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#### Legal solutions merely mask sovereign power and legitimatize exclusion

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[Margaret, "Bare Life and the Limits of the Law," Theory & Event, 9:2, 2006, muse.jhu.edu/journals/theory\_and\_event/v009/9.2kohn.html, accessed 9-12-13, mss]

Giorgio Agamben is best known for his provocative suggestion that the concentration camp – the spatial form of the state of exception - is not exceptional but rather the paradigmatic political space of modernity itself.  When Agamben first made this claim in Homo Sacer (1995), it may have seemed like rhetorical excess. But a decade later in the midst of a permanent war on terror, in which suspects can be tried by military tribunals, incarcerated without trial based on secret evidence, and consigned to extra-territorial penal colonies like Guantanamo Bay, his characterization seems prescient. The concepts of bare life, sovereignty, the ban, and the state of exception, which were introduced in Homo Sacer, have exerted enormous influence on theorists trying to make sense of contemporary politics. Agamben recently published a new book entitled State of Exception that elaborates on some of the core ideas from his earlier work. It is an impressive intellectual history of emergency power as a paradigm of government. The book traces the concept from the Roman notion of iustitium through the infamous Article 48 of the Weimar constitution to the USA Patriot Act. Agamben notes that people interned at Guantanamo Bay are neither recognized as prisoners of war under the Geneva Convention nor as criminals under American law; as such they occupy a zone of indeterminacy, both legally and territorially, which, according to Agamben, could only be compared to the Jews in the Nazi Lager (concentration camps) (4). Agamben's critique of the USA Patriot Act, at least initially seems to bare a certain resemblance to the position taken by ACLU-style liberals in the United States. When he notes that "detainees" in the war on terror are the object of pure de factorule and compares their legal status to that of Holocaust victims, he implicitly invokes a normative stance that is critical of the practice of turning juridical subjects into bare life, e.g. life that is banished to a realm of potential violence. For liberals, "the rule of law" involves judicial oversight, which they identify as one of the most appropriate weapons in the struggle against arbitrary power. Agamben makes it clear, however, that he does not endorse this solution. In order to understand the complex reasons for his rejection of the liberal call for more fairness and universalism we must first carefully reconstruct his argument. State of Exception begins with a brief history of the concept of the state of siege (France), martial law (England), and emergency powers (Germany). Although the terminology and the legal mechanisms differ slightly in each national context, they share an underlying conceptual similarity. The state of exception describes a situation in which a domestic or international crisis becomes the pretext for a suspension of some aspect of the juridical order. For most of the bellicose powers during World War I this involved government by executive decree rather than legislative decision. Alternately, the state of exception often implies a suspension of judicial oversight of civil liberties and the use of summary judgment against civilians by members of the military or executive. Legal scholars have differed about the theoretical and political significance of the state of exception. For some scholars, the state of exception is a legitimate part of positive law because it is based on necessity, which is itself a fundamental source of law. Similar to the individual's claim of self-defense in criminal law, the polity has a right to self-defense when its sovereignty is threatened; according to this position, exercising this right might involve a technical violation of existing statutes (legge) but does so in the name of upholding the juridical order (diritto). The alternative approach, which was explored most thoroughly by Carl Schmitt in his books Political Theology and Dictatorship, emphasizes that declaring the state of exception is the perogative of the sovereign and therefore essentially extra-juridical. For Schmitt, the state of exception always involves the suspension of the law, but it can serve two different purposes. A "commissarial dictatorship" aims at restoring the existing constitution and a "sovereign dictatorship" constitutes a new juridical order. Thus, the state of exception is a violation of law that expresses the more fundamental logic of politics itself. Following Derrida, Agamben calls this force-of-law. What exactly is the force-of-law? Agamben suggests that the appropriate signifier would be force-of-law, a graphic reminder of the fact that the concept emerges out of the suspension of law. He notes that it is a "mystical element, or rather a fictio by means of which law seeks to annex anomie itself." It expresses the fundamental paradox of law: the necessarily imperfect relationship between norm and rule. The state of exception is disturbing because it reveals the force-of-law, the remainder that becomes visible when the application of the norm, and even the norm itself, are suspended. At this point it should be clear that Agamben would be deeply skeptical of the liberal call for more vigorous enforcement of the rule of law as a means of combating cruelties and excesses carried out under emergency powers. His brief history of the state of exception establishes that the phenomenon is a political reality that has proven remarkably resistant to legal limitations. Critics might point out that this descriptive point, even if true, is no reason to jettison the ideal of the rule of law. For Agamben, however, the link between law and exception is more fundamental; it is intrinsic to politics itself. The sovereign power to declare the state of exception and exclude bare life is the same power that invests individuals as worthy of rights. The two are intrinsically linked. The disturbing implication of his argument is that we cannot preserve the things we value in the Western tradition (citizenship, rights, etc.) without preserving the perverse ones. Agamben presents four theses that summarize the results of his genealogical investigation. (1) The state of exception is a space devoid of law. It is not the logical consequence of the state's right to self-defense, nor is it (qua commissarial or sovereign dictatorship) a straightforward attempt to reestablish the norm by violating the law. (2) The space devoid of law has a "decisive strategic relevance" for the juridical order. (3) Acts committed during the state of exception (or in the space of exception) escape all legal definition. (4) The concept of the force-of-law is one of the many fictions, which function to reassert a relationship between law and exception, nomos andanomie. The core of Agamben's critique of liberal legalism is captured powerfully, albeit indirectly, in a quote from Benjamin's eighth thesis on the philosophy of history. According to Benjamin, (t)he tradition of the oppressed teaches us that the 'state of exception' in which we live is the rule. We must attain a concept of history that accords with this fact. Then we will clearly see that it is our task to bring about the real state of exception, and this will improve our position in the struggle against fascism. (57) Here Benjamin endorses the strategy of more radical resistance rather than stricter adherence to the law. He recognizes that legalism is an anemic strategy in combating the power of fascism. The problem is that conservative forces had been willing to ruthlessly invoke the state of exception in order to further their agenda while the moderate Weimar center-left was paralyzed; frightened of the militant left and unwilling to act decisively against the authoritarian right, partisans of the rule of law passively acquiesced to their own defeat. Furthermore, the rule of law, by incorporating the necessity of its own dissolution in times of crisis, proved itself an unreliable tool in the struggle against violence. From Agamben's perspective, the civil libertarians' call for uniform application of the law simply denies the nature of law itself. He insists, "From the real state of exception in which we live, it is not possible to return to the state of law. . ." (87) Moreover, by masking the logic of sovereignty, such an attempt could actually further obscure the zone of indistinction that allows the state of exception to operate. For Agamben, law serves to legitimize sovereign power. Since sovereign power is fundamentally the power to place people into the category of bare life, the law, in effect, both produces and legitimizes marginality and exclusion.

#### Sanitization of US policy leads to endless violence and imperialism – turns case

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[A. J., retired career officer in the United States Army, former director of Boston University's Center for International Relations (from 1998 to 2005), The New American Militarism: How Americans Are Seduced by War, 2005 accessed 9-4-13, mss]

Today as never before in their history Americans are enthralled with military power. The global military supremacy that the United States presently enjoys--and is bent on perpetuating-has become central to our national identity. More than America's matchless material abundance or even the effusions of its pop culture, the nation's arsenal of high-tech weaponry and the soldiers who employ that arsenal have come to signify who we are and what we stand for. When it comes to war, Americans have persuaded themselves that the United States possesses a peculiar genius. Writing in the spring of 2003, the journalist Gregg Easterbrook observed that "the extent of American military superiority has become almost impossible to overstate." During Operation Iraqi Freedom, U.S. forces had shown beyond the shadow of a doubt that they were "the strongest the world has ever known, . . . stronger than the Wehrmacht in r94o, stronger than the legions at the height of Roman power." Other nations trailed "so far behind they have no chance of catching up. ""˜ The commentator Max Boot scoffed at comparisons with the German army of World War II, hitherto "the gold standard of operational excellence." In Iraq, American military performance had been such as to make "fabled generals such as Erwin Rommel and Heinz Guderian seem positively incompetent by comparison." Easterbrook and Booz concurred on the central point: on the modern battlefield Americans had located an arena of human endeavor in which their flair for organizing and deploying technology offered an apparently decisive edge. As a consequence, the United States had (as many Americans have come to believe) become masters of all things military. Further, American political leaders have demonstrated their intention of tapping that mastery to reshape the world in accordance with American interests and American values. That the two are so closely intertwined as to be indistinguishable is, of course, a proposition to which the vast majority of Americans subscribe. Uniquely among the great powers in all of world history, ours (we insist) is an inherently values-based approach to policy. Furthermore, we have it on good authority that the ideals we espouse represent universal truths, valid for all times. American statesmen past and present have regularly affirmed that judgment. In doing so, they validate it and render it all but impervious to doubt. Whatever momentary setbacks the United States might encounter, whether a generation ago in Vietnam or more recently in Iraq, this certainty that American values are destined to prevail imbues U.S. policy with a distinctive grandeur. The preferred language of American statecraft is bold, ambitious, and confident. Reflecting such convictions, policymakers in Washington nurse (and the majority of citizens tacitly endorse) ever more grandiose expectations for how armed might can facilitate the inevitable triumph of those values. In that regard, George W. Bush's vow that the United States will "rid the world of evil" both echoes and amplifies the large claims of his predecessors going at least as far back as Woodrow Wilson. Coming from Bush the war- rior-president, the promise to make an end to evil is a promise to destroy, to demolish, and to obliterate it. One result of this belief that the fulfillment of America's historic mission begins with America's destruction of the old order has been to revive a phenomenon that C. Wright Mills in the early days of the Cold War described as a "military metaphysics"-a tendency to see international problems as military problems and to discount the likelihood of finding a solution except through military means. To state the matter bluntly, Americans in our own time have fallen prey to militarism, manifesting itself in a romanticized view of soldiers, a tendency to see military power as the truest measure of national greatness, and outsized expectations regarding the efficacy of force. To a degree without precedent in U.S. history, Americans have come to define the nation's strength and well-being in terms of military preparedness, military action, and the fostering of (or nostalgia for) military ideals? Already in the 19905 America's marriage of a militaristic cast of mind with utopian ends had established itself as the distinguishing element of contemporary U.S. policy. The Bush administrations response to the hor- rors of 9/11 served to reaffirm that marriage, as it committed the United States to waging an open-ended war on a global scale. Events since, notably the alarms, excursions, and full-fledged campaigns comprising the Global War on Terror, have fortified and perhaps even sanctified this marriage. Regrettably, those events, in particular the successive invasions of Afghanistan and Iraq, advertised as important milestones along the road to ultimate victory have further dulled the average Americans ability to grasp the significance of this union, which does not serve our interests and may yet prove our undoing. The New American Militarism examines the origins and implications of this union and proposes its annulment. Although by no means the first book to undertake such an examination, The New American Militarism does so from a distinctive perspective. The bellicose character of U.S. policy after 9/11, culminating with the American-led invasion of Iraq in March 2003, has, in fact, evoked charges of militarism from across the political spectrum. Prominent among the accounts advancing that charge are books such as The Sorrows of Empire: Militarism, Secrecy, and the End of the Republic, by Chalmers Johnson; Hegemony or Survival: Americas Quest for Global Dominance, by Noam Chomsky; Masters of War; Militarism and Blowback in the Era of American Empire, edited by Carl Boggs; Rogue Nation: American Unilateralism and the Failure of Good Intentions, by Clyde Prestowitz; and Incoherent Empire, by Michael Mann, with its concluding chapter called "The New Militarism." Each of these books appeared in 2003 or 2004. Each was not only writ- ten in the aftermath of 9/11 but responded specifically to the policies of the Bush administration, above all to its determined efforts to promote and justify a war to overthrow Saddam Hussein. As the titles alone suggest and the contents amply demonstrate, they are for the most part angry books. They indict more than explain, and what- ever explanations they offer tend to be ad hominem. The authors of these books unite in heaping abuse on the head of George W Bush, said to combine in a single individual intractable provincialism, religious zealotry, and the reckless temperament of a gunslinger. Or if not Bush himself, they fin- ger his lieutenants, the cabal of warmongers, led by Vice President Dick Cheney and senior Defense Department officials, who whispered persua- sively in the president's ear and used him to do their bidding. Thus, accord- ing to Chalmers Johnson, ever since the Persian Gulf War of 1990-1991, Cheney and other key figures from that war had "Wanted to go back and finish what they started." Having lobbied unsuccessfully throughout the Clinton era "for aggression against Iraq and the remaking of the Middle East," they had returned to power on Bush's coattails. After they had "bided their time for nine months," they had seized upon the crisis of 9/1 1 "to put their theories and plans into action," pressing Bush to make Saddam Hussein number one on his hit list." By implication, militarism becomes something of a conspiracy foisted on a malleable president and an unsuspecting people by a handful of wild-eyed ideologues. By further implication, the remedy for American militarism is self-evi- dent: "Throw the new militarists out of office," as Michael Mann urges, and a more balanced attitude toward military power will presumably reassert itself? As a contribution to the ongoing debate about U.S. policy, The New American Militarism rejects such notions as simplistic. It refuses to lay the responsibility for American militarism at the feet of a particular president or a particular set of advisers and argues that no particular presidential election holds the promise of radically changing it. Charging George W. Bush with responsibility for the militaristic tendencies of present-day U.S. for- eign policy makes as much sense as holding Herbert Hoover culpable for the Great Depression: Whatever its psychic satisfactions, it is an exercise in scapegoating that lets too many others off the hook and allows society at large to abdicate responsibility for what has come to pass. The point is not to deprive George W. Bush or his advisers of whatever credit or blame they may deserve for conjuring up the several large-scale campaigns and myriad lesser military actions comprising their war on ter- ror. They have certainly taken up the mantle of this militarism with a verve not seen in years. Rather it is to suggest that well before September 11, 2001 , and before the younger Bush's ascent to the presidency a militaristic predisposition was already in place both in official circles and among Americans more generally. In this regard, 9/11 deserves to be seen as an event that gave added impetus to already existing tendencies rather than as a turning point. For his part, President Bush himself ought to be seen as a player reciting his lines rather than as a playwright drafting an entirely new script. In short, the argument offered here asserts that present-day American militarism has deep roots in the American past. It represents a bipartisan project. As a result, it is unlikely to disappear anytime soon, a point obscured by the myopia and personal animus tainting most accounts of how we have arrived at this point. The New American Militarism was conceived not only as a corrective to what has become the conventional critique of U.S. policies since 9/11 but as a challenge to the orthodox historical context employed to justify those policies. In this regard, although by no means comparable in scope and in richness of detail, it continues the story begun in Michael Sherry's masterful 1995 hook, In the Shadow of War an interpretive history of the United States in our times. In a narrative that begins with the Great Depression and spans six decades, Sherry reveals a pervasive American sense of anxiety and vulnerability. In an age during which War, actual as well as metaphorical, was a constant, either as ongoing reality or frightening prospect, national security became the axis around which the American enterprise turned. As a consequence, a relentless process of militarization "reshaped every realm of American life-politics and foreign policy, economics and technology, culture and social relations-making America a profoundly different nation." Yet Sherry concludes his account on a hopeful note. Surveying conditions midway through the post-Cold War era's first decade, he suggests in a chapter entitled "A Farewell to Militarization?" that America's preoccupation with War and military matters might at long last be waning. In the mid- 1995, a return to something resembling pre-1930s military normalcy, involving at least a partial liquidation of the national security state, appeared to be at hand. Events since In the Shadow of War appear to have swept away these expectations. The New American Militarism tries to explain why and by extension offers a different interpretation of America's immediate past. The upshot of that interpretation is that far from bidding farewell to militariza- tion, the United States has nestled more deeply into its embrace. f ~ Briefly told, the story that follows goes like this. The new American militarism made its appearance in reaction to the I96os and especially to Vietnam. It evolved over a period of decades, rather than being sponta- neously induced by a particular event such as the terrorist attack of Septem- ber 11, 2001. Nor, as mentioned above, is present-day American militarism the product of a conspiracy hatched by a small group of fanatics when the American people were distracted or otherwise engaged. Rather, it devel- oped in full view and with considerable popular approval. The new American militarism is the handiwork of several disparate groups that shared little in common apart from being intent on undoing the purportedly nefarious effects of the I96OS. Military officers intent on reha- bilitating their profession; intellectuals fearing that the loss of confidence at home was paving the way for the triumph of totalitarianism abroad; reli- gious leaders dismayed by the collapse of traditional moral standards; strategists wrestling with the implications of a humiliating defeat that had undermined their credibility; politicians on the make; purveyors of pop cul- turc looking to make a buck: as early as 1980, each saw military power as the apparent answer to any number of problems. The process giving rise to the new American militarism was not a neat one. Where collaboration made sense, the forces of reaction found the means to cooperate. But on many occasions-for example, on questions relating to women or to grand strategy-nominally "pro-military" groups worked at cross purposes. Confronting the thicket of unexpected developments that marked the decades after Vietnam, each tended to chart its own course. In many respects, the forces of reaction failed to achieve the specific objectives that first roused them to act. To the extent that the 19603 upended long-standing conventions relating to race, gender, and sexuality, efforts to mount a cultural counterrevolution failed miserably. Where the forces of reaction did achieve a modicum of success, moreover, their achievements often proved empty or gave rise to unintended and unwelcome conse- quences. Thus, as we shall see, military professionals did regain something approximating the standing that they had enjoyed in American society prior to Vietnam. But their efforts to reassert the autonomy of that profession backfired and left the military in the present century bereft of meaningful influence on basic questions relating to the uses of U.S. military power. Yet the reaction against the 1960s did give rise to one important by-prod: uct, namely, the militaristic tendencies that have of late come into full flower. In short, the story that follows consists of several narrative threads. No single thread can account for our current outsized ambitions and infatua- tion with military power. Together, however, they created conditions per- mitting a peculiarly American variant of militarism to emerge. As an antidote, the story concludes by offering specific remedies aimed at restor- ing a sense of realism and a sense of proportion to U.S. policy. It proposes thereby to bring American purposes and American methods-especially with regard to the role of military power-into closer harmony with the nation's founding ideals. The marriage of military metaphysics with eschatological ambition is a misbegotten one, contrary to the long-term interests of either the American people or the world beyond our borders. It invites endless war and the ever-deepening militarization of U.S. policy. As it subordinates concern for the common good to the paramount value of military effectiveness, it promises not to perfect but to distort American ideals. As it concentrates ever more authority in the hands of a few more concerned with order abroad rather than with justice at home, it will accelerate the hollowing out of American democracy. As it alienates peoples and nations around the world, it will leave the United States increasingly isolated. If history is any guide, it will end in bankruptcy, moral as well as economic, and in abject failure. "Of all the enemies of public liberty," wrote James Madison in 1795, "war is perhaps the most to be dreaded, because it comprises and develops the germ of every other. War is the parent of armies. From these proceed debts and taxes. And armies, debts and taxes are the known instruments for bringing the many under the domination of the few .... No nation could preserve its freedom in the midst of continual Warfare." The purpose of this book is to invite Americans to consider the continued relevance of Madison's warning to our own time and circumstances.

#### The Alternative is to imagine Whatever Being--Any point of rejection of the sovereign state creates a non-state world made up of whatever life – that involves imagining a political body that is outside the sphere of sovereignty in that it defies traditional attempts to maintain a social identity

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(Anne, “Bio-Sovereignty and the Emergence of Humanity,” Theory & Event, Volume 7, Issue 2, Project Muse)

Can we imagine another form of humanity, and another form of power? The bio-sovereignty described by Agamben is so fluid as to appear irresistible. Yet Agamben never suggests this order is necessary. Bio-sovereignty results from a particular and contingent history, and it requires certain conditions. Sovereign power, as Agamben describes it, finds its grounds in specific coordinates of life, which it then places in a relation of indeterminacy. What defies sovereign power is a life that cannot be reduced to those determinations: a life "that can never be separated from its form, a life in which it is never possible to isolate something such as naked life. " (2.3). In his earlier Coming Community, Agamben describes this alternative life as "whatever being." More recently he has used the term "forms-of-life." These concepts come from the figure Benjamin proposed as a counter to homo sacer: the "total condition that is 'man'." For Benjamin and Agamben, mere life is the life which unites law and life. That tie permits law, in its endless cycle of violence, to reduce life an instrument of its own power. The total condition that is man refers to an alternative life incapable of serving as the ground of law. Such a life would exist outside sovereignty. Agamben's own concept of whatever being is extraordinarily dense. It is made up of varied concepts, including language and potentiality; it is also shaped by several particular dense thinkers, including Benjamin and Heidegger. What follows is only a brief consideration of whatever being, in its relation to sovereign power. / "Whatever being," as described by Agamben, lacks the features permitting the sovereign capture and regulation of life in our tradition. Sovereignty's capture of life has been conditional upon the separation of natural and political life. That separation has permitted the emergence of a sovereign power grounded in this distinction, and empowered to decide on the value, and non-value of life (1998: 142). Since then, every further politicization of life, in turn, calls for "a new decision concerning the threshold beyond which life ceases to be politically relevant, becomes only 'sacred life,' and can as such be eliminated without punishment" (p. 139). / This expansion of the range of life meriting protection does not limit sovereignty, but provides sites for its expansion. In recent decades, factors that once might have been indifferent to sovereignty become a field for its exercise. Attributes such as national status, economic status, color, race, sex, religion, geo-political position have become the subjects of rights declarations. From a liberal or cosmopolitan perspective, such enumerations expand the range of life protected from and serving as a limit upon sovereignty. Agamben's analysis suggests the contrary. If indeed sovereignty is bio-political before it is juridical, then juridical rights come into being only where life is incorporated within the field of bio-sovereignty. The language of rights, in other words, calls up and depends upon the life caught within sovereignty: homo sacer. / Agamben's alternative is therefore radical. He does not contest particular aspects of the tradition. He does not suggest we expand the range of rights available to life. He does not call us to deconstruct a tradition whose power lies in its indeterminate status.21 Instead, he suggests we take leave of the tradition and all its terms. Whatever being is a life that defies the classifications of the tradition, and its reduction of all forms of life to homo sacer. Whatever being therefore has no common ground, no presuppositions, and no particular attributes. It cannot be broken into discrete parts; it has no essence to be separated from its attributes; and it has no common substrate of existence defining its relation to others. Whatever being cannot then be broken down into some common element of life to which additive series of rights would then be attached. Whatever being retains all its properties, without any of them constituting a different valuation of life (1993: 18.9). As a result, whatever being is "reclaimed from its having this or that property, which identifies it as belonging to this or that set, to this or that class (the reds, the French, the Muslims) -- and it is reclaimed not for another class nor for the simple generic absence of any belonging, but for its being-such, for belonging itself." (0.1-1.2). / Indifferent to any distinction between a ground and added determinations of its essence, whatever being cannot be grasped by a power built upon the separation of a common natural life, and its political specification. Whatever being dissolves the material ground of the sovereign exception and cancels its terms. This form of life is less post-metaphysical or anti-sovereign, than a-metaphysical and a-sovereign. Whatever is indifferent not because its status does not matter, but because it has no particular attribute which gives it more value than another whatever being. As Agamben suggests, whatever being is akin to Heidegger's Dasein. Dasein, as Heidegger describes it, is that life which always has its own being as its concern -- regardless of the way any other power might determine its status. Whatever being, in the manner of Dasein, takes the form of an "indissoluble cohesion in which it is impossible to isolate something like a bare life. In the state of exception become the rule, the life of homo sacer, which was the correlate of sovereign power, turns into existence over which power no longer seems to have any hold" (Agamben 1998: 153). / We should pay attention to this comparison. For what Agamben suggests is that whatever being is not any abstract, inaccessible life, perhaps promised to us in the future. Whatever being, should we care to see it, is all around us, wherever we reject the criteria sovereign power would use to classify and value life. "In the final instance the State can recognize any claim for identity -- even that of a State identity within the State . . . What the State cannot tolerate in any way, however, is that the singularities form a community without affirming an identity, that humans co-belong without a representable condition of belonging" (Agamben 1993:85.6). At every point where we refuse the distinctions sovereignty and the state would demand of us, the possibility of a non-state world, made up of whatever life, appears.

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#### The President of the United States should close Guantanimo Bay, use ordinary courts to try Guantanimo detainees, establish a blue ribbon commission evaluating detention policy over the past 10 years, issue an Executive Order mandating humane treatment for all detainees in US custody, make a public statement in favor of support for the ICC -

#### Court upholds human rights now – counterplan ensures that happens on detention in the future – solve all your human rights cred advantage

Sadat 9 (Fall, 2009¶ Denver Journal of International Law and Policy¶ 37 Denv. J. Int'l L. & Pol'y 539¶ LENGTH: 8460 words 2008 Sutton Colloquium Edition: The War on Terror and Its Implications for International Law & Policy: A Presumption of Guilt: The Unlawful Enemy Combatant and the U.S. War on Terror NAME: Leila Nadya Sadat\* BIO: \* Henry H. Oberschelp Professor of Law and Director, Whitney R. Harris World Law Institute, Washington University in St. Louis. This article was originally given as the Henry & Mary Bryan Lecture at the 2008 Sutton Colloqium held on Oct. 25, 2008 at the University of Denver Sturm College of Law.)

