# Off

### 1NC

#### Security is a psychological construct—the aff’s scenarios for conflict are products of paranoia that project our violent impulses onto the other

**Mack 91** – Doctor of Psychiatry and a professor at Harvard University (John, “The Enemy System” http://www.johnemackinstitute.org/eJournal/article.asp?id=23 \*Gender modified)

The threat of nuclear annihilation has stimulated us to try to understand what it is about (hu)mankind that has led to such self-destroying behavior. Central to this inquiry is an exploration of the adversarial relationships between ethnic or national groups. It is out of such enmities that war, including nuclear war should it occur, has always arisen. Enmity between groups of people stems from the interaction of psychological, economic, and cultural elements. These include fear and hostility (which are often closely related), competition over perceived scarce resources,[3] the need for individuals to identify with a large group or cause,[4] a tendency to disclaim and assign elsewhere responsibility for unwelcome impulses and intentions, and a peculiar susceptibility to emotional manipulation by leaders who play upon our more savage inclinations in the name of national security or the national interest. A full understanding of the "enemy system"[3] requires insights from many specialities, including psychology, anthropology, history, political science, and the humanities. In their statement on violence[5] twenty social and behavioral scientists, who met in Seville, Spain, to examine the roots of war, declared that there was no scientific basis for regarding (hu)man(s) as an innately aggressive animal, inevitably committed to war. The Seville statement implies that we have real choices. It also points to a hopeful paradox of the nuclear age: threat of nuclear war may have provoked our capacity for fear-driven polarization but at the same time it has inspired unprecedented efforts towards cooperation and settlement of differences without violence. The Real and the Created Enemy Attempts to explore the psychological roots of enmity are frequently met with responses on the following lines: "I can accept psychological explanations of things, but my enemy is real. The Russians [or Germans, Arabs, Israelis, Americans] are armed, threaten us, and intend us harm. Furthermore, there are real differences between us and our national interests, such as competition over oil, land, or other scarce resources, and genuine conflicts of values between our two nations. It is essential that we be strong and maintain a balance or superiority of military and political power, lest the other side take advantage of our weakness". This argument does not address the distinction between the enemy threat and one's own contribution to that threat-**by distortions of perception**, provocative words, and actions. In short, the enemy is real, but we have not learned to understand how we have created that enemy, or how the threatening image we hold of the enemy relates to its actual intentions. "We never see our enemy's motives and we never labor to assess his will, with anything approaching objectivity".[6] Individuals may have little to do with the choice of national enemies. Most Americans, for example, know only what has been reported in the mass media about the Soviet Union. We are largely unaware of the forces that operate within our institutions, affecting the thinking of our leaders and ourselves, and which determine how the Soviet Union will be represented to us. Ill-will and a desire for revenge are transmitted from one generation to another, and we are not taught to think critically about how our assigned enemies are selected for us. In the relations between potential adversarial nations there will have been, inevitably, real grievances that are grounds for enmity. But the attitude of one people towards another is usually determined by leaders who manipulate the minds of citizens for domestic political reasons which are generally unknown to the public. As Israeli sociologist Alouph Haveran has said, in times of conflict between nations historical accuracy is the first victim.[8] The Image of the Enemy and How We Sustain It Vietnam veteran William Broyles wrote: "War begins in the mind, with the idea of the enemy."[9] But to sustain that idea in war and peacetime a nation's leaders must maintain public support for the massive expenditures that are required. Studies of enmity have revealed susceptibilities, though not necessarily recognized as such by the governing elites that provide raw material upon which the leaders may draw to sustain the image of an enemy.[7,10] Freud[11] in his examination of mass psychology identified the proclivity of individuals to surrender personal responsibility to the leaders of large groups. This surrender takes place in both totalitarian and democratic societies, and without coercion. Leaders can therefore designate outside enemies and take actions against them with little opposition. Much further research is needed to understand the psychological mechanisms that impel individuals to kill or allow killing in their name, often with little questioning of the morality or consequences of such actions. Philosopher and psychologist Sam Keen asks why it is that in virtually every war "The enemy is seen as less than human? He's faceless. He's an animal"." Keen tries to answer his question: "The image of the enemy is not only the soldier's most powerful weapon; it is society's most powerful weapon. It enables people en masse to participate in acts of violence they would never consider doing as individuals".[12] National leaders become skilled in presenting the adversary in dehumanized images. The mass media, taking their cues from the leadership, contribute powerfully to the process.

#### Our response is to interrogate the psychological underpinnings of enemy creation–prevents war

Byles 3—English, U Cyprus (Joanna, Psychoanalysis and War: The Superego and Projective Identification, http://www.clas.ufl.edu/ipsa/journal/articles/art\_byles01.shtml)

The problem of warfare which includes genocide, and its most recent manifestation, international terrorism, brings into focus the need to understand how the individual is placed in the social and the social in the individual. Psychoanalytic theories of superego aggression, splitting, projection, and projective identification may be useful in helping us to understand the psychic links involved. It seems vital to me writing in the Middle East in September 2002 that we examine our understanding of what it is we understand about war, including genocide and terrorism. Some psychoanalysts argue that war is a necessary defence against psychotic anxiety (Fornari xx; Volkan), and Freud himself first advanced the idea that war provided an outlet for repressed impulses. ("Why War?"197). The problematic of these views is the individual's need to translate internal psychotic anxieties into real external dangers so as to control them. **It suggests** that culturally **warfare** and its most recent manifestation, international terrorism and the so-called ''war on terrorism," **may be a necessary object for internal aggression and not a pathology.** Indeed, Fornari suggests that "war could be seen as an attempt at therapy, carried out by a social institution which, precisely by institutionalizing war, increases to gigantic proportions what is initially an elementary defensive mechanism of the ego in the schizo-paranoid phase" (xvii-xviii). In other words, **the history of war might represent the externalization** and articulation **of shared unconscious fantasies**. This idea would suggest that the culture of war, genocide, and international terrorism provides objects of psychic need. If this is so, with what can we replace them? If cultural formations and historical events have their sources in our psychic functioningthat is to say, in our unconscious fears and desires, and culture itself provides a framework for expressing, articulating, and coming to terms with these fears and desires, then **psychoanalysis may help to reveal why war seems to be an inevitable and ineradicable part of human history.** Superego as an Agent of Aggression In "The Ego and the Id," Freud formulated a seemingly insoluble dilemma in the very essence of the human psyche; the eternal conflict between the dual instincts of eros, the civilizing life instinct, and the indomitable death instinct (thanatos). He also identified some aspects of the death instinct with superego aggression, suggesting that the superego was the agent of the death instinct in its cruel and aggressive need for punishment and that its operative feeling was frequently a punitive hatred, while other aspects of the superego were protective. As we know, Freud thought the source of the superego was the internalization of the castrating Oedipal father. In chapter seven of Civilization and its Discontents, he theorized that when de-fusion or separation of the dual instincts occurred, aspects of aggression frequently dominated and that it was the purpose of the ego to find objects for eros and/or aggression either in phanta sv or reality. The role phantasy plays in projective identification is something to which I shall return. Other theorists, such as Melanie Klein, trace the beginning of the superego back to early (infant) oral phantasies of self-destruction, which is a direct manifestation of the death instinct. Klein transformed the oedipal drama by making the mother its central figure and thus playing a vital role in object-relations theory, about which I shall say more later in this essay. Although Klein's work relied on the dual instinct theory postulated by Freud, she re-defined the drives by emphasizing the way in which the destructive instincts attached themselves to the object, in particular the good-bad breast. Thus for Klein, the site of the superego is derived from oral Incorporation of the good/bad breast, contrary to Freud, for whom the site of the superego is the paternal law. Although the formation of the superego is grounded on the renunciation ofloving and hostile Oedipal wishes, it is subsequently refined, by the contributions of social and cultural requirements (education, religion, morality). My argument in this paper is three-fold: (1) These social and cultural requirements in which the superego is grounded may be used by the superego of the state and/or its leader to mobilize aspects of the individual's aggression during war-time in a way that does not happen in peace-time. (2) Klein's theory of splitting and projective identification plays an important role in the concept of difference and otherness as enemy. (3) Bion's development of Klein's theory into what he called the "container" and the "contained" may offer some way out of the psychic dangers of projective identification by suggesting that we may be able to access our internal psychic world as a transformative power to combat violence both internal and external. In an early attempt to define war neuroses, or how war mentally traumatizes the psyche, Freud wrote of the conflict "between the soldier's old peaceful ego and his new warlike one" becoming acute as soon as the peace-ego realizes what danger it runs in losing its own life to the rashness of its newly formed parasitic double" (SE 17 209). Accepting the violence that is within ourselves as well as in the other, the so-called enemy, is a difficult lesson to learn, and learning to displace our instinctual destructive aggression peacefully is enormously more difficult. To the extent the individual superego is connected to society, which assumes its functions particularly in wartime, the problem of war brings into focus the psychoanalytic problem of the partial defusion (separation) of eros and psychic aggression brought about by war through specifically social processes. These social processes involve the mechanisms by which aspects of the violent and aggressive social superego of the State mobilizes and appropriates some of the dynamic aspects of the individual's superego aggression: the need to hate, and to punish, for its own purposes, such as genocide or so-called "ethnic cleansing," and for territorial and economic reasons. Many of these actions are often masked as defending civilization, or an idealized State and/or its leader. This is also true of the "holy jihads" that are rapidly becoming an enormous threat to the world. In his book Enemies and Allies, Vamik Volkan suggests that the individual may see the superego of the State as his/her own idealized superego. And indeed, this may in turn help to explain how during war-time the social superego is placed in the individual and how in turn the individual is positioned in the social. In Civilization and its Discontents, to which I have already referred, Freud wrote about the ways in which the regulations and demands of a civilized society harbor the risk of the death instinct (aggression) being released at any favorable opportunity, especially when combined with Eros i.e., under the pretext of idealism and patriotism. This is especially true when t here is a leader who elicits strong emotional attachments from a group or nation. Of course, I am not arguing that there are not some important aspects of the social superego that are beneficial, for example the ethical and moral laws which shape society and protect its citizens; nevertheless, in wartime and its most recent manifestation, international terrorism, it is precisely these civilizing aspects of the social superego that are ignored or repressed. It seems to me that the **failure of civilization historically to control** the aggression, cruelty, and hatred that characterize **war** urgently **requires a psychoanalytic explanation**. Of course, I am speaking of psychic, not biological (survival of the fittest), aggression. In wartime the externalized superego of the state sanctions killing and violence that is not allowed in peace-time (in fact, such violence against others during peacetime would be considered criminal) sanctions, in fact, the gratification of warring aggression, thus ensuring that acts of violence need not incur guilt. Why do we accept this? Psychoanalysis posits the idea that aggression is not behavioral but instinctual; not social but psychological. To quote Volkan, who follows Freud, "It is man's very nature itself." Obviously, it is vital that humanity find more mature, less primitive ways of dealing with our hatred and aggression than war, genocide, and international terrorism. The most characteristic thing about this kind of violence and cruelty is its collective mentality: war requires group co-operation, organization, and approval. Some theorists argue that one of the primary cohesive elements binding individuals into institutionalized human association is defence against psychotic anxiety. In Group Psychology Freud writes that "in a group the individual is brought under conditions which allow him to throw off the repressions of his unconscious instinctual impulses. The apparently new characteristics he then displays are in fact the manifestation of this unconscious, **in which all that is evil in the human mind is contained as a predisposition**" (74). Later in the same essay, when speaking of the individual and the group mind, Freud quotes Le Bon : "Isolated, he may be a cultivated individual; in a crowd, he is a barbarian that is, a creature acting by instinct. He possesses the spontaneity, the violence, the ferocity, and also the enthusiasm and heroism of primitive beings" (77). War is a collective phenomenon that mobilizes our anxieties and allows our **original sadistic fantasies of destructive omnipotence to be re-activated and projected onto "the enemy."** Some critics have argued that we "need" enemies as external stabilizers of our sense of identity and inner control. It has also been argued that the militancy a particular group shows toward its enemies may partly mask the personal internal conflicts of each member of the group, and that they may therefore have **an emotional investment in** the maintenance of the **enmity**. In other words, **they need the enemy and are unconsciously afraid to lose it**. **This fits in with the** well known **phenomenon of inventing an enemy when there is not one readily available**. The individual suicide bomber, or suicide pilot, is just as much part of this group psychology each bomber, each terrorist, is acting for his/her group, or even more immediately his or her family, from whom he/she derives enormous psychic strength and support. Just as importantly, she/he is acting in the name of his/her leader. All of these identifications require strong emotional attachments. Freud writes, "The mutual tie between members of a group is in the nature of an identification, based upon an important emotional common quality. . . . This common quality lies in the nature of the tie to the leader" (Group 1078). In Learning from Experience, Bion theorizes that a social groupfunctions to establish a fixed social order of things (the establishm ent), and that the individual has to be contained by the establishment of the group. Sometimes the rigidity of me system crushes the individual's creativity; alternatively, certain special individuals erupt in the group, which goes to pieces under their influence (Bion cites Jesus within the constraints of Israel). A final possibility is the mutual adaptation of one to the other, with a development of both the individual and the group. The development of a sense of self, its integration, its separation, and its protection all begin, or course, in early childhood. Psychoanalyses like Klein, Winnicott, and Bion have explored these ideas in what is known as object relations theory. Volkan writes that the concepts of enemy and ally and the senses of ethnicity and nationality are largely bound up with the individual's sense of self, and that individuals within an ethnic or national group tend to see their group as a privileged "pseudo-species" (Erikson) and enemy groups as subhuman (262). Of course enemies are threatening and do generate a reactive need for defenses; however, a basic psychoanalytic question might be to what extent the degree of defensiveness characteristic of **war behavior represents personal**, emotional **needs of individuals for an enemy to hate**, **so that they can keep their conflicted selves together**, and to what extent the State superego plays a role here. Our capacity for splitting and projection plays an important part in how we see others and feel about others, and through the process of projective identification, how we make others feel about ourselves and themselves. Projective identification involves a deep split, displacing onto and into others the hateful, bad parts of ourselves, and frequently making them feehateful to themselves through their own introjection of our hatred. This hatred is often racial or religious, frequently both. Moreover, in the process of projective identification, parts of the self are put into the other, thus depleting the ego. (This process can be a vicious circle, and it is a profoundly disturbing and characteristic pathology, often involving envy and/or rivalry, both corrosive, poisonous forces.) These Kleinian ideas, developed by other theorists, such as Winnicott and Bion, are hugely relevant to the problem of war and genocide, and most recently, of terrorism. Klein argues that in the paranoid schizoid position there is a splitting of good and bad objects, with the good being introjected and the bad being externalized and projected out into someone or onto something else. As with the infant and child, so with the adult, mechanisms of splitting and protection play upon negative and feared connotations of the other, of the enemy, and of difference; projection prevents warring nations from exploring and thus understanding what it is that actually divides them; it prevents mutual response and recognition by promoting exclusivity. As already mentioned, analysts such as Volkan and Erikson have written about the processes by which an enemy is dehumanized so as to provide the distance a group needs from its perceived enemy. First the group becomes preoccupied with the enemy according to the psychology of minor differences. Then mass regression occurs to permit the group to recover and reactivate more primitive methods. What they then use in this regressed state tends to contain aspects of childish (pre-oedipal) fury. The enemy is perceived more and more as a stereotype of bad and negative qualities. The use of **denial allows a group to ignore the fact that its own externalizations and projections are involved in this process**. The stereotyped enemy may be so despised as to be no longer human, and it will then be referred to in non-human terms. History teaches us that it was in this way that the Nazis perceived the Jews as vermin to be exterminated. As I write, Al Qaeda terrorist groups view all Americans as demons and infidels to be annihilated, and many Americans are comforted by demonizing all of bearded Islam. Many Israelis consider most Palestinians as dirt beneath their feet subhuman and most Palestinians think of most Israelis as despoilers of the land they are supposed to share. In other words, the problem of the mentality of war and of terrorism mobilizes our anxieties in such a way so as to **prevent critical reality testing**. If we could learn the enormously difficult and painful task of re-introjection, of taking back our projections, our hatreds, anxieties, and fears of the other and of difference, long before they harm the other, there might be a transition, a link, from the state sanctioned violence of war back to individual violence. We might learn to subvert negative projective identification into a positive identification as a means of empathizing with the other and thus containing difference. The violence of the individual could then be contained and sublimated in peaceful ways, such as reconciling and balancing competing interests by asking what exactly these opposing interests are and exploring what the dynamics, conscious and unconscious, are for the hatred of deep war-like antagonisms. In other words, we would need to change our relationship with the other, giving up the dangerously irresponsible habit of splitting, projective identification, and exclusivity by recognizing difference not antagonistically but through an inclusive process that recognises the totalitv of human relationships in a peaceful world. We might substitute for the libidinal object-ties involved in projective identification the re-introjection of the object into the ego, and thus reach a common feeling of sharing, of being part of the other, of empathy, in short. As Freud pointed our, the ego is altered bv introjection, as suggested by his memorable formulation: " The shadow of the object has fallen on the ego." In his book Second Thoughts, Bion theorizes that in the infant as in the adult, re-introjection can be dangerous if the dominance of projective identification confuses the distinction between s elf and the external object, since this awareness depends on the recognition of a distinction between subject and object. But Bion's theory of the pairing group, or the container and the contained, provides a way out of this predicament, suggesting that the outcome of such pairing is either detrimental to the contained, or to the container, or mutually developing to both. This idea is germane to my argument in this paper that the reciprocity of the container and the contained relationship, through both positive projective identification (empathy) and introjection or re-introjection, results in a positive allowance of difference in other words, a healthy acceptance of and adaptation to the other within the self and the self within the other.

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#### Restrictions are prohibitions on action --- the aff is oversight

Jean Schiedler-Brown 12, Attorney, Jean Schiedler-Brown & Associates, Appellant Brief of Randall Kinchloe v. States Dept of Health, Washington, The Court of Appeals of the State of Washington, Division 1, http://www.courts.wa.gov/content/Briefs/A01/686429%20Appellant%20Randall%20Kincheloe%27s.pdf

3. The ordinary definition of the term "restrictions" also does not include the reporting and monitoring or supervising terms and conditions that are included in the 2001 Stipulation. ¶ Black's Law Dictionary, 'fifth edition,(1979) defines "restriction" as; ¶ A limitation often imposed in a deed or lease respecting the use to which the property may be put. The term "restrict' is also cross referenced with the term "restrain." Restrain is defined as; To limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion on; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle, to repress or suppress, to curb. ¶ In contrast, the terms "supervise" and "supervisor" are defined as; To have general oversight over, to superintend or to inspect. See Supervisor. A surveyor or overseer. . . In a broad sense, one having authority over others, to superintend and direct. The term "supervisor" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but required the use of independent judgment. ¶ Comparing the above definitions, it is clear that the definition of "restriction" is very different from the definition of "supervision"-very few of the same words are used to explain or define the different terms. In his 2001 stipulation, Mr. Kincheloe essentially agreed to some supervision conditions, but he did not agree to restrict his license.

#### Restrictions on authority are distinct from conditions

William Conner 78, former federal judge for the United States District Court for the Southern District of New York United States District Court, S. D. New York, CORPORACION VENEZOLANA de FOMENTO v. VINTERO SALES, http://www.leagle.com/decision/19781560452FSupp1108\_11379

Plaintiff next contends that Merban was charged with notice of the restrictions on the authority of plaintiff's officers to execute the guarantees. Properly interpreted, the "conditions" that had been imposed by plaintiff's Board of Directors and by the Venezuelan Cabinet were not "restrictions" or "limitations" upon the authority of plaintiff's agents but rather conditions precedent to the granting of authority. Essentially, then, plaintiff's argument is that Merban should have known that plaintiff's officers were not authorized to act except upon the fulfillment of the specified conditions.

#### Substantially” means the plan must be across the board

Brian Anderson 5, Becky Collins, Barbara Van Haren & Nissan Bar-Lev, WCASS Research / Special Projects Committee\* Report on: A Conceptual Framework for Developing a 504 School District Policy, http://www.specialed.us/issues-504policy/504.htm

A substantial limitation is a significant restriction as to the condition, manner, or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.¶ The 504 regulation does not define substantial limitation, and the regulation gives discretion to schools to decide what substantial limitation is. The key here is to be consistent internally and to be consistent with pertinent court decisions.¶ The issue “Does it substantially limit the major life activity?” was clarified by the US Supreme Court decision on January 8th, 2002 , “Toyota v. Williams”. In this labor related case, the Supreme Court noted that to meet the “substantially limit” definition, the disability must occur across the board in multiple environments, not only in one environment or one setting. The implications for school related 504 eligibility decisions are clear: The disability in question must be manifested in all facets of the student’s life, not only in school.

