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### 2AC RoL K

The alternative should be evaluated based on their ability to engage 1AC institutions- society shapes individual beliefs and create behavioral patterns for macro-level trends- their pedagogy is irrelevant absent a method of engagement

Wight – Professor of IR @ University of Sydney – 6

(Colin, Agents, Structures and International Relations: Politics as Ontology, pgs. 48-50

One important aspect of this relational ontology is that these relations constitute our identity as social actors. According to this relational model of societies, one is what one is, by virtue of the relations within which one is embedded. A worker is only a worker by virtue of his/her relationship to his/her employer and vice versa. ‘Our social being is constituted by relations and our social acts presuppose them.’ At any particular moment in time an individual may be implicated in all manner of relations, each exerting its own peculiar causal effects. This ‘lattice-work’ of relations constitutes the structure of particular societies and endures despite changes in the individuals occupying them. Thus, the relations, the structures, are ontologically distinct from the individuals who enter into them. At a minimum, the social sciences are concerned with two distinct, although mutually interdependent, strata. There is an ontological difference between people and structures: ‘people are not relations, societies are not conscious agents’. Any attempt to explain one in terms of the other should be rejected. If there is an ontological difference between society and people, however, we need to elaborate on the relationship between them. Bhaskar argues that we need a system of mediating concepts, encompassing both aspects of the duality of praxis into which active subjects must fit in order to reproduce it: that is, a system of concepts designating the ‘point of contact’ between human agency and social structures. This is known as a ‘positioned practice’ system. In many respects, the idea of ‘positioned practice’ is very similar to Pierre Bourdieu’s notion of *habitus*. Bourdieu is primarily concerned with what individuals do in their daily lives. He is keen to refute the idea that social activity can be understood solely in terms of individual decision-making, or as determined by surpa-individual objective structures. Bourdieu’s notion of the *habitus* can be viewed as a bridge-building exercise across the explanatory gap between two extremes. Importantly, the notion of a habitus can only be understood in relation to the concept of a ‘social field’. According to Bourdieu, a social field is ‘a network, or a configuration, of objective relations between positions objectively defined’. A social field, then, refers to a structured system of social positions occupied by individuals and/or institutions – the nature of which defines the situation for their occupants. This is a social field whose form is constituted in terms of the relations which define it as a field of a certain type. A *habitus* (positioned practices) is a mediating link between individuals’ subjective worlds and the socio-cultural world into which they are born and which they share with others. The power of the habitus derives from the thoughtlessness of habit and habituation, rather than consciously learned rules. The habitus is imprinted and encoded in a socializing process that commences during early childhood. It is inculcated more by experience than by explicit teaching. Socially competent performances are produced as a matter of routine, without explicit reference to a body of codified knowledge, and without the actors necessarily knowing what they are doing (in the sense of being able adequately to explain what they are doing). As such, the *habitus* can be seen as the site of ‘internalization of reality and the externalization of internality.’ Thus social practices are produced in, and by, the encounter between: (1) the *habitus* and its dispositions; (2) the constraints and demands of the socio-cultural field to which the habitus is appropriate or within; and (3) the dispositions of the individual agents located within both the socio-cultural field and the *habitus*. When placed within Bhaskar’s stratified complex social ontology the model we have is as depicted in Figure 1. The explanation of practices will require all three levels. Society, as field of relations, exists prior to, and is independent of, individual and collective understandings at any particular moment in time; that is, social action requires the conditions for action. Likewise, given that behavior is seemingly recurrent, patterned, ordered, institutionalised, and displays a degree of stability over time, there must be sets of relations and rules that govern it. Contrary to individualist theory, these relations, rules and roles are not dependent upon either knowledge of them by particular individuals, or the existence of actions by particular individuals; that is, their explanation cannot be reduced to consciousness or to the attributes of individuals. These emergent social forms must possess emergent powers. This leads on to arguments for the reality of society based on a causal criterion. Society, as opposed to the individuals that constitute it, is, as Foucault has put it, ‘a complex and independent reality that has its own laws and mechanisms of reaction, its regulations as well as its possibility of disturbance. This new reality is society…It becomes necessary to reflect upon it, upon its specific characteristics, its constants and its variables’.