America's legal system was sorely tested during the Bush years, and it is not yet clear whether it will ever fully recover. At the same time, many lawyers pushed back, particularly with regard to the more extreme departures from the law advocated by Bush administration officials often risking their careers in so doing. These included Navy General Counsel Alberto Mora and Navy Judge advocate general Michael Lohr, [n73](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.652930.8735756027&target=results_DocumentContent&returnToKey=20_T18009070954&parent=docview&rand=1377199741899&reloadEntirePage=true" \l "n73) Lieutenant Commander Charles Swift, and the military lawyers assigned to defend detainees at Guantanamo Bay, to name a few. Civilian lawyers like Michael Ratner, Joe Margulies, and Tom Wilner also played a key role in bringing the rule of law back into U.S. government policy, risking their reputations in doing so. [n74](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.652930.8735756027&target=results_DocumentContent&returnToKey=20_T18009070954&parent=docview&rand=1377199741899&reloadEntirePage=true" \l "n74) British lawyer Clive Stafford Smith filed lawsuits on behalf of Guantanamo detainees, and law professors wrote articles and amicus briefs attempting to influence government policy and the courts.[n75](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.652930.8735756027&target=results_DocumentContent&returnToKey=20_T18009070954&parent=docview&rand=1377199741899&reloadEntirePage=true" \l "n75)¶ Recently, U.S. courts have upheld the rule of law, particularly the United States Supreme Court, which has issued a quartet of decisions providing detainees with access to the courts and affirming their minimum rights under the laws of war. [n76](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.652930.8735756027&target=results_DocumentContent&returnToKey=20_T18009070954&parent=docview&rand=1377199741899&reloadEntirePage=true" \l "n76) At the same time, the Court did not address the fundamental problems with the UEC classification itself, and its decisions were relatively narrow. Nevertheless, the Rasul decision, holding that the detention facility at Guantanamo Bay was within U.S. jurisdiction, the Hamdi decision upholding the right of detainees to challenge the evidence against them, and the Hamdan decision finding that no matter what their status, the detainees were entitled to the protection of common article 3 of the Geneva Conventions (prohibiting cruel treatment) were courageous and important decisions not just for the U.S. legal system, but upholding the rule of law around the world. With the retirement of Justice O'Connor, and the passing of former Chief Justice William Rehnquist, however, the consensus on the Court is increasingly fragile, and the new President could have a tremendous influence on these cases through his appointments.¶ Here are seven suggestions for President Obama's new administration:¶ First, close the U.S. detention facility at Guantanamo Bay. The existence of this prison camp has become a lightening rod for criticism of the United States and a recruitment tool for international terrorists. It seems clear from what information is available, that many of the approximately 250 detainees have been cleared for release, but the administration has not been able to find a country willing to take [\*552] them. [n77](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.652930.8735756027&target=results_DocumentContent&returnToKey=20_T18009070954&parent=docview&rand=1377199741899&reloadEntirePage=true" \l "n77) This has been advocated by former Secretaries of State, military officers, human rights groups and legal and political experts. President Obama announced during the campaign that he plans to close Guantanamo and he should make it a top priority to keep this promise.¶ Second, ensure respect for the U.S. Constitution by using existing, ordinary courts - civilian and military - to try Guantanamo detainees who are accused of serious crimes. During his campaign, President Obama announced that he felt the existing legal system could handle the detainees yet to be tried. More recently, it was reported that he was considering the establishment of a "new legal system" to handle the most sensitive cases, which is presumably a reference to the national security courts discussed above. Yet a close look at the proposals suggests a disdain for time-tested rules of law eerily similar to the lawyering style that pervaded the administration during the past eight years. The federal courts - and regularly constituted military courts - are more than capable of trying individuals accused of terrorism and violations of the laws and customs of war, as they have done so before.¶ Third, the President should establish a Blue Ribbon Commission evaluating U.S. detention policies over the past seven years. The Commission needs to examine not only issues of accountability for violations of U.S. and international law, but should make an authoritative record and issue recommendations regarding victim reparations for those who were imprisoned by U.S. officials or under U.S. authority by mistake. The Commission could also make recommendations concerning items 4-7, below.¶ Fourth, the President should immediately issue an Executive Order mandating humane treatment for all detainees in U.S. custody. It needs to be made clear that there is no "CIA exception" to the Convention Against Torture, and that the United States takes seriously not only its role as a beacon of freedom, human rights and democracy, but its obligations under international law.¶ Fifth, the President should recommit the United States of America to the international and domestic rule of law; by supporting and ratifying, when possible, the many human rights and humanitarian law treaties that the United States has eschewed during the past decade. In particular, the United States should support the International Criminal Court, and ratify the Convention on the Rights of the Child, the Convention for the Elimination of Discrimination Against Women, the Landmines Ban, the new cluster bomb treaty and the new Convention on Forced Disappearances.¶ Sixth, the President should not issue pardons to individuals accused of war crimes, crimes against humanity or facilitating torture or cruel, degrading or inhumane treatment¶ Seventh, the President should seriously consider joining the Inter-American system by ratifying the American Convention on Human Rights. Additionally (or [\*553] alternatively) the United States could also consider establishing its own human rights commission. It seems clear that the European Convention on Human Rights, for example, has had a moderating influence on European efforts to address international terrorism. For example, in A. v. Secretary of State, the U.K. House of Lords held in 2005 that Britain could not indefinitely detain aliens suspected of connections to terrorism. [n78](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.652930.8735756027&target=results_DocumentContent&returnToKey=20_T18009070954&parent=docview&rand=1377199741899&reloadEntirePage=true" \l "n78)¶ There is no doubt that governments have a duty to respond to national security threats, but they have equally important obligations to ensure the human rights of their citizens, and their prisoners. Fear causes governments to overreact; strong institutions help nations to respond in a more measured way. Most democracies are members of regional human rights regimes, and many have their own national human rights commissions. The United States could consider these examples as it looks for ways to strengthen its own human rights record and enhance its world leadership.¶ The new President should consider implementing these suggestions even though cynics could argue that the United States has "gotten away" with conducting the war on its own terms, without regard to, or respect for, the opinions of mankind and the legal and institutional framework of international law. In addition to the obvious point of enlightened self-interest - that the United States can only achieve its objectives if it acts with legitimacy and commands respect - there is the deeper moral question of deciding what we stand for. Do Americans still believe that all human beings are created equal and endowed with inalienable rights, beliefs that many generations of Americans have died fighting for, beliefs that have inspired respect and admiration for the United States the world over, and principles that President Obama invoked in his campaign?¶ The war that was launched from the nightmare of September 11 has produced the nightmare of Guantanamo, the horror of Abu Ghraib, the broken lives of the U.S. soldiers killed or wounded in Iraq and Afghanistan, the deaths of tens, maybe hundreds of thousands of Afghan and Iraqi civilians, and the shattered psyches of America's torture and rendition victims. The United States is better than this - surely it can temper its great power with moderation and reason, to paraphrase Justice Jackson's famous phrase uttered at Nuremberg so many years ago. On January 20, 2009, it is to be hoped that the 44th President of the United States of America will immediately begin to recommit the United States to respecting the human rights of its enemies as well as its friends.¶

## 1NC DA

#### Broad executive authority winning the war now ---- Restricting detention would signal weakness

Majidyar, 13 -- American Enterprise Institute senior research associate [Ahmad, “We Need Military Authorization Until Al-Qaida Is No Longer a Threat,” June 17th, http://www.usnews.com/debate-club/should-the-authorization-for-use-of-military-force-be-repealed/we-need-military-authorization-until-al-qaida-is-no-longer-a-threat]

Nearly 12 years since 9/11, the United States remains in a state of armed conflict and the 2001 Authorization for Use of Military Force continues to **provide the** principal legal **framework for** military and detention **operations** against al-Qaida, the Taliban and associated forces. The law has given both the Bush and Obama administrations the authority to "use all necessary and appropriate force against those nations, organizations, or persons" responsible for the September 11 attacks, in order to prevent any future terror plots against America. **As a result, al-Qaida** and the Taliban were removed from power in Afghanistan; Osama bin Laden and many of his top lieutenants were killed in Pakistan; and there have been no terror attacks of the 9/11 magnitude on American soil. Despite these gains, however, al-Qaida remains a viable threat. Over the past years, the terror group has metastasized and spread across the Middle East, forming al-Qaida in the Arabian Peninsula and al-Qaida in the Islamic Maghreb. Al-Qaida-affiliated groups have also exploited regional instability in the aftermath of the Arab Spring to gain a foothold in Syria, Libya and Egypt's Sinai. Moreover, some regional radical groups have become co-belligerents with al-Qaida in the fight against the West, including Somalia-based Al-Shabaab and Nigeria's Boko Haram. It is therefore premature and dangerous to repeal or significantly restrict the AUMF at this point, since it **would undercut** the **effectiveness** of U.S. counterterrorism efforts to deal with al-Qaida-related emerging threats worldwide. Suggestions to incorporate temporal and geographical limitations into the AUMF are also ill-advised. Confining the law to a specific number of countries or terrorist groups would give the enemy more freedom of action and allow it to create new fronts and sanctuaries in areas immune from U.S. counterterrorism operations. In his counterterrorism policy speech three weeks ago, President Obama promised to continue a "series of persistent, targeted efforts to dismantle specific networks of violent extremists that threaten America." In the absence of the AUMF, such actions would become **untenable** and devoid of a legal basis. At present, the AUMF provides the administration with **adequate** authorities to pursue the war. Until al-Qaida and associated forces are degraded to a level where they pose no substantial national security threat to the United States, the law should not be repealed or replaced.

#### That would uniquely decimate Obama and the military’s ability to calm alliances and deter enemies ---- makes terrorism and global nuclear war more likely

WAXMAN 2013 - law professor at Columbia Law School, co-chairs the Roger Hertog Program on Law and National Security (Matthew Waxman, “The Constitutional Power to Threaten War,” August 27, 2013, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2316777)