#### Vote neg---

#### Neg ground---only prohibitions on particular authorities guarantee links to every core argument like flexibility and deference

#### Precision---only our interpretation defines “restrictions on authority”---that’s key to adequate preparation and policy analysis

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#### Court interference in national security decks effective executive responses to prolif, terror, and the rise of hostile powers---link threshold is low

Robert Blomquist 10, Professor of Law, Valparaiso University School of Law, THE JURISPRUDENCE OF AMERICAN NATIONAL SECURITY PRESIPRUDENCE, 44 Val. U.L. Rev. 881

Supreme Court Justices--along with legal advocates--need to conceptualize and prioritize big theoretical matters of institutional design and form and function in the American national security tripartite constitutional system. By way of an excellent introduction to these vital issues of legal theory, the Justices should pull down from the library shelf of the sumptuous Supreme Court Library in Washington, D.C. (or more likely have a clerk do this chore) the old chestnut, The Legal Process: Basic Problems in the Making and Application of Law by the late Harvard University law professors Henry M. Hart and Albert M. Sacks. n7 Among the rich insights on institutional design coupled with form and function in the American legal system that are germane to the Court's interpretation of national security law-making and decision-making by the President are several pertinent points. First, "Hart and Sacks' intellectual starting point was the interconnectedness of human beings, and the usefulness of law in helping us coexist peacefully together." n8 By implication, therefore, the Court should be mindful of the unique [\*883] constitutional role played by the POTUS in preserving peace and should prevent imprudent judicial actions that would undermine American national security. Second, Hart and Sacks, continuing their broad insights of social theory, noted that legal communities establish "institutionalized[] procedures for the settlement of questions of group concern" n9 and regularize "different procedures and personnel of different qualifications . . . appropriate for deciding different kinds of questions" n10 because "every modern society differentiates among social questions, accepting one mode of decision for one kind and other modes for others-e.g., courts for 'judicial' decisions and legislatures for 'legislative' decisions" n11 and, extending their conceptualization, an executive for "executive" decisions. n12 Third, Professors Hart and Sacks made seminal theoretical distinctions between rules, standards, principles, and policies. n13 While all four are part of "legal arrangements [\*884] in an organized society," n14 and all four of these arrangements are potentially relevant in judicial review of presidential national security decisions, principles and policies n15 are of special concern because of the sprawling, inchoate, and rapidly changing nature of national security threats and the imperative of hyper-energy in the Executive branch in responding to these threats. n16

The Justices should also consult Professor Robert S. Summers's masterful elaboration and amplification of the Hart and Sacks project on enhancing a flourishing legal system: the 2006 opus, Form and Function in a Legal System: A General Study. n17 The most important points that [\*885] Summers makes that are relevant to judicial review of American national security presiprudence are three key considerations. First, a "conception of the overall form of the whole of a functional [legal] unit is needed to serve the founding purpose of defining, specifying, and organizing the makeup of such a unit so that it can be brought into being and can fulfill its own distinctive role" n18 in synergy with other legal units to serve overarching sovereign purposes for a polity. The American constitutional system of national security law and policy should be appreciated for its genius in making the POTUS the national security sentinel with vast, but not unlimited, powers to protect the Nation from hostile, potentially catastrophic, threats. Second, "a conception of the overall form of the whole is needed for the purpose of organizing the internal unity of relations between various formal features of a functional [legal] unit and between each formal feature and the complementary components of the whole unit." n19 Thus, Supreme Court Justices should have a thick understanding of the form of national security decision-making conceived by the Founders to center in the POTUS; the ways the POTUS and Congress historically organized the processing of national security through institutions like the National Security Council and the House and Senate intelligence committees; and the ways the POTUS has structured national security process through such specific legal forms as Presidential Directives, National Security Decision Directives, National Security Presidential Decision Directives, Presidential Decision Directives, and National Security Policy Directives in classified, secret documents along with typically public Executive Orders. n20 Third, according to Summers, "a conception of the overall form of the whole functional [legal] unit is needed to organize further the mode of operation and the instrumental capacity of the [legal] unit." n21 So, the Supreme Court should be aware that tinkering with national security decisions of the POTUS--unless clearly necessary to counterbalance an indubitable violation of the text of the Constitution--may lead to unforeseen negative second-order consequences in the ability of the POTUS (with or without the help of Congress) to preserve, protect, and defend the Nation. n22

 [\*886] B. Geopolitical Strategic Considerations Bearing on Judicial Interpretation

Before the United States Supreme Court Justices form an opinion on the legality of national security decisions by the POTUS, they should immerse themselves in judicially-noticeable facts concerning what national security expert, Bruce Berkowitz, in the subtitle of his recent book, calls the "challengers, competitors, and threats to America's future." n23 Not that the Justices need to become experts in national security affairs, n24 but every Supreme Court Justice should be aware of the following five basic national security facts and conceptions before sitting in judgment on presiprudential national security determinations.

(1) "National security policy . . . is harder today because the issues that are involved are more numerous and varied. The problem of the day can change at a moment's notice." n25 While "[y]esterday, it might have been proliferation; today, terrorism; tomorrow, hostile regional powers" n26, the twenty-first century reality is that "[t]hreats are also more likely to be intertwined--proliferators use the same networks as narco-traffickers, narco-traffickers support terrorists, and terrorists align themselves with regional powers." n27

(2) "Yet, as worrisome as these immediate concerns may be, the long-term challenges are even harder to deal with, and the stakes are higher. Whereas the main Cold War threat--the Soviet Union--was brittle, most of the potential adversaries and challengers America now faces are resilient." n28

(3) "The most important task for U.S. national security today is simply to retain the strategic advantage. This term, from the world of military doctrine, refers to the overall ability of a nation to control, or at least influence, the course of events." n29 Importantly, "[w]hen you hold [\*887] the strategic advantage, situations unfold in your favor, and each round ends so that you are in an advantageous position for the next. When you do not hold the strategic advantage, they do not." n30

(4) While "keeping the strategic advantage may not have the idealistic ring of making the world safe for democracy and does not sound as decisively macho as maintaining American hegemony," n31 maintaining the American "strategic advantage is critical, because it is essential for just about everything else America hopes to achieve--promoting freedom, protecting the homeland, defending its values, preserving peace, and so on." n32

(5) The United States requires national security "agility." n33 It not only needs "to refocus its resources repeatedly; it needs to do this faster than an adversary can focus its own resources." n34

 [\*888] As further serious preparation for engaging in the jurisprudence of American national security presiprudence in hotly contested cases and controversies that may end up on their docket, our Supreme Court Justices should understand that, as Walter Russell Mead pointed out in an important essay a few years ago, n35 the average American can be understood as a Jacksonian pragmatist on national security issues. n36 "Americans are determined to keep the world at a distance, while not isolating ourselves from it completely. If we need to take action abroad, we want to do it on our terms." n37 Thus, recent social science survey data paints "a picture of a country whose practical people take a practical approach to knowledge about national security. Americans do not bother with the details most of the time because, for most Americans, the details do not matter most the time." n38 Indeed, since the American people "do know the outlines of the big picture and what we need to worry about [in national security affairs] so we know when we need to pay greater attention and what is at stake. This is the kind of knowledge suited to a Jacksonian." n39

Turning to how the Supreme Court should view and interpret American presidential measures to oversee national security law and policy, our Justices should consider a number of important points. First, given the robust text, tradition, intellectual history, and evolution of the institution of the POTUS as the American national security sentinel, n40 and the unprecedented dangers to the United States national security after 9/11, n41 national security presiprudence should be accorded wide latitude by the Court in the adjustment (and tradeoffs) of trading liberty and security. n42 Second, Justices should be aware that different presidents [\*889] institute changes in national security presiprudence given their unique perspective and knowledge of threats to the Nation. n43 Third, Justices should be restrained in second-guessing the POTUS and his subordinate national security experts concerning both the existence and duration of national security emergencies and necessary measures to rectify them. "During emergencies, the institutional advantages of the executive are enhanced", n44 moreover, "[b]ecause of the importance of secrecy, speed, and flexibility, courts, which are slow, open, and rigid, have less to contribute to the formulation of national policy than they do during normal times." n45 Fourth, Supreme Court Justices, of course, should not give the POTUS a blank check--even during times of claimed national emergency; but, how much deference to be accorded by the Court is "always a hard question" and should be a function of "the scale and type of the emergency." n46 Fifth, the Court should be extraordinarily deferential to the POTUS and his executive subordinates regarding questions of executive determinations of the international laws of war and military tactics. As cogently explained by Professors Eric Posner and Adrian Vermeule, n47 "the United States should comply with the laws of war in its battle against Al Qaeda"--and I would argue, other lawless terrorist groups like the Taliban--"only to the extent these laws are beneficial to the United States, taking into account the likely response of [\*890] other states and of al Qaeda and other terrorist organizations," n48 as determined by the POTUS and his national security executive subordinates.

### 1NC

#### The United States federal judiciary should restrict the President’s war powers authority to imprison individuals that have won their habeas hearing on the grounds that human rights treaties ratified by the United States are self-executing.

#### Using the word “detain” is unethical and turns solvency—“imprison” is more accurate—hold the 1ac accountable

Margaret Sullivan 13, April 12, “‘Targeted Killing,’ ‘Detainee’ and ‘Torture’: Why Language Choice Matters,” http://publiceditor.blogs.nytimes.com/2013/04/12/targeted-killing-detainee-and-torture-why-language-choice-matters/?\_r=0

If it’s torture, why call it a “harsh interrogation technique”? If it’s premeditated assassination, why call it a “targeted killing”? And if a suspected terrorist has been locked up at Guantánamo Bay for more than a decade, why call him a “detainee”? Many of the complaints I get in the public editor’s in-box are about phrases that The Times uses. These writers complain that **language** choices make a **huge difference in perception**, **especially** when they accept and adopt government-speak. One reader, Donald Mintz, a professor emeritus at Montclair State University, objects to the unquestioning use of “defense” as in “defense budget,” and prefers “military.” He wrote: “Outside of direct or indirect quotation the term ‘defense’ should be used sparingly and with the greatest caution. Who, after all, could be against ‘defense’? But at least some of us are against excessive militarism.” Another reader, Roscoe Gort, commented on an article this week, “Targeted Killing Comes to Define War on Terror.” “Since 9/11 The New York Times has shown a great willingness to adopt the Newspeak (‘War Is Peace’) terminology from successive administrations in Washington,” he wrote. “War on terror” was just one example, he said, and wanted to know how The Times decides what terms to use. And, he wondered, “Do reporters like Scott Shane really write this way, or does some editor automatically change all the occurrences of “murder” or “assassination” in the stories they file into “targeted killing”? And Gene Krzyzynski, a veteran copy editor at The Buffalo News and a longtime New York Times reader, objected to the continued use of the term “detainee” to describe suspected terrorists who are being held indefinitely at the United States naval base at Guantánamo Bay, calling it “**accepting political spin** at face value.” Mr. Krzyzynski wrote: **To “detain” connotes brevity**, as in, say, a traveler detained at a border or an airport for further Immigration, Customs, T.S.A. or similar questioning-searching-processing. I’d go as far as to call it **language abuse** in the context of Gitmo, especially for anyone who has a healthy respect for plain, clear English or who remembers “detention” in high school. “**Prisoner**” and its variants **would be accurate**, of course, given the unusually long time behind bars or in cages (historically unprecedented, actually, for any P.O.W.’s, if one accepts that we’re in a “war,” albeit undeclared by Congress). Seven years ago, the Pulitzer Prize-winning cartoonist Steve Breen of The San Diego Union-Tribune came up with what’s probably the most precise term of all: “infinitee.” I asked Mr. Shane, a national security reporter in the Washington bureau, and Philip B. Corbett, the associate managing editor for standards, to respond to some of these issues. Mr. Shane addressed Mr. Gort’s question on “targeted killings,” noting that editors and reporters have discussed it repeatedly. He wrote: “Assassination” is banned by executive order, but for decades that has been interpreted by successive administrations as prohibiting the killing of political figures, not suspected terrorists. Certainly most of those killed are not political figures, though arguably some might be. Were we to use “assassination” routinely about drone shots, it would suggest that the administration is deliberately violating the executive order, which is not the case. This administration, like others, just doesn’t think the executive order applies. (The same issue arose when Ronald Reagan bombed Libya, and Bill Clinton fired cruise missiles at Sudan and Afghanistan.) “Murder,” of course, is a specific crime described in United States law with a bunch of elements, including illegality, so it would certainly not be straight news reporting to say President Obama was “murdering” people. This leaves “targeted killing,” which I think is far from a euphemism. It denotes exactly what’s happening: American drone operators aim at people on the ground and fire missiles at them. I think it’s a pretty good term for what’s happening, if a bit clinical. Mr. Shane added that he had only one serious qualm about the term. That, he said, was expressed by an administration official: “It’s not the targeted killings I object to — it’s the untargeted killings.” The official “was talking about so-called ‘signature strikes’ that target suspected militants based on their appearance, location, weapons and so on, not their identities, which are unknown; and also about mistaken strikes that kill civilians.” On the matter of “detainee,” Mr. Corbett called it “a legitimate concern” and agreed that the term might not be ideal. He said that it, not prisoner, was used because those being held “are in such an unusual situation – they are not serving a prison term, they are in an unusual status of limbo.” The debate over the word “torture,” he said, has similar implications to the one Mr. Shane described with assassination. “The word torture, aside from its common sense meaning, has specific legal meaning and ramifications,” Mr. Corbett said. “Part of the debate is on that very point.” The Times wants to “avoid making a legal judgment in the middle of a debate,” he added. Mr. Corbett also said that readers might have the wrong idea about The Times’s practices on word use. “People have this image that we set out a list of terms that must be used and those that must not be used — that there is a committee or cabal that sends out an edict,” he said. That’s far from true, he said. “In a vast majority of cases, we rely on our reporters to use their judgment,” he said. “Only rarely do we make a firm style rule.” Although individual words and phrases may not amount to very much in the great flow produced each day, **language matters**. When news organizations accept the government’s way of speaking, they seem to **accept the government’s way of thinking**. In The Times, these decisions carry even more weight. Word choices like these **deserve thoughtful consideration** – and, at times, some institutional **soul-searching**.

### 1NC

#### The United States Executive Branch should make a public declaration that the United States’ indefinite detention policy guarantees Article 75 protections of the First Geneva Protocol. The United States Congress should

#### ratify the Second Geneva Protocol.

#### release individuals that have won their habeas hearing.

* Pronounce that the United states supports a right to water

#### Solves HR cred and treaty leadership

John Bellinger 10, **headed the U.S. delegation for the negotiation of the Third Additional Protocol to the Geneva Conventions**; an adjunct senior fellow in International and National Security Law at the Council on Foreign Relations. As the legal adviser for Department of State from 2005 to 2009. Obama, Bush, and the Geneva Conventions, shadow.foreignpolicy.com/posts/2010/08/11/obama\_bush\_and\_the\_geneva\_conventions

Today, 12 August, is the 61st anniversary of the signing of the Geneva Conventions of 1949, the international treaties designed to protect soldiers and civilians during armed conflicts. The treaties became the focus of international attention in 2002 when the Bush administration controversially concluded that al Qaeda and the Taliban were not entitled to their protections. President Obama has reaffirmed America's "commitment" to the Geneva Conventions but has not been specific about how the Conventions apply to al Qaeda and Taliban detainees. To re-assert U.S. leadership with respect to the laws of war, the Obama administration should announce that the United States accepts specific provisions of the Conventions and engage other countries to develop new rules where the Geneva Conventions do not apply.¶ The 1949 Geneva Conventions consist of four separate treaties originally signed by 59 countries in Geneva, Switzerland. In light of the horrific experiences of World War II, the first three agreements revised previous treaties dating from 1864, 1906, and 1929 that provided humanitarian protections for sick or wounded soldiers on land, sailors at sea, and prisoners of war. The fourth agreement, added in 1949, establishes protections for civilians in conflict zones. The best known of the agreements is the Third Geneva Convention, which provides detailed articles of protection for those who qualify as Prisoners of War (POWs).¶ The Geneva Conventions apply to conflicts between the 194 countries that are now party to them. Since 1949, three Additional Protocols have been added to the Conventions to provide further protections in light of changes in modern warfare. The United States has long objected to certain provisions in the First Protocol, although it has stated its support for others. President Reagan submitted the Second Protocol to the Senate in 1987, but the Senate has not acted on it. The Bush administration was a driving force behind (and signed and ratified) the Third Protocol, which created an alternative protective symbol (a Red Diamond) for countries (primarily Israel) that do not use the Red Cross or Red Crescent.¶ Together, the four 1949 Conventions and the three protocols form the bedrock of the international laws of war.¶ The United States applied the Geneva Conventions in the Korean, Vietnam, and first Gulf Wars. After the September 11 attacks, however, President Bush concluded that the Conventions did not apply to the United States conflict with al Qaeda because al Qaeda was not a party to the Conventions. He also determined that while Afghanistan was a party to the Conventions, the Taliban were not entitled to POW protections. The Bush administration's refusal to apply the Geneva Conventions (and certain provisions in human rights treaties) was condemned by U.S. allies and human rights groups as an effort to place al Qaeda and Taliban detainees into a "legal black hole." In its second term, the Bush administration made significant efforts to clarify the legal rules applicable to detention and engage U.S. allies in discussions on international legal issues. But the administration still resisted application of the Geneva Conventions. ¶ In 2006, the Supreme Court rejected the Bush administration's arguments and held that even if the Geneva Conventions did not apply in their entirety, at least one provision -- Common Article 3, which prohibits torture and inhuman or degrading treatment of detainees -- applies to the conflict between the United States and al Qaeda.¶ President Obama entered office pledging to "restore" U.S. respect for international law. He immediately banned coercive interrogation methods and rescinded the Bush administration's strained interpretations of Common Article 3. Last December, Obama reaffirmed the U.S. "commitment to abide by the Geneva Conventions" in his Nobel Prize remarks. These statements have helped improve America's image internationally. But the Obama administration has yet to apply the Geneva Conventions as a legal framework differently than the Bush administration. The administration continues to hold hundreds of al Qaeda and Taliban detainees as enemy combatants in Guantanamo and Afghanistan but has not determined that they are POWs under the Third Convention or civilian "protected persons" under the Fourth Convention.¶ The Obama administration has been studying for nearly twenty months whether to give additional Geneva protections to these detainees. Although al Qaeda detainees clearly are not entitled to POW status, the administration should agree to be bound by Article 75 of the First Protocol to the Conventions, which specifies minimum protections for detained persons, such as the right to be told the reasons for one's detention. The administration should also urge the Senate to approve the Second Protocol to the Conventions, which spells out rules for internal wars such as in Afghanistan today. Applying these provisions from the First and Second Protocols would demonstrate the U.S. commitment to holding detainees under an internationally recognized set of rules.¶ For more than a hundred years, the United States has been a respected leader in developing the international laws of war. The Bush administration stumbled by straining to avoid application of the Geneva Conventions as a whole and refusing to adopt even the minimum international standards set forth in Common Article 3 and Article 75. But it is true that the Conventions, and even the Additional Protocols, do not provide clear guidance for countries engaged in conflicts with terrorist groups like al Qaeda, such as who qualifies as a combatant and what legal process should be given. The Obama administration should continue to engage our allies in dialogue about which existing rules of international humanitarian and human rights law apply and where additional rules should be developed. The administration should use its considerable political capital in the international community to clarify and expand the international law applicable to modern warfare.

#### Court ILAW rulings cause massive Congressional backlash that turns the case

Eric Posner 8, professor at the University of Chicago Law School, Medellin and America's Ability To Comply With International Law, www.slate.com/content/slate/blogs/convictions/2008/03/25/medellin\_and\_america\_s\_ability\_to\_comply\_with\_international\_law.html

There is an academic theory that holds that the type of litigation (sometimes called "transnational legal process") exemplified by the Medellin case would eventually bring the United States into greater and greater compliance with international law. But with the benefit of hindsight, we see that the opposite has been the case. The U.S. government reacted to this litigation by withdrawing from the protocol that gave the ICJ jurisdiction over these cases, and the U.S. Supreme Court has reacted to this litigation by weakening the domestic effect of treaties, expressing discomfort with international adjudication and making clear that the president lacks the power to compel the states to comply with treaties. The United States will violate or withdraw from international law when its national government wants to, and sometimes it will do so even when its national government does not want to.

#### That demolishes hegemony and turns cred

J. Harvie Wilkinson 4, Circuit Judge for the 4th Circuit, DEBATE: THE USE OF INTERNATIONAL LAW IN JUDICIAL DECISIONS, 27 Harv. J.L. & Pub. Pol'y 423

So of course international law should play a part in American judicial reasoning. It would be odd if it did not. In some areas, foreign and international law is made relevant by our Constitution, by statute or treaty, by the well-developed principles of common law, by overwhelming considerations of comity, or simply by private commercial agreement of the parties. But when judges, on their own motion and without any direction by Congress or the Constitution decide to make such precedents relevant, we are dealing with an entirely different question.

So judges must not wade, **sua sponte**, into international law's deep blue sea. Rather, we ought to ask: How does American law make foreign or international standards relevant? Why should we ask this threshold question? Because it is important that the United States speak with one, not multiple, voices in foreign affairs. The Constitution is explicit on this: Article I, Section 10 says that "no State shall enter into any Treaty [or] Alliance" with a foreign power. 9 The Constitution leaves the conduct of foreign and military affairs largely to the political branches -- not the courts. The diplomatic credibility of the United States would plummet if the actions and pronouncements of the executive and legislative branches in foreign and military matters were later repudiated and contradicted by judicial decree.

Where courts go too far, in my view, is where they rely upon international (and mostly European) precedents when resolving important and contentious social issues. This "internationalization" of the Constitution on domestic social issues raises three types of problems.

### 1NC

#### Independent judicial interpretation of international law undermines Congressional treaty power

GeraldNeuman 4, professor of jurisprudence at Columbia University, 98 A.J.I.L. 82, “THE UNITED STATES CONSTITUTION AND INTERNATIONAL LAW: The Uses of International Law in Constitutional Interpretation”, January, lexis

Normative reasoning borrowed from international human rights sources will not necessarily prevail in the process of constitutional interpretation. Other normative considerations omitted there may be relevant, and consensual and institutional factors may also come into play. The Court may conclude that the normatively compelling interpretation of a right cannot be adopted at the constitutional level but, rather, should await political implementation. I emphasize again that the international human rights regime does not call for implementation at the constitutional level, only compliance. Thus, the Supreme Court has reason to examine international human rights norms and decisions interpreting them for the normative and functional insights that they may provide on analogous issues of constitutional right. They certainly cannot control constitutional interpretation, but they may inform it.

The use of human rights treaties as an aid in construing constitutional rights might seem superficially in tension with the Supreme Court's reassurance in Reid v. Covert that the treaty power cannot be employed to violate constitutional rights. 31 That appearance should dissolve on closer examination. The treaty makers cannot override constitutional norms, and they cannot order the Supreme Court to alter its interpretation of a constitutional provision. 32 But treaties, like legislation, can contribute to a shift in the factual, institutional, and normative environment within which the Court carries on its task of constitutional interpretation. The resulting doctrinal evolution is unavoidable in any candid account of U.S. constitutional history. Nothing in Reid v. Covert and its progeny precludes this indirect influence of treaty making on constitutional law. Treaties and the case law arising under them thus become data available for the Court's consideration in elaborating the contemporary meaning of constitutional norms. The political branches can neither require the Court to follow international or foreign law in interpreting the Constitution nor prohibit the Court from considering international or foreign law. Under current circumstances, the Supreme Court correctly does not engage in the practice, pursued by some other constitutional courts, of construing constitutional rights for the purpose of judicially implementing the positive international obligations of the nation under human rights treaties. The positive effect of treaty norms differs from the moral or functional insight that they may provide. Human rights treaties do not require implementation at the constitutional level, and in the U.S. legal system. Congress retains ultimate control over the means of implementing--or breaching--a treaty. Entrenching positive human rights standards as  [\*89]  constitutional interpretation, for the purpose of ensuring compliance with the treaty as such, would deprive the political branches of their authority to choose methods of treaty implementation, and would not be consistent with current constitutional understandings. 33

#### The Court’s not using treaties to limit political branch’s authority---the plan creates a doctrine of judicial enforceability that collapses the PQD and SOP---it also functionally renders treaties self-executing

Curtis Bradley 9, Horvitz Professor of Law, Duke Law School, SELF-EXECUTION AND TREATY DUALITY, http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5505&context=faculty\_scholarship

Nothing in this history, however, suggests that treaties were included in the Supremacy Clause in order to empower the courts to deter or redress national government breaches of treaties, or in any other way limit the national political branches’ control over treaty compliance. Indeed, the entire thrust of the adoption of the Supremacy Clause was one of empowering the national government to operate more effectively. As Professor Christopher Drahozal notes in his book on the Supremacy Clause:

“Certainly the Supremacy Clause does away with the question under the Articles of Confederation of whether states have to implement treaties before they take effect. That possibility, the subject of debate and federal action in connection with the Treaty of Peace with Great Britain, is conclusively rejected by the Supremacy Clause. Beyond that, however, the resolution of the self-execution debate is less clear, at least with respect to the preemption of state law.”58

To put it differently, there is no reason to think that the Supremacy Clause removes the international political dimension of treaties, which leaves to national governments the ultimate responsibility for deciding whether and how to comply with treaty obligations, and for accepting whatever international consequences may flow from that decision. The Supremacy Clause simply ensures that in the United States this responsibility rests at the federal rather than state level.