#### Alt doesn’t solve detention- engagement is key

Jenks and Talbot-Jensen 11 (INDEFINITE DETENTION UNDER THE LAWS OF WAR Chris Jenks\* & Eric Talbot Jensen\*\* Lieutenant Colonel, U.S. Army Judge Advocate General's Corps. Presently serving as the Chief of the International Law Branch, Office of The Judge Advocate General, Washington D.C. The views expressed in this Article are those of the author and not The Judge Advocate General's Corps, the U.S. Army, or the Department of Defense. \*\* Visiting Assistant Professor, Fordham Law School. The authors wish to thank Sue Ann Johnson for her exceptional research and editing skills, and the organizers and attendees at both the 3rd Annual National Security Law Jtinior Faculty Workshop at the University of Texas School of Law, where we first discussed the ideas for this article, and the Stanford Law and Policy Review National Defense Symposium, where we first presented the finished product. STANFORD LAW & POLICY REVIEW [Vol. 22:1] Page Lexis)

Those who would deconstruct the law of war as applied to detention stemming from armed conflict with non state actors may achieve victory, but in an academic, and, practically speaking, pyrrhic sense. Arguing that the Geneva Conventions for Prisoners and Civilians do not, on their face, apply to members of al-Qaeda or the Taliban may be correct, and in more than one way. But in so arguing, the deconstructionist approach removes a large portion of intemationally recognized and accepted provisions for regulating detention associated with armed conflict—^the Geneva Conventions—^while leaving the underlying question of how to govern detention unanswered. At some point, even the deconstmctionist must shift to positivism and propose an altemative, an altemative we submit would inevitably resemble that which is already extant in the law of war.

Moreover, while there has been discussion about the strained application of the Geneva Conventions and Additional Protocols to states combating transnational terrorism, attempts at a new convention have gained little traction. Our approach is more an attempt at pragmatism than radicalism—there are individuals currently detained, purportedly indefinitely and under the law of war. Yet despite years of such detention, two administrations have provided little if any information on what exactly such detention means, how and by what it is govemed, and if and how it ends. Conflating aspects of intemationally recognized law of war conventions allows for a transparent process that could be promulgated now. Whether for the up to fifty or so individuals currently detained at Guantanamo or for those who may be detained in the future, we posit that the law of war provides a legitimate model for indefinite detention. And, as the Walsh Report recognized,^' the longer detainees are held, the more concern for their individual situations must be given. We therefore analyze the complete protections provided by the law of war and advocate that all of them, over time and to varying degrees, be applied to the detainees in Guantanamo. In this way, detention under the laws of war can provide a humane system of indefinite detention that strikes the right balance between the security of the nation and the rights of individuals

#### Our perceptions of the rule of law are good – prevents liberal democracies from sliding into totalitarianism by eliminating instances of exclusion

Heins 5 (Volker- Professor of Political Science Concordia, “Giorgio Agamben and the Current State of Affairs in Humanitarian Law and Human Rights Policy” German Law Journal, Vol 6 No 5)

According to this basic Principle of Distinction, modern humanitarian action is directed towards those who are caught up in violent conflicts without possessing any strategic value for the respective warring parties. Does this imply that classic humanitarianism and its legal expressions reduce the lives of noncombatants to the "bare life" of nameless individuals beyond the protection of any legal order? I would rather argue that humanitarianism is itself an order-making activity. Its goal is not the preservation of life reduced to a bare natural fact, but conversely the protection of civilians and thereby the protection of elementary standards of civilization which prevent the exclusion of individuals from any legal and moral order. The same holds true for human rights, of course. Agamben fails to appreciate the fact that human rights laws are not about some cadaveric "bare life", but about the protection of moral agency.33 His sweeping critique also lacks any sense for essential distinctions. It may be legitimate to see "bare life" as a juridical fiction nurtured by the modern state, which claims the right to derogate from otherwise binding norms in times of war and emergency, and to kill individuals, if necessary, outside the law in a mode of "effective factuality."34 Agamben asserts that sovereignty understood in this manner continues to function in the same way since the seventeenth century and regardless of the democratic or dictatorial structure of the state in question. This claim remains unilluminated by the wealth of evidence that shows how the humanitarian motive not only shapes the mandate of a host state and nonstate agencies, but also serves to restrict the operational freedom of military commanders in democracies, who can- not act with impunity and who do not wage war in a lawless state of nature.35 Furthermore, Agamben ignores the crisis of humanitarianism that emerged as a result of the totalitarian degeneration of modern states in the twentieth century. States cannot always be assumed to follow a rational self-interest which informs them that there is no point in killing others indiscriminately. The Nazi episode in European history has shown that sometimes leaders do not spare the weak and the sick, but take extra care not to let them escape, even if they are handicapped, very old or very young. Classic humanitarianism depends on the existence of an international society whose members feel bound by a basic set of rules regarding the use of violence—rules which the ICRC itself helped to institutionalize. Conversely, classic humanitarianism becomes dysfunctional when states place no value at all on their international reputation and see harming the lives of defenseless individuals not as useless and cruel, but as part of their very mission.36 The founders of the ICRC defined war as an anthropological constant that produced a continuous stream of new victims with the predictable regularity and unavoidability of floods or volcanic eruptions. Newer organizations, by contrast, have framed conditions of massive social suffering as a consequence of largely avoidable political mistakes. The humanitarian movement becomes political, to paraphrase Carl Schmitt,37 in so far as it orients itself to humanitarian states of emergency, the causes of which are located no longer in nature, but in society and politics. Consequently, the founding generation of the new humanitarian organizations have freed themselves from the ideals of apolitical philanthropy and chosen as their new models historical figures like the Swedish diplomat Raoul Wallenberg, who saved thou- sands of Jews during the Second World War.38 In a different fashion than Agamben imagines, the primary concern in the field of humanitarian intervention and human rights politics today is not the protection of bare life, but rather the rehabilitation of the lived life of citizens who suffer, for in- stance, from conditions such as post-traumatic stress disorder. At the same time, there is a field of activity emerging beneath the threshold of the bare life. In the United States, in particular, pathologists working in conjunction with human rights organizations have discovered the importance of corpses and corporal remains now that it is possible to identify reliable evidence for war crimes from exhumed bod- ies.39