As a prescriptive matter, Part II also shows that examination of threatened force and the credibility requirements for its effectiveness calls into question many orthodoxies of the policy advantages and risks attendant to various allocations of legal war powers, including the existing one and proposed reforms.23 Most functional arguments about war powers focus on fighting wars or hostile engagements, but that is not all – or even predominantly – what the United States does with its military power. Much of the time it seeks to avert such clashes while achieving its foreign policy objectives: to bargain, coerce, deter.24 The President’s flexibility to use force in turn affects decision-making about threatening it, with major implications for securing peace or dragging the United States into conflicts. Moreover, constitutional war power allocations affect potential conflicts not only because they may constrain U.S. actions but because they may send signals and shape other states’ (including adversaries’) expectations of U.S. actions.25 That is, most analysis of war-powers law is inward-looking, focused on audiences internal to the U.S. government and polity, but thinking about threatened force prompts us to look outward, at how war-powers law affects external perceptions among adversaries and allies. Here, extant political science and strategic studies offer few clear conclusions, but they point the way toward more sophisticated and realistic policy assessment of legal doctrine and proposed reform. More generally, as explained in Part III, analysis of threatened force and war powers exposes an under-appreciated relationship between constitutional doctrine and grand strategy. Instead of proposing a functionally optimal allocation of legal powers, as legal scholars are often tempted to do, this Article in the end denies the tenability of any such claim. Having identified new spaces of war and peace powers that legal scholars need to take account of in understanding how those powers are really exercised, this Article also highlights the extent to which any normative account of the proper distribution of authority over this area depends on many matters that cannot be predicted in advance or expected to remain constant.26 Instead of proposing a policy-optimal solution, this Article concludes that the allocation of constitutional war powers is – and should be –geopolitically and strategically contingent; the actual and effective balance between presidential and congressional powers over war and peace in practice necessarily depends on fundamental assumptions and shifting policy choices about how best to secure U.S. interests against potential threats.27 I. Constitutional War Powers and Threats of Force Decisions to go to war or to send military forces into hostilities are immensely consequential, so it is no surprise that debates about constitutional war powers occupy so much space. But one of the most common and important ways that the United States uses its military power is by threatening war or force – and the constitutional dimensions of that activity receive almost no scrutiny or even theoretical investigation. A. War Powers Doctrine and Debates The Constitution grants Congress the powers to create military forces and to “declare war,”28 which the Supreme Court early on made clear includes the power to authorize limited uses of force short of full-blown war.29 The Constitution then vests the President with executive power and designates him commander in chief of the armed forces,30 and it has been well-accepted since the Founding that these powers include unilateral authority to repel invasions if the United States is attacked.31 Although there is nearly universal acceptance of these basic starting points, there is little legal agreement about how the Constitution allocates responsibility for the vast bulk of cases in which the United States has actually resorted to force. The United States has declared war or been invaded only a handful of times in its history, but it has used force – sometimes large-scale force – hundreds of other times.32 Views split over questions like when, if ever, the President may use force to deal with aggression against third parties and how much unilateral discretion the President has to use limited force short of full-blown war. For many lawyers and legal scholars, at least one important methodological tool for resolving such questions is to look at historical practice, and especially the extent to which the political branches acquiesced in common practices.33 Interpretation of that historical practice for constitutional purposes again divides legal scholars, but most would agree at least descriptively on some basic parts of that history. In particular, most scholars assess that from the Founding era through World War II, Presidents and Congresses alike recognized through their behavior and statements that except in certain narrow types of contingencies, congressional authorization was required for large-scale military operations against other states and international actors, even as many Presidents pushed and sometimes crossed those boundaries.34 Whatever constitutional constraints on presidential use of force existed prior to World War II, however, most scholars also note that the President asserted much more extensive unilateral powers to use force during and after the Cold War, and many trace the turning point to the 1950 Korean War.35 Congress did not declare war in that instance, nor did it expressly authorize U.S. participation.36 From that point forward, presidents have asserted broad unilateral authority to use force to address threats to U.S. interests, including threats to U.S. allies, and that neither Congress nor courts pushed back much against this expanding power.37 Concerns about expansive presidential war-making authority spiked during the Vietnam War. In the wind-down of that conflict, Congress passed – over President Nixon’s veto – the War Powers Resolution,38 which stated its purpose as to ensure the constitutional Founders’ original vision that the “collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.”39 Since then, presidentialists have argued that the President still retains expansive authority to use force abroad to protect American interests,40 and congressionalists argue that this authority is tightly circumscribed.41 These constitutional debates have continued through the first decade of the 21st century. Constitutional scholars split, for example, over President Obama’s power to participate in coalition operations against Libya without congressional authorization in 2011, especially after the War Powers Resolution’s 60-day clock expired.42 Some argue that President Obama’s use of military force without specific congressional authorization in that case reflects the broad constitutional discretion presidents now have to protect American interests, at least short of full-blown “war”, while others argue that it is the latest in a long record of presidential violations of the Constitution and the War Powers Resolution.43 B. Threats of Force and Constitutional Powers These days it is usually taken for granted that – whether or not he can make war unilaterally – the President is constitutionally empowered to threaten the use of force, implicitly or explicitly, through diplomatic means or shows of force. It is never seriously contested whether the President may declare that United States is contemplating military options in response to a crisis, or whether the President may move substantial U.S. military forces to a crisis region or engage in military exercises there. To take the Libya example just mentioned, is there any constitutional limitation on the President’s authority to move U.S. military forces to the Mediterranean region and prepare them very visibly to strike?44 Or his authority to issue an ultimatum to Libyan leaders that they cease their brutal conduct or else face military action? Would it matter whether such threats were explicit versus implicit, whether they were open and public versus secret, or whether they were just a bluff? If not a constitutional obstacle, could it be argued that the War Powers Resolution’s reporting requirements and limits on operations were triggered by a President’s mere ultimatum or threatening military demonstration, insofar as those moves might constitute a “situation where imminent involvement in hostilities is clearly indicated by the circumstances”? These questions simply are not asked (at least not anymore).45 If anything, most lawyers would probably conclude that the President’s constitutional powers to threaten war are not just expansive but largely beyond Congress’s authority to regulate directly. From a constitutional standpoint, to the extent it is considered at all, the President’s power to threaten force is probably regarded to be at least as broad as his power to use it. One way to look at it is that the power to threaten force is a lesser included element of presidential war powers; the power to threaten to use force is simply a secondary question, the answer to which is bounded by the primary issue of the scope of presidential power to actually use it. If one interprets the President’s defensive war powers very broadly, to include dealing with aggression not only directed against U.S. territories but also against third parties,46 then it might seem easy to conclude that the President can also therefore take steps that stop short of actual armed intervention to deter or prevent such aggression. If, however, one interprets the President’s powers narrowly, for example, to include only limited unilateral authority to repel attacks against U.S. territory,47 then one might expect objections to arguably excessive presidential power to include his unilateral threats of armed intervention. Another way of looking at it is that in many cases, threats of war or force might fall within even quite narrow interpretations of the President’s inherent foreign relations powers to conduct diplomacy or his express commander in chief power to control U.S. military forces – or some combination of the two – depending on how a particular threat is communicated. A President’s verbal warning, ultimatum, or declared intention to use military force, for instance, could be seen as merely exercising his role as the “sole organ” of U.S. foreign diplomacy, conveying externally information about U.S. capabilities and intentions.48 A president’s movement of U.S. troops or warships to a crisis region or elevation of their alert level could be seen as merely exercising his dayto- day tactical control over forces under his command.49 Generally it is not seriously contested whether the exercise of these powers alone could so affect the likelihood of hostilities or war as to intrude on Congress’s powers over war and peace.50 We know from historical examples that such unilateral military moves, even those that are ostensibly pure defensive ones, can provoke wars – take, for example, President Polk’s movement of U.S. forces to the contested border with Mexico in 1846, and the resulting skirmishes that led Congress to declare war.51 Coming at the issue from Congress’s Article I powers rather than the President’s Article II powers, the very phrasing of the power “To declare War” puts most naturally all the emphasis on the present tense of U.S. military action, rather than its potentiality. Even as congressionalists advance interpretations of the clause to include not merely declarative authority but primary decision-making authority as to whether or not to wage war or use force abroad, their modern-day interpretations do not include a power to threaten war (except perhaps through the specific act of declaring it). None seriously argues – at least not any more – that the Declare War Clause precludes presidential threats of war. This was not always the case. During the early period of the Republic, there was a powerful view that beyond outright initiation of armed hostilities or declaration of war, more broadly the President also could not unilaterally take actions (putting aside actual military attacks) that would likely or directly risk war,52 provoke a war with another state,53 or change the condition of affairs or relations with another state along the continuum from peace to war.54 To do so, it was often argued, would usurp Congress’s prerogative to control the nation’s state of peace or war.55 During the Quasi-War with France at the end of the 18th century, for example, some members of Congress questioned whether the President, absent congressional authorization, could take actions that visibly signaled an intention to retaliate against French maritime harassment,56 and even some members of President Adams’ cabinet shared doubts.57 Some questions over the President’s power to threaten force arose (eventually) in relation to the Monroe Doctrine, announced in an 1823 presidential address to Congress and which in effect declared to European powers that the United States would oppose any efforts to colonize or reassert control in the Western Hemisphere.58 “Virtually no one questioned [Monroe’s proclamation] at the time. Yet it posed a constitutional difficulty of the first importance.”59 Of course, Monroe did not actually initiate any military hostilities, but his implied threat – without congressional action – risked provoking rather than deterring European aggression and by putting U.S. prestige and credibility on the line it limited Congress’s practical freedom of action if European powers chose to intervene.60 The United States would have had at the time to rely on British naval power to make good on that tacit threat, though a more assertive role for the President in wielding the potential for war or intervention during this period went hand in hand with a more sustained projection of U.S. power beyond its borders, especially in dealing with dangers emanating from Spanish-held Florida territory.61 Monroe’s successor, John Quincy Adams, faced complaints from opposition members of Congress that Monroe’s proclamation had exceeded his constitutional authority and had usurped Congress’s by committing the United States – even in a non-binding way – to resisting European meddling in the hemisphere.62 The question whether the President could unilaterally send militarily-threatening signals was in some respects a mirror image of the issues raised soon after the Constitution was ratified during the 1793 Neutrality Controversy: could President Washington unilaterally declare the United States to be neutral as to the war among European powers. Washington’s politically controversial proclamation declaring the nation “friendly and impartial” in the conflict between France and Great Britain (along with other European states) famously prompted a back-and-forth contest of public letters by Alexander Hamilton and James Madison, writing pseudonymously as “Pacificus” and “Helvidius”, about whether the President had such unilateral power or whether it belonged to Congress.63 Legal historian David Currie points out the irony that the neutrality proclamation was met with stronger and more immediate constitutional scrutiny and criticism than was Monroe’s threat. After all, Washington’s action accorded with the principle that only Congress, representing popular will, should be able to take the country from the baseline state of peace to war, whereas Monroe’s action seemed (at least superficially) to commit it to a war that Congress had not approved.64 Curiously (though for reasons offered below, perhaps not surprisingly) this issue – whether there are constitutional limits on the President’s power to threaten war – has almost vanished completely from legal discussion, and that evaporation occurred even before the dramatic post-war expansion in asserted presidential power to make war. Just prior to World War II, political scientist and presidential powers theorist Edward Corwin remarked that “[o]f course, it may be argued, and has in fact been argued many times, that the President is under constitutional obligation not to incur the risk of war in the prosecution of a diplomatic policy without first consulting Congress and getting its consent.”65 “Nevertheless,” he continued,66 “the supposed principle is clearly a maxim of policy rather than a generalization from consistent practice.” In his 1945 study World Policing and the Constitution, James Grafton Rogers noted: [E]xamples of demonstrations on land and sea made for a variety of purposes and under Presidents of varied temper and in different political climates will suffice to make the point. The Commander-in-Chief under the Constitution can display our military resources and threaten their use whenever he thinks best. The weakness in the diplomatic weapon is the possibility of dissidence at home which may cast doubt on our serious intent. The danger of the weapon is war.67 At least since then, however, the importance to U.S. foreign policy of threatened force has increased dramatically, while legal questions about it have receded further from discussion. In recent decades a few prominent legal scholars have addressed the President’s power to threaten force, though in only brief terms. Taylor Reveley noted in his volume on war powers the importance of allocating constitutional responsibility not only for the actual use of force but also “[v]erbal or written threats or assurances about the circumstances in which the United States will take military action …, whether delivered by declarations of American policy, through formal agreements with foreign entities, by the demeanor or words of American officials, or by some other sign of national intent.”68 Beyond recognizing the critical importance of threats and other non-military actions in affecting war and peace, however, Reveley made little effort to address the issue in any detail. Among the few legal scholars attempting to define the limiting doctrinal contours of presidentially threatened force, Louis Henkin wrote in his monumental Foreign Affairs and the Constitution that: Unfortunately, the line between war and lesser uses of force is often elusive, sometimes illusory, and the use of force for foreign policy purposes can almost imperceptibly become a national commitment to war. Even when he does not use military force, the President can incite other nations or otherwise plunge or stumble this country into war, or force the hand of Congress to declare or to acquiesce and cooperate in war. As a matter of constitutional doctrine, however, one can declare with confidence that a President begins to exceed his authority if he willfully or recklessly moves the nation towards war…69 The implication seems to be that the President may not unilaterally threaten force in ways that are dramatically escalatory and could likely lead to war, or perhaps that the President may not unilaterally threaten the use of force that he does not have the authority to initiate unilaterally.70 Jefferson Powell, who generally takes a more expansive view than Henkin of the President’s war powers, argues by contrast that “[t]he ability to warn of, or threaten, the use of military force is an ordinary and essential element in the toolbox of that branch of government empowered to formulate and implement foreign policy.”71 For Powell, the President is constantly taking actions as part of everyday international relations that carry a risk of military escalation, and these are well-accepted as part of the President’s broader authority to manage, if not set, foreign policy. Such brief mentions are in recent times among the rare exceptions to otherwise barren constitutional discussion of presidential powers to threaten force. That the President’s authority to threaten force is so well-accepted these days as to seem self-evident is not just an academic phenomenon. It is also reflected in the legal debates among and inside all three branches of government. In 1989, Michael Reisman observed: Military maneuvers designed to convey commitment to allies or contingent threats to adversaries … are matters of presidential competence. Congress does not appear to view as within its bailiwick many low-profile contemporaneous expressions of gunboat diplomacy, i.e., the physical interposition of some U.S. war-making capacity as communication to an adversary of United States’ intentions and capacities to oppose it.72 This was and remains a correct description but understates the pattern of practice, insofar as even major and high-profile expressions of coercive diplomacy are regarded among all three branches of government as within presidential competence. In Dellums v. Bush – perhaps the most assertive judicial scrutiny of presidential power to use large-scale force abroad since the end of the Cold War – the district court dismissed on ripeness grounds congressmembers’ suit challenging President George H. W. Bush’s intended military operations against Iraq in 1991 and seeking to prevent him from initiating an offensive attack against Iraq without first securing explicit congressional authorization for such action.73 That at the time of the suit the President had openly threatened war – through ultimatums and deployment of several hundred thousand U.S. troops – but had not yet “committed to a definitive course of action” to carry out the threat meant there was no justiciable legal issue, held the court.74 The President’s threat of war did not seem to give the district court legal pause at all; quite the contrary, the mere threat of war was treated by the court as a non-issue entirely.75 There are several reasons why constitutional questions about threatened force have dropped out of legal discussions. First, the more politically salient debate about the President’s unilateral power to use force has probably swallowed up this seemingly secondary issue. As explained below, it is a mistake to view threats as secondary in importance to uses of force, but they do not command the same political attention and their impacts are harder to measure.76 Second, the expansion of American power after World War II, combined with the growth of peacetime military forces and a set of defense alliance commitments (developments that are elaborated below) make at least some threat of force much more common – in the case of defensive alliances and some deterrent policies, virtually constant – and difficult to distinguish from other forms of everyday diplomacy and security policy.77 Besides, for political and diplomatic reasons, presidents rarely threaten war or intervention without at least a little deliberate ambiguity. As historian Marc Trachtenberg puts it: “It often makes sense … to muddy the waters a bit and avoid direct threats.”78 Any legal lines one might try to draw (recall early attempts to restrict the President’s unilateral authority to alter the state of affairs along the peacetime-wartime continuum) have become blurrier and blurrier. In sum, if the constitutional power to threaten war ever posed a serious legal controversy, it does so no more. As the following section explains, however, threats of war and armed force have during most of our history become a greater and greater part of American grand strategy, defined here as long-term policies for using the country’s military and non-military power to achieve national goals. The prominent role of threatened force in U.S. strategy has become the focus of political scientists and other students of security strategy, crises, and responses – but constitutional study has not adjusted accordingly.79 C. Threats of Force and U.S. Grand Strategy While the Korean and Vietnam Wars were generating intense study among lawyers and legal scholars about constitutional authority to wage military actions abroad, during that same period many political scientists and strategists – economists, historians, statesmen, and others who studied international conflict – turned their focus to the role of threatened force as an instrument of foreign policy. The United States was building and sustaining a massive war-fighting apparatus, but its security policy was not oriented primarily around waging or winning wars but around deterring them and using the threat of war – including demonstrative military actions – to advance U.S. security interests. It was the potential of U.S. military might, not its direct application or engagement with the enemy, that would do much of the heavy lifting. U.S. military power would be used to deter the Soviet Union and other hostile states from taking aggressive action. It would be unsheathed to prompt them to back down over disputes. It would reassure allies that they could depend on U.S. help in defending themselves. All this required that U.S. willingness to go to war be credible in the eyes of adversaries and allies alike. Much of the early Cold War study of threatened force concerned nuclear strategy, and especially deterrence or escalation of nuclear war. Works by Albert Wohlstetter, Herman Kahn, and others not only studied but shaped the strategy of nuclear threats, as well as how to use limited applications of force or threats of force to pursue strategic interests in remote parts of the globe without sparking massive conflagrations.80 As the strategic analyst Bernard Brodie wrote in 1946, “Thus far the chief purpose of our military establishment has been to win wars. From now on its chief purpose must be to avert them.”81 Toward that end, U.S. government security and defense planners during this time focused heavily on preserving and improving the credibility of U.S. military threats – while the Soviet Union was doing likewise.82 The Truman administration developed a militarized version of containment strategy against the Soviet empire, emphasizing that stronger military capabilities were necessary to prevent the Soviets from seizing the initiative and to resist its aggressive probes: “it is clear,” according to NSC-68, the government document which encapsulated that strategy, “that a substantial and rapid building up of strength in the free world is necessary to support a firm policy intended to check and to roll back the Kremlin's drive for world domination.”83 The Eisenhower administration’s “New Look” policy and doctrine of “massive retaliation” emphasized making Western collective security both more effective and less costly by placing greater reliance on deterrent threats – including threatened escalation to general or nuclear war. As his Secretary of State John Foster Dulles explained, “[t]here is no local defense which alone will contain the mighty landpower of the Communist world. Local defenses must be reinforced by the further deterrent of massive retaliatory power.”84 As described in Evan Thomas’s recent book, Ike’s Bluff, Eisenhower managed to convince Soviet leaders that he was ready to use nuclear weapons to check their advance in Europe and elsewhere. In part due to concerns that threats of massive retaliation might be insufficiently credible in Soviet eyes (especially with respect to U.S. interests perceived as peripheral), the Kennedy administration in 1961 shifted toward a strategy of “flexible response,” which relied on the development of a wider spectrum of military options that could quickly and efficiently deliver varying degrees of force in response to foreign aggression.85 Throughout these periods, the President often resorted to discrete, limited uses of force to demonstrate U.S. willingness to escalate. For example, in 1961 the Kennedy administration (mostly successfully in the short-run) deployed intervention-ready military force immediately off the coast of the Dominican Republic to compel its government's ouster,86 and that same year it used military exercises and shows of force in ending the Berlin crisis;87 in 1964, the Johnson administration unsuccessfully used air strikes on North Vietnamese targets following the Tonkin Gulf incidents, failing to deter what it viewed as further North Vietnamese aggression.88 The point here is not the shifting details of U.S. strategy after World War II – during this era of dramatic expansion in asserted presidential war powers – but the central role of credible threats of war in it, as well as the interrelationship of plans for using force and credible threats to do so. Also during this period, the United States abandoned its long-standing aversion to “entangling alliances,”89 and committed to a network of mutual defense treaties with dependent allies. Besides the global collective security arrangement enshrined in the UN Charter, the United States committed soon after World War II to mutual defense pacts with, for example, groups of states in Western Europe (the North Atlantic Treaty Organization)90 and Asia (the Southeast Asia Treaty Organization,91 as well as a bilateral defense agreement with the Republic of Korea,92 Japan,93 and the Republic of China,94 among others). These alliance commitments were part of a U.S. effort to “extend” deterrence of Communist bloc aggression far beyond its own borders.95 “Extended deterrence” was also critical to reassuring these U.S. allies that their security needs would be met, in some instances to head off their own dangerous rearmament.96 Among the leading academic works on strategy of the 1960s and 70s were those of Thomas Schelling, who developed the theoretical structure of coercion theory, arguing that rational states routinely use the threat of military force – the manipulation of an adversary’s perceptions of future risks and costs with military threats – as a significant component of their diplomacy.97 Schelling distinguished between deterrence (the use of threats to dissuade an adversary from taking undesired action) and compellence (the use of threats to persuade an adversary to behave a certain way), and he distinguished both forms of coercion from brute force: “[B]rute force succeeds when it is used, whereas the power to hurt is most successful when held in reserve. It is the threat of damage to come that can make someone yield of comply. It is latent violence that can influence someone’s choice.”98 Alexander George, David Hall, and William Simons then led the way in taking a more empirical approach, reviewing case studies to draw insights about the success and failure of U.S. coercive threats, analyzing contextual variables and their effects on parties’ reactions to threats during crises. Among their goals was to generate lessons informed by history for successful strategies that combine diplomatic efforts with threats or demonstrations of force, recognizing that the United States was relying heavily on threatened force in addressing security crises. Coercive diplomacy – if successful – offered ways to do so with minimal actual application of military force.99 One of the most influential studies that followed was Force Without War: U.S. Armed Forces as a Political Instrument, a Brookings Institution study led by Barry Blechman and Stephen Kaplan and published in 1977.100 They studied “political uses of force”, defined as actions by U.S. military forces “as part of a deliberate attempt by the national authorities to influence, or to be prepared to influence, specific behavior of individuals in another nation without engaging in a continued contest of violence.”101 Blechman and Kaplan’s work, including their large data set and collected case studies, was important for showing the many ways that threatened force could support U.S. security policy. Besides deterrence and compellence, threats of force were used to assure allies (thereby, for example, avoiding their own drive toward militarization of policies or crises) and to induce third parties to behave certain ways (such as contributing to diplomatic resolution of crises). The record of success in relying on threatened force has been quite mixed, they showed. Blechman and Kaplan’s work, and that of others who built upon it through the end of the Cold War and the period that has followed,102 helped understand the factors that correlated with successful threats or demonstrations of force without resort or escalation to war, especially the importance of credible signals.103 After the Cold War, the United States continued to rely on coercive force – threatened force to deter or compel behavior by other actors – as a central pillar of its grand strategy. During the 1990s, the United States wielded coercive power with varied results against rogue actors in many cases that, without the overlay of superpower enmities, were considered secondary or peripheral, not vital, interests: Iraq, Somalia, Haiti, Bosnia, and elsewhere. For analysts of U.S. national security policy, a major puzzle was reconciling the fact that the United States possessed overwhelming military superiority in raw terms over any rivals with its difficult time during this era in compelling changes in their behavior.104 As Daniel Byman and I wrote about that decade in our study of threats of force and American foreign policy: U.S. conventional and nuclear forces dwarf those of any adversaries, and the U.S. economy remains the largest and most robust in the world. Because of these overwhelming advantages, the United States can threaten any conceivable adversary with little danger of a major defeat or even significant retaliation. Yet coercion remains difficult. Despite the United States’ lopsided edge in raw strength, regional foes persist in defying the threats and ultimatums brought by the United States and its allies. In confrontations with Somali militants, Serb nationalists, and an Iraqi dictator, the U.S. and allied record or coercion has been mixed over recent years…. Despite its mixed record of success, however, coercion will remain a critical element of U.S. foreign policy.105 One important factor that seemed to undermine the effectiveness of U.S. coercive threats during this period was that many adversaries perceived the United States as still afflicted with “Vietnam Syndrome,” unwilling to make good on its military threats and see military operations through.106 Since the turn of the 21st Century, major U.S. security challenges have included non-state terrorist threats, the proliferation of nuclear and other weapons of mass destruction (WMD), and rapidly changing power balances in East Asia, and the United States has accordingly been reorienting but retaining its strategic reliance on threatened force. The Bush Administration’s “preemption doctrine” was premised on the idea that some dangerous actors – including terrorist organizations and some states seeking WMD arsenals – are undeterrable, so the United States might have to strike them first rather than waiting to be struck.107 On one hand, this was a move away from reliance on threatened force: “[t]he inability to deter a potential attacker, the immediacy of today’s threats, and the magnitude of potential harm that could be caused by our adversaries’ choice of weapons, do not permit” a reactive posture.108 Yet the very enunciation of such a policy – that “[t]o forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively”109 – was intended to persuade those adversaries to alter their policies that the United States regarded as destabilizing and threatening. Although the Obama administration pulled back from this rhetoric and placed greater emphasis on international institutions, it has continued to rely on threatened force as a key pillar of its strategy with regard to deterring threats (such as aggressive Iranian moves), intervening in humanitarian crises (as in Libya), and reassuring allies.110 With regard to East Asia, for example, the credible threat of U.S. military force is a significant element of U.S. strategy for deterring Chinese and North Korean aggression as well as reassuring other Asian powers of U.S. protection, to avert a destabilizing arms race.111 D. The Disconnect Between Constitutional Discourse and Strategy There is a major disconnect between the decades of work by strategists and many political scientists on American security policy and practice since the Second World War and legal analysis and scholarship of constitutional war powers during that period. Lawyers and strategists have been relying on not only distinct languages but distinct logics of military force – in short, when it comes to using U.S. military power, lawyers think in terms of “going to war” while strategists focus on potential war and processes leading to it. These framings manifest in differing theoretical starting points for considering how exercises of U.S. military might affect war and peace, and they skew the empirical insights and normative prescriptions about Presidential power often drawn from their analyses. 1. Lawyers’ Misframing Lawyers’ focus on actual uses of force – especially engagements with enemy military forces – as constitutionally salient, rather than including threats of force in their understanding of modern presidential powers tilts analysis toward a one-dimensional strategic logic, rather than a more complex and multi-dimensional and dynamic logic in which the credible will to use force is as important as the capacity to do so. As discussed above, early American constitutional thinkers and practitioners generally wanted to slow down with institutional checks decisions to go to war, because they thought that would make war less likely. “To invoke a more contemporary image,” wrote John Hart Ely of their vision, “it takes more than one key to launch a missile: It should take quite a number to start a war.”112 They also viewed the exercise of military power as generally a ratchet of hostilities, whereby as the intensity of authorized or deployed force increased, so generally did the state of hostilities between the United States and other parties move along a continuum from peace to war.113 Echoes of this logic still reverberate in modern congressionalist legal scholarship: the more flexibly the President can use military force, the more likely it is that the United States will find itself in wars; better, therefore, to clog decisions to make war with legislative checks.114 Modern presidentialist legal scholars usually respond that rapid action is a virtue, not a vice, in exercising military force.115 Especially as a superpower with global interests and facing global threats, presidential discretion to take rapid military action – endowed with what Alexander Hamilton called “[d]ecision, activity, secrecy, and dispatch”116 – best protects American interests. In either case the emphasis tends overwhelmingly to be placed on actual military engagements with adversaries. Strategists and many political scientists, by contrast, view some of the most significant use of military power as starting well before armed forces clash – and including important cases in which they never actually do. Coercive diplomacy and strategies of threatened force, they recognize, often involve a set of moves and countermoves by opposing sides and third parties before or even without the violent engagement of opposing forces. It is often the parties’ perceptions of anticipated actions and costs, not the actual carrying through of violence, that have the greatest impact on the course of events and resolution or escalation of crises. Instead of a ratchet of escalating hostilities, the flexing of military muscle can increase as well as decrease actual hostilities, inflame as well as stabilize relations with rivals or enemies. Moreover, those effects are determined not just by U.S. moves but by the responses of other parties to them – or even to anticipated U.S. moves and countermoves.117 Indeed, as Schelling observed, strategies of brinkmanship sometimes operate by “the deliberate creation of a recognizable risk of war, a risk that one does not completely control.”118 This insight – that effective strategies of threatened force involve not only great uncertainty about the adversary’s responses but also sometimes involve intentionally creating risk of inadvertent escalation119 – poses a difficult challenge for any effort to cabin legally the President’s power to threaten force in terms of likelihood of war or some due standard of care.120 2. Lawyers’ Selection Problems Methodologically, a lawyerly focus on actual uses of force – a list of which would then commonly be used to consider which ones were or were not authorized by Congress – vastly undercounts the instances in which presidents wield U.S. military might. It is already recognized by some legal scholars that studying actual uses of force risks ignoring instances in which President contemplated force but refrained from using it, whether because of political, congressional, or other constraints.121 The point here is a different one: that some of the most significant (and, in many instances, successful) presidential decisions to threaten force do not show up in legal studies of presidential war powers that consider actual deployment or engagement of U.S. military forces as the relevant data set. Moreover, some actual uses of force, whether authorized by Congress or not, were preceded by threats of force; in some cases these threats may have failed on their own to resolve the crisis, and in other cases they may have precipitated escalation. To the extent that lawyers are interested in understanding from historical practice what war powers the political branches thought they had and how well that understanding worked, they are excluding important cases. Consider, as an illustration of this difference in methodological starting point, that for the period of 1946-1975 (during which the exercise of unilateral Presidential war powers had its most rapid expansion), the Congressional Research Service compilation of instances in which the United States has utilized military forces abroad in situations of military conflict or potential conflict to protect U.S. citizens or promote U.S. interests – which is often relied upon by legal scholars studying war powers – lists only about two dozen incidents.122 For the same time period, the Blechman and Kaplan study of political uses of force (usually threats) – which is often relied upon by political scientists studying U.S. security strategy – includes dozens more data-point incidents, because they divide up many military crises into several discrete policy decisions, because many crises were resolved with threat-backed diplomacy, and because many uses of force were preceded by overt or implicit threats of force.123 Among the most significant incidents studied by Blechman and Kaplan but not included in the Congressional Research Service compilation at all are the 1958-59 and 1961 crises over Berlin and the 1973 Middle East War, during which U.S. Presidents signaled threats of superpower war, and in the latter case signaled particularly a willingness to resort to nuclear weapons.124 Because the presidents did not in the end carry out these threats, these cases lack the sort of authoritative legal justifications or reactions that accompany actual uses of force. It is therefore difficult to assess how the executive branch and congress understood the scope of the President’s war powers in these cases, but historical inquiry would probably show the executive branch’s interpretation to be very broad, even to include full-scale war and even where the main U.S. interest at stake was the very credibility of U.S. defense commitments undergirding its grand strategy, not simply the interests specific to divided Germany and the Middle East region. Of course, one might argue that because the threatened military actions were never carried out in these cases, it is impossible to know if the President would have sought congressional authorization or how Congress would have reacted to the use of force; nonetheless, it is easy to see that in crises like these a threat by the President to use force, having put U.S. credibility on the line in addition to whatever other foreign policy stakes were at issues, would have put Congress in a bind. 3. Lawyers’ Mis-Assessment Empirically, analysis of and insights gleaned from any particular incident – which might then be used to evaluate the functional merits of presidential powers – looks very different if one focuses predominantly on the actual use of force instead of considering also the role of threatened force. Take for example, the Cuban Missile Crisis – perhaps the Cold War’s most dangerous event. To the rare extent that they consider domestic legal issues of this crisis at all, lawyers interested in the constitutionality of President Kennedy’s actions generally ask only whether he was empowered to initiate the naval quarantine of Cuba, because that is the concrete military action Kennedy took that was readily observable and that resulted in actual engagement with Soviet forces or vessels – as it happens, very minimal engagement.125 To strategists who study the crisis, however, the naval quarantine is not in itself the key presidential action; after all, as Kennedy and his advisers realized, a quarantine alone could not remove the missiles that were already in Cuba. The most consequential presidential actions were threats of military or even nuclear escalation, signaled through various means including putting U.S. strategic bombers on highest alert.126 The quarantine itself was significant not for its direct military effects but because of its communicative impact in showing U.S. resolve. If one is focused, as lawyers often are, on presidential military action that actually engaged the enemy in combat or nearly did, it is easy to dismiss this case as not very constitutionally significant. If one focuses on it, as strategists and political scientists often do, on nuclear brinkmanship, it is arguably the most significant historical exercise of unilateral presidential powers to affect war and peace.127 Considering again the 1991 Gulf War, most legal scholars would dismiss this instance as constitutionally a pretty uninteresting military conflict: the President claimed unilateral authority to use force, but he eventually sought and obtained congressional authorization for what was ultimately – at least in the short-run – a quite successful war. For the most part this case is therefore neither celebrated nor decried much by either side of legal war powers debates,128 though some congressionalist scholars highlight the correlation of congressional authorization for this war and a successful outcome.129 Political scientists look at the case differently, though. They often study this event not as a successful war but as failed coercive diplomacy, in that the United States first threatened war through a set of dramatically escalating steps that ultimately failed to persuade Saddam Hussein to withdraw from Kuwait.130 Some political scientists even see U.S. legal debate about military actions as an important part of this story, assessing that adversaries pay attention to congressional arguments and moves in evaluating U.S. resolve (an issue taken up in greater detail below) and that congressional opposition to Bush’s initial unilateralism in this case undermined the credibility of U.S. threats.131 Whether one sees the Gulf War as a case of (successful) war, as lawyers usually do, or (unsuccessful) threatened war, as political scientists usually do, colors how one evaluates the outcome and the credit one might attach to some factors such as vocal congressional opposition to initially-unilateral presidential moves. Notice also that legal analysis of Presidential authority to use force is sometimes thought to turn partly on the U.S. security interests at stake, as though those interests are purely contextual and exogenous to U.S. decision-making and grand strategy. In justifying President Obama’s 2011 use of force against the Libyan government, for example, the Justice Department’s Office of Legal Counsel concluded that the President had such legal authority “because he could reasonably determine that such use of force was in the national interest,” and it then went on to detail the U.S. security and foreign policy interests.132 The interests at stake in crises like these, however, are altered dramatically if the President threatens force: doing so puts the credibility of U.S. threats at stake, which is important not only with respect to resolving the crisis at hand but with respect to other potential adversaries watching U.S. actions.133 The President’s power to threaten force means that he may unilaterally alter the costs and benefits of actually using force through his prior actions.134 The U.S. security interests in carrying through on threats are partly endogenous to the strategy embarked upon to address crises (consider, for example, that once President George H.W. Bush placed hundred of thousands of U.S. troops in the Persian Gulf region and issued an ultimatum to Saddam Hussein in 1990, the credibility of U.S. threats and assurances to regional allies were put on the line).135 Moreover, interests at stake in any one crisis cannot simply be disaggregated from broader U.S. grand strategy: if the United States generally relies heavily on threats of force to shape the behavior of other actors, then its demonstrated willingness or unwillingness to carry out a threat and the outcomes of that action affect its credibility in the eyes of other adversaries and allies, too.136 It is remarkable, though in the end not surprising, that the executive branch does not generally cite these credibility interests in justifying its unilateral uses of force. It does cite when relevant the U.S. interest in sustaining the credibility of its formal alliance commitments or U.N. Security Council resolutions, as reasons supporting the President’s constitutional authority to use force.137 The executive branch generally refrains from citing the similar interests in sustaining the credibility of the President’s own threats of force, however, probably in part because doing so would so nakedly expose the degree to which the President’s prior unilateral strategic decisions would tie Congress’s hands on the matter. \* \* \* In sum, lawyers’ focus on actual uses of force – usually in terms of armed clashes with an enemy or the placement of troops into hostile environments – does not account for much vaster ways that President’s wield U.S. military power and it skews the claims legal scholars make about the allocation of war powers between the political branches. A more complete account of constitutional war powers should recognize the significant role of threatened force in American foreign policy. II. Democratic Checks on Threatened Force The previous Parts of this Article showed that, especially since the end of World War II, the United States has relied heavily on strategies of threatened force in wielding its military might – for which credible signals are a necessary element – and that the President is not very constrained legally in any formal sense in threatening war. Drawing on recent political science scholarship, this Part takes some of the major questions often asked by students of constitutional war powers with respect to the actual use of force and reframes them in terms of threatened force. First, as a descriptive matter, in the absence of formal legal checks on the President’s power to threaten war, is the President nevertheless informally but significantly constrained by democratic institutions and processes, and what role does Congress play in that constraint? Second, as a normative matter, what are the strategic merits and drawbacks of this arrangement of democratic institutions and constraints with regard to strategies of threatened force? Third, as a prescriptive matter, although it is not really plausible that Congress or courts would ever erect direct legal barriers to the President’s power to threaten war, how might legal reform proposals to more strongly and formally constrain the President’s power to use force indirectly impact his power to threaten it effectively? For reasons discussed below, I do not consider whether Congress could legislatively restrict directly the President’s power to threaten force or war; in short, I set that issue aside because assuming that were constitutionally permissible, even ardent congressionalists have exhibited no interest in doing so, and instead have focused on legally controlling the actual use of force. Political science insights that bear on these questions emerge from several directions. One is from studies of Congress’ influence on use of force decisions, which usually assume that Congress’s formal legislative powers play only a limited role in this area, and the effects of this influence on presidential decision-making about threatened force. Another is international relations literature on international bargaining138 as well as literature on the theory of democratic peace, the notion that democracies rarely, if ever, go to war with one another.139 In attempting to explain the near-absence of military conflicts between democracies, political scientists have examined how particular features of democratic governments – electoral accountability, the institutionalized mobilization of political opponents, and the diffusion of decision-making authority regarding the use of force among executive and legislative branches – affect decision-making about war.140 These and other studies, in turn, have led some political scientists (especially those with a rational choice theory orientation) to focus on how those features affect the credibility of signals about force that governments send to adversaries in crises.141 My purpose in addressing these questions is to begin painting a more complete and detailed picture of the way war powers operate, or could operate, than one sees when looking only at actual wars and use of force. This is not intended to be a comprehensive account but an effort to synthesize some strands of scholarship from other fields regarding threatened force to inform legal discourse about how war powers function in practice and the strategic implications of reform. The answers to these questions also bear on raging debates among legal scholars on the nature of American executive power and its constraint by law. Initially they seem to support the views of those legal scholars who have long believed that in practice law no longer seriously binds the President with respect to war-making.142 That view has been taken even further recently by Eric Posner and Adrian Vermeule, who argue that “[l]aw does little constraint the modern executive” at all, but also observe that “politics and public opinion” operate effectively to cabin executive powers.143 The arguments offered here, however, do more to support the position of those legal scholars who describe a more complex relationship between law and politics, including that law is constitutive of the processes of political struggle.144 That law helps constitute the processes of political struggles is true of any area of public policy, though, and what is special here is the added importance of foreign audiences – including adversaries and allies, alike – observing and reacting to those politics, too. Democratic Constraints on the Power to the Threaten Force Whereas most lawyers usually begin their analysis of the President’s and Congress’s war powers by focusing on their formal legal authorities, political scientists usually take for granted these days that the President is – in practice – the dominant branch with respect to military crises and that Congress wields its formal legislative powers in this area rarely or in only very limited ways. A major school of thought, however, is that congressional members nevertheless wield significant influence over decisions about force, and that this influence extends to threatened force, so that Presidents generally refrain from threats that would provoke strong congressional opposition. Even without any serious prospect for legislatively blocking the President’s threatened actions, Congress under certain conditions can loom large enough to force Presidents to adjust their policies; even when it cannot, congressional members can oblige the President expend lots of political capital. As Jon Pevehouse and William Howell explain: When members of Congress vocally oppose a use of force, they undermine the president’s ability to convince foreign states that he will see a fight through to the end. Sensing hesitation on the part of the United States, allies may be reluctant to contribute to a military campaign, and adversaries are likely to fight harder and longer when conflict erupts— thereby raising the costs of the military campaign, decreasing the president’s ability to negotiate a satisfactory resolution, and increasing the probability that American lives are lost along the way. Facing a limited band of allies willing to participate in a military venture and an enemy emboldened by domestic critics, presidents may choose to curtail, and even abandon, those military operations that do not involve vital strategic interests. 145 This statement also highlights the important point, alluded to earlier, that force and threatened force are not neatly separable categories. Often limited uses of force are intended as signals of resolve to escalate, and most conflicts involve bargaining in which the threat of future violence – rather than what Schelling calls “brute force”146 – is used to try to extract concessions. The formal participation of political opponents in legislative bodies provides them with a forum for registering dissent to presidential policies of force through such mechanisms floor statements, committee oversight hearings, resolution votes, and funding decisions.147 These official actions prevent the President “from monopolizing the nation’s political discourse” on decisions regarding military actions can thereby make it difficult for the President to depart too far from congressional preferences.148 Members of the political opposition in Congress also have access to resources for gathering policy relevant information from the government that informs their policy preferences. Their active participation in specialized legislative committees similarly gives opponent party members access to fact-finding resources and forums for registering informed dissent from decisions within the committee’s purview.149 As a result, legislative institutions within democracies can enable political opponents to have a more immediate and informed impact on executive’s decisions regarding force than can opponents among the general public. Moreover, studies suggest that Congress can actively shape media coverage and public support for a president’s foreign policy engagements.150 In short, these findings among political scientists suggest that, even without having to pass legislation or formally approve of actions, Congress often operates as an important check on threatened force by providing the president’s political opponents with a forum for registering dissent from the executive’s decisions regarding force in ways that attach domestic political costs to contemplated military actions or even the threats to use force. Under this logic, Presidents, anticipating dissent, will be more selective in issuing¶ threats in the first place, making only those commitments that would not incite¶ widespread political opposition should the threat be carried through.151 Political¶ opponents within a legislature also have few electoral incentives to collude in an¶ executive’s bluff, and they are capable of expressing opposition to a threatened use of¶ force in ways that could expose the bluff to a threatened adversary.152 This again narrows¶ the President’s range of viable policy options for brandishing military force. Counter-intuitively, given the President’s seemingly unlimited and unchallenged¶ constitutional power to threaten war, it may in some cases be easier for members of¶ Congress to influence presidential decisions to threaten military action than presidential¶ war decisions once U.S. forces are already engaged in hostilities. It is widely believed¶ that once U.S. armed forces are fighting, congress members’ hands are often tied: policy¶ opposition at that stage risks being portrayed as undermining our troops in the field.153¶ Perhaps, it could be argued, the President takes this phenomenon into account and¶ therefore discounts political opposition to threatened force; he can assume that such¶ opposition will dissipate if he carries it through. Even if that is true, before that point¶ occurs, however, members of Congress may have communicated messages domestically¶ and communicated signals abroad that the President will find difficult to counter.154 The bottom line is that a body of recent political science, while confirming the¶ President’s dominant position in setting policy in this area, also reveals that policymaking¶ with respect to threats of force is significantly shaped by domestic politics and¶ that Congress is institutionally positioned to play a powerful role in influencing those¶ politics, even without exercising its formal legislative powers. Given the centrality of¶ threatened force to U.S. foreign policy strategy and security crises, this suggests that the¶ practical war powers situation is not so imbalanced toward the President as many assume. B. Democratic Institutions and the Credibility of Threats A central question among constitutional war powers scholars is whether robust¶ checks – especially congressional ones – on presidential use of force lead to “sound”¶ policy decision-making. Congressionalists typically argue that legislative control over¶ war decisions promotes more thorough deliberation, including more accurate weighing of¶ consequences and gauging of political support of military action.155 Presidentialists¶ usually counter that the executive branch has better information and therefore better¶ ability to discern the dangers of action or inaction, and that quick and decisive military¶ moves are often required to deal with security crises.156 If we are interested in these sorts of functional arguments, then reframing the¶ inquiry to include threatened force prompts critical questions whether such checks also¶ contribute to or detract from effective deterrence and coercive diplomacy and therefore¶ positively or negatively affect the likelihood of achieving aims without resort to war.¶ Here, recent political science provides some reason for optimism, though the scholarship¶ in this area is neither yet well developed nor conclusive. To be sure, “soundness” of policy with respect to force is heavily laden with¶ normative assumptions about war and the appropriate role for the United States in the¶ broader international security system, so it is difficult to assess the merits and¶ disadvantages of constitutional allocations in the abstract. That said, whatever their¶ specific assumptions about appropriate uses of force in mind, constitutional war powers¶ scholars usually evaluate the policy advantages and dangers of decision-making¶ allocations narrowly in terms of the costs and outcomes of actual military engagements¶ with adversaries. The importance of credibility to strategies of threatened force adds important new¶ dimensions to this debate. On the one hand, one might intuitively expect that robust democratic checks would generally be ill-suited for coercive threats and negotiations –¶ that institutional centralization and secrecy of decision-making might better equip nondemocracies¶ to wield threats of force. As Quincy Wright speculated in 1944, autocracies¶ “can use war efficiently and threats of war even more efficiently” than democracies,157¶ especially the American democracy in which vocal public and congressional opposition¶ may undermine threats.158 Moreover, proponents of democratic checks on war powers¶ usually assume that careful deliberation is a virtue in preventing unnecessary wars, but¶ strategists of deterrence and coercion observe that perceived irrationality is sometimes¶ important in conveying threats: “don’t test me, because I might just be crazy enough to¶ do it!”159 On the other hand, some political scientists have recently called into question this¶ view and concluded that the institutionalization of political contestation and some¶ diffusion of decision-making power in democracies of the kind described in the previous¶ section make threats to use force rare but especially credible and effective in resolving¶ international crises without actual resort to armed conflict. In other words, recent¶ arguments in effect turn some old claims about the strategic disabilities of democracies¶ on their heads: whereas it used to be generally thought that democracies were ineffective¶ in wielding threats because they are poor at keeping secrets and their decision-making is¶ constrained by internal political pressures, a current wave of political science accepts this¶ basic description but argues that these democratic features are really strategic virtues.160 Rationalist models of crisis bargaining between states assume that because war is¶ risky and costly, states will be better off if they can resolve their disputes through¶ bargaining rather than by enduring the costs and uncertainties of armed conflict.161¶ Effective bargaining during such disputes – that which resolves the crisis without a resort¶ to force – depends largely on states’ perceptions of their adversary’s capacity to wage an¶ effective military campaign and its willingness to resort to force to obtain a favorable¶ outcome. A state targeted with a threat of force, for example, will be less willing to resist¶ the adversary’s demands if it believes that the adversary intends to wage and is capable of¶ waging an effective military campaign to achieve its ends. In other words, if a state¶ perceives that the threat from the adversary is credible, that state has less incentive to¶ resist such demands if doing so will escalate into armed conflict. The accuracy of such perceptions, however, is often compromised by¶ informational asymmetries that arise from private information about an adversary’s¶ relative military capabilities and resolve that prevents other states from correctly¶ assessing another states’ intentions, as well as by the incentives states have to¶ misrepresent their willingness to fight – that is, to bluff.162 Informational asymmetries¶ increase the potential for misperception and thereby make war more likely; war,¶ consequentially, can be thought of in these cases as a “bargaining failure.”163 Some political scientists have argued in recent decades – contrary to previously common wisdom – that features and constraints of democracies make them better suited than non-democracies to credibly signal their resolve when they threaten force. To bolster their bargaining position, states will seek to generate credible signals of their resolve by taking actions that can enhance the credibility of such threats, such as mobilizing military forces or making “hand-tying” commitments from which leaders cannot back down without suffering considerable political costs domestically.164 These domestic audience costs, according to some political scientists, are especially high for leaders in democratic states, where they may bear these costs at the polls.165 Given the potentially high domestic political and electoral repercussions democratic leaders face from backing down from a public threat, they have considerable incentives to refrain from bluffing. An adversary that understands these political vulnerabilities is thereby more likely to perceive the threats a democratic leader does issue as highly credible, in turn making it more likely that the adversary will yield.166 Other scholars have recently pointed to the special role of legislative bodies in signaling with regard to threatened force. This is especially interesting from the perspective of constitutional powers debates, because it posits a distinct role for Congress – and, again, one that does not necessarily rely on Congress’s ability to pass binding legislation that formally confines the President. Kenneth Schultz, for instance, argues that the open nature of competition within democratic societies ensures that the interplay of opposing parties in legislative bodies over the use of force is observable not just to their domestic publics but to foreign actors; this inherent transparency within democracies – magnified by legislative processes – provides more information to adversaries regarding the unity of domestic opponents around a government’s military and foreign policy decisions.167 Political opposition parties can undermine the credibility of some threats by the President to use force if they publicly voice their opposition in committee hearings, public statements, or through other institutional mechanisms. Furthermore, legislative processes – such as debates and hearings – make it difficult to conceal or misrepresent preferences about war and peace. Faced with such institutional constraints, Presidents will incline to be more selective about making such threats and avoid being undermined in that way.168 This restraining effect on the ability of governments to issue threats simultaneously makes those threats that the government issues more credible, if an observer assumes that the President would not be issuing it if he anticipated strong political opposition. Especially when members of the opposition party publicly support an executive’s threat to use force during a crisis, their visible support lends additional credibility to the government’s threat by demonstrating that political conditions domestically favor the use of force should it be necessary.169 In some cases, Congress may communicate greater willingness than the president to use force, for instance through non-binding resolutions.170 Such powerful signals of resolve should in theory make adversaries more likely to back down. The credibility-enhancing effects of legislative constraints on threats are subject to dispute. Some studies question the assumptions underpinning theories of audience costs – specifically the idea that democratic leaders suffer domestic political costs to failing to make good on their threats, and therefore that their threats are especially credible171 – and others question whether the empirical data supports claims that democracies have credibility advantages in making threats.172 Other scholars dispute the likelihood that leaders will really be punished politically for backing down, especially if the threat was not explicit and unambiguous or if they have good policy reasons for doing so.173 Additionally, even if transparency in democratic institutions allows domestic dissent from threats of force to be visible to foreign audiences, it is not clear that adversaries would interpret these mechanisms as political scientists expect in their models of strategic interaction, in light of various common problems of misperception in international relations.174 These disputes are not just between competing theoretical models but also over the links between any of the models and real-world political behavior by states. At this point there remains a dearth of good historical evidence as to how foreign leaders interpret political maneuvers within Congress regarding threatened force. Nevertheless, at the very least, strands of recent political science scholarship cast significant doubt on the intuition that democratic checks are inherently disadvantageous to strategies of threatened force. Quite the contrary, they suggest that legislative checks – or, indeed, even the signaling functions that Congress is institutionally situated to play with respect to foreign audiences interpreting U.S. government moves – can be harnessed in some circumstances to support such strategies. C. Legal Reform and Strategies of Threatened Force Among legal scholars of war powers, the ultimate prescriptive question is whether the President should be constrained more formally and strongly than he currently is by legislative checks, especially a more robust and effective mandatory requirement of congressional authorization to use force. Calls for reform usually take the form of narrowing and better enforcement (by all three branches of government) of purported constitutional requirements for congressional authorization of presidential uses of force or revising and enforcing the War Powers Resolutions or other framework legislation requiring express congressional authorization for such actions.175 As applied to strategies of threatened force, generally under these proposals the President would lack authority to make good on them unilaterally (except in whatever narrow circumstances for which he retains his own unilateral authority, such as deterring imminent attacks on the United States). Whereas legal scholars are consumed with the internal effects of war powers law, such as whether and when it constrains U.S. government decision-making, the analysis contained in the previous section shifts attention externally to whether and when U.S. law might influence decision-making by adversaries, allies, and other international actors. In prescriptive terms, if the President’s power to use force is linked to his ability to threaten it effectively, then any consideration of war powers reform on policy outcomes and longterm interests should include the important secondary effects on deterrent and coercive strategies – and how U.S. legal doctrine is perceived and understood abroad.176 Would stronger requirements for congressional authorization to use force reduce a president’s opportunities for bluffing, and if so would this improve U.S. coercive diplomacy by making ensuing threats more credible? Or would it undermine diplomacy by taking some threats off the table as viable policy options? Would stronger formal legislative powers with respect to force have significant marginal effects on the signaling effects of dissent within Congress, beyond those effects already resulting from open political discourse? These are difficult questions, but the analysis and evidence above helps generate some initial hypotheses and avenues for further research and analysis. One might ask at this point why, though, having exposed as a hole in war powers legal discourse the tendency to overlook threatened force, this Article does not take up whether Congress should assert some direct legislative control of threats – perhaps statutorily limiting the President’s authority to make them or establishing procedural conditions like presidential reporting requirements to Congress. This Article puts such a notion aside for several reasons. First, for reasons alluded to briefly above, such limits would be very constitutionally suspect and difficult to enforce.177 Second, even the most ardent war-power congressionalists do not contemplate such direct limits on the President’s power to threaten; they are not a realistic option for reform. Instead, this Article focuses on the more plausible – and much more discussed – possibility of strengthening Congress’s power over the ultimate decision whether to use force, but augments the usual debate over that question with appreciation for the importance of credible threats. A claim previously advanced from a presidentialist perspective is that stronger legislative checks on war powers is harmful to coercive and deterrent strategies, because it establishes easily-visible impediments to the President’s authority to follow through on threats. This was a common policy argument during the War Powers Resolution debates in the early 1970s. Eugene Rostow, an advocate inside and outside the government for executive primacy, remarked during consideration of legislative drafts that any serious restrictions on presidential use of force would mean in practice that “no President could make a credible threat to use force as an instrument of deterrent diplomacy, even to head off explosive confrontations.”178 He continued: In the tense and cautious diplomacy of our present relations with the Soviet Union, as they have developed over the last twenty-five years, the authority of the President to set clear and silent limits in advance is perhaps the *most* important of all the powers in our constitutional armory to prevent confrontations that could carry nuclear implications. … [I]t is the diplomatic power the President needs most under the circumstance of modern life—the power to make a credible threat to use force in order to prevent a confrontation which might escalate.179 In his veto statement on the War Powers Resolution, President Nixon echoed these concerns, arguing that the law would undermine the credibility of U.S. deterrent and coercive threats in the eyes of both adversaries and allies – they would know that presidential authority to use force would expire after 60 days, so absent strong congressional support they could assume U.S. withdrawal at that point.180 In short, those who oppose tying the president’s hands with mandatory congressional authorization requirements to use force sometimes argue that doing so incidentally and dangerously ties his hands in threatening it. A critical assumption here is that presidential flexibility, preserved in legal doctrine, enhances the credibility of presidential threats to escalate.