The federalism orientation of the Supremacy Clause is further reflected in the fact that it refers only to state judges and state laws and does not mention the federal political branches. The Constitution addresses the Executive Branch’s obligation to comply with federal law not in the Supremacy Clause but rather in the Take Care Clause of Article II.59 As for Congress, it is well settled that Congress has the authority to override both treaties and statutes, despite their status as supreme law of the land.60 Congress does of course have an obligation to comply with the Constitution, but the Supreme Court in Marbury described this obligation as emanating principally from the nature of a written constitution that assigns limited and enumerated powers to the national government rather than from the Supremacy Clause.61 The pattern of judicial enforcement of treaties throughout U.S. history also comports with a federalism rather than separation-of-powers understanding of the Supremacy Clause. As Professor Wu has found, most judicial enforcement of treaties has been directed at states and localities, and, even outside that context, courts have tended to “look for signals from Congress or the Executive that might show who is meant to be responsible for enforcing a given treaty.”62

Once the concept of supreme law of the land is viewed as potentially separate from automatic judicial enforceability, it is easier to understand contemporary judicial and political branch practice relating to treaties. Consider, for example, the non-self- execution declarations that the Senate and President sometimes include with their consent to treaties. These declarations are not an effort to turn off the Supremacy Clause, as some critics contend. They are simply an effort by the U.S. treatymakers to regulate the separable issue of judicial enforceability. I will say more about these declarations in the next Part, and I will address there other constitutional objections that might be raised against them. For now, it is important to note that, in order to conclude that they violate the Supremacy Clause, one would need to read that Clause as not only mandating direct judicial enforceability, but doing so even when the Senate and President expressly do not desire judicial enforceability, and even when they have concluded that other U.S. laws already place the United States in compliance with the treaty. Again, there is nothing in the history of the Supremacy Clause that suggests such a mandate.

#### That creates unlimited legislative role for the Courts in treaty enforcement---collapses effective international political responses to environment, terrorism, rogues, and collapses the economy and trade---it also kills the cred of informal treaties which will solve the case in the SQ

John Yoo 8, Cal Berkeley law prof, The Powers of War and Peace, 244-9

Non-self-execution provides a ready means to solve some of the tensions between the treaty and legislative powers. International events now inﬂuence numerous areas of life that were formerly the preserve of regular legislation, while domestic conduct has produced effects on problems of an international scope. Correspondingly, the scope of international agreements has broadened, which has expanded the potential reach of the treaty power. Meanwhile, nationalization of the American economy and society has produced an expansion in the powers of Congress, particularly through its commerce and spending powers. International efforts to regulate areas such as the environment, arms control, the economy, or human rights, therefore, will come into conﬂict with Congress’s constitutional powers, just as treaties threatened to do—albeit in more limited subject-matter areas—during the framing and early National Period. In short, the globalization of affairs produces substantial tension with a constitutional system that maintains a strong distinction between the power to make treaties and the power to legislate. ¶ Non-self-execution provides a means to solve this tension. It prevents international political commitments, entered through treaties, from automatically imposing domestic legal obligations on the government until the political branches have determined the manner in which to implement them. It reserves to the most popular branch of government, Congress, its authority over the domestic regulation of individual citizens and their pri- vate activity, while also creating a presumption that protects the normal regulatory prerogatives of the states under our federal system of govern- ment. It also preserves the discretion of the president and/or Congress¶ 245¶ to choose to disregard international rules without violating the domestic Constitution. ¶ The values served by non-self-execution become clearer when we ex- amine two different sets of issues raised by globalization: the multilater- alization of the use of force and the death penalty. Turning ﬁrst to the use of force, it will be recalled that the U.N. Charter prohibits the use of force unless in self-defense or on authorization by the Security Council. The United States ratiﬁed the U.N. Charter as a treaty at the end ofWorld WarII.Thus,someargue,inratifyingthechartertheUnitedStatesgaveup its right to initiate hostilities unless in conformity with its terms. Because a treaty is part of the “law of the land” under the Supremacy Clause, and hence on a par with the Constitution and other federal law, the president has a constitutional obligation, in seeing that the laws are faithfully exe- cuted, not to order the use of force that would violate the U.N. Charter. If a Congress funds a presidential war at odds with the U.N. Charter, one imagines that Congress is acting unconstitutionally as well. “By adhering to the Charter,” according to Professor Henkin, “the United States has given up the right to go to war at will.”78 ¶ Two disruptions of the constitutional structure ﬂow from this position. First, it renders any presidential use of force that is not taken in self- defense or authorized by the Security Council not only illegal, but un- constitutional. Presidential discretion to use force in foreign affairs, as envisioned by the Framers and established in the constitutional text and structure, is unarguably reduced as a result. Under this approach to trea- ties, the violation of international law by the United States and its allies in Kosovo also amounted to a violation of the Constitution by President Clinton. After all, the United States could not claim seriously—nor did it try—that Serbia was armed with weapons of mass destruction and their delivery systems and that it posed a threat sufﬁcient to trigger the U.S. national right of self-defense. Due to Russia’s veto, the Security Coun- cil never issued a resolution authorizing the use of force. In using force againstKosovo,theUnitedStatesviolatedtheU.N.CharterandPresident Clinton,under a self-execution theory,failed to perform his constitutional duty to enforce the laws of the land. Second,equating treaties with statutes has the effect of transferring the authority to decide whether to use force in international relations to an international organization. Under the Constitution’s original design, the president and Congress decide on war through the interaction of their constitutional powers. Putting to one side the use of force in self-defense, many scholars believe both that the United States cannot wage war with- out Security Council permission, and that if the Security Council autho- rizes war—as it did in the 1991 Persian GulfWar—the United States must use force to meet the goals set out by the Council. In other words, the SecurityCouncilhastheauthorityunderthechartertoimposebothaneg- ative duty (not to attack) and an afﬁrmative duty—to use force to enforce council resolutions. The Constitution’s usual procedure of relying on the president and Congress to make these decisions, under this approach, is effectively within the control of the Security Council. In those cases,how- ever, where the United States can make an actual claim of self-defense, as inAfghanistan and probably Iraq in 2003,the United States—and thus the president and Congress—would still have their usual room for deci- sionmaking. ¶ Of course,the United States has used force many times since the end of WorldWar II,and not all of those cases met the requirements of the U.N. Charter. In fact,in only two instances has the use of force been authorized by the Security Council, in Korea in 1950 and in the Persian Gulf four decades later. During this period,some conﬂicts undoubtedly qualiﬁed as national exercises of the right to self-defense under international law— Afghanistan being the easiest example. Others,however,may not have— such as the uses of force in Kosovo,Bosnia,and Lebanon—although there is usually a healthy debate over each one.79 Non-self-execution explains why these interventions did not violate the Constitution. If we consider treaties to be diplomatic commitments in the realm of international pol- itics, rather than automatic laws enforceable in the United States, then the president has no constitutional obligation to enforce the U.N. Char- ter,nor does Congress have any obligation to fund actions to comply with it. Rather, the political branches can decide whether and how the nation should obey a Security Council resolution,or they can even decide to vio- late the charter, as in Kosovo. Non-self-execution also precludes any real delegation of authority to the United Nations, as the decisions of that in- ternational organization remain—from the perspective of the American constitutional system—only the demands of international politics. Secu- rity Council decisions may bind the United States as a matter of inter-¶ national law, but the president and Congress decide how they are to be implemented, if at all. It should come as no surprise that the federal courts have adopted this approach in cases involving the decisions of the organs of the United Nations. In Diggs v. Richardson (1976), for example, the U.S. Court of Appeals for the District of Columbia Circuit confronted a Security Coun- cil resolution sanctioning South Africa because of its occupation of Na- mibia.80 Plaintiffs sought an injunction,based on the Security Council res- olution, ordering the U.S. government to cease economic relations with SouthAfrica involving goods from Namibia. Dismissing the case,the D.C. Circuit held that the resolution was not self-executing and was not en- forceable federal law. In Committee of United States Citizens Living in Nicaragua v. Reagan (1988), the D.C. Circuit faced a suit demanding that the Reagan administration cease all aid to the contra resistance in Nic- aragua, as the United States had been ordered to do by the International CourtofJustice(ICJ).81TheD.C.Circuitagaindismissedthecase,holding that ICJ decisions are not self-executing,and that any requirement in the UN Charter to obey ICJ decisions was similarly non-self-executing. Recent litigation over the death penalty raises the same tensions and ultimately may require the same solution.Aliens arrested and tried in the United States for capital murder sometimes have not received notiﬁca- tion, at the time of their arrest, that they have the right of access to con- sular representatives from their countries, as guaranteed by the Vienna Convention on Consular Relations. In two cases, one involving a citizen of Paraguay, the other two brothers from Germany, all convicted of mur- der and sentenced to death, the International Court of Justice ordered the United States to “take all measures at its disposal” to stop their exe- cution. In refusing to order a stay of execution in the ﬁrst case,Breard,the Supreme Court suggested that the ICJ order was not self-executing fed- eral law,and found that 1996 changes to the federal death penalty statute had overridden any treaty obligations.82 In the second case, LaGrande, the Court also refused to issue a stay, with the executive branch inform- ing the Court that the ICJ decision was not binding federal law, but was instead a matter of international politics.83 In yet a third case, decided in 2004, the ICJ ordered the United States to stay the execution of ﬁfty-one Mexicans on death row and to provide them a judicial forum for review and reconsideration of their convictions.84¶ According to some scholars, failure to obey the ICJ’s decision consti- tuted a violation of federal law. In regard to the Breard case, Professor Henkin argues that the ICJ order was self-executing federal law.85 Pro- fessor Vázquez similarly argued that if the ICJ order was binding it must alsobeself-executing,aviewsharedbyAnne-MarieSlaughter.Ifthiswere correct, then the Supreme Court violated federal law by refusing to issue a stay of execution,and the president failed to uphold his duty to enforce federal law by not ordering Virginia or Oklahoma to stop the execution. Indeed, this view conceivably would have the president send in federal marshals to stop state prison ofﬁcials from carrying out the sentences, as his authority to execute federal law would preempt the state law imposing the death penalty. It would also expand the powers of the federal govern- ment at the expense of the states,because without the ICJ order there was no basis,under the Bill of Rights or the federal habeas statute,to halt the executions. Presidents are not about to issue unilateral orders to state prisons halt- ing the executions of foreign nationals duly convicted of capital murder. And the Supreme Court has not (at least not yet) issued stays of execu- tions when the only violation of federal law asserted is a failure to notify a defendant of his rights under theVienna Convention. Contrary to lead- ing academic views, however, this does not constitute a violation of the Constitution. Rather, it is a recognition of the manner in which non-self- execution works as a practical matter to allow the political branches of government to decide how to implement our international obligations, with due regard for constitutional principles of the separation of powers and federalism. By treating theVienna Convention and the U.N. Charter provisions concerning the ICJ as nonbinding,the Supreme Court leaves it to the president and Congress to decide whether and how to obey ICJ orders. The president and Congress simply chose not to exercise their powers to enforce these orders. Non-self-execution also preserves the Court’s own authority to interpret, as a ﬁnal matter, all species of federal law, rather than allowing that power to be transferred to the ICJ. Finally, non-self-execution in this context protects the prerogatives of the states, which have the primary responsibility for enforcing criminal laws such as murder. ¶ A presumption that treaties are non-self-executing thus plays two important roles. First, as William Eskridge and Philip Frickey have argued, such presumptions allow the judiciary to avoid difﬁcult constitutional questions and to protect the constitutional structure, without having to block actions by the political branches.86 While protecting the constitutional line between the executive treaty power and legislation, it also leaves to the political branches the ﬂexibility to decide whether and how to implement the nation’s international obligations. Second, a clear statement rule helps contain the potential for unlimited lawmaking at a time when the line between domestic and international affairs is disappearing. Globalization, plus the interaction of several broad doctrines about the unbounded subject matter of treaties, their freedom from the restraints of the separation of powers and federalism, and their alleged interchange- ability with statutes, threatens to give the treaty makers a legislative power with few limits. Non-self-execution ensures that treaties, like the Constitution itself and all other species of federal law, are true to the notion that the national government is one of limited and separated powers.¶ 251¶ This striking divergence between the constitutional text on the one hand, and practice supported by academic opinion on the other, is not just a matter of intellectual curiosity. International agreements today are¶ 252¶ assuming center stage in efforts to regulate areas such as national security, the environment, trade and ﬁnance, and human rights. As interna- tional agreements increasingly assume the function of statutes, the treaty power threatens to supplant the domestic lawmaking process, even in areas within Congress’s Article I, Section 8 competencies. At the same time, interchangeability raises the prospect that statutes could fully re- placetreaties,which raises the problem that Congress could exercise executive powers in areas where treaties have force beyond domestic statutes. While this may not have presented much of a practical problem in an era when the reach of the Commerce Clause was thought to be virtually limit- less,the Supreme Court’s recent federalism decisions make clear that sig- niﬁcant areas still exist where treaties may provide the sole constitutional source for national regulatory power. Interchangeability would permit statutes to evade the restrictions on Congress’s ArticleI, Section8 powers, just as globalization threatens to allow the treaty power to supplant the domestic lawmaking process. ¶ Explaining the constitutionality of the congressional-executive agree- ment is a matter not just of intellectual coherence, but of practical eco- nomic and political importance. Today, about one-quarter of the gross national product arises from international trade, whose rules are set by the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO) agreement. If all international agreements must undergo the supermajority treaty process, America’s ability to participate in a new world of international cooperation will be hampered. On the other hand, use of a constitutionally illegitimate method would throw America’s participation in the world trading system into doubt. Not only would constitutional questions undermine the validity of current congressional-executive agreements, they also would raise problems for America’s ability to engage in ever more intensive international co-operation. Uncertainty about the constitutionality of the congressional- executive agreement may undermine novel efforts to craft international solutions in response to the effects of globalization on areas such as ﬁnance and economics, security, the environment, and human rights.

Extinction

Michael Panzer 8, 25-year veteran of the markets who has worked for for HSBC, Soros Funds, ABN Amro, Dresdner Bank, and J.P. Morgan Chase. New York Institute of Finance faculty member and a graduate of Columbia University. Financial Armageddon, 136-8

Continuing calls for curbs on the flow of finance and trade will inspire the United States and other nations to spew forth protectionist legislation like the notorious Smoot-Hawley bill. Introduced at the start of the Great Depression, it triggered a series of tit-for-tat economic responses, which many commentators believe helped turn a serious economic downturn into a prolonged and devastating global disaster. But if history is any guide, those lessons will have been long forgotten during the next collapse. Eventually, fed by a mood of desperation and growing public anger, restrictions on trade, finance, investment, and immigration will almost certainly intensify. Authorities and ordinary citizens will likely scrutinize the cross-border movement of Americans and outsiders alike, and lawmakers may even call for a general crackdown on nonessential travel. Meanwhile, many nations will make transporting or sending funds to other countries exceedingly difficult. As desperate officials try to limit the fallout from decades of ill-conceived, corrupt, and reckless policies, they will introduce controls on foreign exchange. Foreign individuals and companies seeking to acquire certain American infrastructure assets, or trying to buy property and other assets on the cheap thanks to a rapidly depreciating dollar, will be stymied by limits on investment by noncitizens. Those efforts will cause spasms to ripple across economies and markets, disrupting global payment, settlement, and clearing mechanisms. All of this will, of course, continue to undermine business confidence and consumer spending. In a world of lockouts and lockdowns, any link that transmits systemic financial pressures across markets through arbitrage or portfolio-based risk management, or that allows diseases to be easily spread from one country to the next by tourists and wildlife, or that otherwise facilitates unwelcome exchanges of any kind will be viewed with suspicion and dealt with accordingly. The rise in isolationism and protectionism will bring about ever more heated arguments and dangerous confrontations over shared sources of oil, gas, and other key commodities as well as factors of production that must, out of necessity, be acquired from less-than-friendly nations. Whether involving raw materials used in strategic industries or basic necessities such as food, water, and energy, efforts to secure adequate supplies will take increasing precedence in a world where demand seems constantly out of kilter with supply. Disputes over the misuse, overuse, and pollution of the environment and natural resources will become more commonplace. Around the world, such tensions will give rise to fullscale military encounters, often with minimal provocation. In some instances, economic conditions will serve as a convenient pretext for conflicts that stem from cultural and religious differences. Alternatively, nations may look to divert attention away from domestic problems by channeling frustration and populist sentiment toward other countries and cultures. Enabled by cheap technology and the waning threat of American retribution, terrorist groups will likely boost the frequency and scale of their horrifying attacks, bringing the threat of random violence to a whole new level. Turbulent conditions will encourage aggressive saber rattling and interdictions by rogue nations running amok. Age-old clashes will also take on a new, more heated sense of urgency. China will likely assume an increasingly belligerent posture toward Taiwan, while Iran may embark on overt colonization of its neighbors in the Mideast. Israel, for its part, may look to draw a dwindling list of allies from around the world into a growing number of conflicts. Some observers, like John Mearsheimer, a political scientist at the University of Chicago, have even speculated that an “intense confrontation” between the United States and China is “inevitable” at some point. More than a few disputes will turn out to be almost wholly ideological. Growing cultural and religious differences will be transformed from wars of words to battles soaked in blood. Long-simmering resentments could also degenerate quickly, spurring the basest of human instincts and triggering genocidal acts. Terrorists employing biological or nuclear weapons will vie with conventional forces using jets, cruise missiles, and bunker-busting bombs to cause widespread destruction. Many will interpret stepped-up confl icts between Muslims and Western societies as the beginnings of a new world war.

#### Effective presidential treaty power key to solve rogue-prolif and terrorism---but, there’s no risk of their overreach impacts

John Yoo 8, Cal Berkeley law prof, The Powers of War and Peace, 204-5

Events such as the Neutrality Proclamation, the termination of the Mutual Defense Treaty with Taiwan, or even the Reagan-era struggle over the SDI program may seem of limited relevance to today’s challenges of rogue nations, the proliferation of weapons of mass destruction, and terrorism. Recent efforts, however, designed to respond to such problems only highlight again the centrality of treaties to the conduct of foreign affairs. Treaty termination and interpretation has proven central in the debate over how to respond to the proliferation of nuclear weapons and ballistic missiles, and the legal status of al Qaeda and Taliban ﬁghters captured in Afghanistan and throughout the world. On these questions, the Constitution’s ﬂexibility toward the distribution of the foreign affairs power has given the president the tools to promote U.S. foreign policy, but at the same time has ensured that Congress has the ability to block policies with which it disagrees.

#### Extinction

Kroenig 12 – Matthew Kroenig is an Assistant Professor of Government at Georgetown University and a Stanton Nuclear Security Fellow on the Council on Foreign Relations, May 26th, 2012, “The History of Proliferation Optimism: Does It Have A Future?” <http://www.npolicy.org/article.php?aid=1182&tid=30>

What’s Wrong with Proliferation Optimism?

**The proliferation optimist position**, while having a distinguished pedigree, **has several major flaws**. Many of these weaknesses have been chronicled in brilliant detail by Scott Sagan and other contemporary proliferation pessimists.34 Rather than repeat these substantial efforts, I will use this section to offer some original critiques of the recent incarnations of proliferation optimism.¶ First and foremost, proliferation optimists do not appear to understand contemporary deterrence theory. I do not say this lightly in an effort to marginalize or discredit my intellectual opponents. Rather, I make this claim with all due caution and sincerity. A careful review of the contemporary proliferation optimism literature does not reflect an understanding of, or engagement with, the developments in academic deterrence theory over the past few decades in top scholarly journals such as the American Political Science Review and International Organization.35 While early optimists like Viner and Brodie can be excused for not knowing better, the writings of contemporary proliferation optimists **ignore much of the past fifty years of academic research on nuclear deterrence theory.**¶In the 1940s, Viner, Brodie, and others argued that the advent of Mutually Assured Destruction (MAD) rendered war among major powers obsolete, but nuclear deterrence theory soon advanced beyond that simple understanding.36 After all, great power political competition does not end with nuclear weapons. And nuclear-armed states still seek to threaten nuclear-armed adversaries. States cannot credibly threaten to launch a suicidal nuclear war, but they still want to coerce their adversaries. This leads to a credibility problem: “how can states credibly threaten a nuclear-armed opponent? Since the 1960s academic nuclear deterrence theory has been devoted almost exclusively to answering this question.37 And, unfortunately for proliferation optimists, the answers do not give us reasons to be optimistic.¶ Thomas Schelling was the first to devise a rational means by which states can threaten nuclear-armed opponents.38 He argued that leaders cannot credibly threaten to intentionally launch a suicidal nuclear war, but they can make a “threat that leaves something to chance.”39 They can engage in a process, the nuclear crisis, which increases the risk of nuclear war in an attempt to force a less resolved adversary to back down. As states escalate a nuclear crisis there is an increasing probability that the conflict will spiral out of control and result in an inadvertent or accidental nuclear exchange. As long as the benefit of winning the crisis is greater than the incremental increase in the risk of nuclear war, threats to escalate nuclear crises are inherently credible. In these games of nuclear brinkmanship, the state that is willing to run the greatest risk of nuclear war before backing down will win the crisis as long as it does not end in catastrophe. It is for this reason that Thomas Schelling called great power politics in the nuclear era a “competition in risk taking.”¶ 40 This does not mean that states eagerly bid up the risk of nuclear war. Rather, they face gut-wrenching decisions at each stage of the crisis. They can quit the crisis to avoid nuclear war, but only by ceding an important geopolitical issue to an opponent. Or they can the escalate the crisis in an attempt to prevail, but only at the risk of suffering a possible nuclear exchange.¶ Since 1945 there were have been many high stakes nuclear crises (by my count, there have been twenty) in which “rational” states like the United States run a frighteningly-real risk of nuclear war.41 By asking whether states can be deterred or not, therefore, proliferation optimists ask the wrong question. The right question to ask is: what risk of nuclear war is a specific state willing to run against a particular opponent in a given crisis? Optimists are likely correct when they assert that Iran will not intentionally commit national suicide by launching a bolt-from-the-blue nuclear attack on the United States or Israel. This does not mean that Iran will never use nuclear weapons, however. Indeed, it is almost inconceivable to think that a nuclear-armed Iran would not, at some point, find itself in a crisis with another nuclear-armed power. It is also inconceivable that in those circumstances, Iran would not be willing to run any risk of nuclear war in order to achieve its objectives. If a nuclear-armed Iran and the United States or Israel have a geopolitical conflict in the future, over, for example, the internal politics of Syria, an Israeli conflict with Iran’s client Hezbollah, the U.S. presence in the Persian Gulf, passage through the Strait of Hormuz, or some other issue, do we believe that Iran would immediately capitulate? Or is it possible that Iran would push back, possibly even brandishing nuclear weapons in an attempt to coerce its adversaries? If the latter, there is a real risk that proliferation to Iran could result in nuclear war.¶ An optimist might counter that nuclear weapons will never be used, even in a crisis situation, because states have such a strong incentive, namely national survival, to ensure that nuclear weapons are not used. But, this objection ignores the fact that **leaders operate under competing pressures.** Leaders in nuclear-armed states also have very strong incentives to convince their adversaries that nuclear weapons could very well be used. Historically we have seen that leaders take actions in crises, such as **placing nuclear weapons on** high alert **and** delegating **nuclear** launch authority **to low level commanders**, to purposely increase the risk of accidental nuclear war in an attempt to force less-resolved opponents to back down.