## 1NC Case

### Solvency

#### The broader US legal system has tanked

Jonathan Turley 10, the Shapiro Professor of Public Interest Law at George Washington University, member of USA TODAY's Board of Contributors, 6/14/10, “Do laws even matter today?,” http://usatoday30.usatoday.com/news/opinion/forum/2010-06-15-column15\_ST\_N.htm

Though I am a critic of the Arizona law, I do not view its supporters in such one-dimensional terms. Indeed, I do not view the public response in purely immigration terms. Whether it is illegal immigration or the mortgage crisis or corporate bailouts, there seems to be a growing sense among many citizens that they are expected to play by the rules while others are exempt.¶ With polls showing about 60% of people supporting the Arizona law and almost half supporting similar laws in their states, it is implausible to suggest that all these people are racists or extremists — let alone fascists. Notably, a majority of Americans also opposed the bank bailouts and mortgage forgiveness. In each of these controversies, there is a sense that the government was stepping in to protect people from the consequences of their actions.¶ In the mortgage crisis, tens of thousands of people accepted high-risk, low-interest loans while other citizens either declined to buy homes or agreed to higher monthly payments to avoid such deals. When Congress intervened with mortgage relief, some of those who had acted responsibly wondered whether they acted stupidly by rejecting low rates and later federal support.¶ Bailouts and immigration¶ Then there were the corporate bailouts. For citizens to secure a loan, they have to meet exacting terms and disclosures. Yet, when banks and firms concealed risks or engaged in financial wrongdoing, Congress bailed them out and allowed their executives to reap fat bonuses. The laws on fraud and deceptive practices simply did not seem to apply to them. Just as several companies were declared "too big to fail," many of their executives appeared too big to lose money — unlike the millions of citizens burned by their business practices.¶ Those prior controversies coalesced with the immigration debate. The last time Congress granted amnesty to illegal immigrants was 1986 — and it was criticized at the time for rewarding those who had evaded deportation. Complaints over the lack of federal enforcement had been percolating for years but exploded along Arizona's long desert border. When a law mandated state enforcement of federal laws, the Obama administration moved to block it.¶ Indeed, high-ranking Obama officials such as John Morton, head of the Immigration and Customs Enforcement, have suggested that they might refuse to deport those arrested under the Arizona law. While we continue to tell millions around the world that they must wait for years to immigrate legally, Congress and the White House are considering a new amnesty proposal to benefit an additional 11 million illegal immigrants.¶ In each of these areas, the perception is that the law says one thing but actually means different things for different people. It is a dangerous perception, and it is not entirely unfounded. Such double-standards have become common as Congress and presidents seek to avoid unpopular legal problems.¶ •Torture: While acknowledging that waterboarding is torture and that torture violates domestic and international law, President Obama and members of Congress have barred any investigation or prosecution of those crimes.¶ •Pollution: While citizens are subject to pay for the full damage they cause to their neighbors and are routinely fined for their environmental damage for everything from dumping in rivers to leaf burning, Congress capped the liability for massive corporations such as BP and Exxon at a ridiculous $75 million. Though BP is likely to spend much more in litigation (particularly if prosecuted criminally), the current law requires citizens to pay the full cost of their environmental damage while capping the costs for companies producing massive destruction.¶ •Privacy: When the telecommunications companies found themselves on the losing end of citizen suits over the violation of privacy laws, Congress (including then-Sen. Obama) and President Bush simply changed the law to legislatively kill the citizen suits and protect the companies.¶ An arbitrary system¶ The message across these areas is troubling. To paraphrase Animal Farm, all people are equal, but some people are more equal than others.¶ A legal system cannot demand the faith and fealty of the governed when rules are seen as arbitrary and deceptive. Our leaders have led us not to an economic crisis or an immigration crisis or an environmental crisis or a civil liberties crisis. They have led us to a crisis of faith where citizens no longer believe that laws have any determinant meaning. It is politics, not the law, that appears to drive outcomes — a self-destructive trend for a nation supposedly defined by the rule of law.

#### No chance the Courts enforce I-Law

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

Foreign affairs legalists make sweeping claims about the American judiciary's promotion of international law, but the support for these claims is weak. In this section, we discuss some examples of contributions to international law by Congress, the courts and the executive. We then evaluate the institutional capacities and incentives of the different branches to promote international law. As we will show, the evidence points to the executive, not the judiciary, as the branch most responsible for advancing international law.

[\*528]

1. The American Judiciary's Contribution to International Law

Foreign affairs legalists celebrate the American judiciary's contributions to international law, but they can only point to a few concrete accomplishments. A handful of judge-made doctrines put limited pressure on the political branches to comply with international law. For example, the Charming Betsy canon makes it more difficult for Congress to pass a statute that violates international law by requiring Congress to be clearer than it would otherwise be. n101 International comity rules, in limited circumstances, avoid violations of international jurisdictional law that suggest that certain types of disputes are best resolved in the state with the most contacts to the litigation. n102 The federal courts' admiralty jurisprudence has developed in tandem with admiralty cases in other states, and in this way it could be considered a contribution to international law. One could also point to the willingness of the federal courts to suspend federalism constraints in order to enforce treaties in cases like Missouri v. Holland, n103 but these cases are weak and inconsistent. n104

Moreover, the empirical literature regarding the judiciary's support of international law is thin. Benvenisti cites a handful of cases that suggest that national courts - mainly in developing countries - have used international law in an effort to constrain their executives. n105 Koh also cites a very small number of cases n106 - his best examples are American ATS cases, which we discuss below. n107 Slaughter rests much of her argument on the rise of international judicial conferences, where judges from different countries meet and exchange ideas. n108 She does not provide evidence that these conferences have affected judicial outcomes. Another possibility is that judges enjoy meeting each other and learning about foreign judicial decisions, but they do not, as a matter of pragmatics or principle, allow what they learn to affect the way that they decide cases. n109

In contrast, many court decisions and judge-made doctrines cut against the claims of foreign affairs legalism. The early decision in Foster [\*529] v. Neilson n110 to distinguish between self-executing and non-self-executing treaties, n111 recently reaffirmed in Medellin v. Texas, n112 ensures that many treaties cannot be judicially enforced. These rules have been reinforced by the reluctance to find judicially enforceable rights even in treaties that are self-executing. The tradition of executive deference also limits the judiciary's ability to contribute to international law. The judiciary generally follows the executive's lead instead of pushing the executive toward greater international engagement. In treaty interpretation cases, courts frequently defer to the executive. n113

On questions of international law - the area most important to foreign affairs legalists - the judiciary's record is poor. In the notable federal common law case The Paquete Habana, n114 the Supreme Court made clear that the executive could unilaterally decide that the United States would not comply with CIL, in which case the victims of the legal violation would have had no remedy. n115 Courts have held that both the executive and Congress have the authority to violate international law n116 and that violations of international law cannot be a basis for federal-question jurisdiction. n117 For example, the Supreme Court found that an illegal, extrajudicial abduction that circumvented the terms of an international extradition treaty did not preclude a U.S. trial court's jurisdiction over the abductee. n118

The Supreme Court's treatment of international law in Medellin v. Texas n119 is also instructive. Here, the Court held that the Vienna Convention [\*530] on Consular Relations n120 was not self-executing or judicially enforceable in U.S. courts. n121 That case involved a Mexican national who had been deprived of his right to consular notification under the Convention after he was arrested. He was later sentenced to death. n122 The International Court of Justice held that the United States violated international law by failing to provide the Mexican national with access to his consulate. n123 What is striking in the Medellin context is that not only did the Supreme Court refuse to intervene in order to vindicate rights under international law (earlier, it had held that the ICJ judgment was not binding on U.S. courts), n124 but it also prevented President Bush from vindicating those rights. n125 Bush had tried to order state courts to take account of the ICJ ruling, but the Supreme Court held that he did not have the power to do so. n126

### Credibility

#### No warming now – computer models are exaggerated and alarmism is used for funding

**WSJ 12** (Wall Street Journal 1/19/12, “No Need to Panic About Global Warming” <http://online.wsj.com/article/SB10001424052970204301404577171531838421366.html>)

\*The following has been signed by the 16 scientists with the following credentials: Claude Allegre, former director of the Institute for the Study of the Earth, University of Paris; J. Scott Armstrong, cofounder of the Journal of Forecasting and the International Journal of Forecasting; Jan Breslow, head of the Laboratory of Biochemical Genetics and Metabolism, Rockefeller University; Roger Cohen, fellow, American Physical Society; Edward David, member, National Academy of Engineering and National Academy of Sciences; William Happer, professor of physics, Princeton; Michael Kelly, professor of technology, University of Cambridge, U.K.; William Kininmonth, former head of climate research at the Australian Bureau of Meteorology; Richard Lindzen, professor of atmospheric sciences, MIT; James McGrath, professor of chemistry, Virginia Technical University; Rodney Nichols, former president and CEO of the New York Academy of Sciences; Burt Rutan, aerospace engineer, designer of Voyager and SpaceShipOne; Harrison H. Schmitt, Apollo 17 astronaut and former U.S. senator; Nir Shaviv, professor of astrophysics, Hebrew University, Jerusalem; Henk Tennekes, former director, Royal Dutch Meteorological Service; Antonio Zichichi, president of the World Federation of Scientists, Geneva.

A candidate for public office in any contemporary democracy may have to consider what, if anything, to do about "global warming." Candidates should understand that the oft-repeated claim that nearly all scientists demand that something dramatic be done to stop global warming is not true. In fact, a large and growing number of distinguished scientists and engineers do not agree that drastic actions on global warming are needed. In September, Nobel Prize-winning physicist Ivar Giaever, a supporter of President Obama in the last election, publicly resigned from the American Physical Society (APS) with a letter that begins: "I did not renew [my membership] because I cannot live with the [APS policy] statement: 'The evidence is incontrovertible: Global warming is occurring. If no mitigating actions are taken, significant disruptions in the Earth's physical and ecological systems, social systems, security and human health are likely to occur. We must reduce emissions of greenhouse gases beginning now.' In the APS it is OK to discuss whether the mass of the proton changes over time and how a multi-universe behaves, but the evidence of global warming is incontrovertible?" In spite of a multidecade international campaign to enforce the message that increasing amounts of the "pollutant" carbon dioxide will destroy civilization, large numbers of scientists, many very prominent, share the opinions of Dr. Giaever. And the number of scientific "heretics" is growing with each passing year. The reason is a collection of stubborn scientific facts. Perhaps the most inconvenient fact is the lack of global warming for well over 10 years now. This is known to the warming establishment, as one can see from the 2009 "Climategate" email of climate scientist Kevin Trenberth: "The fact is that we can't account for the lack of warming at the moment and it is a travesty that we can't." But the warming is only missing if one believes computer models where so-called feedbacks involving water vapor and clouds greatly amplify the small effect of CO2. The lack of warming for more than a decade—indeed, the smaller-than-predicted warming over the 22 years since the U.N.'s Intergovernmental Panel on Climate Change (IPCC) began issuing projections—suggests that computer models have greatly exaggerated how much warming additional CO2 can cause. Faced with this embarrassment, those promoting alarm have shifted their drumbeat from warming to weather extremes, to enable anything unusual that happens in our chaotic climate to be ascribed to CO2. Alarmism over climate is of great benefit to many, providing government funding for academic research and a reason for government bureaucracies to grow. Alarmism also offers an excuse for governments to raise taxes, taxpayer-funded subsidies for businesses that understand how to work the political system, and a lure for big donations to charitable foundations promising to save the planet. Lysenko and his team lived very well, and they fiercely defended their dogma and the privileges it brought them. Speaking for many scientists and engineers who have looked carefully and independently at the science of climate, we have a message to any candidate for public office: There is no compelling scientific argument for drastic action to "decarbonize" the world's economy. Even if one accepts the inflated climate forecasts of the IPCC, aggressive greenhouse-gas control policies are not justified economically.