### 1nc

#### The United States federal judiciary should rule that individuals that have won their habeas hearings be released on the grounds that human rights treaties ratified by the United States inform the war powers authority of the President.

#### Key distinction between saying his authority is restricted vs informed by Geneva

Jack L. Goldsmith 5, and Curtis A. Bradley, \* Professor, Harvard Law School \*\* Professor, University of Virginia School of Law. CONGRESSIONAL AUTHORIZATION AND THE WAR ON TERRORISM, Harvard Law Review, VOLUME 118 MAY 2005 NUMBER 7

The fact that the international laws of war can inform the boundaries of the powers that Congress has implicitly granted to the President does not mean that such powers are conditioned on perfect compliance with all requirements of the international laws of war. A violation of international law would negate a claim of implied authority under the AUMF only if the international law requirement in question was a condition of the exercise of the particular authority. For example, it is a condition of the power to detain an enemy combatant under the in- ternational laws of war that the detainee actually be an enemy com- batant, lawful or unlawful.210 In contrast, even though prisoners of war covered by the Third Geneva Convention are entitled to receive monthly pay, access a canteen, and receive musical instruments,211 a violation of those requirements (assuming they apply to the particular detainee) would not undermine the authority to detain because none of these requirements is a condition of the authority to detain a prisoner of war. Similarly, if the President ordered photographs to be taken of a prisoner of war in a way that violated the duty in the Third Geneva Convention to protect prisoners from “insults and public curiosity,”212 this would not mean that he lacked authority to detain the prisoner. Instead, it would mean that he lacked authority to treat the prisoner in this manner.213

## Case

## Advantage 1

### No Model

#### No modeling and no impact---democratic states will only model good US laws and authoritarian ones won’t model no matter what

John O. McGinnis 7, Professor of Law, Northwestern University School of Law. \*\* Ilya Somin \*\* Assistant Professor of Law, George Mason University School of Law. GLOBAL CONSTITUTIONALISM: GLOBAL INFLUENCE ON U.S. JURISPRUDENCE: Should International Law Be Part of Our Law? 59 Stan. L. Rev. 1175

The second benefit to foreigners of distinctive U.S. legal norms is information. The costs and benefits of our norms will be visible for all to see. n268 Particularly in an era of increased empirical social science testing, over time we will be able to analyze and identify the effects of differences in norms between the United States and other nations. n269 Such diversity benefits foreigners as foreign nations can decide to adopt our good norms and avoid our bad ones.

The only noteworthy counterargument is the claim that U.S. norms will have more harmful effects than those of raw international law, yet other nations will still copy them. But both parts of this proposition seem doubtful. First, U.S. law emerges from a democratic process that creates a likelihood that it will cause less harm than rules that emerge from the nondemocratic processes [\*1235] that create international law. Second, other democratic nations can use their own political processes to screen out American norms that might cause harm if copied.

Of course, many nations remain authoritarian. n270 But our norms are not likely to have much influence on their choice of norms. Authoritarian states are likely to select norms that serve the interests of those in power, regardless of the norms we adopt. It is true that sometimes they might cite our norms as cover for their decisions. But the crucial word here is "cover." They would have adopted the same rules, anyway. The cover may bamboozle some and thus be counted a cost. But this would seem marginal compared to the harm of allowing raw international law to trump domestic law.

AT: Human Rights Cred

#### Human Rights Cred is irrelevant — public opinion, global norms, and NGO networks outweigh US policy

Andrew Moravcsik 5, PhD and a Professor of Politics and International Affairs at Princeton, 2005, "The Paradox of U.S. Human Rights Policy," American Exceptionalism and Human Rights, http://www.princeton.edu/~amoravcs/library/paradox.pdf

It is natural to ask: What are the consequences of U.S. "exemptionalism” and noncompliance? International lawyers and human rights activists regularly issue dire warnings about the ways in which the apparent hypocrisy of the United States encourages foreign governments to violate human rights, ignore international pressure, and undermine international human rights institutions. In Patricia Derian's oft-cited statement before the Senate in I979: "Ratification by the United States significantly will enhance the legitimacy and acceptance of these standards. It will encourage other countries to join those which have already accepted the treaties. And, in countries where human rights generally are not respected, it will aid citizens in raising human rights issues.""' One constantly hears this refrain. Yet there is little empirical reason to accept it. Human rights norms have in fact spread widely without much attention to U.S. domestic policy. In the wake of the "third wave" democratization in Eastern Europe, East Asia, and Latin America, government after government moved ahead toward more active domestic and international human rights policies without attending to U.S. domestic or international practice." The human rights movement has firmly embedded itself in public opinion and NGO networks, in the United States as well as elsewhere, despite the dubious legal status of international norms in the United States. One reads occasional quotations from recalcitrant governments citing American noncompliance in their own defense-most recently Israel and Australia-but there is little evidence that this was more than a redundant justification for policies made on other grounds. Other governments adhere or do not adhere to global norms, comply or do not comply with judgments of tribunals, for reasons that seem to have little to do with U.S. multilateral policy.

#### US judiciary isn’t modeled on human rights issues

Adam Liptak 8, J.D. from Yale, an instructor in law and journalism and the Supreme Court correspondent for the NYT, 9/17/2008, "U.S. Court is Not Guiding Fewer Nations," The New York Times, http://www.nytimes.com/2008/09/18/us/18legal.html?pagewanted=all&\_r=0

WASHINGTON — Judges around the world have long looked to the decisions of the United States Supreme Court for guidance, citing and often following them in hundreds of their own rulings since the Second World War. But now American legal influence is waning. Even as a debate continues in the court over whether its decisions should ever cite foreign law, a diminishing number of foreign courts seem to pay attention to the writings of American justices. “One of our great exports used to be constitutional law,” said Anne-Marie Slaughter, the dean of the Woodrow Wilson School of Public and International Affairs at Princeton. “We are losing one of the greatest bully pulpits we have ever had.” From 1990 through 2002, for instance, the Canadian Supreme Court cited decisions of the United States Supreme Court about a dozen times a year, an analysis by The New York Times found. In the six years since, the annual citation rate has fallen by half, to about six. Australian state supreme courts cited American decisions 208 times in 1995, according to a recent study by Russell Smyth, an Australian economist. By 2005, the number had fallen to 72. The story is similar around the globe, legal experts say, particularly in cases involving human rights. These days, foreign courts in developed democracies often cite the rulings of the European Court of Human Rights in cases concerning equality, liberty and prohibitions against cruel treatment, said Harold Hongju Koh, the dean of the Yale Law School. In those areas, Dean Koh said, “they tend not to look to the rulings of the U.S. Supreme Court.” The rise of new and sophisticated constitutional courts elsewhere is one reason for the Supreme Court’s fading influence, legal experts said. The new courts are, moreover, generally more liberal than the Rehnquist and Roberts courts and for that reason more inclined to cite one another. Another reason is the diminished reputation of the United States in some parts of the world, which experts here and abroad said is in part a consequence of the Bush administration’s unpopularity around the world. Foreign courts are less apt to justify their decisions with citations to cases from a nation unpopular with their domestic audience. “It’s not surprising, given our foreign policy in the last decade or so, that American influence should be declining,” said Thomas Ginsburg, who teaches comparative and international law at the University of Chicago.

### No Impact

#### Doesn’t cause global war---no WMD prolif absent human rights, doesn’t make sense – their ev from 2004 emp denied

## Advantage 2

### 1NC Resource Wars—No War

#### No resource wars

Tetrais 12—Senior Research Fellow at the Fondation pour la Recherche Stratgique (FRS). Past positions include: Director, Civilian Affairs Committee, NATO Assembly (1990-1993); European affairs desk officer, Ministry of Defense (1993-1995); Visiting Fellow, the Rand Corporation (1995-1996); Special Assistant to the Director of Strategic Affairs, Ministry of Defense (1996-2001).(Bruno, The Demise of Ares, csis.org/files/publication/twq12SummerTertrais.pdf)

The Unconvincing Case for ‘‘New Wars’’ ¶ Is the demise of war reversible? In recent years, the metaphor of a new ‘‘Dark Age’’ or ‘‘Middle Ages’’ has flourished. 57 The rise of political Islam, Western policies in the Middle East, the fast development of emerging countries, population growth, and climate change have led to fears of ‘‘civilization,’’ ‘‘resource,’’ and ‘‘environmental’’ wars. We have heard the New Middle Age theme before. In 1973, Italian writer Roberto Vacca famously suggested that mankind was about to enter an era of famine, nuclear war, and civilizational collapse. U.S. economist Robert Heilbroner made the same suggestion one year later. And in 1977, the great Australian political scientist Hedley Bull also heralded such an age. 58 But the case for ‘‘new wars’’ remains as flimsy as it was in the 1970s.¶ Admittedly, there is a stronger role of religion in civil conflicts. The proportion of internal wars with a religious dimension was about 25 percent between 1940 and 1960, but 43 percent in the first years of the 21st century. 59 This may be an effect of the demise of traditional territorial conflict, but as seen above, this has not increased the number or frequency of wars at the global level. Over the past decade, neither Western governments nor Arab/Muslim countries have fallen into the trap of the clash of civilizations into which Osama bin Laden wanted to plunge them. And ‘‘ancestral hatreds’’ are a reductionist and unsatisfactory approach to explaining collective violence. Professor Yahya Sadowski concluded his analysis of post-Cold War crises and wars, The Myth of Global Chaos, by stating, ‘‘most of the conflicts around the world are not rooted in thousands of years of historythey are new and can be concluded as quickly as they started.’’ 60¶ Future resource wars are unlikely. There are fewer and fewer conquest wars. Between the Westphalia peace and the end of World War II, nearly half of conflicts were fought over territory. Since the end of the Cold War, it has been less than 30 percent. 61 The invasion of Kuwaita nationwide bank robberymay go down in history as being the last great resource war. The U.S.-led intervention of 1991 was partly driven by the need to maintain the free flow of oil, but not by the temptation to capture it. (Nor was the 2003 war against Iraq motivated by oil.) As for the current tensions between the two Sudans over oil, they are the remnants of a civil war and an offshoot of a botched secession process, not a desire to control new resources.¶ China’s and India’s energy needs are sometimes seen with apprehension: in light of growing oil and gas scarcity, is there not a risk of military clashes over the control of such resources? This seemingly consensual idea rests on two fallacies. One is that there is such a thing as oil and gas scarcity, a notion challenged by many energy experts. 62 As prices rise, previously untapped reserves and non-conventional hydrocarbons become economically attractive. The other is that spilling blood is a rational way to access resources. As shown by the work of historians and political scientists such as Quincy Wright, the economic rationale for war has always been overstated. And because of globalization, it has become cheaper to buy than to steal. We no longer live in the world of 1941, when fear of lacking oil and raw materials was a key motivation for Japan’s decision to go to war. In an era of liberalizing trade, many natural resources are fungible goods. (Here, Beijing behaves as any other actor: 90 percent of the oil its companies produce outside of China goes to the global market, not to the domestic one.) 63 There may be clashes or conflicts in regions in maritime resource-rich areas such as the South China and East China seas or the Mediterranean, but they will be driven by nationalist passions, not the desperate hunger for hydrocarbons.

### AT: Water Wars

#### No water wars---zero empirical or theoretical support and their authors have self-reinforcing incentives to exaggerate risk

David Katz 11, Director of the Akirov Institute for Business and Environment at Tel Aviv University and Adjunct Lecturer at Tel Aviv University’s Recanati School of Management and Porter School of Environmental Studies, February 2011, “Hydro-Political Hyperbole: Examining Incentives for Overemphasizing the Risks of Water Wars,” Global Environmental Politics, Vol. 11, No. 1, p. 12-33

Reference to linkages between natural resource scarcity and the potential for violent conflict is now commonplace. Perhaps the most highlighted and most studied such linkage is that between freshwater scarcity and conflict. Predictions of looming water wars—such as former Egyptian Foreign Minister and later United Nations Secretary-General Boutrous Boutrous Ghali’s statement that “The next war in the Middle East will be fought over water, not politics,” or former World Bank Vice President Ismail Serageldin’s declaration that “the wars of the next century will be over water”1—have been cited extensively by a variety of sources over the past three decades. More recently, UN Secretary-General Ban Ki-moon stressed reports that water scarcity has created “a high risk of violent conflict.”2 Those who make claims regarding the possibility of future water wars range from people who present such a scenario as a possibility that can be avoided with cooperation and proper planning,3 to those who predict that such wars are likely,4 to those who confidently assert that such outcomes are “certain”5 and only a matter of time.6

While the claim that increasing water scarcity will lead to increased outbreaks of wars—often dubbed the “water war hypothesis”—is widespread in public discourse, a growing body of literature has challenged both the empirical [End Page 12] and theoretical foundations of such a hypothesis.7 Critics note, for instance, that proponents of the water war hypothesis often rely on a very limited number of case studies or statements from a handful of prominent figures,8 that relatively little systematic empirical evidence exists of past wars over water, and that there is scant evidence that violent conflict over water is becoming more frequent.9

Despite weak supporting evidence and numerous theoretical challenges to the water wars hypothesis, proclamations that water wars are imminent remain prevalent. Much of the academic literature on the topic has attempted to promulgate, refute, or test the water war hypothesis. Little has attempted to explain why the predictions of water wars remain so popular despite questionable empirical support. This study addresses this gap. It outlines various incentives different types of key actors have to emphasize, and even exaggerate, the likelihood of water wars. Moreover, it demonstrates that relationships between several of these actors serve to mutually reinforce these incentives. This confluence of incentives to stress such risks is likely to have contributed to the persistence of such warnings in public discourse at levels and profiles far beyond what appears justified by empirical evidence. While this article specifically addresses violent conflict over water, its premises and conclusions are likely relevant to much of the discourse in the field of environmental security.

### AT: Water Wars---Author Indicts/Exaggeration

#### Their authors have incentives to overstate the risk and impact

David Katz 11, Director of the Akirov Institute for Business and Environment at Tel Aviv University and Adjunct Lecturer at Tel Aviv University’s Recanati School of Management and Porter School of Environmental Studies, February 2011, “Hydro-Political Hyperbole: Examining Incentives for Overemphasizing the Risks of Water Wars,” Global Environmental Politics, Vol. 11, No. 1, p. 12-33

Observers have noted that various actors may have incentives to stress or even exaggerate the risks of water wars. Lonergan notes, for instance, that in “many cases, the comments are little more than media hype; in others, statements have been made for political reasons.”49 Beyond mere acknowledgement of the possibility of such incentives, however, little research has attempted to understand what these incentives are and how they may differ between actors. An understanding of the different motivations of various groups of actors to stress the possibility of imminent water wars can help explain the continued seemingly disproportionate popularity of such messages and help to evaluate such warnings more critically.

Mueller offers a general explanation for a focus on violence in public discourse by postulating that, following the end of the Cold War, policy-makers, the press, and various analysts seek to fill a “catastrophe quota.”50 According to this theory, various actors seek out new areas of potential violence to justify fears that had become commonplace during the Cold War period.

Simon, while not specifically addressing environmental conflict, suggests four possible reasons for academic researchers to offer what he claimed were overly gloomy scenarios resulting from resource scarcity.51 The first reason is that international funding organizations are eager to fund research dealing with crises, but not work that produces good news. The second is that bad news sells more newspapers and books. The third is a psychological predisposition to focus on bad news or worst-case scenarios. The fourth is a belief that sounding alarm bells can mobilize action to improve environmental issues.

Haas offers two reasons why “exaggerated beliefs about resource scarcity and their possible threats to environmental security persist.” The first is “the absence of any consensual mechanism for reconciling inter-discourse (or interparadigm) disputes.” This, Haas argues, allows for ideological disputes to continue [End Page 18] unresolved. “The second reason is the elective affinity between environmental and security discourses on the one hand, and other dominant discourses in social discussions . . . on the other hand. Consequently self-interested political actors can borrow from discourses that are similar in their ontology and structure and that justify pre-existing political ambitions.”52 Trottier, addressing the risks of water wars specifically, suggests that certain private-sector actors in the water industry may stress the risks of water wars in order to promote water-related infrastructure.53

### No War

#### Empirically disproven and shortages incentivize cooperation

Ken Conca 12, professor at American University's School of International Service, where he directs the Global Environmental Politics Program, "Decoupling Water and Violent Conflict," Fall, Issues in Science & Technology, Vol. 29 Issue 1, Academic Search Premier

The good news is that although countries may sometimes use bellicose rhetoric when discussing water supplies, there are no significant examples in the historical record of countries going to war over water. The most comprehensive study to date, which looked at water-related events in shared river basins during the second half of the 20th century, found that cooperative events, such as treaties, scientific exchanges, or verbal declarations of cooperation, outnumbered instances of conflict, such as verbal hostility, coercive diplomacy, or troop mobilization, by roughly two to one; and that even the most severe episodes of conflict stopped short of outright warfare. Moreover, when conflict episodes did occur, they were typically not the result of water scarcity. Rather, the key factor was the inability of governments to adapt to rapid changes, such as when part of a country split off to become a new one or when a decision to build a large dam was made without consulting downstream neighbors. The reasons for the lack of violent conflict are not surprising: War between nations is an increasingly rare event in world politics, water relations are embedded in broader relations between countries, and there are far less costly alternatives than war to improve water availability or efficiency of use. Well-designed cooperative agreements can go a long way toward managing shared rivers in a fair and peaceful manner.

## Advantage 3

### SQ Solves

#### Sq solves

Aaron B. Aft 11, J.D., Indiana University Maurer School of Law, Winter 2011, Respect My Authority: Analyzing Claims of Diminished U.S. Supreme Court Influence Abroad, Indiana Journal of Global Legal Studies, Vol. 18, No. 1

Considering the role cast for foreign precedent by its proponents and the trepidation of its opponents, one may tentatively conclude that the influence of foreign jurisprudence on the U.S. Supreme Court is limited to a modest background role. Based on the descriptions offered by Justice Breyer and Justice Kirby as to the use of foreign precedent, the influence of foreign precedent is perhaps less than the volume n54 of the debate might indicate. Certainly some shared ideas are influential, but this influence seems limited to providing background information, rather than serving a dispositive role in a given case.

Lastly, it may be tempting to infer from the preceding discussion that the hostility of some prominent U.S. judges to the use of foreign precedent may leave foreign jurists less inclined to cite U.S. precedent. However, that conclusion is premature, and to accurately assess the extent of the U.S. Supreme Court's influence abroad, it is necessary to examine the use of U.S. precedent overseas.

 [\*431]

B. Use of U.S. Supreme Court Precedent Abroad

In contrast to the vigorous debate that characterizes the U.S. Supreme Court's use of foreign case law, many courts in other countries take a more expansive view of the use of foreign precedent. For example, in Australia, n55 Canada, n56 India, n57 Israel, n58 New Zealand, n59 Singapore, n60 and South Africa, n61 to name but a few, reference to U.S. precedent is not uncommon. n62 Many of the judges in these countries offer justifications for their comparative endeavors similar to those advanced by Justices Breyer and Kirby. n63

In Canada, citation to U.S. precedent is seen as "an aspect of a more general trend" of comparative exercise. n64 Indeed, the entire practice of referring to foreign precedent is merely reflective of the "legal cosmopolitanism" that Canadian jurists have found to be "a valuable source of enrichment and greater sophistication." n65 In Canada comparative practice has been used to provide important background on [\*432] legal questions via consideration of "the successes and failures of various approaches" taken by other states and is driven by a desire "to benefit from expertise acquired [by longstanding non-Canadian constitutional jurisprudence]." n66

Justices from Australia have advanced similar arguments. For example, Justice Kirby has been an outspoken advocate of comparative reference to foreign precedent. n67 As he notes in a recent article, references to foreign precedent by the High Court of Australia are quite uncontroversial. Such references are used because they "have been found helpful and informative and therefore useful in the development of the municipal decision-maker's own opinions concerning apparently similar problems presented by the municipal constitution or other laws." n68 And while reference to international law in certain contexts may be controversial, n69 the utility of referring to jurisprudence of other countries as a means of elucidating the meaning of the Australian Constitution remains unquestioned. n70

Although courts in many countries commonly refer to foreign precedent, Canada and Australia are particularly useful for measuring the influence of the U.S. Supreme Court abroad. Of obvious benefit is the fact that these countries speak English, n71 but of even more benefit is the fact that observers have extensively studied and documented the practices of the Supreme Court of Canada and the High Court of Australia with special attention to the citation of U.S. precedent. Section B will end by noting any conclusions that can be drawn from the discussion, with an eye to addressing arguments that the influence of the U.S. Supreme Court is waning due to hostility toward comparative practice. n72

As noted above, the relative influence (measured by citation analysis) of U.S. authority, and the U.S. Supreme Court in particular, on the Supreme Court of Canada has recently declined. At the same time, the data available regarding the citation practices of the High Court of Australia indicate that citation to U.S. authority in general is increasing. A review of how U.S. authority is used, as opposed to how often, will help determine the full extent of the influence the U.S. Supreme Court wields abroad, as well as any changes to it over time. Unfortunately, available studies of "how" are less thorough than the studies of "how often." n192

C. Informal Judicial Meetings and Exchanges

Though important, empirical study alone is insufficient to fully capture the U.S. Supreme Court's influence abroad. Advances in telecommunications have placed many court decisions at the fingertips of judges the world over, enabling a curious jurist to access decisions almost as soon as they are released. n193

Beyond technology, it is also important to consider the "informal" contacts-i.e. interactions beyond the context of adjudicating cases-between U.S. Supreme Court Justices and their colleagues and counterparts around the world. In addition to occasionally citing the opinions of their colleagues, "[j]udges are also meeting face to face" n194 and "are getting to know each other better as they interact at conferences and in personal meetings. . . ." n195 These informal contacts between judges provide opportunities for judges to engage in dialogue aside from citation of foreign law, undermining claims that the U.S. Supreme Court is "out of step" with the transnational judicial dialogue. n196 Anne-Marie Slaughter has expertly catalogued many [\*449] examples of such contacts, n197 and the following merely supplements her valuable work.

Slaughter observes that judges around the world are meeting at inter-judicial conferences, n198 via judicial exchanges, n199 and through conferences sponsored by law schools and NGOs. n200 One prominent example is the gathering of the Organization of Supreme Courts of the Americas (OSCA), hosted in Washington, D.C. in 1995. Chaired by then-Chief Justice William Rehnquist, the meeting boasted attendees from twenty-five countries representing North America, Central America, South America, and the Caribbean. n201 Some of these experiences have been noted in judicial opinions. n202 In addition, "[a] flood of foundation and government funding for judicial seminars, training programs, and [\*450] educational materials under the banner [of] 'rule of law' programs has significantly expanded the opportunities for cross-fertilization." n203 Furthermore, U.S. Supreme Court Justices have given at least seven speeches in four countries over the last ten years. n204 Some Justices have engaged in literary projects with counterparts from abroad, n205 and the Court has paid tribute to fallen colleagues abroad. n206

### 1NC No Model

#### No one cites the US for anything---there are too many other countries to look to---\*but the SQ solves their impacts because other countries reject excessive Presidentialism now

Mila Versteeg 13, Associate Professor at the University of Virginia School of Law. Model, Resource, or Outlier? What Effect Has the U.S. Constitution Had on the Recently Adopted Constitutions of Other Nations?, 29 May 2013, www.heritage.org/research/lecture/2013/05/model-resource-or-outlier-what-effect-has-the-us-constitution-had-on-the-recently-adopted-constitutions-of-other-nations

Unsurprisingly, attempting to gauge one constitution’s “influence” on another involves various conceptual and methodological challenges. To illustrate, a highly generic constitution may be generic because others have followed its lead, because it has modeled others, or simply by coincidence. That said, if two constitutions are becoming increasingly dissimilar, by definition, one cannot be following the other. That is, neither is exerting influence on the other (at least not in a positive way).

This is the phenomenon we observed in comparing the U.S. Constitution to the rest of the world; based on the rights index, the U.S. has become less similar to the world since 1946 and, with a current index of 0.30, is less similar now than at any point during the studied period. This phenomenon has occurred even among current American allies; among countries in regions with close cultural and historic ties to the U.S. (namely, Latin America and Western Europe); and among democracies. Only among common law countries is constitutional similarity higher than it was after World War II, but even that similarity has decreased since the 1960s.

Rights provisions are not the only constitutional elements that have lost favor with the rest of the world; structural provisions pioneered by American constitutionalism—such as federalism, presidentialism, and judicial review—have also been losing their global appeal.

For instance, in the early 20th century, 22 percent of constitutions provided for federalistic systems, while today, just 12 percent do.

A similar trend has occurred for presidentialism, another American innovation. Since the end of World War II, the percentage of countries employing purely presidential systems has declined, mainly in favor of mixed systems, which were a favorite of former Soviet bloc countries.

Finally, though judicial review is not mentioned in the U.S. Constitution, it has proved the most popular American structural innovation. But though the popularity of judicial review in general has exploded over the past six decades, most countries have opted for the European style of review (which designates a single, constitutional court which alone has the power to nullify laws inconsistent with the constitution) over the American model (in which all courts are empowered to strike unconstitutional laws). In 1946, over 80 percent of countries exercised American-style constitutional review; today, fewer than half do.

Reasons for the Decline

It appears that several factors are driving the U.S. Constitution’s increasing atypicality. First, while in 2006 the average national constitutions contained 34 rights (of the 60 we identify), the U.S. Constitution contains relatively few—just 21—and the rights it does contain are often themselves atypical.

Just one-third of constitutions provide for church and state separation, as does the U.S. Establishment Clause, and only 2 percent of constitutions (including, e.g., Mexico and Guatemala) contain a “right to bear arms.” Conversely, the U.S. Constitution omits some of the most globally popular rights, such as women’s rights, the right to social security, the right to food, and the right to health care.

These peculiarities, together with the fact that the U.S. Constitution is both old and particularly hard to amend, have led some to characterize the Constitution as simply antiquated or obsolete.

### Model Fails

#### Modeling fails – constitutions must be endogenous

Mila Versteeg 13, Associate Professor at the University of Virginia School of Law. Model, Resource, or Outlier? What Effect Has the U.S. Constitution Had on the Recently Adopted Constitutions of Other Nations?, 29 May 2013, www.heritage.org/research/lecture/2013/05/model-resource-or-outlier-what-effect-has-the-us-constitution-had-on-the-recently-adopted-constitutions-of-other-nations

As I describe above, our article conceptualizes a “generic constitution”—that is, one that contains the 25 most popular global constitution rights elements—but we do not suggest that a “generic” constitution is an “ideal” constitution or that it otherwise should serve as a model for the United States or other countries. To the contrary, I tend to resist the notion that constitutional design based on a standardized template is generally desirable. Rather, I adhere to the view that constitutions should be written with popular input and tailored to the needs, traditions, values, and interests of the society they govern. There is no “one-size-fits-all” constitution.

Indeed, history and the literature have documented the adverse effects of foreign values being inserted into a citizenry that is unprepared to accept them. As an example, most former British colonies in Africa and the Caribbean received the exact same bill of rights upon independence, rights which were taken from the European Convention on Human Rights. In most cases, these bills of rights, oblivious to the deep ethnic tensions and persistent poverty, became a grand failure.

### AT: Democracy Impact

#### Judicial independence doesn’t solve democratic transitions – self interest guarantees failure of the rule of law.

Frank B. Cross – Prof of Law and Business Law at the University of Texas – 03

(64 Ohio St. L.J. 195)

[\*198]  One potential problem with judicial independence is that judges may have their own self-interests and ideological fervor. An independent, unchecked judiciary may simply decide cases according to its own whims and predilections, rather than according to the rule of law. [**10**](http://www.lexis.com/research/retrieve?_m=d8ac6524bdc67d1ea8d4915ba5b3eee3&csvc=le&cform=byCitation&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVlz-zSkAW&_md5=9d13de7766fafcb067889625e599ce35#n10) For example, because of the great independence of the federal life-tenured judiciary, many political scientists believe that they are more ideological in their decisions than elected legislators or executives. [**11**](http://www.lexis.com/research/retrieve?_m=d8ac6524bdc67d1ea8d4915ba5b3eee3&csvc=le&cform=byCitation&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVlz-zSkAW&_md5=9d13de7766fafcb067889625e599ce35#n11) Judges may allow corruption and bribery to influence their decisions. [**12**](http://www.lexis.com/research/retrieve?_m=d8ac6524bdc67d1ea8d4915ba5b3eee3&csvc=le&cform=byCitation&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVlz-zSkAW&_md5=9d13de7766fafcb067889625e599ce35#n12) They may even be lazy and decide poorly, given the lack of oversight. In these circumstances, the means (independent judiciary) does not advance the end (rule of law). We cannot rely entirely upon judicial self-discipline and restraint to avoid these circumstances. There is nothing intrinsic in judges that causes them to favor, say, rule-of-law impartiality and the freedoms recognized in the Bill of Rights. Saintliness is not a historic precondition to becoming a judge, nor does the process of doffing judicial robes magically make one saintly. There are surely temptations not to apply the neutral rule of law. Given the absence of any threat of removal, "we should expect to see the decisions of judges heavily influenced by the intellectual orientation and political inclinations that they brought with them to the bench in the first place." [**13**](http://www.lexis.com/research/retrieve?_m=d8ac6524bdc67d1ea8d4915ba5b3eee3&csvc=le&cform=byCitation&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVlz-zSkAW&_md5=9d13de7766fafcb067889625e599ce35#n13) In addition to internal political desires, there may even be external pressures to this effect. Paul Carrington observed that those calling for judicial self-restraint "would have Justices eschew fame, the adoration of the media and the academy, and even 'greatness' to settle for the modest facelessness of drones." [**14**](http://www.lexis.com/research/retrieve?_m=d8ac6524bdc67d1ea8d4915ba5b3eee3&csvc=le&cform=byCitation&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVlz-zSkAW&_md5=9d13de7766fafcb067889625e599ce35#n14) There is little reason to expect that a wholly independent,  [\*199]  unaccountable judiciary would appropriately restrain itself and sincerely seek to apply neutral legal principles to the cases they decide.

### Africa---Yes African Democracy

#### African democratization is up – overall trend solves the aff

Joseph Siegle, Working Group Chair, Africa Center for Strategic Studies, et al, 11-3-2011, “African Spring: a new era of democratic expectations?” Democracy Digest, http://www.demdigest.net/blog/2011/11/african-spring-a-new-era-of-democratic-expectations/

A question often asked since the launch of the Arab Spring in January 2011 is what effect will these popular protests have on democracy in the rest of Africa. Frequently overlooked in this discussion is that Sub-Saharan Africa has been experiencing its own democratic surge during this time with important advances in Guinea, Côte d’Ivoire, Niger, Nigeria, and Zambia, among other countries. This progress builds on nearly two decades of democratic institution building on the continent. Even so, the legacy of “big-man” politics continues to cast a long shadow over Africa’s governance norms. Regime models on the continent, moreover, remain highly varied, ranging from hard core autocrats, to semi-authoritarians, democratizers, and a select number of democracies. Recognizing these complex and still fluid crosscurrents, a Working Group embarked on an analysis of the linkages between the Arab Spring and African democracy — with an eye on the implications for governance norms on the continent over the next several years. A key finding of this analysis is that the effects of the Arab Spring on Africa must be understood in the much larger and longer-term context of Africa’s democratic evolution. While highly varied and at different stages of progress, democracy in Sub-Saharan Africa is not starting from scratch, unlike in most of the Arab world. Considered from this broader and more heterogeneous perspective, the direct effects of the Arab Spring on Sub-Saharan Africa’s democratic development are muted. There are few linear relationships linking events in North Africa to specific shifts in democratization on the continent. That said, the angst and frustration propelling the protests and unfolding transitions in the Arab world, particularly Egypt and Tunisia, resonate deeply with many Africans who are closely following events in the north. The Arab Spring is thus serving as a trigger, rather than a driver, for further democratic reforms in the region. There have been protests in more than a dozen African capitals demanding greater political pluralism, transparency, and accountability following the launch of the Arab Spring. Some have even explicitly referenced North Africa as a model. Likewise, a number of African governments are so fearful of the Arab Spring’s influence that they have banned mention of the term on the Internet or public media. The democratic protests in North Africa, consequently, are having an impact and shaping the debate on the future of democracy in Africa. They are also teaching important lessons that democracy is not bestowed on but earned by its citizens. Once initiated, it is not a passive or self-perpetuating governance model, but one that requires the active engagement of citizens. Perhaps most meaningfully, then, the Arab Spring is instigating changes in expectations that African citizens have of their governments. What makes these changed expectations especially potent is that they dovetail with more fundamental drivers of change that are likely to spur further democratic advances in Africa in the next several years. Access to information technology has exploded in Africa, dramatically enhancing the capacity for collective action and accountability. Rapid urbanization is further facilitating this capacity for mass action. Africa’s youthful and better educated population is restive for more transparency from public officials and expanded livelihood opportunities. These youth are increasingly aware of governance norms elsewhere in the world and yearn for the same basic rights in their societies. Rising governance standards in the region and internationally, in turn, are placing ever greater value on legitimacy while heightening intolerance of unconstitutional transitions of power. Civil society, typically the bottom-up vehicle for governance change, has grown in breadth, sophistication, and influence over the past several decades. And Africa’s democratic institutions have begun to put down roots. Parliaments have become more capable and autonomous, independent media is more diverse and accessible than ever, and elections are becoming increasingly common, transparent, and meaningful.

### Africa---Alt-Causes

#### Lots of alt-causes to African judicial independence

Brian Odhiambo, 1-31-2012, “On Judicial Independence in Africa,” Yale Undergraduate Law Review, http://yulr.org/on-judicial-independence-in-africa/

Given the disparity between the theoretical and practical aspects of the African judicial process, there is a dire need for a reconstruction of the judicial institution. Corruption of the judiciary is a function of several problems: a) Poor payment of judicial officers thus making them gullible to corruption. b) Lack of information by the populace of their rights within the judicial system c) Poor investigative work by state law enforcement agencies resulting in half-baked prosecutions often resolved by paying the judge for a verdict. d) Lack of a sufficient number of judges prompting individuals to pay in order to get a hearing Before Africa can boast an independent judiciary, these and other problems not directly related to the judiciary will have to be addressed. The independence of the judiciary is not only an end in itself, but also a tool to be used to discover the truth and do justice and promote political, social and economic progress.

# Block

## Treaties

### Link

Neuman – positive force

#### The Court’s not using treaties to limit political branch’s authority---the plan creates a doctrine of judicial enforceability that collapses the PQD and SOP---it also functionally renders treaties self-executing

Curtis Bradley 9, Horvitz Professor of Law, Duke Law School, SELF-EXECUTION AND TREATY DUALITY, http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5505&context=faculty\_scholarship

Nothing in this history, however, suggests that treaties were included in the Supremacy Clause in order to empower the courts to deter or redress national government breaches of treaties, or in any other way limit the national political branches’ control over treaty compliance. Indeed, the entire thrust of the adoption of the Supremacy Clause was one of empowering the national government to operate more effectively. As Professor Christopher Drahozal notes in his book on the Supremacy Clause:

“Certainly the Supremacy Clause does away with the question under the Articles of Confederation of whether states have to implement treaties before they take effect. That possibility, the subject of debate and federal action in connection with the Treaty of Peace with Great Britain, is conclusively rejected by the Supremacy Clause. Beyond that, however, the resolution of the self-execution debate is less clear, at least with respect to the preemption of state law.”58

To put it differently, there is no reason to think that the Supremacy Clause removes the international political dimension of treaties, which leaves to national governments the ultimate responsibility for deciding whether and how to comply with treaty obligations, and for accepting whatever international consequences may flow from that decision. The Supremacy Clause simply ensures that in the United States this responsibility rests at the federal rather than state level.

The federalism orientation of the Supremacy Clause is further reflected in the fact that it refers only to state judges and state laws and does not mention the federal political branches. The Constitution addresses the Executive Branch’s obligation to comply with federal law not in the Supremacy Clause but rather in the Take Care Clause of Article II.59 As for Congress, it is well settled that Congress has the authority to override both treaties and statutes, despite their status as supreme law of the land.60 Congress does of course have an obligation to comply with the Constitution, but the Supreme Court in Marbury described this obligation as emanating principally from the nature of a written constitution that assigns limited and enumerated powers to the national government rather than from the Supremacy Clause.61 The pattern of judicial enforcement of treaties throughout U.S. history also comports with a federalism rather than separation-of-powers understanding of the Supremacy Clause. As Professor Wu has found, most judicial enforcement of treaties has been directed at states and localities, and, even outside that context, courts have tended to “look for signals from Congress or the Executive that might show who is meant to be responsible for enforcing a given treaty.”62

Once the concept of supreme law of the land is viewed as potentially separate from automatic judicial enforceability, it is easier to understand contemporary judicial and political branch practice relating to treaties. Consider, for example, the non-self- execution declarations that the Senate and President sometimes include with their consent to treaties. These declarations are not an effort to turn off the Supremacy Clause, as some critics contend. They are simply an effort by the U.S. treatymakers to regulate the separable issue of judicial enforceability. I will say more about these declarations in the next Part, and I will address there other constitutional objections that might be raised against them. For now, it is important to note that, in order to conclude that they violate the Supremacy Clause, one would need to read that Clause as not only mandating direct judicial enforceability, but doing so even when the Senate and President expressly do not desire judicial enforceability, and even when they have concluded that other U.S. laws already place the United States in compliance with the treaty. Again, there is nothing in the history of the Supremacy Clause that suggests such a mandate.

### 2NC Exec Agreements Turn Case

#### Executive agreements are more likely to solve their impacts than treaties because the US actually uses them---judicial application of treaties isn’t necessary

Curtis Bradley 9, Horvitz Professor of Law, Duke Law School, SELF-EXECUTION AND TREATY DUALITY, http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5505&context=faculty\_scholarship

The rise of congressional-executive agreements also may reduce the need for and desirability of direct judicial application of treaties.111 As the overlap between treaty-making and legislating has increased, so has the number of congressional-executive agreements, such that now they constitute the vast majority of international agreements concluded by the United States. As supporters of this development emphasize, these agreements have the virtue of including the full Congress in considering whether to approve a treaty, and in deciding how the treaty should be accommodated within the framework of existing U.S. law. The shift to these agreements also reduces the issue of self-execution, since Congress often specifies the level of judicial enforceability that it wants when approving the agreements (sometimes substantially limiting such enforceability).112 Furthermore, it is easier to analogize these congressional-executive agreements to statutes for purposes of judicial enforceability because they actually are statutes.

### Non-Self-Execution Now

#### Medillin locked in non-self-execution---political branches have to give a green-light to treaty interpretation---solves exec flex

James Turner 10, JD, American University (candidate at time), THE POST-MEDELLÍN CASE FOR LEGISLATIVE STANDING, www.wcl.american.edu/journal/lawrev/59/turner.pdf

The Supreme Court’s 2008 Medellín v. Texas 5 decision appeared to be an example of the judiciary reversing that trend by countering an additional assertion of executive power. In Medellín, the Court rejected the President’s efforts to force Texas to comply with an International Court of Justice (ICJ) decision ordering reconsideration of Jose Medellín’s original conviction.6 However, while the Court facially limited the executive’s power in that instance, it also opened a new avenue for the President to exercise his authority with regard to treaty interpretation.

Since its earliest days, the Court has recognized a distinction between treaty terms that are automatically binding (“self-executing”) and those that require additional legislative attention (“non-self- executing”).7 However, early rulings were inconsistent and created confusion in applying this distinction.8 In Medellín, the Court attempted to clarify this area of the law by endorsing a strict text-based approach to treaty interpretation.9 Relying on that approach, the majority asserted the novel concept that a treaty term is not domestically enforceable without further action unless the language in the treaty clearly indicates that the parties intended the term to be self-executing.10

This Comment argues that this approach to treaty interpretation creates a presumption of non-self-execution and effectively grants the executive the final say in deciding whether to enforce treaty obligations within the United States, thereby increasing executive power.11 This Comment further argues that this increase in executive power could undermine the constitutional role of legislators in the treaty-making process.12

#### Non-self-execution is authoritative

Philip Dore 11, JD from Louisiana Law, Law Clerk at United States District Court for the Eastern District of Louisiana, Greenlighting American Citizens: Proceed with Caution, Louisiana Law Review 72;1, Fall 2011

This section discusses the domestic status of treaties in the United States. The contemporary approach presumes that treaties 83 are not self-executing absent evidence to the contrary. The Supreme Court adopted this position in Medellin v. Texas and, in so, doing provided an authoritative framework for interpreting the effect of treaties in domestic law.84 Under the treaty interpretation principles established in Medellin, the laws of war that the Obama Administration must invoke to justify violating the foreign-murder statute lack binding domestic force.