#### Warming won’t cause extinction

**Lomborg 8** – Director of the Copenhagen Consensus Center and adjunct professor at the Copenhagen Business School, Bjorn, “Warming warnings get overheated”, The Guardian, 8/15, <http://www.guardian.co.uk/commentisfree/2008/aug/15/carbonemissions.climatechange>

These alarmist predictions are becoming quite bizarre, and could be dismissed as sociological oddities, if it weren’t for the fact that they get such big play in the media. Oliver Tickell, for instance, writes that a global warming causing a 4C temperature increase by the end of the century would be a “catastrophe” and the beginning of the “extinction” of the human race. This is simply silly. His evidence? That 4C would mean that all the ice on the planet would melt, bringing the long-term sea level rise to 70-80m, flooding everything we hold dear, seeing billions of people die. Clearly, Tickell has maxed out the campaigners’ scare potential (because there is no more ice to melt, this is the scariest he could ever conjure). But he is wrong. Let us just remember that the UN climate panel, the IPCC, expects a temperature rise by the end of the century between 1.8 and 6.0C. Within this range, the IPCC predicts that, by the end of the century, sea levels will rise 18-59 centimetres – Tickell [he] is simply exaggerating by a factor of up to 400. Tickell will undoubtedly claim that he was talking about what could happen many, many millennia from now. But this is disingenuous. First, the 4C temperature rise is predicted on a century scale – this is what we talk about and can plan for. Second, although sea-level rise will continue for many centuries to come, the models unanimously show that Greenland’s ice shelf will be reduced, but Antarctic ice will increase even more (because of increased precipitation in Antarctica) for the next three centuries. What will happen beyond that clearly depends much more on emissions in future centuries. Given that CO2 stays in the atmosphere about a century, what happens with the temperature, say, six centuries from now mainly depends on emissions five centuries from now (where it seems unlikely non-carbon emitting technology such as solar panels will not have become economically competitive). Third, Tickell tells us how the 80m sea-level rise would wipe out all the world’s coastal infrastructure and much of the world’s farmland – “undoubtedly” causing billions to die. But to cause billions to die, it would require the surge to occur within a single human lifespan. This sort of scare tactic is insidiously wrong and misleading, mimicking a firebrand preacher who claims the earth is coming to an end and we need to repent. While it is probably true that the sun will burn up the earth in 4-5bn years’ time, it does give a slightly different perspective on the need for immediate repenting. Tickell’s claim that 4C will be the beginning of our extinction is again many times beyond wrong and misleading, and, of course, made with no data to back it up. Let us just take a look at the realistic impact of such a 4C temperature rise. For the Copenhagen Consensus, one of the lead economists of the IPCC, Professor Gary Yohe, did a survey of all the problems and all the benefits accruing from a temperature rise over this century of about approximately 4C. And yes, there will, of course, also be benefits: as temperatures rise, more people will die from heat, but fewer from cold; agricultural yields will decline in the tropics, but increase in the temperate zones, etc. The model evaluates the impacts on agriculture, forestry, energy, water, unmanaged ecosystems, coastal zones, heat and cold deaths and disease. The bottom line is that benefits from global warming right now outweigh the costs (the benefit is about 0.25% of global GDP). Global warming will continue to be a net benefit until about 2070, when the damages will begin to outweigh the benefits, reaching a total damage cost equivalent to about 3.5% of GDP by 2300. This is simply not the end of humanity. If anything, global warming is a net benefit now; and even in three centuries, it will not be a challenge to our civilisation. Further, the IPCC expects the average person on earth to be 1,700% richer by the end of this century.

#### Solving warming locks in a permanent Ice Age – outweighs the case

Hoyle 99 – former Director of The Institute of Astronomy at Cambridge (Fred, Chandra Wickramasinghe, Professor at Cardiff University and Honorary Professor at the University of Buckingham, July, “ON THE CAUSE OF ICE-AGES,” http://abob.libs.uga.edu/bobk/ccc/ce120799.html)

"The renewal of ice-age conditions would render a large fraction of the world's major food-growing areas inoperable, and so would inevitably lead to the extinction of most of the present human population. Since bolide impacts cannot be called up to order, we must look to a sustained greenhouse effect to maintain the present advantageous world climate. This implies the ability to inject effective greenhouse gases into the atmosphere, the opposite of what environmentalists are erroneously advocating." The greenhouse effect raises the Earth's temperature by about 40oC above what it would otherwise have been. Without the greenhouse effect the Earth would be locked into a permanent ice-age. This fact gives the lie to those renegade scientists, who in their anxiety to get their hands into the public purse, are seeking to persuade the public that the greenhouse effect is a bad thing greatly to be feared. The reverse is true. The greenhouse effect is an exceedingly good thing, without which those of us who happen to live in Britain would be buried under several hundreds of metres of ice. Water vapour and carbon dioxide are the main greenhouse gases. Carbon dioxide produces essentially the whole of its effect through absorption at infrared wavelengths from about 13.5mm to 17.5mm. Because the blocking by carbon dioxide over this interval is large, the band having steeply-falling wings, additions of carbon dioxide have only a second-order influence on the greenhouse effect and are inconsequential compared to the major factors which control the Earth's climate. The blocking effect of water vapour rises all the way from 17.5mm to almost 100mm. The wavelength 13.5mm is important in two respects. In the energy distribution of radiation emitted at ground and sea-level it marks the halfway point, one-half of the energy being at wavelengths shorter than 13.5mm and one-half at wavelengths longer. It also marks a division in the effectiveness of the blocking of greenhouse gases. Shortward of 13.5mm the blocking is comparatively weak, longward of 13.5mm it is strong, excepting for a partial window from 17.5mm to about 20mm. Shortward of 13.5mm there is a broad weak absorption from water vapour with its minimum in the region of 10mm, together with narrow bands from 03 and CH4. Of these, some current fuss is being made about CH4. But blocking by methane is somewhat shortward of 8mm, which is so far out on the short wavelength tail of the Earth's reradiated spectrum as also to be of no great consequence. Thus the Planck maximum for a reradiated spectrum of, say, an effective temperature 290K is at 17.6mm with respect to energy, and at 12.7mm with respect to maximum photon emission. Thus methane makes its contribution in a region of the reradiated spectrum where there is only 10 percent of the energy, for which reason fluctuations in atmospheric methane can produce only minor effects, like those produced by fluctuations of CO2. The gas that can produce major effects, and towards which one must therefore look for an understanding of large shifts of the Earth's climate, is water vapour. Without the greenhouse effect the Earth's mean temperature, averaged with respect to latitude, between day and night and between land and sea, is given by the formula T= [1.37 x 106 (1-A)/ac]l/4, where 1.37 x 106erg cm-2 s-1 is the solar energy flux outside the Earth, A is an averaged value for the Earth's albedo, c is the velocity of light, and a is the radiation density constant, equal to 7.565 x 10-15 erg cm-3deg-4. Thus for an albedo of 0.4 one would have 245K, very cold indeed. It is known from model calculations of stellar atmospheres that the situation becomes complex and difficult when opacity sources are highly wavelength dependent, as they are for the terrestrial greenhouse effect. The same must arise here so that it seems desirable to seek an approximation with the virtue of physical rectitude rather than to set up a supposedly accurate computation in which approximations of uncertain physical validity are nevertheless made in the end. Owing to the fortunate circumstance that the wavelength 13.5mm has the special properties described above, such a useful approximation lies immediately to hand. Suppose the half of the reradiated energy longward of 13.5mm to be completely blocked by the heavy opacity of the greenhouse gases and suppose the half shortward of 13.5mm to be completely free to escape. Then it is easy to see that the greenhouse effect must raise the Earth's mean temperature by 21/4 above what it would otherwise be, about 292K instead of 245K, a result agreeing very well with experience. One can see that the weak blocking which actually takes place shortward of 13.5mm is approximately compensated by the partial window from 17.5mm to 20mm. With a first approximation that is evidently close to the truth it is possible to calculate the effects of changing individual greenhouse gases as fluctuations from this first approximation, thereby keeping close contact with physical reality. The above remarks concerning the opacity of water vapour refers to a so-called standard atmosphere which is taken to contain 1 cm cm-2 of precipitable water. Reducing the water content appreciably to only a few millimetres of precipitable water weakens the greenhouse, dropping the Earth's mean temperature (for the same A) to about 280K, which corresponds closely to what is required for ice-age conditions. The conclusion is therefore that reducing the average water content of the atmosphere to about a third of its present-day value, while maintaining the albedo, would produce an ice-age. Ice-age conditions were dry, dusty and cold. The great deposits of loess, wind-blown soil, in E. Europe and China, imply a climate that was dusty in the lower atmosphere, a situation implying a low precipitation rate. Low precipitation is not a handicap to the accumulation of large glaciers, which will grow even at annual precipitation rates as little as a few centimetres per year, provided the temperature is low enough to prevent summer melting. During the ice-ages the whole Earth was cooled, including the tropics. This is proved by glaciers extending down to about 10,000 feet on tropical mountains, mountains which at present do not hold glaciers, such as the mountains on the island of Hawaii. The need for the whole Earth to be appreciably cooled disposes of astronomical theories of the cause of ice-ages, in particular of the Milankovitch theory of small oscillations of the tilt of the Earth's rotation axis to the plane of the ecliptic, and of small oscillations in the eccentricity of the Earth's orbit. Neither of these effects produces any change in the amount of solar energy incident on the Earth and so could not lead to widespread cooling. Oscillations of tilt merely produce slight latitude variations in the incidence of solar energy, which are in any case much smaller than the transport in latitude of heat by atmospheric storms and ocean currents. Indeed the transport of oceanic heat towards the poles gives a far larger effect than would easily buffer slight latitude variations of insolation. Oscillations in eccentricity of the Earth's orbit produce small shifts of solar energy between one geographical hemisphere and the other, and so should tend to cool one hemisphere and warm the other. But ice-ages occur contemporaneously in both hemispheres, not alternatively, a disproof that was already well-understood more than half a century ago. Claims in favour of the astronomical theory, made from numerical computer studies, say more about the work of computer studies than they do about ice-ages. If we were to imagine such an atmospheric state being brought about today, evaporation from the relatively warm surface layers of the ocean would quickly resupply water vapour to a typical amount of 1 cm of precipitable water per cm2 and the cooling due to a reduced greenhouse effect would quickly be gone. Thus it is the heat of the ocean which saves us from the possibility of an immediate onset of ice-age conditions. Reckoning the heat of the ocean as being the energy content above freezing point, which can be thought of as available heat, almost all is contained in a surface layer with depth no greater than a few hundred metres, the amount being equivalent to a supply of sunlight over a time interval of a few years, say 3 to 5 years. It is because the ocean has this back storage of heat that we do not drop almost immediately into an ice-age. In distant geological periods the heat storage in the oceans was considerably greater than it is at present. Today the ocean bottom waters are close to freezing, whereas only 50 million years ago the bottom temperature was about 15'C and the available oceanic heat was then equivalent to a 50 year supply of sunlight. The difference has been caused by drifting continents, especially by the positioning of Antarctica and Greenland at or close to the poles. Melt water from arctic glaciers has gradually filled the lower ocean with water close to freezing, greatly reducing the margin of safety against ice-age conditions developing. This is why the past million years has been essentially a continuing ice-age, broken occasionally by short-lived interglacials. It is also why those who have engaged in lurid talk over an enhanced greenhouse effect raising the Earth's temperature by a degree or two should be seen as both demented and dangerous. The problem for the present swollen human species is of a drift back into an ice-age, not away from an ice-age. Manifestly, we need all the greenhouse we can get, even to the extent of the British Isles becoming good for the growing of vines. The present-day situation is best seen as one of neutral equilibrium unlike an ice-age which is a position of stable equilibrium. The present-day situation is one in which over relatively short intervals the world climate stays the way it is, but over longer intervals can be subject to drift. Looking through climatic records for the recent millennium the drift over a century or two is by 1-2oC. Drift from the present-day down by 10o C into an ice-age requires an excess of about ten downward steps over upward steps, say each step of 1o C. With a century between steps, random shifts would bring on the next ice-age in an interval of about 10,000 years, the typical length of an interglacial. Without some artificial means of giving positive feedback to the climate, such an eventual drift into ice-age conditions appears inevitable. All this is on the assumption of a fixed albedo, a point which now requires consideration. The remarkable feature of the Earth's albedo is that atmospheric water does not lift A close to unity. If even a very small fraction of even a very dry atmosphere were to condense into tiny ice crystals, this would happen. The mass exclusion coefficient, through the scattering back into space of sunlight, produced by dielectric crystals with radii of a few tenths of a micrometre, is about 3000 cm2 g-1 . Thus a condensation of only 0.1 percent of the water in a very dry atmosphere with only 1 mm of precipitable would yet contribute about 0.3 to A. Essentially no water must be condensed into ice crystals if A is to be appreciably less than unity. Otherwise the Earth would appear from the outside as an intensely bright white planet with an albedo even higher than Venus, while below the haze of ice crystals it would be exceedingly cold at ground-level. The saving grace is that ice crystals do not form in supersaturated water vapour except at very low temperatures, below say -50oC. For the Earth's emission into space of radiation at wavelengths longer than 20mm we can think of a photosphere at which the optical depth out into space is of order unity. If only radiation were involved in determining the water vapour temperature at this photosphere the temperature would be of order 290 t -1/4 where t was the optical depth from ground level up to the photosphere, suitably averaged at wavelengths longer than 20mm. In a typical atmosphere t would be about 19, leading to a photospheric temperature for water vapour (and hence for surrounding air) of as little as 163K, i.e. -110oC, far below that needed for ice crystal formation. The circumstance that ice crystals do not form profusely except under special conditions in Antarctica shows that calculating for radiation only cannot be correct. A convective transport of energy from ground-level to the water-vapour photosphere is required. This cannot be carried by air movements but must come from the upward transport of the latent heat of condensation of the water vapour itself. To keep the photospheric water vapour temperature above -50oC, and so to prevent ice crystal formation, the transport of water vapour must be such as would lead to an annual precipitation rate of about 50 cm. For comparison, the present-day world-wide average of the precipitation rate is about 80 cm of rain, sufficient to prevent ice crystal formation, but not by a wide margin. Let the world climate drift downward, however, sufficiently for the surface layers of the ocean to cool to the point where an annual average rainfall of 50 cm cannot be maintained and the consequent formation of an atmospheric haze of ice crystals would plunge the Earth immediately back into an ice-age.

#### No heg decline and no challengers

**Kaplan ‘11**, senior fellow – Center for a New American Security, and Kaplan, frmr. vice chairman – National Intelligence Council, (Robert D and Stephen S, “America Primed,” The National Interest, March/April)

But in spite of the seemingly inevitable and rapid diminution of U.S. eminence, to write America’s great-power obituary is beyond premature. The United States remains a highly capable power. Iraq and Afghanistan, as horrendous as they have proved to be—in a broad historical sense—are still relatively minor events that America can easily overcome. The eventual demise of empires like those of Ming China and late-medieval Venice was brought about by far more pivotal blunders. Think of the Indian Mutiny against the British in 1857 and 1858. Iraq in particular—ever so frequently touted as our turning point on the road to destruction—looks to some extent eerily similar. At the time, orientalists and other pragmatists in the British power structure (who wanted to leave traditional India as it was) lost some sway to evangelical and utilitarian reformers (who wanted to modernize and Christianize India—to make it more like England). But the attempt to bring the fruits of Western civilization to the Asian subcontinent was met with a violent revolt against imperial authority. Delhi, Lucknow and other Indian cities were besieged and captured before being retaken by colonial forces. Yet, the debacle did not signal the end of the British Empire at all, which continued on and even expanded for another century. Instead, it signaled the transition from more of an ad hoc imperium fired by a proselytizing lust to impose its values on others to a calmer and more pragmatic empire built on international trade and technology.1 There is no reason to believe that the fate of America need follow a more doomed course. Yes, the mistakes made in Iraq and Afghanistan have been the United States’ own, but, though destructive, they are not fatal. If we withdraw sooner rather than later, the cost to American power can be stemmed. Leaving a stable Afghanistan behind of course requires a helpful Pakistan, but with more pressure Washington might increase Islamabad’s cooperation in relatively short order. In terms of acute threats, Iran is the only state that has exported terrorism and insurgency toward a strategic purpose, yet the country is economically fragile and politically unstable, with behind-the-scenes infighting that would make Washington partisans blanch. Even assuming Iran acquires a few nuclear devices—of uncertain quality with uncertain delivery systems—the long-term outlook for the clerical regime is itself unclear. The administration must only avoid a war with the Islamic Republic. To be sure, America may be in decline in relative terms compared to some other powers, as well as to many countries of the former third world, but in absolute terms, particularly military ones, the United States can easily be the first among equals for decades hence. China, India and Russia are the only major Eurasian states prepared to wield military power of consequence on their peripheries. And each, in turn, faces its own obstacles on the road to some degree of dominance. The Chinese will have a great navy (assuming their economy does not implode) and that will enforce a certain level of bipolarity in the world system. But Beijing will lack the alliance network Washington has, even as China and Russia will always be—because of geography—inherently distrustful of one another. China has much influence, but no credible military allies beyond possibly North Korea, and its authoritarian regime lives in fear of internal disruption if its economic growth rate falters. Furthermore, Chinese naval planners look out from their coastline and see South Korea and a string of islands—Japan, Taiwan and Australia—that are American allies, as are, to a lesser degree, the Philippines, Vietnam and Thailand. To balance a rising China, Washington must only preserve its naval and air assets at their current levels. India, which has its own internal insurgency, is bedeviled by semifailed states on its borders that critically sap energy and attention from its security establishment, and especially from its land forces; in any case, India has become a de facto ally of the United States whose very rise, in and of itself, helps to balance China. Russia will be occupied for years regaining influence in its post-Soviet near abroad, particularly in Ukraine, whose feisty independence constitutes a fundamental challenge to the very idea of the Russian state. China checks Russia in Central Asia, as do Turkey, Iran and the West in the Caucasus. This is to say nothing of Russia’s diminishing population and overwhelming reliance on energy exports. Given the problems of these other states, America remains fortunate indeed. The United States is poised to tread the path of postmutiny Britain. America might not be an empire in the formal sense, but its obligations and constellation of military bases worldwide put it in an imperial-like situation, particularly because its air and naval deployments will continue in a post-Iraq and post-Afghanistan world. No country is in such an enviable position to keep the relative peace in Eurasia as is the United States—especially if it can recover the level of enduring competence in national-security policy last seen during the administration of George H. W. Bush. This is no small point. America has strategic advantages and can enhance its power while extricating itself from war. But this requires leadership—not great and inspiring leadership which comes along rarely even in the healthiest of societies—but plodding competence, occasionally steely nerved and always free of illusion.

#### Extinction from disease is impossible and ahistorical

**Posner 5** (Richard A., Judge U.S. Court of Appeals 7th Circuit, Professor Chicago School of Law, January 1, 2005, Skeptic, Altadena, CA, Catastrophe: Risk and Response, http://goliath.ecnext.com/coms2/gi\_0199-4150331/Catastrophe-the-dozen-most-significant.html#abstract)

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. The reason is improvements in medical science. But the comfort is a small one. Pandemics can still impose enormous losses and resist prevention and cure: the lesson of the AIDS pandemic. And there is always a lust time. That the human race has not yet been destroyed by germs created or made more lethal by modern science, as distinct from completely natural disease agents such as the flu and AIDS viruses, is even less reassuring. We haven't had these products long enough to be able to infer survivability from our experience with them. A recent study suggests that as immunity to smallpox declines because people am no longer being vaccinated against it, monkeypox may evolve into "a successful human pathogen," (9) yet one that vaccination against smallpox would provide at least some protection against; and even before the discovery of the smallpox vaccine, smallpox did not wipe out the human race. What is new is the possibility that science, bypassing evolution, will enable monkeypox to be "juiced up" through gene splicing into a far more lethal pathogen than smallpox ever was.

#### Extinction claims are hype

**Fitzpatrick ’10** Michael Fitzpatrick, General Practitioner @ Barton House Health Center, November 2010. “Pandemic Flu: Public Health and the Culture of Fear”

http://www.rsis.edu.sg/NTS/resources/research\_papers/NTS%20Working%20Paper2.pdf

Projections by leading public health officials of rates of disease and death from pandemic flu on a catastrophic scale had a major impact. While WHO experts such as Keiji Fukuda speculated that global death rates would be in the millions, if not tens of millions, television reports featured images of the 1918-19 pandemic and accounts of the devastating effects of that (historically unprecedented) viral pestilence.10 Patients fearful for their own healtn and that of their children, their elderly relatives, and family members with chronic illnesses sought medical advice and whatever preventative measures were available. There is however little evidence that raising awareness of the emerging threat of swine flu had any protective value. Given the rapid spread of the virus, it appears than none of the measures taken in the early 'containment' phase of the outbreak, such as more assiduous hand-washing, face masks, social distancing measures (school closures, etc.) and the provision of prophylactic antivirals to contacts had an appreciable effect on its spread. Pregnant women, deemed to be particularly at risk, were particularly susceptible to pandemic fears - and their anxieties were subsequently compounded by the development of vaccines that rival scaremongers claimed were unsafe. It soon emerged that early reports from Mexico provided unreliable figures for deaths resulting from swine flu and an uncertain number of cases of infection to use as a denominator with which to calculate the mortality rate. As it also became clear that most cases were mild, projections for the impact of the pandemic were steadily scaled down." In July, British authorities anticipated that 30 per cent of the population (19 million people) would become infected, with a complication rate of 15 per cent, a hospitalisation rate of 2 per cent and a death rate between 0.1 per cent and 0.35 per cent (between 19,000 and 65,000 people). By September the figure of 19,000 had become the worst-case scenario; the following month this was reduced to 1,000. In December, the official report on the mortality statistics for the first six months of the pandemic in England estimated a mortality rate of 0.026 per cent (138 confirmed deaths, and cases of swine flu in 1 per cent of the population), a rate substantially lower than the most optimistic scenario of six months earlier.12 The contrast with earlier influenza pandemics was dramatic: the death rate in 1918-19 was 2-3 per cent, and that in the less severe pandemics of 1957-58 and 1967-68 around 0.2 per cent. In the judgement of the Hine Report, ministers and officials placed excessive faith in mathematical modelling. They had come to regard this as 'hard, quantitative science' that could provide 'easily understandable figures' which had the aura of appearing 'scientifically very robust'.13 Though the mathematicians had warned, at the first pandemic planning meeting in April, that in the absence of reliable data their modelling capability was low, they were under pressure from the politicians to 'produce forecasts'. The high level of uncertainty surrounding these projections does not seem to have deterred the modellers from producing them or the politicians from projecting them into the public realm. The Hine Report observes that by the end of the first wave of swine flu cases in September, sufficient data were available to guarantee accurate modelling of the second wave. However, official statements still sought to warn against complacency about future dangers and did nothing to allay the anxieties provoked by earlier doomsday scenarios. The Hine Report is critical of the public promotion of 'reasonable worst-case scenarios', which imply 'a reasonably likely event', focusing in particular on CMO Professor Liam Donaldson's July statement. The report says: The English CMO's citing of the 'reasonable worst-case' planning assumption of 65,000 fatalities on 16 July 2009 was widely reported in headlines in somewhat alarmist terms.14 It seems unfair to blame the media for the alarmist tone of their reports, when it was echoed by the newly appointed health minister Andy Bumham, who told parliament that the swine flu pandemic could no longer be controlled and that there could be 100,000 cases a day by the end of August. It is striking that British authorities chose to promote such gloomy projections at a time when other prominent health figures had already declared such figures improbable. A month earlier, on the occasion of declaring the swine flu outbreak a global pandemic, WHO chief Margaret Chan had already recognised that most cases were mild and that she did not expect to see a sudden and dramatic jump in severe or fatal infections.15 While the Hine Report is generally highly congratulatory of the UK response to the swine flu pandemic, it suggests that the authorities may have adhered too strictly to the contingency plan they had developed over the previous decade to cope with the emergence of an influenza pandemic on the scale of the 1918-19 outbreak. As a result they 'did not consider sufficiently the possibility that a pandemic might be far less severe' than the one envisioned in that contingency plan. Their response was 'tailored to the plan, not the nature of the virus' and thus lacked flexibility. The report tentatively suggests that the authorities might consider as an alternative approach, a policy of preparing for the most likely outcome, while being prepared to monitor and change tack as necessary. The alarmist response to the swine flu outbreak reflects the wider trend of the past decade in which 'crying wolf has emerged as the appropriate official response to diverse real and imaginary threats, from the millennium bug to bioterrorism, obesity to global warming.'5 For the authorities, the over-riding principle is to avoid blame for unforeseen disasters, by always proclaiming the worst-case scenario and repeating the mantra 'prepare for the worst, hope for the best'. From this perspective, rational contingency planning gives way to scaremongering. Instead of making discreet preparations for probable, predictable emergencies (snow in winter, drought in summer), the authorities engage in speculation about the grimmest possible eventualities (massive loss of life resulting from disease or climate change) with the aim of promoting more responsible behaviour and healthier lifestyles.17 Rather than communicating realistic assessments of risk to the public, the authorities engage in sharing their anxieties and promoting fears. Instead of guiding practical professional interventions in response to real social problems, politicians and public health officials engage in dramatic posturing.