#### Courts defer to non-self-execution now, which the plan reverses by making treaties directly enforceable in US courts

Curtis Bradley 9, Horvitz Professor of Law, Duke Law School, SELF-EXECUTION AND TREATY DUALITY, http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5505&context=faculty\_scholarship

In any event, the decision has had essentially no influence. Not a single court has relied on this decision since it was issued more than fifty years ago.79 Nor has the decision affected political branch practice, which, since the decision, has developed to include the use of non-self-execution declarations. These declarations have consistently been upheld by the lower courts, and the Supreme Court recently suggested that they are valid.80 Even in academic writings, the Power Authority decision has not been invoked extensively. One likely reason is that its suggestion that the treaty power might be limited to matters of international rather than domestic concern is a difficult distinction to apply in practice and could easily lead to undesirable consequences. If applied stringently, this distinction might render invalid the U.S. ratification of a variety of important treaties, including many human rights treaties, since those treaties do not involve reciprocal promises in the traditional sense. (The U.S. government does not condition its promise to respect the human rights of its citizens on other countries’ respect for the human rights of their citizens.) Probably in part for this reason, the Restatement (Third) of Foreign Relations rejects any effort to have treaty validity turn on the domestic-versus-international distinction.81

The intent-of-the-U.S. approach is not only constitutionally valid, it also best explains judicial and political branch practice. Unlike an intent-of-the-parties approach, this approach has an easy time explaining the consistent deference that courts have given to non-self-execution declarations attached by the Senate and accepted by the President. Under the intent-of-the-U.S. approach, these declarations are clear evidence of senatorial and presidential intent concerning self-execution, which is the relevant intent for this issue. Commentators who argue for an intent-of-the-parties approach, by contrast, either find these declarations unconstitutional or have a difficult time explaining their validity.82 Moreover, the intent-of-the-U.S. approach would find valid the recent self-execution declarations attached by the Senate, as long as the treaty was otherwise susceptible to judicial application. An intent-of-the-parties approach, by contrast, would likely see these declarations as unconstitutionally expanding the international obligations of the United States.83 It is also worth noting that, outside of the human rights area, declarations concerning self-execution have not typically been included in the instruments of ratification that are communicated to the other treaty parties, and the Senate has not been recommending their inclusion in these instruments afte 84 Such communication would presumably be a constitutional prerequisite, however, unde an intent-of-the-parties approach. r Medellín. r h. 85 All of this purported unconstitutionality should at least give us pause before committing to the intent-of-the-parties approac 86

The intent-of-the-U.S. approach also explains why it is perfectly appropriate for courts to consider treaty text when discerning self-execution, as they have done since Foster. Treaty text is relevant under this approach because it is what the Senate and President specifically approve when agreeing to the treaty, just as statutory text is relevant in discerning congressional intent with respect to whether and to what extent a statute is to be judicially enforceable. This is true, under the intent-of-the-U.S. approach, regardless of whether the treaty text would mean something different to other treaty parties on this question of self-execution (or mean nothing at all to them on this question). The textual question under the intent-of-the-U.S. approach is, simply, did the Senate and President intend in agreeing to this language that the treaty would be directly enforceable in U.S. courts? As discussed below, this is precisely the reasoning of the Supreme Court in Medellín. Supporters of the intent-of-the-parties approach, by contrast, have a difficult time explaining why text is relevant. Professor Vázquez, for example, criticizes judicial reliance on treaty text in discerning whether treaties are self-executing:

“Because nations negotiating treaties rarely, if ever, select the wording of a treaty with the question of legislative implementation in mind, judges who draw conclusions about this question from treaty text are very likely attributing to the words a meaning that was not intended by the parties.”87

### 2NC Link Wall

#### Courts are deferring to Congress’ non-self-executing stance on HR treaties now---ruling directly on a treaty sets a precedent that ends Congressional treaty power and causes a flood of litigation

Curtis Bradley 9, Horvitz Professor of Law, Duke Law School, SELF-EXECUTION AND TREATY DUALITY, http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5505&context=faculty\_scholarship

Assuming this reluctance to allow treaties to displace Congress’s legislative role is justified, it suggests a greater potential scope for non-self-execution today than might have been true in the past. In the modern era, both statutes and treaties have proliferated, and the content and structure of treaty-making has changed such that treaties are often the vehicle for broad-based legislative efforts. These developments mean, among other things, that statutes and treaties are much more likely to overlap with one another and to express potentially different policy choices. Even when treaties reflect policies similar to those in existing U.S. statutes, treaties (as noted above) tend to use different language than is used in the statutes and thus, if enforced directly, may require significant litigation to work out the implications of this language. (As discussed in Part I, this is one reason the Senate routinely includes non-self-execution declarations with its advice and consent to human rights treaties.)109 One should expect, therefore, that in the modern era courts would become less willing to apply treaties directly as rules of decision, and this is precisely what appears to have happened. As discussed earlier, the lower courts in the post-World War II period have come close to presuming against self-execution, at least for multilateral treaties and other treaties not covered by prior lines of precedent.110

#### Court deference to executive treaty interpretation now---the plan sets a precedent for upcoming rulings that collapse deference---kills credible foreign policy

Curtis Bradley 13, William Van Alstyne Professor of Law, Professor of Public Policy Studies, and Senior Associate Dean for Academic Affairs, “Terrorists, Pirates, and Drug Traffickers: Customary International Law and U.S. Criminal Prosecutions,” Jan. 11, <http://www.lawfareblog.com/2013/01/terrorists-pirates-and-drug-traffickers-customary-international-law-and-u-s-criminal-prosecutions/>

The Supreme Court has stated on a number of occasions that it will give “great weight” to Executive Branch interpretations of treaties (although it admittedly seemed not to apply such deference in its own Hamdan decision in 2006 when interpreting Common Article 3 of the Geneva Conventions). The issue is somewhat more complicated for customary international law, since part of the reason for deference on treaty questions is that the Executive Branch plays a direct role in negotiating U.S. treaties, whereas the Executive Branch’s role in the development of customary international law is more diffuse. In criminal cases, there might also be a separation of powers concern associated with allowing the Executive Branch both to act as the prosecutor and giving it deference on the content of a body of law that affects its prosecutorial authority (although that concern would also apply in some cases involving criminal statutes that implement treaties).

On the other hand, for both treaties and customary international law it may be desirable as a general matter for the United States to be able to speak with a unified voice, since whatever position the U.S. adopts may have reciprocity and other international consequences. (For this reason, the Restatement (Third) of Foreign Relations Law suggests that there should be judicial deference for both treaty and customary international law questions.) It is also generally more difficult for courts to discern the content of customary international law than the content of treaties, which might justify giving greater deference to the Executive Branch with respect to custom, not less. In any event, as courts continue to consider cases in which customary international law is a potential constraint on criminal prosecution, the issue of deference is likely to emerge as a more significant issue.

#### Treaty enforcement’s a key political question --- judicial enforcement decks political branch foreign affairs policy

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Finally, the Court’s discussion of the “option of noncompliance” demonstrated its recognition of the dual law-and-politics nature of treaty commitments. The Court was not advocating the breach of U.S. treaty obligations, but it was recognizing that decisions about whether and how to comply with such obligations are not purely legal decisions but also involve questions of international politics. As discussed above, the duality of treaties suggests that the role of the courts in enforcing them may be somewhat more limited than with respect to statutes, especially when such enforcement poses a risk of undermining political branch management of foreign relations, a proposition evident at least since Foster. The longstanding doctrine of deference to Executive Branch treaty constructions, invoked by the Court in Medellín, also takes account of this proposition.

CONCLUSION

The Supreme Court’s decision in Medellín is unlikely to result in a significant change in the extent of U.S. judicial enforcement of treaties, but it may make it less likely that certain academic claims about such enforcement will be achieved. As the Court appears to have recognized, treaties have a dual nature in that they are situated in the domain of international politics as well as in the domain of law, and this duality is relevant to their judicial enforceability. Their dual nature means that their domestic judicial enforceability is in part a political decision, not some automatic rule of the Supremacy Clause. The relevant intent in discerning whether treaties are subject to such domestic judicial enforceability is in turn the intent of the national political branches. Finally, the international political dimension of treaties means that, as a class, they are less likely than statutes to be subject to domestic judicial enforcement, especially in the modern era.

#### Judicial enforceability is the key determining factor in determining the doctrine of self-execution

Philip Dore 11, JD from Louisiana Law, Law Clerk at United States District Court for the Eastern District of Louisiana, Greenlighting American Citizens: Proceed with Caution, Louisiana Law Review 72;1, Fall 2011

*1. Pre-*Medellin *Treaty Status in US. Domestic Law*

The U.S. Constitution mentions "treaties" several times. One important reference is found in Article II, Section 2, which gives the President the power to negotiate treaties by and with the advice and consent of the Senate.86 Perhaps the most significant reference is found in Article VI, Section 2 (the Supremacy Clause), which states that "[a]ll Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land."87 The text of the Constitution thus suggests that all treaties negotiated by the President and ratified by the Senate are domestic law.¶ U.S. courts, however, have drawn a distinction between treaties that are self-executing and those that are non-self-executing.8 The precise nature of this distinction, and indeed its very existence, has been a subject of intense debate.89 Because this distinction is entrenched in U.S. law, any consideration of the domestic status of a treaty must address this issue. ¶ The Supreme Court has defined self-executing treaties as "treaties that automatically have effect as domestic law" and non- self-executing treaties as treaties that "do not by themselves function as binding federal law."90 The origin of the self-execution doctrine is often traced to Chief Justice Marshall's opinion in Foster v. Neilson, an 1829 Supreme Court case involving land rights under a treaty between Spain and the United States.91 Courts frequently cite the following language in Foster: "[The U.S. Constitution] declares a treaty to be the law of the land. [A treaty] is, consequently, to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself without the aid of any legislative provision."92 As one commentator notes, "The Foster holding is easier to describe than to apply."93 In particular, scholars and courts differ as to whether Foster merits a broad or narrow interpretation. A narrow interpretation of Foster supports a presumption in favor of treaties as self-executing:94 A treaty should only be declared non-self-executing when there is affirmative evidence that the treaty was not intended to have domestic effect.95¶ Over the past 100 years, the Supreme Court has said very little about self-execution. Lower courts, however, have recent@ developed a rather expansive view of the self-execution doctrine. The "modem" self-execution doctrine requires evidence of intent to make treaties enforceable as domestic law.98 In other words, a treaty is presumed non-self-executing absent any evidence that it was intended to be self-executing. 99 This development is significant because most nations do not address matters of domestic enforceability in the provisions of treaties.100 A presumption in favor of or against self-execution will thus ultimately determine the judicial enforceability of the treaty in the vast majority of circumstances.' It appears that the Supreme Court in Medellin v. Texas endorsed the lower courts' presumption against self-execution and, in doing so, provided a framework for analyzing the domestic effect of treaties.

### AT No Spillover

#### Their link-defense about not spilling-over actually bolsters our link---the aff creates an arbitrary, ad-hoc approach to treaty enforcement that grants the Courts a political role---the mish-mash they create only means that they can’t access any link turns or solve anything

Curtis Bradley 9, Horvitz Professor of Law, Duke Law School, SELF-EXECUTION AND TREATY DUALITY, http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5505&context=faculty\_scholarship

Finally, the Court observed that the consequences of giving direct effect to ICJ judgments “give pause.”129 The Court expressed particular concern that, under such regime, even erroneous ICJ decision

ns could override state law, and potentially even federal law.130 The Court also worried that the ICJ would have the ability to bind U.S. courts to extreme remedies, such as “annul[ling] criminal convictions and sentences, for any reason deemed sufficient by the ICJ.”131 For these reasons, the Court suggested that it was unlikely that the U.S. political branches had intended for the obligation to comply ents to be self-executing.

In reaching its conclusion, the Court rejected what it called the “multifactor judgment by judgment” approach to self-execution suggested by Justice Breyer in dissent, whereby courts would consider not only treaty text and drafting history, but also the treaty’s subject matter, whether the treaty provision confers specific individual righ and whether direct enforcement of the treaty would require the courts to create a new cause of action.132 The Court reasoned that such an approach would be too indeterminate and would give the courts too much discretion, thereby “assign[ing] to the courts the political branches – the primary role in deciding when and how international agreements will be enforced.”133 The Court particularly objected that, under the dissent’s proposed approach, a treaty provision could be self-executing in some cases and non-self executing in others. The Court thought it “hard to believe that the United States would enter into treaties that are sometimes enforceable and sometimes not,”134 and it expressed concern that allowing courts to make such case-by-case judgments would give the judiciary “the power not only to interpret but also to create the law.”135

### SQ Charming Betsy=Inform Not Restrict

\*\*\*note in restrictions PIC\*\*\*

#### Charming Betsy’s application is limited now---it isn’t affirmatively used to implement restrictions

Rebecca Crootof 11**, 1ac author,** J.D. Yale Law School Judicious influence: non-self-executing treaties and the Charming Betsy canon. www.thefreelibrary.com/Judicious+influence%3A+non-self-executing+treaties+and+the+Charming...-a0256684853

The Charming Betsy canon plays a modest role in statutory interpretation. (125) If a later-in-time statute unquestionably contradicts customary international law or a treaty provision, the statutory text prevails. (126) However, if a statute is ambiguous, (127) the canon may prove useful in selecting between multiple fairly possible interpretations. (128) The canon's presumption will privilege only reasonable interpretations of the statute. (129) It does not demand that courts play word games that warp the statutory text or purpose: "[T]he contents of [a non-self-executing treaty are] only relevant insofar as [a statute] is ambiguous and there is a reasonable interpretation of [the statute] that aligns with the United States' treaty obligations." (130) As a result, the canon "exerts a negative force on the meaning of statutes, pushing them away from meanings that would conflict with international law. Courts do not apply Charming Betsy as an affirmative indicator of statutory meaning." (131)

### Yes Prolif

#### Optimists ignore recent developments in IR theory

Matthew Kroenig 12, Assistant Professor of Government, Georgetown University and Stanton Nuclear Security Fellow, Council on Foreign Relations, “The History of Proliferation Optimism: Does It Have A Future?” Prepared for the Nonproliferation Policy Education Center, May 26, 2012, <http://www.npolicy.org/article.php?aid=1182&tid=30>

The proliferation optimist position, while having a distinguished pedigree, has several major problems. Many of these weaknesses have been chronicled in brilliant detail by Scott Sagan and other contemporary proliferation pessimists.[34] Rather than repeat these substantial efforts, I will use this section to offer some original critiques of the recent incarnations of proliferation optimism. ¶ First and foremost, proliferation optimists do not appear to understand contemporary deterrence theory. I do not say this lightly in an effort to marginalize or discredit my intellectual opponents. Rather, I make this claim with all due caution and with complete sincerity. A careful review of the contemporary proliferation optimism literature does not reflect an understanding of, or engagement with, the developments in academic deterrence theory in top scholarly journals such as the American Political Science Review and International Organization over the past few decades.[35] While early optimists like Viner and Brodie can be excused for not knowing better, the writings of contemporary proliferation optimists ignore the past fifty years of academic research on nuclear deterrence theory. ¶ In the 1940s, Viner, Brodie, and others argued that the advent of Mutually Assured Destruction (MAD) rendered war among major powers obsolete, but nuclear deterrence theory soon advanced beyond that simple understanding.[36] After all, great power political competition does not end with nuclear weapons. And nuclear-armed states still seek to threaten nuclear-armed adversaries. States cannot credibly threaten to launch a suicidal nuclear war, but they still want to coerce their adversaries. This leads to a credibility problem: how can states credibly threaten a nuclear-armed opponent? Since the 1960s academic nuclear deterrence theory has been devoted almost exclusively to answering this question.[37] And, unfortunately for proliferation optimists, the answers do not give us reasons to be optimistic.¶ Thomas Schelling was the first to devise a rational means by which states can threaten nuclear-armed opponents.[38] He argued that leaders cannot credibly threaten to intentionally launch a suicidal nuclear war, but they can make a “threat that leaves something to chance.”[39] They can engage in a process, the nuclear crisis, which increases the risk of nuclear war in an attempt to force a less resolved adversary to back down. As states escalate a nuclear crisis there is an increasing probability that the conflict will spiral out of control and result in an inadvertent or accidental nuclear exchange. As long as the benefit of winning the crisis is greater than the incremental increase in the risk of nuclear war, threats to escalate nuclear crises are inherently credible. In these games of nuclear brinkmanship, the state that is willing to run the greatest risk of nuclear war before back down will win the crisis as long as it does not end in catastrophe. It is for this reason that Thomas Schelling called great power politics in the nuclear era a “competition in risk taking.”[40] This does not mean that states eagerly bid up the risk of nuclear war. Rather, they face gut-wrenching decisions at each stage of the crisis. They can quit the crisis to avoid nuclear war, but only by ceding an important geopolitical issue to an opponent. Or they can the escalate the crisis in an attempt to prevail, but only at the risk of suffering a possible nuclear exchange.

### Impact

#### Proliferation cascades---causes nuclear war and terrorism

Matthew Kroenig 12, Assistant Professor of Government, Georgetown University and Stanton Nuclear Security Fellow, Council on Foreign Relations, “The History of Proliferation Optimism: Does It Have A Future?” Prepared for the Nonproliferation Policy Education Center, May 26, 2012, <http://www.npolicy.org/article.php?aid=1182&tid=30>

Further proliferation. Nuclear proliferation poses an additional threat to international peace and security because it causes further proliferation. As former Secretary of State George Schultz once said, “proliferation begets proliferation.”[69] When one country acquires nuclear weapons, its regional adversaries, feeling threatened by its neighbor’s new nuclear capabilities, are more likely to attempt to acquire nuclear weapons in response. Indeed, the history of nuclear proliferation can be read as a chain reaction of proliferation. The United States acquired nuclear weapons in response to Nazi Germany’s crash nuclear program. The Soviet Union and China acquired nuclear weapons to counter the U.S. nuclear arsenal. The United Kingdom and France went nuclear to protect themselves from the Soviet Union. India’s bomb was meant to counter China and it, in turn, spurred Pakistan to join the nuclear club. Today, we worry that, if Iran acquires nuclear weapons, other Middle Eastern countries, such as Egypt, Iraq, Turkey, and Saudi Arabia, might desire nuclear capabilities, triggering an arms race in a strategically important and volatile region.¶ Of course, reactive proliferation does not always occur. In the early 1960s, for example, U.S. officials worried that a nuclear-armed China would cause Taiwan, Japan, India, Pakistan, and other states to acquire nuclear weapons.[70] In hindsight, we now know that they were correct in some cases, but wrong in others. Using statistical analysis, Philipp Bleek has shown that reactive proliferation is not automatic, but that rather, states are more likely to proliferate in response to neighbors when three conditions are met 1) there is an intense security rivalry between the two countries, 2) the potential proliferant state does not have a security guarantee from a nuclear-armed patron 3) and the potential proliferant state has the industrial and technical capacity to launch an indigenous nuclear program.[71] In other words, reactive proliferation is real, but it is also conditional. If Iran enters the nuclear club, therefore, it is likely that some, but not all, of the countries that we currently worry about will eventually follow suit and become nuclear powers.¶ We should worry about the spread of nuclear weapons in every case, therefore, because the problem will likely extend beyond that specific case. As Wohlstetter cautioned decades ago, proliferation is not an N problem, but an N+1 problem. Further nuclear proliferation is not necessarily a problem, of course, if the spread of nuclear weapons is irrelevant or even good for international politics as obsessionists and optimists protest. But, as the above discussion makes clear, nuclear proliferation, and the further nuclear proliferation it causes, increases the risk of nuclear war and nuclear terrorism, emboldens nuclear-armed states to be more aggressive, threatens regional stability, constrains U.S. freedom of action, and weakens America’s alliance relationships, giving us all good reason to fear the spread of nuclear weapons.

## Congress

### 2NC Solves Cred

#### Solves ILAW leadership and cred---allows the US to lead by example

John Bellinger 11, Obama’s Announcements on International Law, www.lawfareblog.com/2011/03/obamas-announcements-on-international-law/

Either way, both of these announcements are important assertions of U.S. leadership in international humanitarian law, although they are years late in coming. During the second term of the Bush Administration, State Department lawyers and Matt Waxman at the Defense Department urged that if Al Qaeda and Taliban detainees were not covered by the Third and Fourth Geneva Conventions, then the Administration should announce that it would at least apply the minimum protections of Common Article 3 of the Geneva Conventions and Article 75 of Additional Protocol I. Others in the Administration opposed this approach. In Hamdan, the Supreme Court held that Common Article 3 of the Geneva Conventions applied to the U.S. conflict with Al Qaeda, and four members of the Court concluded that Article 75 constitutes customary international law. During the transition, I recommended to the incoming Administration that it clarify the international legal framework by announcing support for Article 75. The new Administration then embarked on a 25-month study of the issue. Last August, on the 61st anniversary of the Geneva Conventions, I wrote this op-ed on ForeignPolicy.com’s Shadow Government blog, noting that the Obama Administration was not actually applying the Third or Fourth Geneva Conventions as a legal framework to Al Qaeda and Taliban detainees in any way differently from the Bush Administration.¶ I urged the Administration to announce that it accepts Article 75 as legally binding and to push the Senate to approve Additional Protocol II. The State and Defense Departments were reportedly prepared to make these announcements last fall, but the White House apparently did not want to announce any new “rights” for terrorists before the election.¶ Among the other reasons for the long delay is that the Administration needed to ensure that military commission trials complied with the requirements of Article 75, which requires, among other things, that any detained person be prosecuted only before a “regularly constituted court respecting the generally recognized principles of regular judicial procedure,” including the right to examine witnesses against him.¶ It is also important to note that (contrary to the views of four present or past justices of the Supreme Court) the Administration has not concluded that Article 75 already constitutes “customary international law.” This would have required the Administration to determine that almost all the states in the world accept Article 75 as a legally binding obligation, which would have been difficult to do. Instead, the Administration has announced that it will “choose out of a sense of legal obligation to treat the principles set forth in Article 75 as applicable to any individual detained in an international armed conflict, and expects all other nations to adhere to these principles as well.” In other words, the Administration is saying (appropriately, in my view) that it will lead by example by attempting to create customary international law through state practice.

### 2NC Courts Not Key

\*\*\*in Cong Cp\*\*\*

#### Congressional enforcement of treaties solves ILAW---court key and perception arguments are made up nonsense---other countries care about US compliance with treaties, not which actor causes that compliance

Curtis Bradley 9, Horvitz Professor of Law, Duke Law School, SELF-EXECUTION AND TREATY DUALITY, http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5505&context=faculty\_scholarship

My second claim is that, in discerning whether a treaty is self-executing, the relevant intent is that of the U.S. treatymakers (i.e., the Senate and President), not the collective intent of the treaty parties. As I will explain, my claim does not depend on any particular view about the relevance of ratification history or other non-textual materials in the self-execution analysis. Indeed, my claim is compatible even with a pure “public meaning” approach to interpretation.64

As Professor Vázquez has noted, “Courts and commentators seem to agree that a treaty’s self-executing character is largely, if not entirely, a matter of intent.”65 There has been substantial uncertainty, however, over whose intent counts – the collective intent of the parties to the treaty, or just the intent of the U.S. Senate and President. Before Medellín, some lower courts had suggested, without analysis, that the collective intent of the parties is what matters,66 and this is also the view of some commentators.67 By contrast, the Restatement (Third) of Foreign Relations Law reasons that the intent of the U.S. treatymakers should be dispositive. As the Restatement explains:

 “In the absence of special agreement, it is ordinarily for the United States to decide how it will carry out its international obligations. Accordingly, the intention of the United States determines whether an agreement is to be self-executing in the United States or should await implementation by legislation or appropriate executive or administrative action.”68

 Although I do not always agree with the Restatement’s claims, on this issue the Restatement is persuasive. Nations have widely varying approaches to the domestic status of treaties, with some nations (such as Great Britain) always requiring legislative implementation before treaties can be enforced by domestic courts, other nations allowing most or all treaties to be enforced directly by their courts, and still other nations allowing only some treaties to be enforced in this way.69 Furthermore, international law generally does not concern itself with the particular institutions a nation uses to implement international obligations; nations are simply required to comply with their treaty obligations, and it does not matter whether they do so through their courts or through some other mechanism. As a leading international law casebook notes, “International law requires a state to carry out its international obligations but, in general, how a state accomplishes that result is not of concern to international law or to the state system.”70 For these reasons, nations almost never negotiate about treaty self-execution, especially for multilateral treaties. Moreover, parties negotiating a treaty are typically indifferent to the issue, so even tools used for contract gap filling would not work here. If the search for self-execution turned on the collective intent of the parties, it would almost always be a meaningless exercise.

### 2NC Backlash NB

#### Judicial review of treaties causes the US to comply less with human rights on a scale that qualitatively outweighs their internal link---we control uniqueness because the Court doesn’t restrict political authority now and Court enforcement isn’t key to US treaty compliance

Curtis Bradley 9, Horvitz Professor of Law, Duke Law School, SELF-EXECUTION AND TREATY DUALITY, http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5505&context=faculty\_scholarship

The argument for more mandatory judicial review of treaty obligations depends on a separation of powers-oriented, rather than federalism-oriented, construction of the Clause. Critics of non-self-execution argue that treaties were included in the Supremacy Clause to help avert U.S. treaty violations, something that they contend will be more likely to occur without self-execution.47 As an initial matter, it is important to remember that U.S. compliance with its treaty obligations generally does not depend on self- execution. There are many ways for a nation to comply with a treaty without direct judicial application, including preexisting legislation, new legislation, and executive action, and U.S. compliance with most treaties is not in fact accomplished through its courts. As discussed below in Part III, treaties are never self-executing in some countries, and yet those countries generally manage to comply. Critics of political branch flexibility with respect to the issue of self-execution also neglect to consider the ex ante effects of eliminating such flexibility. Among other things, if the political branches could not regulate the domestic effects of treaties, they would likely enter into fewer, and less significant, treaty commitments.48 ¶ [Footnote 48 Starts] ¶ 48 See, e.g., Bradley & Goldsmith, 149 U Pa L Rev at 410-16 (documenting how non-self- execution declarations and other conditions helped break the logjam that had prevented U.S. ratification of human rights treaties) ¶ [Footnote 48 Ends]

#### Executive promotion of I-Law is comparatively better than the courts---the plan/perm cause executive backlash to adoption which turns the case

Daniel Abebe & Eric A. Posner 11, Assistant Professor and Kirkland & Ellis Professor, University of Chicago Law School, The Flaws of Foreign Affairs Legalism, 51 Va. J. Int'l L. 507

Let us now compare the judiciary's record with that of the executive. To keep the discussion short, we will focus on post-World War II activity.

The executive has been the leading promoter of international law. It has negotiated and ratified (sometimes with the Senate's consent, sometimes with Congress's consent, and sometimes without legislative consent) thousands of treaties over the last sixty years, n153 including the fundamental [\*534] building blocks of the modern international legal system, such as the UN Charter, the GATT/WTO, the International Covenant for Civil and Political Rights, and the Genocide Convention. Through the U.S. State Department, the executive issues annual reports criticizing foreign countries for human rights violations, and the U.S. government has frequently, although not with complete consistency, issued objections when foreign countries violate human rights. n154 The executive has also negotiated and signed other important treaties to which the Senate has withheld consent - including the Vienna Convention on the Law of Treaties, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Law of the Sea, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination Against Women, among others. n155 The executive has also been instrumental in creating modern international institutions, including the UN Security Council, the GATT/WTO system, the World Bank, and the IMF. n156

Much of what we said might seem too obvious to mention. One can hardly imagine the judiciary deciding on its own that the United States must create or join some new treaty regime. But these obvious points have been overlooked in the debate about the role of the judiciary in foreign affairs. Virtually everything the judiciary does in this area depends on prior executive action. Only the constitutional interpretation cases seem truly judge-initiated, for in these cases, the Court sometimes cites treaties that the United States has not ratified and sometimes cites the laws of foreign nations.

The claim that the judiciary can, and even does, play a primary role in the adoption of international law is puzzling. In almost all cases, the judiciary must follow the executive's lead. This also means that if the judiciary interprets treaties and other sources of international law in an aggressive way - in a way that the executive rejects - the executive may respond by being more cautious about negotiating treaties and adopting international law in the first place. This possible backlash effect has not been documented, but is plausible. As we discuss in the next section, fears of judicial enforcement of certain treaty obligations [\*535] led to an effort by the Senate to ensure that those treaties would not have domestic legal effect.

The plan goes about incorporating ILAW in reverse---picking a controversial area like War Powers to issue rulings in causes massive political backlash---only the CP can smooth the transition

Peter B. Rutledge 8, Columbus School of Law, Catholic University of America, Medellin v. Texas: Presidential Power and International Tribunals, 6 Geo. J.L. & Pub. Pol'y 129

I want to be careful here because I do not want to stretch the European Court of Justice analogy; I'm offering it as a positive issue, not as a normative issue. So here is the point that I'm trying to make about the European Court of Justice: If you go back and look at how the European Court of Justice articulated the Doctrine of Direct Effect, it was very careful on how it did so. This is a point that Joseph Weiler, probably one of the foremost academics on the European Union, has made. n111 And that is that the European Court of Justice did not go out and pick the most controversial, intractable issues among the European states in which to articulate the doctrine; it picked issues on which to articulate the Doctrine of Direct Effect that were relatively non-controversial among the member states of the European community. n112 And, as a result, the mechanism of domestic absorption was relatively uncontroversial.

Contrast that with what is going on in Medellin where you have a real divergence between the domestic political views about the death penalty, which, [\*149] if anything, is on the resurgence again in the United States in terms of states reconsidering adopting it, Illinois excepted. n113 And on the other hand, the consensus in the international community, many of whom would view the death penalty as inconsistent with modern-day human rights norms. n114 If you are one who is trying to advocate the integration of the Doctrine of Direct Effect or its analogue in the Medellin case, you have picked a really poor example by which to do so. You have not learned the lesson of Europe. You have picked a situation where the divergence between the international norm and the domestic political consensus is so great that you are bound to promote this firestorm of controversy over whether or not the international judgment is going to be reduced to a domestic judgment.

Does that mean that these international judgments do not have any effect whatsoever? No, of course not. We can differentiate as various scholars in this field do between hard law and soft law. n115 They may not be given direct domestic effect in the way that, say, judgments at the European Court of Justice are, n116 but that does not mean that they do not influence the political process potentially in ways that, as I think John [McGinnis] would say, are affected by actors who have a great degree of political accountability. So in the wake of these sorts of Medellin-type decisions, you do not see U.S. courts reducing their judgments to domestic effect but you do, for example, see governors acting to commute various death sentences of individuals, perhaps, in response to some of the pressure that comes from these international tribunals. n117

The interesting thing to watch will not necessarily be how Medellin comes out but instead it will be to see how those who would advocate the integration of international tribunals' decisions into our domestic system strategize and what types of cases they will use to develop the extent to which they rely on "soft law" methods to bridge the dissensus between the domestic political [\*150] norms and the international norms in order to ease the transition as occurred in the EU. Thank you.

#### Turns solvency---causes courts to back down

Daniel Abebe & Eric A. Posner 11, Assistant Professor and Kirkland & Ellis Professor, University of Chicago Law School, The Flaws of Foreign Affairs Legalism, 51 Va. J. Int'l L. 507

The second body of law involves constitutional interpretation. In a series of cases, the U.S. Supreme Court has interpreted ambiguous constitutional norms in light of foreign materials - including international [\*532] law, foreign law, and the judgments of international and foreign courts. In Atkins v. Virginia, n137 the Court held that execution of the mentally retarded is cruel and unusual punishment under the Eighth Amendment. n138 Likewise, in Roper v. Simmons, n139 the Court held that execution of people for crimes that they committed as juveniles violates the Eighth Amendment. n140 In Lawrence v. Texas, n141 the Court struck down a state law criminalizing sexual sodomy. n142 In all of these cases, the Court cited international treaties, foreign constitutions, foreign law, or foreign institutional practices as support for its holding. n143

The U.S. government has never agreed by treaty that executing mentally retarded people violates international law. In Atkins, the Court appears to be trying to bring the United States into line with the norms and practices of other states. n144 Whatever the Court's reasons for doing this, the effect is to bind the United States to treaties and norms of CIL that otherwise it would either refuse to agree to, or would violate. These cases have proven to be extremely controversial, however, and have provoked a political backlash. n145 In recent years, the Supreme Court has backed away from the practice of citing foreign sources. n146

We should also mention recent developments that postdate the rise of foreign affairs legalism - the war-on-terror cases, in particular Hamdan v. Rumsfeld n147 and Boumediene v. Bush. n148 In Hamdan, the Supreme Court held that military commissions established by the Bush [\*533] Administration violated a provision of the Uniform Code of Military Justice that incorporated international law. n149 In Boumediene, the Court held that federal habeas jurisdiction extended to the U.S. military detention facility at Guantanamo Bay. n150 Although this case did not rest on international law, it eliminated the Bush Administration's main reason for using this location and thus helped doom an institution that many people regarded as an affront to international norms of legality.

These cases were qualified victories for foreign affairs legalism, but their immediate impact was limited. Very few detainees have been released as a direct result of legal process, n151 and, in fact, the Supreme Court followed its historical practice of temporizing until the emergency had passed. More generally, from 2001 until the present, courts have been largely deferential to the executive branch. n152

### Tc

#### DA turns the case --- releasing detainees based on immigration rulings makes future pro-detainee war powers rulings less likely

Samuel Chow 11, Juris Doctor, Benjamin N. Cardozo School of Law, Summer 2011, “NOTE: THE KIYEMBA PARADOX: CREATING A JUDICIAL FRAMEWORK TO ERADICATE INDEFINITE, UNLAWFUL EXECUTIVE DETENTIONS,” Cardozo Journal of International and Comparative Law, 19 Cardozo J. Int'l & Comp. L. 775

There are also criticisms not that the judiciary should not be involved with terrorist detentions, but that the means in which its role is justified should not rely on immigration law. n260 There is a valid concern in applying immigration law since it frames the issue in the immigration context - which means the Executive presumptively has the right to prevent Guantanamo detainees from entering the United States. In a sense, by framing it in the immigration context, it creates precedent for establishing greater [\*813] obstacles in remedying unlawful detentions. However, this criticism is addressed by the fact that diplomatic resettlements should be the ideal remedy, and where entry into the United States would serve as a last resort. The emphasis should not be on the augmentation of judicial authority in terrorist detentions; rather, the emphasis should be on creating a framework for terrorist detentions where the detainees' liberty interests are adequately protected.

## Yes Trade

#### Yes trade impact

Jeffrey E. Garten 9**,** 3-3-09, professor at the Yale School of Management and chairman of Garten Rothkopf, a global advisory firm. He held economic- and foreign-policy posts in the Nixon, Ford, Carter and Clinton administrations, The Dangers of Turning Inward, Truth About Trade & Technology, 3-3-09, http://www.truthabouttrade.org/content/view/13454/54/lang,en/

The point is, **economic nationalism, with its implicit autarchic and save-yourself character**, embodies exactly the wrong spirit and **runs in** precisely **the wrong direction from the global system that will be necessary to create the future we all want.**

**As happened in the** 19**30s**, economic nationalism is also **sure to poison geopolitics.** Governments under economic pressure have **far fewer resources** to take care of their citizens and to deal with rising anger and social tensions. Whether or not they are democracies, their tenure can be threatened by popular resentment. The temptation for governments to whip up enthusiasm for something that distracts citizens from their economic woes -- **a war or a jihad against unpopular minorities**, for example -- is great. That's not all. As an economically enfeebled South Korea withdraws foreign aid from North Korea**, could we see an even more irrational activity from Pyongyang**? As the **Pakistani economy goes into the tank**, will the government be more likely to compromise with terrorists to alleviate at least one source of pressure? **As Ukraine strains** under the weight of an IMF bailout, **is a civil war with Cold War overtones between Europe and Russia be in the cards?**

And beyond all that, how will economically embattled and inward-looking governments **be able to deal with the critical issues that need global resolution such as control of nuclear weapons, or a treaty to manage climate change**, or help to the hundreds of **millions** of people who are now **falling back into poverty**?

## Modeling Adv

### SQ Solves

#### U.S. judicial influence high---zero risk of any of their advantage---prefer our ev

Aaron B. Aft 11, J.D., Indiana University Maurer School of Law, Winter 2011, “Respect My Authority: Analyzing Claims of Diminished U.S. Supreme Court Influence Abroad,” Indiana Journal of Global Legal Studies, Vol. 18, No. 1

Similarly, skepticism should extend to assertions that the United States risks lagging behind global jurisprudence by failing to partake in the transnational judicial dialogue happening via citation. While the Justices of the U.S. Supreme Court may presently debate the merits of comparative jurisprudence, the history depicted by Calabresi and Zimdahl clearly demonstrates that citation to foreign authority is not alien to the U.S. Supreme Court. And there is clearly another level of interaction between the Justices and their counterparts abroad beyond citation. Examples include the apparent interest in remaining informed of the jurisprudential developments in other countries, participation in formal judicial conferences, international judicial organizations, speaking engagements, and literary ventures. The number and variety of these activities makes clear that the Justices of the Supreme Court are taking an active role in at least some elements of the emerging judicial community. Thus, the risk of lagging behind may be exaggerated.

In sum, when one looks past the anecdotal evidence and considers the verifiable metric of citation analysis, one finds good reason to approach the claims of Choudhry, Ginsburg, Justice Kirby, Justice L-Heureux-Dubé, Lefler, Slaughter, and others with skepticism. Although not conducted here, a review of other national and constitutional courts’ citation practices could prove illuminating as to what influence is wielded by the U.S. Supreme Court. In particular, citation analysis of the courts of countries such as Germany and Israel, with legal systems embracing judicial review while not being rooted entirely in common law, might prove particularly useful. Furthermore, there are other plausible explanations for trends in citation to the U.S. Supreme Court, and U.S. courts overall, that do not herald a decline in influence. Although not sufficient to dismiss claims of declining influence outright, the citation analysis and alternative explanations addressed in this note provide ample reason to seek additional data before drawing conclusions about the influence of the U.S. Supreme Court abroad. [End Page 454]

#### U.S. judicial influence high now---prefer our ev

Aaron B. Aft 11, J.D., Indiana University Maurer School of Law, Winter 2011, “Respect My Authority: Analyzing Claims of Diminished U.S. Supreme Court Influence Abroad,” Indiana Journal of Global Legal Studies, Vol. 18, No. 1

According to some observers, the legal influence of the United States in the world is waning.1 Where once the world looked to the U.S. Supreme Court as a guiding light, now foreign courts are increasingly disinterested in what our nine Justices have to say.2 “One of our great exports used to be constitutional law,” contends Anne-Marie Slaughter; “we are losing one of the greatest bully pulpits we have ever had.”3 Some commentators view this trend as disturbing evidence that the United States is losing its voice in an emerging international and transnational legal dialogue.4 This does not appear to be a temporary [End Page 421] fad: the U.S. Supreme Court’s fading relevance in this global judicial dialogue is seen as a consequence of globalization.5 In sum, “Judges are globalizing,”6 “[c]ourts are talking to one another all over the world,”7 and the United States is “out of step with [this] international mainstream.”8¶ There is empirical evidence offered to support this proposition. For example, the New York Times found that the rate of citation to the U.S. Supreme Court by the Supreme Court of Canada from 2002 to 2008 fell by fifty percent as compared to the number of citations from 1990 to 2002.9 Particularly in human rights cases, foreign courts are now more likely to cite the European Court of Human Rights than the U.S. Supreme Court.10 Politics is one explanation offered for this trend.11 For instance, Thomas Ginsburg views the waning influence of the U.S. Supreme Court as the result of unpopular foreign policies undermining U.S. standing abroad.12 Another reason suggested is that justices from high courts desire to give as well as take.13¶ There are also admonitions that the United States ought to take part in the emerging international judicial dialogue. Diane Amann calls for “[j]ustices both to articulate when it is appropriate to look to external sources and to set forth a framework for consultation.”14 Law student Cody Moon argues that the position of the United States “in the [End Page 422] world legal community requires the United States Supreme Court to engage in the comparative constitutional dialogue.”15 Law student Rebecca Lefler speaks of the potential benefits that might flow from engaging in this judicial dialogue.16 Claire L-Heureux-Dubé cites the lack of participation in this dialogue as an important reason for the U.S. Supreme Court’s waning influence.17¶ These assertions are hard to test. The purpose of this Note is to evaluate the claim that the U.S. Supreme Court is losing influence among other national and constitutional courts, and the explanations offered for this trend. Through the following discussion, this Note shows that the available data does not compel the conclusion that U.S. judicial influence is declining. The complete picture of the Supreme Court’s influence on foreign courts is complex, and while there is certainly some support for the claims of diminished influence, there are reasons to be skeptical of the explanations for this trend identified above.¶ The discussion in Part I proceeds in three sections. The first section describes the U.S. Supreme Court’s practice of citing to foreign precedent and the robust, continuing debate on this subject within the United States. The second section surveys the extent to which U.S. Supreme Court precedent is used abroad.18 Because transnational judicial dialogue need not be confined to written judicial opinions, the third section provides a survey of the “informal” contacts—interactions beyond the context of adjudicating cases—between U.S. Supreme Court Justices and their colleagues and counterparts around the world. This section acknowledges that an empirical citation study alone, though important, is likely insufficient to fully capture the possible influence of the U.S. Supreme Court abroad.19 Part II then evaluates the claim of [End Page 423] diminishing U.S. influence in light of Part I, critiques the elucidations articulated by Slaughter, Ginsburg, Choudhry, and others identified in the Introduction, and provides alternative explanations for trends in citation to U.S. authority abroad. This project is not exhaustive but rather a first step. The goal is to introduce an element of verifiable metrics into a conversation that has been dominated by anecdotal evidence in the hope that further empirical study will be conducted.

### Model Fails

#### Modeling fails – constitutions must be endogenous

Mila Versteeg 13, Associate Professor at the University of Virginia School of Law. Model, Resource, or Outlier? What Effect Has the U.S. Constitution Had on the Recently Adopted Constitutions of Other Nations?, 29 May 2013, www.heritage.org/research/lecture/2013/05/model-resource-or-outlier-what-effect-has-the-us-constitution-had-on-the-recently-adopted-constitutions-of-other-nations

As I describe above, our article conceptualizes a “generic constitution”—that is, one that contains the 25 most popular global constitution rights elements—but we do not suggest that a “generic” constitution is an “ideal” constitution or that it otherwise should serve as a model for the United States or other countries. To the contrary, I tend to resist the notion that constitutional design based on a standardized template is generally desirable. Rather, I adhere to the view that constitutions should be written with popular input and tailored to the needs, traditions, values, and interests of the society they govern. There is no “one-size-fits-all” constitution.

Indeed, history and the literature have documented the adverse effects of foreign values being inserted into a citizenry that is unprepared to accept them. As an example, most former British colonies in Africa and the Caribbean received the exact same bill of rights upon independence, rights which were taken from the European Convention on Human Rights. In most cases, these bills of rights, oblivious to the deep ethnic tensions and persistent poverty, became a grand failure.

### AT: Disease

#### No extinction

Posner 5—Senior Lecturer, U Chicago Law. Judge on the US Court of Appeals 7th Circuit. AB from Yale and LLB from Harvard. (Richard, Catastrophe, http://goliath.ecnext.com/coms2/gi\_0199-4150331/Catastrophe-the-dozen-most-significant.html)

Yet the fact that Homo sapiens has managed to survive every disease to assail it in the 200,000 years or so of its existence is a source of genuine comfort, at least if the focus is on extinction events. There have been enormously destructive plagues, such as the Black Death, smallpox, and now AIDS, but none has come close to destroying the entire human race. There is a biological reason. Natural selection favors germs of limited lethality; they are fitter in an evolutionary sense because their genes are more likely to be spread if the germs do not kill their hosts too quickly. The AIDS virus is an example of a lethal virus, wholly natural, that by lying dormant yet infectious in its host for years maximizes its spread. Yet there is no danger that AIDS will destroy the entire human race. The likelihood of a natural pandemic that would cause the extinction of the human race is probably even less today than in the past (except in prehistoric times, when people lived in small, scattered bands, which would have limited the spread of disease), despite wider human contacts that make it more difficult to localize an infectious disease.

#### Intervening actors check

Zakaria 9**—**Editor of Newsweek, BA from Yale, PhD in pol sci, Harvard. He serves on the board of Yale University, The Council on Foreign Relations, The Trilateral Commission, and Shakespeare and Company. Named "one of the 21 most important people of the 21st Century" (Fareed, “The Capitalist Manifesto: Greed Is Good,” 13 June 2009, http://www.newsweek.com/id/201935)

Note—Laurie Garrett=science and health writer, winner of the Pulitzer, Polk, and Peabody Prize

It certainly looks like another example of crying wolf. After bracing ourselves for a global pandemic, we've suffered something more like the usual seasonal influenza. Three weeks ago the World Health Organization declared a health emergency, warning countries to "prepare for a pandemic" and said that the only question was the extent of worldwide damage. Senior officials prophesied that millions could be infected by the disease. But as of last week, the WHO had confirmed only 4,800 cases of swine flu, with 61 people having died of it. Obviously, these low numbers are a pleasant surprise, but it does make one wonder, what did we get wrong? Why did the predictions of a pandemic turn out to be so exaggerated? Some people blame an overheated media, but it would have been difficult to ignore major international health organizations and governments when they were warning of catastrophe. I think there is a broader mistake in the way we look at the world. Once we see a problem, we can describe it in great detail, extrapolating all its possible consequences. But we can rarely anticipate the human response to that crisis. Take swine flu. The virus had crucial characteristics that led researchers to worry that it could spread far and fast. They described—and the media reported—what would happen if it went unchecked. But it did not go unchecked. In fact, swine flu was met by an extremely vigorous response at its epicenter,

Mexico. The Mexican government reacted quickly and massively, quarantining the infected population, testing others, providing medication to those who needed it. The noted expert on this subject, Laurie Garrett, says, "We should all stand up and scream, 'Gracias, Mexico!' because the Mexican people and the Mexican government have sacrificed on a level that I'm not sure as Americans we would be prepared to do in the exact same circumstances. They shut down their schools. They shut down businesses, restaurants, churches, sporting events. They basically paralyzed their own economy. They've suffered billions of dollars in financial losses still being tallied up, and thereby really brought transmission to a halt." Every time one of these viruses is detected, writers and officials bring up the Spanish influenza epidemic of 1918 in which millions of people died. Indeed, during the last pandemic scare, in 2005, President George W. Bush claimed that he had been reading a history of the Spanish flu to help him understand how to respond. But the world we live in today looks nothing like 1918. Public health-care systems are far better and more widespread than anything that existed during the First World War. Even Mexico, a developing country, has a first-rate public-health system—far better than anything Britain or France had in the early 20th century.

## Human Rights Advantage

### No Model

#### No modeling---their evidence is delusional

Eric Black 12, former reporter for the Star Tribune and Twin Cities blogger, Some ideas to limit the ‘supremacy’ of the U.S. Supreme Court, 11/27/12, www.minnpost.com/eric-black-ink/2012/11/some-ideas-limit-supremacy-us-supreme-court

It seems to be part of our national DNA. We see ourselves as so unlike the rest of **the** world that we have developed a semi-religious belief in what we call “American exceptionalism.” Maybe the upside is some kind of boost to our collective self-esteem. But one of the downsides is a reluctance to look around the world and see if anyone (especially not France) has a good idea from which we might benefit.