### Geneva

#### The worst case scenario happened – no extinction from CBWs

**Dove 12** [Alan Dove, PhD in Microbiology, science journalist and former Adjunct Professor at New York University, “Who’s Afraid of the Big, Bad Bioterrorist?” Jan 24 2012, http://alandove.com/content/2012/01/whos-afraid-of-the-big-bad-bioterrorist/]

The second problem is much more serious. Eliminating the toxins, we’re left with a list of infectious bacteria and viruses. With a single exception, these organisms are probably near-useless as weapons, and history proves it.¶ There have been at least three well-documented military-style deployments of infectious agents from the list, plus one deployment of an agent that’s not on the list. I’m focusing entirely on the modern era, by the way. There are historical reports of armies catapulting plague-ridden corpses over city walls and conquistadors trying to inoculate blankets with Variola (smallpox), but it’s not clear those “attacks” were effective. Those diseases tended to spread like, well, plagues, so there’s no telling whether the targets really caught the diseases from the bodies and blankets, or simply picked them up through casual contact with their enemies.¶ Of the four modern biowarfare incidents, two have been fatal. The first was the 1979 Sverdlovsk anthrax incident, which killed an estimated 100 people. In that case, a Soviet-built biological weapons lab accidentally released a large plume of weaponized Bacillus anthracis (anthrax) over a major city. Soviet authorities tried to blame the resulting fatalities on “bad meat,” but in the 1990s Western investigators were finally able to piece together the real story. The second fatal incident also involved anthrax from a government-run lab: the 2001 “Amerithrax” attacks. That time, a rogue employee (or perhaps employees) of the government’s main bioweapons lab sent weaponized, powdered anthrax through the US postal service. Five people died.¶ That gives us a grand total of around 105 deaths, entirely from agents that were grown and weaponized in officially-sanctioned and funded bioweapons research labs. Remember that.¶ Terrorist groups have also deployed biological weapons twice, and these cases are very instructive. The first was the 1984 Rajneeshee bioterror attack, in which members of a cult in Oregon inoculated restaurant salad bars with Salmonella bacteria (an agent that’s not on the “select” list). 751 people got sick, but nobody died. Public health authorities handled it as a conventional foodborne Salmonella outbreak, identified the sources and contained them. Nobody even would have known it was a deliberate attack if a member of the cult hadn’t come forward afterward with a confession. Lesson: our existing public health infrastructure was entirely adequate to respond to a major bioterrorist attack.¶ The second genuine bioterrorist attack took place in 1993. Members of the Aum Shinrikyo cult successfully isolated and grew a large stock of anthrax bacteria, then sprayed it as an aerosol from the roof of a building in downtown Tokyo. The cult was well-financed, and had many highly educated members, so **this** release over the world’s largest city really **represented a worst-case scenario**.¶ **Nobody got sick** or died. From the cult’s perspective, it was a complete and utter failure. Again, the only reason we even found out about it was a post-hoc confession. Aum members later demonstrated their lab skills by producing Sarin nerve gas, with far deadlier results. Lesson: one of the top “select agents” is extremely hard to grow and deploy even for relatively skilled non-state groups. It’s a really crappy bioterrorist weapon.¶ Taken together, these events point to an uncomfortable but inevitable conclusion: our biodefense industry is a far greater threat to us than any actual bioterrorists.

#### No impact to a biowar attack – Their studies are incomplete

Macfarlane 5 – MIT Security Studies Program (Allison, August, “All Weapons of Mass Destruction Are Not Equal,” MIT Center for International Studies, <http://web.mit.edu/cis/pdf/Audit_6_05_Macfarlane.pdf>) 12/20/12 K. Harris

Some experts consider biological and nuclear weapons to be the “true” weapons of mass destruction.15 The higher end of the lethality range of biological weapons is certainly in the realm of the threat posed by nuclear weapons, but the range itself is troubling. If a nuclear weapon goes off in a densely populated area, it will kill tens of thousands of people. It is not possible to make the same assertion for biological weapons. The extremely uncertain estimates of deaths from bioweapons rely on simulations that use limited datasets. For instance, one significant source of uncertainty is the lethality of the agent such as anthrax and modified (genetically or antibiotic-resistant) agents. These simulations describe worst-case scenarios and do not consider the ameliorating effects of defenses such as a good public health system. A bioweapon attack on the heart of a poor, overcrowded, third world city may indeed result in the high death rates suggested in some models. But is the United States as vulnerable? Hardly. It has an extensive public health system and has invested in biological weapons defenses. At this time, there is simply not enough data to suggest that biological weapons should occupy the same policy category as nuclear weapons.

# 2NC

## 2NC DA

### 2NC/1NR Overview

Disad outweighs the case –

#### Magnitude – lack of presidential authority to stabilization coalitions and international institutions increases the chances of escalation due to misinterpretation and miscalculation of attacks, including terrorism. That GREATLY lowers the threshold for nuclear weapons use – means we control escalation and miscalc ladder

Caves ’10, John P. Caves, Senior Research Fellow in the Center for the Study of Weapons of Mass Destruction at the National Defense University, “Avoiding a Crisis of Confidence in the U.S. Nuclear Deterrent”, <http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ada514285>

Perceptions of a compromised U.S. nuclear deterrent as described above would have profound policy implications, particularly if they emerge at a time when a nucleararmed great power is pursuing a more aggressive strategy toward U.S. allies and partners in its region in a bid to enhance its regional and global clout. ■ A dangerous period of vulnerability would open for the United States and those nations that depend on U.S. protection while the United States attempted to rectify the problems with its nuclear forces. As it would take more than a decade for the United States to produce new nuclear weapons, ensuing events could preclude a return to anything like the status quo ante. ■ The assertive, nuclear-armed great power, and other major adversaries, could be willing to challenge U.S. interests more directly in the expectation that the United States would be less prepared to threaten or deliver a military response that could lead to direct conflict. They will want to keep the United States from reclaiming its earlier power position. ■ Allies and partners who have relied upon explicit or implicit assurances of U.S. nuclear protection as a foundation of their security could lose faith in those assurances. They could compensate by accommodating U.S. rivals, especially in the short term, or acquiring their own nuclear deterrents, which in most cases could be accomplished only over the mid- to long term. A more nuclear world would likely ensue over a period of years. ■ Important U.S. interests could be compromised or abandoned, or a major war could occur as adversaries and/or the United States miscalculate new boundaries of deterrence and provocation. At worst, war could lead to state-on-state employment of weapons of mass destruction (WMD) on a scale far more catastrophic than what nuclear-armed terrorists alone could inflict. Continuing Salience of Nuclear Weapons Nuclear weapons, like all instruments of national security, are a means to an end— national security—rather than an end in themselves. Because of the catastrophic destruction they can inflict, resort to nuclear weapons should be contemplated only when necessary to defend the Nation’s vital interests, to include the security of our allies, and/or in response to comparable destruction inflicted upon the Nation or our allies, almost certainly by WMD. The retention, reduction, or elimination of nuclear weapons must be evaluated in terms of their contribution to national security, and in particular the extent to which they contribute to the avoidance of circumstances that would lead to their employment. Avoiding the circumstances that could lead to the employment of nuclear weapons involves many efforts across a broad front, many outside the military arena. Among such efforts are reducing the number of nuclear weapons to the level needed for national security; maintaining a nuclear weapons posture that minimizes the likelihood of inadvertent, unauthorized, or illconsidered use; improving the security of existing nuclear weapons and related capabilities; reducing incentives and closing off avenues for the proliferation of nuclear and other WMD to state and nonstate actors, including with regard to fissile material production and nuclear testing; enhancing the means to detect and interdict the transfer of nuclear and other WMD and related materials and capabilities; and strength ening our capacity to defend against nuclear and other WMD use. For as long as the United States will depend upon nuclear weapons for its national security, those forces will need to be reliable, adequate, and credible. Today, the United States fields the most capable strategic nuclear forces in the world and possesses globally recognized superiority in any conventional military battlespace. No state, even a nuclear-armed near peer, rationally would directly challenge vital U.S. interests today for fear of inviting decisive defeat of its conventional forces and risking nuclear escalation from which it could not hope to claim anything resembling victory. But power relationships are never static, and current realities and trends make the scenario described above conceivable unless corrective steps are taken by the current administration and Congress. Consider the challenge posed by China. It is transforming its conventional military forces to be able to project power and compete militarily with the United States in East Asia, 1 and is the only recognized nuclear weapons state today that is both modernizing and expanding its nuclear forces. 2 It weathered the 2008 financial crisis relatively well, avoiding a recession and already resuming robust economic growth. 3 Most economists expect that factors such as openness to foreign investment, high savings rates, infrastructure investments, rising productivity, and the ability to leverage access to a large and growing market in commercial diplomacy are likely to sustain robust economic growth for many years to come, affording China increasing resources to devote to a continued, broadbased modernization and expansion of its military capabilities. In contrast, the 2008 financial crisis was the most severe for the United States since the Great Depression, 4 and it led in 2009 to the largest Federal budget deficit—by far—since the Second World War 5 (much of which is financed by borrowing from China). Continuing U.S. military operations in Iraq and Afghanistan are expensive, as will be the necessary refurbishment of U.S. forces when those con flicts end. Those military expenses, however, are expected to be eclipsed by the burgeoning entitlement costs of the aging U.S. “baby boomer” generation. 6 As The Economist recently observed: China’s military build-up in the past decade has been as spectacular as its economic growth. . . . There are growing worries in Washington, DC, that China’s military power could challenge America’s wider military dominance in the region. China insists there is nothing to worry about. But even if its leadership has no plans to displace American power in Asia . . . America is right to fret this could change. 7 As an emerging nuclear-armed near peer like China narrows the wide military power gap that currently separates it from the United States, Washington could find itself more, rather than less, reliant upon its nuclear forces to deter and contain potential challenges from great power competitors. The resulting security dynamics may resemble the Cold War more than the U.S. “unipolar moment” of the 1990s and early 2000s. Concerns about Longterm Reliability With continuing U.S. dependence upon nuclear forces to deter conflict and contain challenges from (re-)emerging great power(s), perceptions of the reliability, adequacy, and credibility of those forces will determine how well they serve those purposes. Perception is all important when it comes to nuclear weapons, which have not been operationally employed since 1945 and not tested (by the United States) since 1992, and, hopefully, will never have to be employed or tested again. If U.S. nuclear forces are to deter other nuclear-armed great powers, the individual weapons must be perceived to work as intended (reliability), the overall forces must be perceived as adequate to deny the adversary the achievement of his goals regardless of his actions (adequacy), and U.S. leadership must be perceived as prepared to employ the forces under conditions that it has communicated via its declaratory policy (credibility) These perceptions must be, of course, those of the leadership of adversaries that we seek to deter (as well as of the allies that we seek to assure), but they also need to be those of the U.S. leadership lest our leaders fail to convey the confidence and resolve necessary to shape adversaries’ perceptions to achieve deterrence. Weapons reliability is the essential foundation for deterrence since there can be no adequacy or credibility without it.

#### Timeframe and Probability – decrease readiness and primacy triggers the perception of vulnerability and hampers war fighting capabilities

Zeisberg, ‘4 [Mariah Zeisberg, PhD in Politics from Princeton, Postdoc Research Associate at the Political Theory Project of Brown University; “INTERBRANCH CONFLICT AND CONSTITUTIONAL MAINTENANCE: THE CASE OF WAR POWERS”; June 2004; found in Word document, can be downloaded from [www.brown.edu/Research/ppw/files/Zeisberg%20Ch5.doc](http://www.brown.edu/Research/ppw/files/Zeisberg%20Ch5.doc)]

The first significant argument of pro-Presidency insularists is that flexibility is a prime value in the conduct of foreign affairs, and especially war. Implicit in this argument is the recognition that the executive is functionally superior to Congress in achieving flexibility and swiftness in war operations, a recognition I share. The Constitution cannot be meant to curtail the very flexibility that may be necessary to preserve the nation; and yet, according to the insularists, any general norm which would include Congress in decision-making about going to war could only undermine that flexibility. Writing on the War Powers Act, Eugene Rostow predicts that it would, “put the Presidency in a straightjacket of a rigid code, and prevent new categories of action from emerging, in response to the necessities of a tense and unstable world.” In fact, Rostow believes, “[t]he centralization of authority in the president is particularly crucial in matters of national defense, war, and foreign policy, where a unitary executive can evaluate threats, consider policy choices, and mobilize national resources with a speed and energy that is far superior to any other branch.” Pro-presidency insularists are fond of quoting Hamilton, who argued that “[o]f all the cares or concerns of government, the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand.” This need for flexibility, some insularists argue, is especially acute given modern conditions, where devastating wars can develop quickly. Today, “many foreign states have the power to attack U.S. forces - and some even the U.S. mainland - almost instantly,” and in such a world it is impracticable to require the President to seek advance authorization for hostilities. Such a requirement would simply be too risky to U.S. security. We furthermore face a nuclear age, and the system of deterrence that operates to contain that threat requires that a single person be capable of responding to nuclear attack with nuclear weapons immediately. Rostow writes, “the requirement for advance authorization would collapse the system of deterrence, making preemptive strikes by our enemies more likely.” Hence, “modern conditions” require the President to “act quickly, and often alone.” While this does not mean that Congress has no role to play in moments of crisis, it does mean that Congress should understand its role largely in terms of cooperating with the President to support his negotiations and decisions regarding relationships with foreign powers. Rostow writes, “Congress should be able to act effectively both before and after moments of crisis or potential crisis. It may join the President in seeking to deter crisis by publicly defining national policy in advance, through the sanctioning of treaties or other legislative declarations. Equally, Congress may participate formally in policymaking after the event through legislative authorization of sustained combat, either by means of a declaration of war, or through legislative action having more limited legal and political consequences. Either of these devices, or both in combination, should be available in situations where cooperation between the two branches is indicated at many points along an arc ranging from pure diplomacy at one end to a declaration of war at the other.” In other words, for Congress to understand itself as having any justifiable role in challenging executive security determinations, especially at moments of crisis, would be to undermine the strength that the executive requires in order to protect the nation. Conflict in this domain represents political degradation.

And it Turns Case –

#### It turns every impact

DUNN 2007 – PhD, former Assistant Director of the U.S. Arms Control and Disarmament Agency and Ambassador to the 1985 Nuclear Non- Proliferation Treaty Review Conference (Lewis Dunn, Proliferation Papers, “Deterrence Today: Roles, Challenges, and Responses.”)

On the one hand, among many U.S. defense experts and officials it has become almost a cliché to state that an alleged *asymmetry of stakes* between the United States (and/or other outsiders) and a regional nuclear power would make it much more difficult to provide credible nuclear security assurances along the lines suggested above. That purported asymmetry of stakes also is widely seen by those same experts and officials as putting the United States (or other outsiders) at a fundamental disadvantage in any crisis with a regional power and shifting the deterrence balance in its favor. Emphasis on the impact of a perceived asymmetry of stakes partly reflects a view that the intensity of the stakes in any given crisis or confrontation is dependent most on what has been called “the proximity effect”: stakes’ intensity is a function of geography. Concern about an asymmetry of stakes also gains support from the fact that a desire to deter the United States or other outsiders probably is one incentive motivating some new or aspiring nuclear . This line of argument should not be accepted at face value. To the contrary, in two different ways, the stakes for the United States (and other outsiders) in a crisis or confrontation with a regional nuclear adversary would be extremely high. To start, what is at stake is the likelihood of cascades of proliferation in Asia and the Middle East. Such proliferation cascades almost certainly would bring greater regional instability, global political and economic disruption, a heightened risk of nuclear conflict, and a jump in the risk of terrorist access to nuclear weapons. Equally important, nuclear blackmail let alone nuclear use against U.S. and other outsiders’ forces, those of U.S. regional allies and friends, or any of their homelands would greatly heighten the stakes for the United States and other outsiders. **Perceptions of** American **resolve** and credibility **around the globe**, the likelihood that an initial nuclear use would be followed by a virtual collapse of a six-decades’ plus nuclear taboo, and the danger of runaway proliferation all would be at issue. So viewed, how the United States and others respond is likely to have a far-reaching impact on their own security as well as longer term global security and stability.

#### Tie-breaker – strong alliances solve the use of WMD

ROSS 1999 - Douglas Ross, Professor of Political Science – Simon Fraser University, Winter 1998/1999, International Journal, Vol. 54, No. 1, “Canada’s Functional Isolationism And The Future Of Weapons Of Mass Destruction”, Lexis

Thus, an easily accessible tax base has long been available for spending much more on international security than recent governments have been willing to contemplate. Negotiating the landmines ban, discouraging trade in small arms, promoting the United Nations arms register are all worthwhile, popular activities that polish the national self-image. But they should all be supplements to, not substitutes for, a proportionately equitable commitment of resources to the management and prevention of international conflict – and thus the containment of the WMD threat. Future American governments will not ‘police the world’ alone. For almost fifty years the Soviet threat compelled disproportionate military expenditures and sacrifice by the United States. That world is gone. Only by enmeshing the capabilities of the United States and other leading powers in a co-operative security management regime where the burdens are widely shared does the world community have any plausible hope of avoiding warfare involving nuclear or other WMD.

### Uniqueness

#### Exec flexibility on detention powers now

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President Obama signed the NDAA "despite having serious reservations with certain provisions that regulate the detention, interrogation, and prosecution of suspected terrorists." n114 While the Administration voiced concerns throughout the legislative process, those concerns were addressed and ultimately resulted in a bill that preserves the flexibility needed to adapt to changing circumstances and upholds America's values. The President reiterated his support for language in Section 1021 making clear that the new legislation does not limit or expand the scope of Presidential authority under the AUMF or affect existing authorities "relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States." n115¶ The President underscored his Administration "will not authorize the indefinite military detention without trial of American citizens" and will ensure any authorized detention "complies with the Constitution, the laws of war, and all other applicable law." n116 Yet understanding fully the Administration's position requires recourse to its prior insistence that the Senate Armed Services Committee remove language in the original bill which provided that U.S. citizens and lawful resident aliens captured in the United States would not be subject to Section 1021. n117 There appears to be a balancing process at work here. On the one hand, the Administration is in lock-step with Congress that the NDAA should neither expand nor diminish the President's detention authority. On the other hand, policy considerations led the President to express an intention to narrowly exercise this detention authority over American citizens.¶ The overriding point is that the legislation preserves the full breadth and depth of detention authority existent in the AUMF, to include the detention of American citizens who join forces with Al Qaida. This is a dynamic and changing conflict. If a home-grown terrorist destroys a U.S. target, the FBI gathers the evidence, and a U.S. Attorney prosecutes, traditional civilian criminal laws govern, and the military detention authority resident in the NDAA need never come into play. This is a reasonable and expected outcome in many cases. The pending strike on rail targets posited in this paper's introduction, where intelligence sources reveal an inchoate attack involving American and foreign nationals operating overseas and at home, however, may be precisely the type of scenario where military detention is not only preferred but vital to thwarting the attack, conducting interrogations about known and hidden dangers, and preventing terrorists from continuing the fight.

### A2 Syria Thumper

**Obama power-played Syrian intervention – their thumper is wrong**

Balkin 9/3/13 - law professor at Yale University (Jack, What Congressional Approval Won't Do: Trim Obama's Power or Make War Legal, [www.theatlantic.com/politics/archive/2013/09/what-congressional-approval-wont-do-trim-obamas-power-or-make-war-legal/279298/](http://www.theatlantic.com/politics/archive/2013/09/what-congressional-approval-wont-do-trim-obamas-power-or-make-war-legal/279298/))

One of the most misleading metaphors in the discussion of President Obama’s Syria policy is that the president has “boxed himself in” or has “painted himself into a corner.” These metaphors treat a president’s available actions as if they were physical spaces and limits on action as if they were physical walls. Such metaphors would make sense only if we also stipulated that Obama has the power to snap his fingers and create a door or window wherever he likes. The Syria crisis has not created a new precedent for limiting presidential power. To the contrary, it has offered multiple opportunities for increasing it. If Congress says no to Obama, it will not significantly restrain future presidents from using military force. At best, it will preserve current understandings about presidential power. If Congress says yes, it may bestow significant new powers on future presidents -- and it will also commit the United States to violating international law. For Obama plans to violate the United Nations Charter, and he wants Congress to give him its blessing. People who believe Obama has painted himself into a corner or boxed himself in might not remember that the president always has the option to ask Congress to authorize any military action he proposes, thus sharing the responsibility for decision if the enterprise goes sour. If Congress refuses, Obama can easily back away from any threats he has made against Syria, pointing to the fact that Congress would not go along. There is no corner. There is no box. Wouldn’t congressional refusal make the United States look weak, as critics including Senator John McCain warn loudly? Hardly. The next dictator who acts rashly will face a different situation and a different calculus. The UN Security Council or NATO may feel differently about the need to act. There may be a new threat to American interests that lets Obama or the next president offer a different justification for acting. It just won’t matter very much what Obama said about red lines in the past. World leaders say provocative things all the time and then ignore them. Their motto is: That was then, and this is now. If Congress turns him down, won’t Obama be undermined at home, as other critics claim? In what sense? It is hard to see how the Republicans could be less cooperative than they already are. And it’s not in the interest of Democrats to fault a president of their own party for acceding to what Congress wants instead of acting unilaterally. Some commentators argue (or hope) that whatever happens, Obama’s request for military authorization will be an important precedent that will begin to restore the constitutional balance between the president and Congress in the area of war powers. Don’t bet on it. By asking for congressional authorization in this case, Obama has not ceded any authority that he ­or any other president ­has previously asserted in war powers. Syria presents a case in which previous precedents did not apply. There is no direct threat to American security, American personnel, or American interests. There is no Security Council resolution to enforce. And there is no claim that America needs to shore up the credibility of NATO or another important security alliance. Nor does Obama have even the feeble justification that the Clinton Administration offered in Kosovo­: that congressional appropriations midway through the operation offered tacit and retroactive approval for the bombings. It is naive to think that the next time a president wants to send forces abroad without congressional approval, he or she will be deterred by the fact that Barack Obama once sought congressional permission to bomb Syria. If a president can plausibly assert that any of the previous justifications apply -- ­including those offered in the Libya intervention -- the case of Syria is easily distinguishable.

#### Link outweighs this thumper --- only the plan sets the precedent that hamstrings Obama

ATHERTON 8/31/13 - Popular Science defense tech writer (“American Presidents Don’t Ask for Permission Before Starting Wars”, https://medium.com/war-is-boring/5a8bf43a7367)

Broad language, and broader interpretations in the name of national defense have allowed both Pres. Bush and Pres. Barack Obama to wage a sweeping war with congressional authority. The AUMF “authorize[s] the use of United States armed forces against those responsible for the recent attacks launched against the United States,“ which is now treated as Al Qaeda or an Al Qaeda-affiliated terror group.

Not all the enemies of the United States are conveniently Al Qaeda affiliates, however. Invading Iraq required a separate authorization. When the United States decided to support a No Fly Zone protecting the rebellious Libyan city of Benghazi from a massacre at the hands of Libyan strongman Muammar Gaddafi, there was a U.N. Security Council resolution calling for it, and executive prerogative let it happen.

U.N. resolutions aren’t congressional approval, and presidents have gone to war without them in the past. The War Powers Resolution, passed following the Vietnam war and designed to check presidential war-making power, has been largely ignored by every executive since Pres. Richard Nixon’s veto was overturned and the law put into place. Every executive since 1973 has rejected the idea that the War Powers Resolution has binding authority over war powers, but presidents do tend to loosely follow the resolution’s requirement for submitting reports to Congress.

What is left to constrain the executive use of military force? Funding, pretty much exclusively.

The problem with this is that a president can bring the nation into war, put soldiers in harm’s way, and then make the case that the war needs to continue, all before Congress has a chance to vote on funding the war. Congress, then, is faced with something of a Sophie’s Choice: fund a war they don’t approve of, or face voters angry that they’d chose a political fight instead of feeding and supporting the troops.

For 2011’s intervention in Libya, the House tried to have it both ways: it passed the funding, but refused to authorize the mission. The problem is that funding is tacit authorization.

How long will the executive have this much control over war powers? Until an entire Congress is willing to make the case against funding a war, expect executive justifications to steamroll Congressional complaints. If Pres. Obama decides to involve the United States militarily in Syria, that will be *his* executive prerogative.