Especially on democracy. We see ourselves as the world’s model for democracy and the “rule of law.” We expect others to copy us, although they have long since stopped doing so with reference to the specifics of how to design a government. We grumble a good deal about the breakdowns in our system, but we are not much open to ideas for improving it.

University of Minnesota political scientist Lisa Hilbink, whose specialties include comparative constitutional systems around the world, said that basically, since the end of World War II, most of the world outside of Latin America came to the conclusion that the U.S. system was “pretty crazy.”

### No HR Cred Impact

#### Human rights leadership is impossible---alt causes overwhelm and the US won’t exercise its influence

Alemayehu Mariam 13, 8/18/13 PhD, JD, teaches political science at California State University, San Bernardino “Is America Disinventing Human Rights?,” http://www.ethiopianreview.us/48632

In a New York Times op-ed piece in June 2012, Carter cautioned, “At a time when popular revolutions are sweeping the globe, the United States should be strengthening, not weakening, basic rules of law and principles of justice enumerated in the Universal Declaration of Human Rights. But instead of making the world safer, America’s violation of international human rights abets our enemies and alienates our friends.”¶ Carter also raised a number of important questions: Has the U.S. abdicated its moral leadership in the arena of international human rights? Has the U.S. betrayed its core values by maintaining a detention facility at Guantánamo Bay, Cuba, and subjecting dozens of prisoners to “cruel, inhuman or degrading treatment or punishment” and leaving them without the “prospect of ever obtaining their freedom”? Does the arbitrary killing of a person suspected to be an enemy terrorist in a drone strike along with women and children who happen to be nearby comport with America’s professed commitment to the rule of law and human rights?¶ In 1948, the U.S. played a central leadership role in “inventing” the principal instrument which today serves as the bedrock foundation of modern human rights. The Universal Declaration of Human Rights (UDHR), adopted by the UN General Assembly in December 1948, set a “common standard of achievement for all peoples and all nations” in terms of equality, dignity and rights. Mrs. Eleanor Roosevelt, the widow of President Franklin D. Roosevelt, chaired the committee that drafted the UDHR. Eleanor remains an unsung heroine even though she was the mother of the modern global human rights movement. Without her, there would have been no UDHR; and without the UDHR, it is doubtful that the plethora of subsequent human rights conventions and regimes would have come into existence. Remarkably, she managed to mobilize, organize and proselytize human rights even though she had no legal training, diplomatic experience or bureaucratic expertise. She used her skills as political activist and advocate in the cause of freedom, justice and civil rights to work for global human rights.¶ Is America disinventing human rights?¶ It seems the U.S. is “disinventing” human rights through the pursuit of double (triple, quadruple) standard of human rights policy wrapped in a cover of diplocrisy. In Africa, the U.S. has one set of standards for Robert Mugabe’s Zimbabwe and Omar al-Bashir’s Sudan. Mugabe and Bashir are classified as the nasty hombres of human rights in Africa. The U.S. has targeted both regimes for crippling economic sanctions and diplomatic pressure. The U.S. has frozen the assets of Mugabe’s family and henchmen because the “Mugabe regime rules through politically motivated violence and intimidation and has triggered the collapse of the rule of law in Zimbabwe.”¶ The U.S. calls “partners” equally brutal regimes in Africa which serve as its proxies. Paul Kagame of Rwanda, Yuweri Museveni of Uganda and the deceased leader of the regime in Ethiopia are lauded as the “new breed of African leaders” and crowned “partners”. Uhuru Kenyatta, recently elected president of Kenya and a suspect under indictment by the International Criminal Court (ICC) for crimes against humanity is said to be different than Bashir who faces similar ICC charges. In 2009, Ambassador Susan E. Rice, then-U.S. Permanent Representative to the United Nations, demanded Bashir’s arrest and prosecution: “The people of Sudan have suffered too much for too long, and an end to their anguish will not come easily. Those who committed atrocities in Sudan, including genocide, should be brought to justice.” No official U.S. statement on Uhuru’s ICC prosecution was issued.¶ The U.S. maintains excellent relations with Teodoro Obiang Nguema Mbasogo of Equatorial Guinea who has been in power since 1979 because of that country’s oil reserves; but all of the oil revenues are looted by Obiang and his cronies. In 2011, the U.S. brought legal action in federal court against Obiang’s son to seize corruptly obtained assets including a $40 million estate in Malibu, California overlooking the Pacific Ocean, a luxury plane and a dozen super-sports cars worth millions of dollars. The U.S. has not touched any of the other African Ali Babas and their forty dozen thieving cronies who have stolen billions and stashed their cash in U.S. and other banks.¶ Despite lofty rhetoric in support of the advancement of democracy and protection of human rights in Africa, the United States continues to subsidize and coddle African dictatorships that are as bad as or even worse than Mugabe’s. The U.S. currently provides substantial economic aid, loans, technical and security assistance to the repressive regimes in Ethiopia, Congo (DRC), Uganda, Rwanda and elsewhere. None of these countries holds free elections, allow the operation of an independent press or free expression or abide by the rule of law. All of them are corrupt to the core, keep thousands of political prisoners, use torture and ruthlessly persecute their opposition. Yet they are deemed U.S. “partners”.¶ “Principled disengagement” as a way of reinventing an American human rights policy?¶ If the Obama Administration indeed has a global or African human rights policy, it must be a well-kept secret. In March 2013, Michael Posner, U.S. Assistant Secretary of State for Democracy, Human Rights, and Labor said American human rights policy is based on “principled engagement”: “We are going to go to the United Nations and join the Human Rights Council and we’re going to be part of it even though we recognize it doesn’t work… We’re going to engage with governments that are allies but we are also going to engage with governments with tough relationships and human rights are going to be part of those discussions.” Second, the U.S. will follow “a single standard for human rights, the Universal Declaration of Human Rights, and it applies to all including ourselves…” Third, consistent with President “Obama’s personality”, the Administration believes “change occurs from within and so a lot of the emphasis… [will be] on how we can help local actors, change agents, civil society, labor activists, religious leaders trying to change their societies from within and amplify their own voices and give them the support they need…”¶ On August 14, according to Egyptian government sources, 525 protesters, mostly members of the Muslim Brotherhood, were killed and 3,717 injured at the hands of Egyptian military and security forces. It was an unspeakably horrifying massacre of protesters exercising their right to peaceful expression of grievances.¶ On August 15, President Obama criticized the heavy-handed crackdown on peaceful protesters with the usual platitudes. “The United States strongly condemns the steps that have been taken by Egypt’s interim government and security forces. We deplore violence against civilians.” His message to the Egyptian people was somewhat disconcerting in light of the massacre. “America cannot determine the future of Egypt. We do not take sides with any particular party or political figure. I know it’s tempting inside Egypt to blame the United States.”¶ In July 2009, in Ghana, President Obama told Africa’s “strongmen”, “History offers a clear verdict: governments that respect the will of their own people are more prosperous, more stable, and more successful than governments that do not…. No person wants to live in a society where the rule of law gives way to the rule of brutality… Make no mistake: history is on the side of these brave Africans [citizens and their communities driving change], and not with those who use coups or change Constitutions to stay in power. Africa doesn’t need strongmen, it needs strong institutions.”¶ President Obama has a clear choice in Egypt between “those who use coups to stay in power” and the people of Egypt peacefully protesting in the streets. Now he says, “We don’t take sides…” By “not taking sides”, it seems he has taken sides with Egypt’s strongmen who “use coups to stay in power”. So much for “principled engagement”!¶ Obama reassured the Egyptian military that the U.S. does not intend to end or suspend its decades-old partnership with them. He cautioned the military that “While we want to sustain our relationship with Egypt, our traditional cooperation cannot continue as usual while civilians are being killed in the streets.” He indicated his disapproval of the imposition of “martial law” but made no mention of the manifest military coup that had ousted Morsy. He obliquely referred to it as a “military intervention”. He made a gesture of “action” cancelling a symbolic military exercise with the Egyptian army. There will be no suspension of U.S. military aid to Egypt and no other sanctions will be imposed on the Egyptian military or government.¶ I am not clear what Obama’s human rights policy of “principled engagement” actually means. But I have a lot of questions about it: Does it mean moral complacency and tolerance of the crimes against humanity of African dictators for the sake of the war on terror and oil? Is it a euphemism for abdication of American ideals on the altar of political expediency? Does it mean overlooking and excusing the crimes of ruthless dictators and turning a blind eye to their bottomless corruption? Does “principled engagement” mean allowing dictators to suck at the teats of American taxpayers to satisfy their insatiable aid addiction while they brutalize their people?¶ The facts of Obama’s “principled engagement” tell a different story. In May 2010, after the ruling party in Ethiopia declared it had won 99.6 percent of the seats in parliament, the U.S. demonstrated its “principled engagement” by issuing a Statement expressing “concern that international observers found that the elections fell short of international commitments” and promised to “work diligently with Ethiopia to ensure that strengthened democratic institutions and open political dialogue become a reality for the Ethiopian people.” There is no evidence that the U.S. did anything to “strengthen democratic institutions and open political dialogue to become a reality for the Ethiopian people.”¶ When two ICC indicted suspects in Kenya (Kenyatta and Ruto) won the presidency in Kenya a few months ago, the U.S. applied its “principled engagement” in the form of a robust defense of the suspects. Johnnie Carson, the former United States Assistant Secretary of State for African Affairs, said the ICC indictments of Bashir and Uhuru/Ruto are different. “I don’t want to make a comparison with Sudan in its totality because Sudan is a special case in many ways.” What makes Bashir and Sudan different, according to Carson, is the fact that Sudan is on the list of countries that support terrorism and Bashir and his co-defendants are under indictment for the genocide in Darfur. Since “none of that applies to Kenya,” according to Carson, it appears the U.S. will follow a different policy.¶ President Obama says the U.S. will maintain its traditional partnership with Egypt’s military, Egypt’s “strongmen”. At the onset of the Egyptian Revolution in 2011, Obama and his foreign policy team froze in stunned silence, flat-footed and twiddling their thumbs and scratching their heads for days before staking out a position on that popular uprising. They could not bring themselves to use the “D” word (dictator as in Hosni Mubarak) to describe events in Egypt then. Today Obama cannot bring himself to say the “C” word (as in Egyptian military coup).¶ Obama is in an extraordinary historical position as a person of color to advance American ideals and values throughout the world in convincing and creative ways. But he cannot advance these ideals and values through a hollow notion of “principled engagement.”¶ Rather, he must adopt a policy of “principled disengagement” with African dictators. That does not mean isolationism or a hands off approach to human rights. By “principled disengagement” I mean a policy and policy outcome that is based on measurable human rights metrics. Under a policy of “principled disengagement”, the U.S. would establish clear, attainable and measurable human rights policy objectives in its relations with African dictatorships. The policy would establish minimum conditions of human rights compliance. For instance, the U.S. could set some basic criteria for the conduct of free and fair elections, press and individual freedoms, limits on arbitrary arrests and detentions, prevention of extrajudicial punishments, etc. Using its annual human rights assessments, the U.S. could make factual determinations on the extent to which it will engage or disengage with a particular regime. “Partnership” status and the benefits that come with it will be reserved to those regimes that have good and improving records on specific human rights measures. Regimes that steal elections, win elections by 99.6 percent, engage in arbitrary arrests and detentions and other human rights violations would be denied “partnership” status and denied aid, loans and technical assistance. Persistent violators of human rights would be given a compliance timetable to improve their records and provided appropriate assistance to achieve specific human rights goals. If regimes persist in a pattern and practice of human rights violations, the U.S. could raise the stakes and impose economic and diplomatic sanctions.¶ The ‘‘Ethiopia Democracy and Accountability Act of 2007’’ contained many important statutory provisions that could serve as a foundation for “principled disengagement”.¶ Obama’s “principled engagement” seems to be a justification for expediency at the cost of American ideals. Until he decides to stand for principle, instead of standing behind the rhetoric of “principled engagement”, he will continue to find himself on a tightrope of moral, legal and political ambiguity. The U.S. cannot “condemn” and “deplore” its way out of its human rights obligations or global leadership role. Yes, the U.S. must take sides! It must take a stand either with the victims of human rights abuses throughout the world or the human rights abusers of the world. If Obama wants to save the world from strongmen with boots and in designer suits with briefcases full of cash, he should pursue a policy of “principled disengagement”. But he should start by reflecting on the words he spoke during his first inauguration speech:

#### Legitimacy not key to human rights pressure – backlash isn’t prohibitive

Michael Ignatieff 2, Carr professor of human rights, Kennedy School of Government @ Harvard, “NO EXCEPTIONS?” *Legal Affairs*, May/June

This defense of the United States does not, however, address the charge of hypocrisy. If America wants to be a human rights leader, the argument goes, it must obey the rules it seeks to champion. Leadership depends on legitimacy, and legitimacy requires consistency. But it's not clear that the effective use of American power in fact depends on being consistent, or on being seen by others as legitimate. Perceived legitimacy eases but it isn't essential to the exercise of power.

Being seen as hypocritical or double-dealing may impose some costs on a superpower, but these costs are rarely prohibitive. America has faced a storm of protest about its treatment of the Guantanamo Bay prisoners—a storm that has led the Bush Administration to concede that the Geneva Convention should determine which protections Taliban prisoners (though not Al Qaeda ones) receive. At the same time, the prisoners remain, and are likely to remain, in American custody and subject to American justice.

In another example, Slobodan Milosevic is in detention in The Hague, thanks in large measure to the pressure of the United States on the Serbian government. America could exert that pressure despite resisting the creation of a permanent criminal court with the power to try American citizens. (Milosevic will make much of this resistance to demonstrate that he is the casualty of victor's justice.) And again, as a matter of equity and ethics, it may be undesirable for the United States to support international tribunals for others but not for its own citizens. It is less clear, however, that this prevents American support for these tribunals from being effective.

## Water Advantage

### Zero Impact

#### Trade solves

Wendy Barnaby 9 is editor of People & Science, the magazine published by the British Science Association "Do nations go to war over water?" Nature 458, 282-283 (19 March 2009) www.nature.com.turing.library.northwestern.edu/nature/journal/v458/n7236/full/458282a.html

Allan's earlier thinking about water wars began to change after meeting the late Gideon Fishelson, an agricultural economist at Tel Aviv University, Israel. Fishelson argued that it is foolish for Israel, a water-short country, to grow and then export products such as oranges and avocados, which require a lot of water to cultivate. Fishelson's work prompted Allan to realize that water 'embedded' in traded products could be important in explaining the absence of conflict over water in the region.

As a global average, people typically drink one cubic metre of water each per year, and use 100 cubic metres per year for washing and cleaning. Each of us also accounts for 1,000 cubic metres per year to grow the food we eat. In temperate climates, the water needed to produce this food is generally taken for granted. In arid regions, Allan described how people depend on irrigation and imported food to fulfill these needs. Imported food, in particluar, saves on the water required to cultivate crops.

The relationship of food trade to water sustainability is often not obvious, and often remains invisible: no political leader will gain any popularity by acknowledging that their country makes up the water budget only by importing food. Allan saw through this to document how the water budgets of the Middle East were accounted for without conflict.

Allan wrote about embedded water for a few years without it exciting any comment. Then, on a dark Monday afternoon in November 1992, during a routine SOAS seminar, somebody used the term 'virtual' water to describe the same concept. Allan realized this attention-grabbing word, in vogue with the computer-literate younger generation, would catch on better than his own term. And he was right: "From there on it flew," he says.

Allan's work explained how, as poor countries diversify their economies, they turn away from agriculture and create wealth from industries that use less water. As a country becomes richer, it may require more water overall to sustain its booming population, but it can afford to import food to make up the shortfall5.

Areas seemingly desperate for water arrive at sustainable solutions thanks to the import of food, reducing the demand for water and giving an invisible boost to domestic supplies. Political leaders can threaten hostile action if their visible water supplies are threatened (a potentially useful political bluff), while not needing to wage war thanks to the benefits of trade.

### AT: Nile

#### Nile’s no different

Wendy Barnaby 9 is editor of People & Science, the magazine published by the British Science Association "Do nations go to war over water?" Nature 458, 282-283 (19 March 2009) www.nature.com.turing.library.northwestern.edu/nature/journal/v458/n7236/full/458282a.html

Israel ran out of water in the 1950s: it has not since then produced enough water to meet all of its needs, including food production. Jordan has been in the same situation since the 1960s; Egypt since the 1970s. Although it is true that these countries have fought wars with each other, they have not fought over water. Instead they all import grain. As Allan points out, more 'virtual' water flows into the Middle East each year embedded in grain than flows down the Nile to Egyptian farmers.

Perhaps the most often quoted example of a water war is the situation in the West Bank between Palestinians and Israel. But as Mark Zeitoun, senior lecturer in development studies at the University of East Anglia in Norwich, UK, has explained, contrary to what both the mass media and some academic literature say on the subject, while there is conflict and tension — as well as cooperation — there is no 'water war' here either6.

Ten million people now live between the Jordan River and the Mediterranean Sea. If they were to be self-sufficient in food, they would need ten billion cubic metres of water per year. As it is, they have only about one-third of that: enough to grow 15–20% of their food. They import the rest in the form of food. When it comes to water for domestic and industrial use, the rainfall and geology of the West Bank alone should provide enough water for the population there: Ramallah has a higher annual average rainfall than Berlin. But today, water for even these needs is scarce.

#### More ev

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The Nile Basin Initiative, launched in 1999 and encompassing nine nations, is another example of the way in which wider geopolitical and economic factors help to balance water allocation. Historically, vast differences in the political clout of nations across which, or along which, a river flows have resulted in unequal water division. Under the 1959 Nile Waters Agreement between Egypt and Sudan, Egypt has had rights to 87% of the Nile's water, with Sudan having rights to the rest. Ethiopia, whose highlands supply 86% of Nile water, does not even figure in the agreement: continuing conflicts weakened the agreement to a point where Ethiopia has been unable to press a claim. But Egypt's desire to consolidate its economic development necessitates that it now come to better terms with its neighbours, improving prospects for local trade. So Egypt is willing to engage in the multilateral initiative to cooperate more on matters such as hydroelectric power development, power-sharing cooperatives, river regulation and water-resources management.

### AT: Water Wars---Author Indicts/Exaggeration

#### Prefer our authors’ studies---theirs aren’t peer reviewed

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Yet the myth of water wars persists. Climate change, we are told, will cause water shortages. The Intergovernmental Panel on Climate Change estimates that up to 2 billion people may be at risk from increasing water stress by the 2050s, and that this number could rise to 3.2 billion by the 2080s7.

Water management will need to adapt. But the mechanisms of trade, international agreements and economic development that currently ease water shortages will persist. Researchers, such as Aaron Wolf at Oregon State University, Corvallis, and Nils Petter Gleditsch at the International Peace Research Institute in Oslo, point out that predictions of armed conflict come from the media and from popular, non-peer-reviewed work.

#### Their authors have incentives to overstate the risk and impact

David Katz 11, Director of the Akirov Institute for Business and Environment at Tel Aviv University and Adjunct Lecturer at Tel Aviv University’s Recanati School of Management and Porter School of Environmental Studies, February 2011, “Hydro-Political Hyperbole: Examining Incentives for Overemphasizing the Risks of Water Wars,” Global Environmental Politics, Vol. 11, No. 1, p. 12-33

Observers have noted that various actors may have incentives to stress or even exaggerate the risks of water wars. Lonergan notes, for instance, that in “many cases, the comments are little more than media hype; in others, statements have been made for political reasons.”49 Beyond mere acknowledgement of the possibility of such incentives, however, little research has attempted to understand what these incentives are and how they may differ between actors. An understanding of the different motivations of various groups of actors to stress the possibility of imminent water wars can help explain the continued seemingly disproportionate popularity of such messages and help to evaluate such warnings more critically.

Mueller offers a general explanation for a focus on violence in public discourse by postulating that, following the end of the Cold War, policy-makers, the press, and various analysts seek to fill a “catastrophe quota.”50 According to this theory, various actors seek out new areas of potential violence to justify fears that had become commonplace during the Cold War period.

Simon, while not specifically addressing environmental conflict, suggests four possible reasons for academic researchers to offer what he claimed were overly gloomy scenarios resulting from resource scarcity.51 The first reason is that international funding organizations are eager to fund research dealing with crises, but not work that produces good news. The second is that bad news sells more newspapers and books. The third is a psychological predisposition to focus on bad news or worst-case scenarios. The fourth is a belief that sounding alarm bells can mobilize action to improve environmental issues.

Haas offers two reasons why “exaggerated beliefs about resource scarcity and their possible threats to environmental security persist.” The first is “the absence of any consensual mechanism for reconciling inter-discourse (or interparadigm) disputes.” This, Haas argues, allows for ideological disputes to continue [End Page 18] unresolved. “The second reason is the elective affinity between environmental and security discourses on the one hand, and other dominant discourses in social discussions . . . on the other hand. Consequently self-interested political actors can borrow from discourses that are similar in their ontology and structure and that justify pre-existing political ambitions.”52 Trottier, addressing the risks of water wars specifically, suggests that certain private-sector actors in the water industry may stress the risks of water wars in order to promote water-related infrastructure.53

### AT: Water Wars---Signaling

#### States threaten water wars as a method of signaling, but they don’t actually fight them

David Katz 11, Director of the Akirov Institute for Business and Environment at Tel Aviv University and Adjunct Lecturer at Tel Aviv University’s Recanati School of Management and Porter School of Environmental Studies, February 2011, “Hydro-Political Hyperbole: Examining Incentives for Overemphasizing the Risks of Water Wars,” Global Environmental Politics, Vol. 11, No. 1, p. 12-33

Political leaders and policy-makers have several other, unique, reasons to voice water war risks. Indeed, given that research has shown that public threats are more often met with defiance rather than compliance,73 other reasons may in fact be primary ones.

Signal Co-riparians that Water is Considered High-level Politics

Actors may use the language of securitization in order to elevate an issue from low to high politics.74 Issues of water management are often considered technical or bureaucratic matters far from the realm of high politics, which traditionally has focused on security and economic development. Warning of risks of war over water can be a signal to a co-riparian country that their actions are being taken seriously. This may be done, for instance, to convince a country to refrain from a planned action or to induce it to engage in negotiations. While Fearon shows that offering non-credible threats is a dominated strategy, he also notes that in reality, such policies are often pursued.75 For example, saber-rattling by Syria and Iraq towards militarily superior Turkey, including threats of war and mobilization of troops, were (unsuccessful) attempts to dissuade Turkey from developing dams upstream. Güner presents the use of threats of war over water as a signaling tactic by Turkey and Syria in a game-theoretic model.76 Such use of threats of war may be an important signaling device even if parties recognize the likelihood of the threat being realized as minor.