### Link

#### Reforms result in catastrophic terrorism---releases them and kills intel gathering

Goldsmith 2009, Henry L. Shattuck Professor at Harvard Law School (Jack Goldsmith, 2/4/09, “Long-Term Terrorist Detention and Our National Security Court,” http://www.brookings.edu/~/media/research/files/papers/2009/2/09%20detention%20goldsmith/0209\_detention\_goldsmith.pdf)

These three concerns challenge the detention paradigm. They do nothing to eliminate the need for detention to prevent detainees returning to the battlefield. But many believe that we can meet this need by giving trials to everyone we want to detain and then incarcerating them under a theory of conviction rather than of military detention. I disagree. For many reasons, it is too risky for the U.S. government to deny itself the traditional military detention power altogether, and to commit itself instead to try or release every suspected terrorist. ¶ For one thing, military detention will be necessary in Iraq and Afghanistan for the foreseeable future. For another, we likely cannot secure convictions of all of the dangerous terrorists at Guantánamo, much less all future dangerous terrorists, who legitimately qualify for non-criminal military detention. The evidentiary and procedural standards of trials, civilian and military alike, are much higher than the analogous standards for detention. With some terrorists too menacing to set free, the standards will prove difficult to satisfy. Key evidence in a given case may come from overseas and verifying it, understanding its provenance, or establishing its chain of custody in the manners required by criminal trials may be difficult. This problem is exacerbated when evidence was gathered on a battlefield or during an armed skirmish. The problem only grows when the evidence is old. And perhaps most importantly, the use of such evidence in a criminal process may compromise intelligence sources and methods, requiring the disclosure of the identities of confidential sources or the nature of intelligence-gathering techniques, such as a sophisticated electronic interception capability. ¶ Opponents of non-criminal detention observe that despite these considerations, the government has successfully prosecuted some Al Qaeda terrorists—in particular, Zacharias Moussaoui and Jose Padilla. This is true, but it does not follow that prosecutions are achievable in every case in which disabling a terrorist suspect represents a surpassing government interest. Moreover, the Moussaoui and Padilla prosecutions highlight an under-appreciated cost of trials, at least in civilian courts. The Moussaoui and Padilla trials were messy affairs that stretched, and some observers believe broke, our ordinary criminal trial conceptions of conspiracy law and the rights of the accused, among other things. The Moussaoui trial, for example, watered down the important constitutional right of the defendant to confront witnesses against him in court, and the Padilla trial rested on an unprecedentedly broad conception of conspiracy.15 An important but under-appreciated cost of using trials in all cases is that these prosecutions will invariably bend the law in ways unfavorable to civil liberties and due process, and these changes, in turn, will invariably spill over into non-terrorist prosecutions and thus skew the larger criminal justice process.16¶ A final problem with using any trial system, civilian or military, as the sole lawful basis for terrorist detention is that the trials can result in short sentences (as the first military commission trial did) or even acquittal of a dangerous terrorist.17 In criminal trials, guilty defendants often go free because of legal technicalities, government inability to introduce probative evidence, and other factors beyond the defendant's innocence. These factors are all exacerbated in terrorist trials by the difficulties of getting information from the place of capture, by classified information restrictions, and by stale or tainted evidence. One way to get around this problem is to assert the authority, as the Bush administration did, to use non-criminal detention for persons acquitted or given sentences too short to neutralize the danger they pose. But such an authority would undermine the whole purpose of trials and would render them a sham. As a result, putting a suspect on trial can make it hard to detain terrorists the government deems dangerous. For example, the government would have had little trouble defending the indefinite detention of Salim Hamdan, Osama Bin Laden's driver, under a military detention rationale. Having put him on trial before a military commission, however, it was stuck with the light sentence that Hamdan is completing at home in Yemen.¶ As a result of these considerations, insistence on the exclusive use of criminal trials and the elimination of non-criminal detention would significantly raise the chances of releasing dangerous terrorists who would return to kill Americans or others. Since noncriminal military detention is clearly a legally available option—at least if it is expressly authorized by Congress and contains adequate procedural guarantees—this risk should be unacceptable. In past military conflicts, the release of an enemy soldier posed risks. But they were not dramatic risks, for there was only so much damage a lone actor or small group of individuals could do.18 Today, however, that lone actor can cause far more destruction and mayhem because technological advances are creating ever-smaller and ever-deadlier weapons. It would be astounding if the American system, before the advent of modern terrorism, struck the balance between security and liberty in a manner that precisely reflected the new threats posed by asymmetric warfare. We face threats from individuals today that are of a different magnitude than threats by individuals in the past; having government authorities that reflect that change makes sense.

#### Restrictions on detention kill exec flex—key to prevent terrorism

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Reading the tea leaves of judicial dicta may be fraught with difficulty, but one certainly discerns from these pragmatic guidelines a view that the Executive should be accorded reasonable deference in matters of preventive detention. This deference is strongest during the early phases of detention, when facts are unclear, when the risks of release are acute, and the dangers of substituting a judicial judgment for that of the military or the Commander-in-Chief is greatest. If the Government learns that al-Qaeda operatives have invaded the U.S. bent on detonating explosives near chemical-laden rail cars, the overwhelming national effort must be directed toward destroying or detaining those forces intent on harming the country. This is not the time for Miranda and presentment but for concerted, decisive action bounded by the law of war. Every instrument of national power must be brought to bear, both military and civilian. If it makes the most sense for the FBI to detain someone, they should do so. If the military has the most information and can most quickly and effectively detain and interrogate, then consistent with military regulations, they should do so.¶ The process of understanding the depth and breadth of the danger, connecting the web of those involved, determining the possibility of future attacks takes time. It remains essential to afford the Commander-in-Chief adequate time and decision space to maximize the opportunity to defeat the threat and prevent future attacks.That is why the NDAA imposes no temporal limits, why it avoids geographic restrictions and why it grants no special protections to citizens who take up arms with the enemy. As Hamdan and Boumerdiene make clear, there are limits to the Court's deference. The more time that passes, the greater the consequences of an erroneous deprivation of liberty and the greater the risk of not affording someone a reasonable opportunity to challenge the basis for their detention. If there is consensus on the matter of process in preventive detention, it appears to mean reasonable deference followed by increased scrutiny with the passage of time. It means judicial review bounded by pragmatism, and it means balancing very real security concerns against the need to protect individuals from arbitrary deprivation of liberty.

### BAD POLICY

#### Weak Obama causes multiple scenarios for nuclear war in Asia and South Asia

COES 2011 (Ben, former speechwriter for George H.W. Bush, September 30, “The Disease of a Weak President,” <http://dailycaller.com/2011/09/30/the-disease-of-a-weak-president/>

The disease of a weak president usually begins with the Achilles’ heel all politicians are born with — the desire to be popular. It leads to pandering to different audiences, people and countries and creates a sloppy, incoherent set of policies. Ironically, it ultimately results in that very politician losing the trust and respect of friends and foes alike.

In the case of Israel, those of us who are strong supporters can at least take comfort in the knowledge that Tel Aviv will do whatever is necessary to protect itself from potential threats from its unfriendly neighbors. While it would be preferable for the Israelis to be able to count on the United States, in both word and deed, the fact is right now they stand alone. Obama and his foreign policy team have undercut the Israelis in a multitude of ways. Despite this, I wouldn’t bet against the soldiers of Shin Bet, Shayetet 13 and the Israeli Defense Forces.

But Obama’s weakness could — in other places — have implications far, far worse than anything that might ultimately occur in Israel. The triangular plot of land that connects Pakistan, India and China is held together with much more fragility and is built upon a truly foreboding foundation of religious hatreds, radicalism, resource envy and nuclear weapons. If you can only worry about preventing one foreign policy disaster, worry about this one.

Here are a few unsettling facts to think about: First, Pakistan and India have fought three wars since the British de-colonized and left the region in 1947. All three wars occurred before the two countries had nuclear weapons. Both countries now possess hundreds of nuclear weapons, enough to wipe each other off the map many times over.

Second, Pakistan is 97% Muslim. It is a question of when — not if — Pakistan elects a radical Islamist in the mold of Ayatollah Khomeini as its president. Make no mistake, it will happen, and when it does the world will have a far greater concern than Ali Khamenei or Mahmoud Ahmadinejad and a single nuclear device.

Third, China sits at the northern border of both India and Pakistan. China is strategically aligned with Pakistan. Most concerning, China covets India’s natural resources. Over the years, it has slowly inched its way into the northern tier of India-controlled Kashmir Territory, appropriating land and resources and drawing little notice from the outside world.

In my book, Coup D’Etat, I consider this tinderbox of colliding forces in Pakistan, India and China as a thriller writer. But thriller writers have the luxury of solving problems by imagining solutions on the page. In my book, when Pakistan elects a radical Islamist who then starts a war with India and introduces nuclear weapons to the theater, America steps in and removes the Pakistani leader through a coup d’état. I wish it was that simple.

The more complicated and difficult truth is that we, as Americans, must take sides. We must be willing to be unpopular in certain places. Most important, we must be ready and willing to threaten our military might on behalf of our allies. And our allies are Israel and India.

There are many threats out there — Islamic radicalism, Chinese technology espionage, global debt and half a dozen other things that smarter people than me are no doubt worrying about. But the single greatest threat to America is none of these. The single greatest threat facing America and our allies is a weak U.S. president. It doesn’t have to be this way. President Obama could — if he chose — develop a backbone and lead. Alternatively, America could elect a new president. It has to be one or the other. The status quo is simply not an option.

#### Spratley Island conflict causes global war

Waldron ’97 (Arthur, Prof Strategy and Policy – Naval War College, Commentary, 3-[1, http://www.aei.org/publications/pubID.7442,f](http://www.aei.org/publications/pubID.7442)ilter.all/pub\_detail.asp)

Then there is Southeast Asia, which, having weathered the Vietnam war and a variety of domestic insurgencies, and having moved onto the track of prosperity, shows no desire to complicate matters with political headaches. Fault lines nevertheless remain, and not least between the numerous and disproportionately successful ethnic Chinese and other inhabitants. And here again China is a looming worry. Beijing's claim of "unquestionable sovereignty" over the Spratly Islands in the South China Sea and its recent seizure of one of them, Mischief Reef, also claimed by the Philippines, have alarmed Vietnam, the Philippines, Malaysia, and Brunei, and rattled Indonesia, which asserts its right to gas fields nearby. India and South Asia, long preoccupied with their own internal rivalries and content with their rates of growth, now look with envy and some concern as East Asia opens an ever-increasing lead in economics, military power, and general global clout. Indian and Chinese forces still face each other in the high mountains of their disputed border, as they have done since their war in 1962. Pakistan to the west is a key Chinese ally, and beyond, in the Middle East, China is reportedly supplying arms to Syria, Iraq, and Iran. To the north, Tibet (whose government-in-exile has been based in India since 1959) is currently the object of a vicious Chinese crackdown. And a new issue between India and China is Beijing's alliance

with Rangoon and its reported military or intelligence-gathering presence on offshore Burmese territories near the Indian naval base in the Andaman Islands. Finally there is Russia, which has key interests in Asia. Sidelined by domestic problems, but only temporarily, Moscow has repeatedly faced China in this century, both in the northeast and along the Mongolian border. The break-up of the Soviet Union has added a potentially volatile factor in the newly independent states of Central Asia and Chinese-controlled Xinjiang (Sinkiang), where Beijing is currently fighting a low-level counter-insurgency. Making these flash-points all the more volatile has been a dramatic increase in the quantity and quality of China's weapons acquisitions. An Asian arms race of sorts was already gathering steam in the post-cold-war era, driven by national rivalries and the understandable desire of newly rich

nation-states to upgrade their capacities; but the Chinese build-up has intensified it. In part a payoff to the military for its role at Tiananmen Square in 1989, China's current build-up is part

and parcel of the regime's major shift since that time away from domestic liberalization and international openness toward repression and irredentism. Today China buys weapons from European states and Israel, but most importantly from Russia. The latest multibillion-dollar deal includes two Sovremenny-class destroyers equipped with the much-feared SS-N-22 cruise missile, capable of defeating the Aegis anti-missile defenses of the U.S. Navy and thus sinking American aircraft carriers. This is in addition to the Su-27 fighter aircraft, quiet Kilo-class submarines, and other force-projection and deterrent technologies. In turn, the Asian states are buying or developing their own advanced aircraft, missiles, and submarines--and considering nuclear options. The sort of unintended escalation which started two world wars could arise from any of the conflicts around China's periphery. It nearly did so in March 1996, when China, in a blatant act of intimidation, fired ballistic missiles in the Taiwan Straits. It could arise from a Chinese-Vietnamese confrontation, particularly if the Vietnamese should score some unexpected military successes against the Chinese, as they did in 1979, and if the Association of Southeast Asian Nations (ASEAN), of which they are now a

member, should tip in the direction of Hanoi. It could flare up from the smoldering insurgencies among Tibetans, Muslims, or Mongolians living inside China. Chains of allianceor interest, perhaps not clearly understood until the moment of crisis itself, could easily draw in neighboring states--Russia, or India, or Japan--or the United States.

#### Best new studies prove this would cause extinction

Starr ’11 (Consequences of a Single Failure of Nuclear Deterrence by Steven Starr February 07, 2011 \* Associate member of the Nuclear Age Peace Foundation \* Senior Scientist for PSR

Only a single failure of nuclear deterrence is required to start a nuclear war, and the consequences of such a failure would be profound. Peer-reviewed studies predict that less than 1% of the nuclear weapons now deployed in the arsenals of the Nuclear Weapon States, if detonated in urban areas, would immediately kill tens of millions of people, and cause long-term, catastrophic disruptions of the global climate and massive destruction of Earth’s protective ozone layer. The result would be a global nuclear famine that could kill up to one billion people. A full-scale war, fought with the strategic nuclear arsenals of the United States and Russia, would so utterly devastate Earth’s environment that most humans and other complex forms of life would not survive. Yet no Nuclear Weapon State has ever evaluated the environmental, ecological or agricultural consequences of the detonation of its nuclear arsenals in conflict. Military and political leaders in these nations thus remain dangerously unaware of the existential danger which their weapons present to the entire human race. Consequently, nuclear weapons remain as the cornerstone of the military arsenals in the Nuclear Weapon States, where nuclear deterrence guides political and military strategy. Those who actively support nuclear deterrence are trained to believe that deterrence cannot fail, so long as their doctrines are observed, and their weapons systems are maintained and continuously modernized. They insist that their nuclear forces will remain forever under their complete control, immune from cyberwarfare, sabotage, terrorism, human or technical error. They deny that the short 12-to-30 minute flight times of nuclear missiles would not leave a President enough time to make rational decisions following a tactical, electronic warning of nuclear attack. The U.S. and Russia continue to keep a total of 2000 strategic nuclear weapons at launch-ready status – ready to launch with only a few minutes warning. Yet both nations are remarkably unable to acknowledge that this high-alert status in any way increases the probability that these weapons will someday be used in conflict. How can strategic nuclear arsenals truly be “safe” from accidental or unauthorized use, when they can be launched literally at a moment’s notice? A cocked and loaded weapon is infinitely easier to fire than one which is unloaded and stored in a locked safe. The mere existence of immense nuclear arsenals, in whatever status they are maintained, makes possible their eventual use in a nuclear war. Our best scientists now tell us that such a war would mean the end of human history. We need to ask our leaders: Exactly what political or national goals could possibly justify risking a nuclear war that would likely cause the extinction of the human race? However, in order to pose this question, we must first make the fact known that existing nuclear arsenals – through their capacity to utterly devastate the Earth’s environment and ecosystems – threaten continued human existence. Otherwise, military and political leaders will continue to cling to their nuclear arsenals and will remain both unwilling and unable to discuss the real consequences of failure of deterrence. We can and must end the silence, and awaken the peoples of all nations to the realization that “nuclear war” means “global nuclear suicide”. A Single Failure of Nuclear Deterrence could lead to: \* A nuclear war between India and Pakistan; \* 50 Hiroshima-size (15 kiloton) weapons detonated in the mega-cities of both India and Pakistan (there are now 130-190 operational nuclear weapons which exist in the combined arsenals of these nations); \* The deaths of 20 to 50 million people as a result of the prompt effects of these nuclear detonations (blast, fire and radioactive fallout); \* Massive firestorms covering many hundreds of square miles/kilometers (created by nuclear detonations that produce temperatures hotter than those believed to exist at the center of the sun), that would engulf these cities and produce 6 to 7 million tons of thick, black smoke; \* About 5 million tons of smoke that would quickly rise above cloud level into the stratosphere, where strong winds would carry it around the Earth in 10 days; \* A stratospheric smoke layer surrounding the Earth, which would remain in place for 10 years; \* The dense smoke would heat the upper atmosphere, destroy Earth’s protective ozone layer, and block 7-10% of warming sunlight from reaching Earth’s surface; \* 25% to 40% of the protective ozone layer would be destroyed at the mid-latitudes, and 50-70% would be destroyed at northern and southern high latitudes; \* Ozone destruction would cause the average UV Index to increase to 16-22 in the U.S, Europe, Eurasia and China, with even higher readings towards the poles (readings of 11 or higher are classified as “extreme” by the U.S. EPA). It would take 7-8 minutes for a fair skinned person to receive a painful sunburn at mid-day; \* Loss of warming sunlight would quickly produce average surface temperatures in the Northern Hemisphere colder than any experienced in the last 1000 years; \* Hemispheric drops in temperature would be about twice as large and last ten times longer then those which followed the largest volcanic eruption in the last 500 years, Mt. Tambora in 1816. The following year, 1817, was called “The Year Without Summer”, which saw famine in Europe from massive crop failures; \* Growing seasons in the Northern Hemisphere would be significantly shortened. It would be too cold to grow wheat in most of Canada for at least several years; \* World grain stocks, which already are at historically low levels, would be completely depleted; grain exporting nations would likely cease exports in order to meet their own food needs; \* The one billion already hungry people, who currently depend upon grain imports, would likely starve to death in the years following this nuclear war; \* The total explosive power in these 100 Hiroshima-size weapons is less than 1% of the total explosive power contained in the currently operational and deployed U.S. and Russian nuclear forces.

### Squo Solves

#### Blame-dodging- plan creates political incentives that deter strikes in the first place

Oliphant, 13 -- National Journal deputy magazine editor

[James, “Vetting the Kill List,” 5-30-13, http://www.nationaljournal.com/magazine/vetting-the-kill-list-20130404, accessed 8-16-13, mss]

Given that reality, shifting the responsibility of a sign-off to a set of federal judges, who are unelected and serve for life, would allow the White House to escape the consequences of its actions, or more crucially, perhaps its failure to act if a target slips out of harm’s way and then masterminds an attack. Military decisions are, at heart, political ones, McNeal says, and they are rightly made by the branch of government whose top official, the president, faces voters. (A case in point: Republicans suffered at the ballot box in 2006 and 2008 as a result of the public’s displeasure with the Iraq war.) “If you’re a politician,” McNeal says of a drone court, “this is great. Because you aren’t on the hook for anything.” By and large, federal judges don’t want to be in this position. They worry about damaging the integrity of the bench. Retired Judge James Robertson, who served on the U.S. Appeals Court in Washington, argued in The Washington Post that the Constitution forbids the judiciary from issuing advisory opinions. “Federal courts rule on specific disputes between adversary parties,” he wrote. “They do not make or approve policy; that job is reserved to Congress and the executive.” The FISA court is a different animal, because approving surveillance is related to Fourth Amendment protections on search warrants. Still, Americans don’t have to grant the White House complete latitude to operate its targeted-killing program. Another idea that has marshaled some support is an inspector general empowered to review operations after the fact. If administration officials know that someone else ultimately will be auditing their decisions, Chesney says, that may be enough of a check on their conduct. Or as Ronald Reagan once put it: “Trust, but verify.”

## 2NC Case

### Ext. CIL = Ilusion

#### Their authors have it backwards – our Goldsmith and Posner evidence is an indict of their assumption that CIL is an objective norm that can be applied to state practice because it’s that state practice that defines CIL in the first place – you should prefer our evidence that says CIL as an illusion better explained by convergence of self-interest and coercion

Goldsmith and Posner 98 (Jack and Eric, law profs at U of Chicago, “A Theory of Customary International Law” John M. Olin Law & Economics Working Paper No. 63, http://www.law.uchicago.edu/Lawecon/WkngPprs\_51-75/63.Goldsmith-Posner.pdf)

In our view, CIL scholars approach international law **exactly backwards**. They think that CIL exists “out there” and states must decide whether to comply with it or violate it. They imagine their task to be discovering what CIL is, in order to determine what states should do. The problem with this view is that one can discover what CIL is only by looking at what states actually do. One evaluates a state’s action by looking at CIL, but one determines CIL by looking at states’ actions. The circularity of this project can be escaped only by giving precedence to earlier behavior. But the standard account of CIL never explains why the current behavior of states should be controlled by their behavior, or the behavior of other states, that occurred ten or fifty or one hundred years ago. Far more fruitful, we think, is the approach that we have described in this Article. We start with the assumption that states act in their perceived national interest.

This assumption is not unknown in the international law literature. Not all international law scholars are starry-eyed about the motives of the state. Some do believe that selfinterested states can cooperate. We agree, but we are also more skeptical and, we hope, more rigorous. Whereas they believe that somehow these self-interested states feels constrained by CIL, we insist that when states do achieve joint gains, and establish behavioral regularities that display law-like patterns, the most plausible explanation can be found in the bilateral coordination and prisoner’s dilemma models. We also insist that a careful attention to the historical record reveals that most instances of supposed cooperation or law-like behavior are best explained as coincidence of interest or successful coercion. CIL scholars tend to be too optimistic about empirical reality and too pessimistic about theory. International cooperation, at least as reflected in CIL, is not as robust as they imagine. But it is still possible for self-interested states to cooperate in the absence of external constraints.

#### CIL is the egg, not the chicken – CIL is not a norm, but only a label that we apply to self-interested actions ex post facto

Goldsmith and Posner 98 (Jack and Eric, law profs at U of Chicago, “A Theory of Customary International Law” John M. Olin Law & Economics Working Paper No. 63, http://www.law.uchicago.edu/Lawecon/WkngPprs\_51-75/63.Goldsmith-Posner.pdf)

This Section sets forth our revisionist theory of CIL. The theory uses simple game theoretical concepts to explain international behavioral regularities as a function of nations pursuing self-interest.41 We argue that nations pursuing self-interest produce behavioral regularities in four strategic situations: coincidence of interest, coercion, the bilateral iterated prisoner’s dilemma, and coordination. All of the international behaviors subsumed by the label CIL are variations on one of these four strategic forms. In contrast to the traditional understanding of CIL, the theory rejects the notion that international behavioral regularities result from compliance with a norm that a nation feels legally obliged to follow. It claims that the direction of causality is the reverse. It is not the case that an exogenous, reified entity known as CIL causes nations to act in certain ways; rather, CIL is the label people attach to behavioral regularities that arise endogenously from the interaction of nations pursuing their self-interest.

#### Realism is inevitable, and CIL does not exist – it’s simply coincidence based off of bilateral cooperation and coercion

Goldsmith and Posner 98 (Jack and Eric, law profs at U of Chicago, “A Theory of Customary International Law” John M. Olin Law & Economics Working Paper No. 63, http://www.law.uchicago.edu/Lawecon/WkngPprs\_51-75/63.Goldsmith-Posner.pdf)

The theory suggests that many international behavioral regularities result from states independently pursuing their self-interest without generating gains from interaction. These cases are trivial and have no normative content. Some international behavioral regularities do reflect cooperation or coordination, but the theory suggests that these regularities will arise in bilateral, not multilateral, interactions. What appear to be multilateral CIL norms, then, are illusions, the product of some combination of (a) coincidence of interests among all, or almost all, states, (b) coercion by one or a few powerful states, or (c) a prisoner’s dilemma or a coordination game played out in discrete bilateral contexts. This theory differs from the standard conception of CIL in several fundamental respects. It rejects the usual explanations of CIL based on opinio juris, legality, morality, and related concepts. States do not comply with norms of CIL because of a sense of moral or legal obligation; rather, their compliance and the norms themselves emerge from the states’ pursuit of self-interested policies on the international stage. In other words, CIL is not an exogenous force that controls the behavior of states, the way domestic law controls the behavior of citizens; it is instead a label people attach to behavior that is generated endogenously from the interactions of states pursuing their self-interest. In addition, our theory rejects the traditional claim that the behaviors associated with CIL reflect a single, unitary logic. These behaviors instead reflect various and importantly different logical structures played out in discrete, historically contingent contexts. Finally, the theory is skeptical of the existence of law-like, multilateral behavioral regularities that are typically thought to constitute CIL. It holds that multinational regularities will invariably reflect coincidence of interest or coercion (and thus not be law-like), and that regularities that reflect cooperation or coordination arise only in bilateral contexts.

### Ext. No CIL Precedent

#### **Plan doesn’t set a precedent – empirics prove international law is not authoritative – that’s New York Times**

#### One plan won’t spillover – no change in US stance

Moravcsik 4 (Professor of Politics and International Affairs and director of the European Union Program at Princeton and Nonresident Senior Fellow at the Brookings Institution (Andrew, “The Paradox of US Human Rights Policy” in American Exceptionalism and Human Rights, p. 197)

This is a sobering conclusion, for it suggests that U.S. ambivalence toward international human rights commitments is not a short-term and contingent aspect of specific American policies. It is instead woven into the deep structural reality of American political life. This is so not, for the most part, because international human rights commitments are inconsistent with a particular understanding of democratic ideals like popular sovereignty, local control, or expansive protection of particular rights shared by most Americans. It is true, rather, because a conservative minority favored by enduring domestic political institutions has consistently prevailed in American politics to the point where its values are now embedded in public opinion and constitutional precedent. The institutional odds against any fundamental change in Madison’s republic are high. To reverse current trends would require an epochal constitutional rupture – an Ackermanian “constitutional moment” – such as those wrought in the United States by the Great Depression and the resulting Democratic “New Deal” majority; in Germany, France, and Italy by the end of World War II; and in all European countries through a half century of European human rights jurisprudence. Short of all that, this particular brand of American ambivalence toward the domestic application of international human rights norms is unlikely to change anytime soon.

# 1NR

## Overview

#### Ice age comparatively outweighs their warming impacts – it’s also irreversible and ensures extinction by 2027

**Chapman 8** – geophysicist, astronautical engineer, NASA astronaut (Phil, 05/20, “Sorry to ruin the fun, but an ice age cometh,” http://www.sciencealert.com.au/opinions/20082105-17356.html)

There is no doubt that the next little ice age would be much worse than the previous one and much more harmful than anything warming may do. There are many more people now and we have become dependent on a few temperate agricultural areas, especially in the US and Canada. Global warming would increase agricultural output, but global cooling will decrease it. Millions will starve if we do nothing to prepare for it (such as planning changes in agriculture to compensate), and millions more will die from cold-related diseases. There is also another possibility, remote but much more serious. The Greenland and Antarctic ice cores and other evidence show that for the past several million years, severe glaciation has almost always afflicted our planet. The bleak truth is that, under normal conditions, most of North America and Europe are buried under about 1.5km of ice. This bitterly frigid climate is interrupted occasionally by brief warm interglacials, typically lasting less than 10,000 years. The interglacial we have enjoyed throughout recorded human history, called the Holocene, began 11,000 years ago, so the ice is overdue. We also know that glaciation can occur quickly: the required decline in global temperature is about 12C and it can happen in 20 years. The next descent into an ice age is inevitable but may not happen for another 1,000 years. On the other hand, it must be noted that the cooling in 2007 was even faster than in typical glacial transitions. If it continued for 20 years, the temperature would be 14C cooler in 2027. By then, most of the advanced nations would have ceased to exist, vanishing under the ice, and the rest of the world would be faced with a catastrophe beyond imagining. Australia may escape total annihilation but would surely be overrun by millions of refugees. Once the glaciation starts, it will last 1000 centuries, an incomprehensible stretch of time.

#### It’ll happen quickly and soon

**Scotsman 8** – Edinburgh news, cites the German Research Centre for Geosciences (08/01, “Last Ice Age happened in less than year say scientists,” http://www.scotsman.com/news/international/last-ice-age-happened-in-less-than-year-say-scientists-1-1083252)

THE last ice age 13,000 years ago took hold in just one year, more than ten times quicker than previously believed, scientists have warned. Rather than a gradual cooling over a decade, the ice age plunged Europe into the deep freeze, German Research Centre for Geosciences at Potsdam said. Cold, stormy conditions caused by an abrupt shift in atmospheric circulation froze the continent almost instantly during the Younger Dryas less than 13,000 years ago – a very recent period on a geological scale. The new findings will add to fears of a serious risk of this happening again in the UK and western Europe – and soon. Dr Achim Brauer, of the GFZ (GeoForschungs Zentrum) German Research Centre for Geosciences at Potsdam, and colleagues analysed annual layers of sediments, called "varves", from a German crater lake. Each varve records a single year, allowing annual climate records from the region to be reconstructed.

#### Turns their war impacts by 2014

**Aym 10** – Salem-News Contributor based in Chicago, cites The Pulkovo Astronomical Observatory (Terrance, 12/06, “Earth may be entering a new Ice Age, Food shortages may lead to regional warfare,” http://www.iceagenow.com/Earth\_may\_be\_entering\_a\_new\_Ice\_Age.htm)

6 Dec 10 - Astrophysicist Habibullo Abdussamatov, head of space research at St. Petersburg's Pulkovo Astronomical Observatory in Russia, recently pronounced his belief that Earth will enter a little Ice Age as early as 2014, says this article by Terrence Aym. Such a period of cooling could last as long as two centuries and be ruinous, Aym warns. "Whereas global warming would be a good thing, a mini-Ice Age could be disastrous: growing seasons would be shortened, more energy must be extended to stay warm, and food shortages may lead to breakouts of regional warfare." The last little ice age occurred between 1650 and 1850 and "accounted for many crop failures, outbreaks of famines and mass migrations," says Aym.

#### Their sources exaggerate to secure funding

**Roche 3** (Dr Roche, whose PhD in agricultural science is from University College, Dublin, The Daily News (New Plymouth, New Zealand), September 25, 2003

"The point is further highlighted when you look at the concern of people for the global environment. All countries considered the global environment to be in a significantly worse state than either their national or local environment. He identified three sources of our negative perception -- researchers, environmental organisations and the media." Dr Roche said researchers were arguably the most important communicators of environmental pessimism because they were generally people with academic credentials and therefore seen as credible. "We are always researching negative aspects of the environment. After all, there is no point in researching something we know is OK. Therefore, we only hear bad stories about the environment, never good. "However, research also contributes to our fear of global demise in a much more sinister way. The constant need to attract scarce funding often forces researchers to release preliminary data before it is full analysed, thereby giving a false impression of the size of the problem and it also encourages scientists to release more scary scenarios than actually exist." Dr Roche said the environmental movements themselves were also an outlet for the pessimistic environmental story. "Environmental organisations are well funded and therefore have a vested interest in research results and resultant political decisions. In other words, if research was to show there was no environmental problem, people funding the environmental organisations would find some other way to spend their money. It is in their interest to 'offer up scary scenarios'." On the media's role in negative perceptions, Dr Roche said everyone had heard the pessimistic stories -- the loss of rainforests and other wildlife habitats, the rapid extinction of species, the depletion of natural resources, the benefits of organic food, the increased incidence of cancer (often blamed on modern ways of producing food), global warming, famine, floods and other major weather events on the increase.

## No Warming

#### Our ev is backed by the most recent and best data

**Amos 12** – Science correspondent, BBC News (Jonathon, 04/04, “CO2 'drove end to last ice age',” http://www.bbc.co.uk/news/science-environment-17611404)

A new, detailed record of past climate change provides compelling evidence that the last ice age was ended by a rise in temperature driven by an increase in atmospheric carbon dioxide. The finding is based on a very broad range of data, including even the shells of ancient tiny ocean animals. A paper describing the research appears in this week's edition of Nature. The team behind the study says its work further strengthens ideas about global warming. "At the end of the last ice age, CO2 rose from about 180 parts per million (ppm) in the atmosphere to about 260; and today we're at 392," explained lead author Dr Jeremy Shakun. "So, in the last 100 years we've gone up about 100 ppm - about the same as at the end of the last ice age, which I think puts it into perspective because it's not a small amount. Rising CO2 at the end of the ice age had a huge effect on global climate." The study covers the period in Earth history from roughly 20,000 to 10,000 years ago. This was the time when the planet was emerging from its last deep chill, when the great ice sheets known to cover parts of the Northern Hemisphere were in retreat. The key result from the new study is that it shows the carbon dioxide rise during this major transition ran slightly ahead of increases in global temperature. This runs contrary to the record obtained solely from the analysis of Antarctic ice cores which had indicated the opposite - that temperature elevation in the southern polar region actually preceded (or at least ran concurrent to) the climb in CO2. This observation has frequently been used by some people who are sceptical of global warming to challenge its scientific underpinnings; to claim that the warming link between the atmospheric gas and global temperature is grossly overstated. But Dr Shakun and colleagues argue that the Antarctic temperature record is just that - a record of what was happening only on the White Continent. By contrast, their new climate history encompasses data from all around the world to provide a much fuller picture of what was happening on a global scale. This data incorporates additional information contained in ices drilled from Greenland, and in sediments drilled from the ocean floor and from continental lakes. These provide a range of indicators. Air bubbles trapped in ice, for example, will record the past CO2 concentrations in the atmosphere. Past temperatures can also be inferred from ancient planktonic marine organisms buried in the sediments. That is because the amount of magnesium they would include in their calcite skeletons and shells was dependent on the warmth of the water in which they swam. "Our global temperature looks a lot like the pattern of rising CO2 at the end of the ice age, but the interesting part in particular is that unlike with these Antarctic ice core records, the temperature lags a bit behind the CO2," said Dr Shakun, who conducted much of the research at Oregon State University but who is now affiliated to Harvard and Columbia universities. "You put these two points together - the correlation of global temperature and CO2, and the fact that temperature lags behind the CO2 - and it really leaves you thinking that CO2 was the big driver of global warming at the end of the ice age," he told BBC News. Dr Shakun's team has now constructed a narrative to explain both what was happening on Antarctica and what was happening globally: This starts with a subtle change in the Earth's orbit around the Sun known as a Milankovitch "wobble", which increases the amount of light reaching northern latitudes and triggers the collapse of the hemisphere's great ice sheets This in turn produces vast amounts of fresh water that enter the North Atlantic to upset ocean circulation Heat at the equator that would normally be distributed northwards then backs up, raising temperatures in the Southern Hemisphere This initiates further changes to atmospheric and ocean circulation, resulting in the Southern Ocean releasing CO2 from its waters The rise in CO2 sets in train a global rise in temperature that pulls the whole Earth out of its glaciated state.

**Newest data proves the greenhouse effect is a hoax**

**IBT 11** (International Business Times, Citing report from NASA’s Terra Satellite, “Global Warming a Hoax? NASA Reveals Earth Releasing Heat into Space,” 7/30, <http://sanfrancisco.ibtimes.com/articles/189649/20110730/global-warming-hoax-nasa-earth-releasing-heat-space.htm>,

With new data collected from a NASA's Terra satellite, the previous model may be proven as a hoax. Hypothesis based on the satellite's findings show that planet Earth actually releases heat into space, more than it retains it. The higher efficiency of releasing energy outside of Earth contradicts former forecasts of climate change. Dr. Roy Spencer, a team leader for NASA's Aqua satellite, studied a decade worth of satellite data regarding cloud surface temperatures. "The satellite observations suggest there is much more energy lost to space during and after warming than the climate models show...There is a huge discrepancy between the data and the forecasts that is especially big over the oceans," said Dr. Spencer. By cross examining data with other Climate Change models, he concluded that carbon dioxide is just a minor part in global warming. His studies have garnered media attention and that the data are going against the beliefs of global warming alarmists by disproving their theory.

**Global warming is flawed – there is no consensus and their evidence is all biased**

Gay 10 (Roger F. professional analyst and director of PICSLT, “Roger F. Gay: Key Evidence of Global Warming Fraud Inc. “ 5-30-11, http://climaterealists.com/index.php?id=7756)

I won't pick apart details of the entire article. It's based on the old propaganda template: warmers are scientists, skeptics are right-wing ideologues. **No mention of the much larger number of professional scientists and engineers who have gone from skeptical to calling the whole thing a fraud.** In Samuelsohn's world, warmers and their climate theories have been “exonerated” and the U.N.'s Intergovernmental Panel on Climate Change (IPCC) is slated to rise in public status again. Sameulsohn's background **– about** as far from scientifically educated as possible **–** is rather typical for environmental journalists. The rank and file tend to drive the ad nauseam element of Global Warming Propaganda - the endless repetition of an idea in the hope that it will begin to be taken as the truth. What else are they qualified to do? We can kind-of understand this serving up of a previous season's warmed over nonsense by someone without enough knowledge to be embarrassed by it. It's a living, right? So I doubt he had a clue that his article contained one of the most basic bits of evidence that the global warming scare is a complete fraud and the IPCC is a scam. “We need to equip ourselves with the ability and capacity to deal with the heightened scrutiny … which we have been subjected to recently,” IPCC Chairman Rajendra Pachauri said earlier this month during a conference in Abu Dhabi. Warmers tend to think of science as magic. Chant the word “science” enough and a cow pie should become the Mona Lisa if that's what you say it is. But what is it about (real) science that implies such overwhelming credibility? If your answer is “the scientific process” then congratulations; you're light-years ahead of environmental journalism. Scientific process: If you're asking, “What's that?” then let me give you a hint. Skepticism and scrutiny are essential to the process. If ideas are not exposed and tested with skepticism and scrutiny, it isn't science. A “skeptic” is the the more likely scientist than the “open-minded” unskeptical believer. The mere fact that a Nobel Peace Prize recipient says something doesn't make it true. That an article is “published in a peer-reviewed scientific journal” does not make everything in it true either. Publications communicate ideas, which are then subject to skepticism and scrutiny. That's scientific process. The word of a “scientific committee” cannot be presumed truth. The so-called “scientific consensus” on global warming is meaningless (and still would be even if it actually did favor their argument as they insist). A good example of scientific perspective on such things is illustrated by Einstein's response to a 1931 pamphlet entitled “100 authors against Einstein.” The pamphlet was commissioned by the German Nazi Party as a clumsy contradiction to Relativity Theory that did not fit the canons of the “Aryan science.” Similarly, the IPCC and modern leftist political operatives define acceptable scientific views to conform with a political and economic agenda and support it with a claim of a consensus view. Einstein’s answer; “If I were wrong, then one would have been enough.” Scientific fact is not determined by appointments and elections. It didn't matter how many Nazi supporters lined up against him or how strong their influence on public discussion. Nor does the past few decades of political influence through biased funding and its impact on the number of scientific journal articles determine the truth about global warming. Science is not conducted by committee and certainly not by political appointees in an intergovernmental panel.

## AT: No Ice Age

#### Ice age coming now – glacial and solar cycles

**Marsh 12** – retired physicist from the Argonne National Laboratory and a former consultant to the Department of Defense on strategic nuclear technology and policy in the Reagan, Bush, and Clinton Administration (Gerald E., “The Coming of a New Ice Age,” http://www.winningreen.com/site/epage/59549\_621.htm)

CHICAGO — Contrary to the conventional wisdom of the day, the real danger facing humanity is not global warming, but more likely the coming of a new Ice Age. What we live in now is known as an interglacial, a relatively brief period between long ice ages. Unfortunately for us, most interglacial periods last only about ten thousand years, and that is how long it has been since the last Ice Age ended. How much longer do we have before the ice begins to spread across the Earth’s surface? Less than a hundred years or several hundred? We simply don’t know. Even if all the temperature increase over the last century is attributable to human activities, the rise has been relatively modest one of a little over one degree Fahrenheit — an increase well within natural variations over the last few thousand years. While an enduring temperature rise of the same size over the next century would cause humanity to make some changes, it would undoubtedly be within our ability to adapt. Entering a new ice age, however, would be catastrophic for the continuation of modern civilization. One has only to look at maps showing the extent of the great ice sheets during the last Ice Age to understand what a return to ice age conditions would mean. Much of Europe and North-America were covered by thick ice, thousands of feet thick in many areas and the world as a whole was much colder. The last “little” Ice Age started as early as the 14th century when the Baltic Sea froze over followed by unseasonable cold, storms, and a rise in the level of the Caspian Sea. That was followed by the extinction of the Norse settlements in Greenland and the loss of grain cultivation in Iceland. Harvests were even severely reduced in Scandinavia And this was a mere foreshadowing of the miseries to come. By the mid-17th century, glaciers in the Swiss Alps advanced, wiping out farms and entire villages. In England, the River Thames froze during the winter, and in 1780, New York Harbor froze. Had this continued, history would have been very different. Luckily, the decrease in solar activity that caused the Little Ice Age ended and the result was the continued flowering of modern civilization. There were very few Ice Ages until about 2.75 million years ago when Earth’s climate entered an unusual period of instability. Starting about a million years ago cycles of ice ages lasting about 100,000 years, separated by relatively short interglacial periods, like the one we are now living in became the rule. Before the onset of the Ice Ages, and for most of the Earth’s history, it was far warmer than it is today. Indeed, the Sun has been getting brighter over the whole history of the Earth and large land plants have flourished. Both of these had the effect of dropping carbon dioxide concentrations in the atmosphere to the lowest level in Earth’s long history. Five hundred million years ago, carbon dioxide concentrations were over 13 times current levels; and not until about 20 million years ago did carbon dioxide levels dropped to a little less than twice what they are today. It is possible that moderately increased carbon dioxide concentrations could extend the current interglacial period. But we have not reached the level required yet, nor do we know the optimum level to reach. So, rather than call for arbitrary limits on carbon dioxide emissions, perhaps the best thing the UN’s Intergovernmental Panel on Climate Change and the climatology community in general could do is spend their efforts on determining the optimal range of carbon dioxide needed to extend the current interglacial period indefinitely. NASA has predicted that the solar cycle peaking in 2022 could be one of the weakest in centuries and should cause a very significant cooling of Earth’s climate. Will this be the trigger that initiates a new Ice Age? We ought to carefully consider this possibility before we wipe out our current prosperity by spending trillions of dollars to combat a perceived global warming threat that may well prove to be only a will-o-the-wisp.

#### Earth is overdue for an ice age – it will happen soon without continued CO2 levels

**Boyle 12** – Popular Science (Rebecca, 01/08, “Human CO2 Emissions Could Avert the Next Ice Age, Study Says,” http://thegwpf.org/science-news/4714-human-co2-emissions-could-avert-the-next-ice-age-study-says.html)

Earth could be entering a new Ice Age within the next millennium, but it might not, the deep freeze averted by warming from increased carbon dioxide emissions. Humans could be thwarting the next glacial inception, a new study says. Even in the comparatively long time scales of Earth history, we’re kind of overdue for another ice age — our current Holocene era has lasted about 11,600 years, roughly 600 years longer than the average interglacial (between-ice-age) periods of the past. If atmospheric CO2 levels were lower, the next ice age might have started sometime within the next 1,000 years, according to researchers from University College London and Cambridge University. Their conclusion is based in part on abrupt temperature changes in the overall temperature contrast between Greenland and Antarctica, according to a Cambridge news release. The North Atlantic would cool rapidly while Antarctica warms, fluctuations that would only happen if expanding ice sheets were calving icebergs huge enough to impact ocean circulation. These temperature see-saws can therefore be used to pinpoint the activation of a new ice age, a “glacial inception.” Chronis Tzedakis from UC London and colleagues examined our present conditions, including temperature averages and solar radiation strength, and found a close analogue to the present, an era called Marine Isotope Stage 19, or about 780,000 years ago. The eras have a similar astronomical configuration and climate, although their CO2 trajectories are pretty different (ours is on the rise). A phenomenon called insolation was a key factor here. Insolation is the seasonal and latitudinal distribution of solar radiation, which changes a tiny bit over tens of thousands of years due to tiny variations in Earth’s orbit around the sun. These little differences are one of the factors that can help trigger a cooling event, cascading toward an ice age. The insolation minimum in the MIS19 era was similar to our own, so it’s a valid analogy, the researchers say. The team applied their glacial inception fingerprinting method to MIS19, looking at ice core samples, plankton remains and debris that would have floated on the encroaching ice, and determined at what point the glacial inception would have started. Then they compared that time frame to the Holocene time frame. “Taking the [current era] to MIS19c analogy to its logical conclusion implies that the current interglacial would be nearing its end,” the researchers write. If, that is, atmospheric CO2 levels were comparable to the MIS19 era. Which they aren't. This shows that while insolation is an important ingredient, apparently it’s not as potent an ice age determinant as CO2. “The current insolation forcing and lack of new ice growth mean that orbital-scale variability will not be moderating the effects of anthropogenically induced global warming,” the authors conclude.

## Heg

#### The only comprehensive study proves no transition impact.

**MacDonald and Parent 11**—Professor of Political Science at Williams College & Professor of Political Science at University of Miami [Paul K. MacDonald & Joseph M. Parent, “Graceful Decline? The Surprising Success of Great Power Retrenchment,” International Security, Vol. 35, No. 4 (Spring 2011), pp. 7–44]

In this article, we question the logic and evidence of the retrenchment pessimists. To date there has been neither a **comprehensive study** of great power retrenchment nor a study that lays out the case for retrenchment as a practical or probable policy. This article fills these gaps by **systematically examining** the relationship between acute relative decline and the responses of great powers. We examine **eighteen cases** of acute relative decline since 1870 and advance three main arguments. First, we challenge the retrenchment pessimists’ claim that domestic or international constraints inhibit the ability of declining great powers to retrench. In fact, when states fall in the hierarchy of great powers, **peaceful retrenchment** **is the most common** response, even over short time spans. Based on the empirical record, we find that great powers retrenched in no less than eleven and no more than fifteen of the eighteen cases, a range of 61–83 percent. When international conditions demand it, states renounce risky ties, increase reliance on allies or adversaries, draw down their military obligations, and impose adjustments on domestic populations. Second, we find that the magnitude of relative decline helps explain the extent of great power retrenchment. Following the dictates of neorealist theory, great powers retrench for the same reason they expand: the rigors of great power politics compel them to do so.12 Retrenchment is by no means easy, but necessity is the mother of invention, and declining great powers face powerful incentives to contract their interests in a prompt and proportionate manner. Knowing only a state’s rate of relative economic decline explains its corresponding degree of retrenchment in as much as 61 percent of the cases we examined. Third, we argue that the rate of decline helps explain what forms great power retrenchment will take. How fast great powers fall contributes to whether these retrenching states will internally reform, seek new allies or rely more heavily on old ones, and make diplomatic overtures to enemies. Further, our analysis suggests that great powers facing acute **decline are less likely to** initiate or **escalate** militarized interstate disputes. **Faced with diminishing resources**, great **powers** **moderate their** foreign policy **ambitions** and offer concessions in areas of lesser strategic value. Contrary to the pessimistic conclusions of critics, **retrenchment neither requires aggression nor invites predation**. Great powers are able to rebalance their **commitments through compromise, rather than conflict**. In these ways, states respond to penury the same way they do to plenty: they seek to adopt policies that maximize security given available means. Far from being a hazardous policy, retrenchment can be successful. States that retrench often regain their position in the hierarchy of great powers. Of the fifteen great powers that adopted retrenchment in response to acute relative decline, 40 percent managed to recover their ordinal rank. In contrast, none of the declining powers that failed to retrench recovered their relative position. Pg. 9-10

## Disease

#### Responses solve

**Ensom 3** (Jim, Crisis Management Trainer at Business Continuity Consultants, Former Editor of Survive Magazine, Former Journalist for the BBC, June 20, http://www.globalcontinuity.com/article/articleview/94/1/30/)

In reaching these landmarks in the containment of SARS, the most severely affected countries and areas have identified and rapidly corrected long-standing weaknesses in their health systems in ways that will mean permanent improvements for the management of all diseases. In addition, systems of data collection and reporting, and new patterns of openly and frankly communicating information to the public will hold the world in good stead when the next new disease emerges and the next influenza pandemic breaks out.

#### Bad methodology is the cause of fears that virus’s are getting more severe

**Garske ‘9** (Garske T, Legrand J, Donnelly CA, et al. Assessing the severity of the novel influenza A/H1N1 pandemic. BMJ. 2009; 339: b2840. Friday 17 July 2009 00.00 BST

Another issue is the time delay between becoming ill and dying. Early in an epidemic, people may have caught the virus, but their illness won't have had time to run its course. Put bluntly, at a particular point in time there will be people who are going to die, but who are still alive at the time statistics are calculated. Mathematically, this type of bias is called censoring. Censoring tends to have its strongest effect early in a pandemic when a disease is spreading faster and faster. It has the effect of making the illness look milder at first, then more serious later as the first wave of patients either die or recover. This happened in the SARS epidemic, and caused unwarranted fears that the virus was becoming more severe.

## Biowar

#### No impact to a biowar attack – Their studies are incomplete

Macfarlane 5 – MIT Security Studies Program (Allison, August, “All Weapons of Mass Destruction Are Not Equal,” MIT Center for International Studies, <http://web.mit.edu/cis/pdf/Audit_6_05_Macfarlane.pdf>) 12/20/12 K. Harris

Some experts consider biological and nuclear weapons to be the “true” weapons of mass destruction.15 The higher end of the lethality range of biological weapons is certainly in the realm of the threat posed by nuclear weapons, but the range itself is troubling. If a nuclear weapon goes off in a densely populated area, it will kill tens of thousands of people. It is not possible to make the same assertion for biological weapons. The extremely uncertain estimates of deaths from bioweapons rely on simulations that use limited datasets. For instance, one significant source of uncertainty is the lethality of the agent such as anthrax and modified (genetically or antibiotic-resistant) agents. These simulations describe worst-case scenarios and do not consider the ameliorating effects of defenses such as a good public health system. A bioweapon attack on the heart of a poor, overcrowded, third world city may indeed result in the high death rates suggested in some models. But is the United States as vulnerable? Hardly. It has an extensive public health system and has invested in biological weapons defenses. At this time, there is simply not enough data to suggest that biological weapons should occupy the same policy category as nuclear weapons.