## CP

### 2AC OLC CP

#### Here’s evidence to support that- even Obama would ignore it

Posner 11 - Kirkland & Ellis Professor, University of Chicago Law School (Eric A. Posner, “Deference To The Executive In The United States After September 11: Congress, The Courts, And The Office Of Legal Counsel”, http://www.harvard-jlpp.com/wp-content/uploads/2012/01/PosnerFinal.pdf)

In the early years of the Bush Administration, the Office of Legal Counsel (OLC), an office within the Department of Jus‐ tice, issued a series of memoranda arguing that certain counter‐ terrorism practices—including surveillance of U.S. citizens and coercive interrogation—did not violate the law. 37 These memos were later leaked to the public, causing an outcry. 38 In 2011, the head of the OLC told President Obama that continued U.S. military presence in Libya would violate the War Powers Act. The President disregarded this advice, relying in part on contrary advice offered by other officials in the government.

These two events neatly encapsulate the dilemma for the OLC, and indeed all the President’s legal advisers. If the OLC tries to block the President from acting in the way he sees fit, it takes the risk that he will disregard its advice and marginalize the institution. If the OLC gives the President the advice that he wants to hear, it takes the risk that it will mislead him and fail to prepare him for adverse reactions from the courts, Congress, and the public.

Many scholars, most notably Professor Jack Goldsmith, argue that the OLC can constrain the executive. 39 The underlying idea here is that even if Congress and the courts cannot constrain the executive, perhaps offices within the executive can. The opposite view, advanced by Professor Bruce Ackerman, is that the OLC is a rubber stamp. 40 I advocate a third view: The OLC does not constrain the executive but enables him to accomplish goals that he would not otherwise be able to accomplish. It is more accurate to say that the OLC enables rather than constrains.

#### SCOTUS would have to review the CP- either the CP links to the net-benefit, or the CP is struck down and doesn’t solve- durable fiat only applies to the agency taking action

Howell 5 (William G. Howell, Associate Prof Gov Dep @ Harvard 2005 (Unilateral Powers: A Brief¶ Overview; Presidential Studies Quarterly, Vol. 35, Issue: 3, Pg 417)

Plainly, presidents cannot institute every aspect of their policy agenda by decree. The checks and balances that define our system of governance are alive, though not always well, when presidents contemplate unilateral action. Should the president proceed without statutory or constitutional authority, the courts stand to overturn his actions, just as Congress can amend them, cut funding for their operations, or eliminate them outright. (4) Even in those moments when presidential power reaches its zenith--namely, during times of national crisis--judicial and congressional prerogatives may be asserted (Howell and Pevehouse 2005, forthcoming; Kriner, forthcoming; Lindsay 1995, 2003; and see Fisher's contribution to this volume). In 2004, as the nation braced itself for another domestic terrorist attack and images of car bombings and suicide missions filled the evening news, the courts extended new protections to citizens deemed enemy combatants by the president, (5) as well as noncitizens held in protective custody abroad. (6) And while Congress, as of this writing, continues to authorize as much funding for the Iraq occupation as Bush requests, members have imposed increasing numbers of restrictions on how the money is to be spent.

#### OLC has to be neutral- the link to court politics proves the CP guts solvency and prevents their shielding arguments

Posner 11 - Kirkland & Ellis Professor, University of Chicago Law School (Eric A. Posner, “Deference To The Executive In The United States After September 11: Congress, The Courts, And The Office Of Legal Counsel”, http://www.harvard-jlpp.com/wp-content/uploads/2012/01/PosnerFinal.pdf)

A question naturally arises about the OLC’s incentives. I have assumed that the OLC provides neutral advice, in the sense of trying to make accurate predictions about how other agents like Congress and the courts would react to proposed actions. It is possible that the OLC could be biased—either in favor of the President or against him. If the OLC were biased against the President, he would stop asking it for advice (or would ask for its advice privately and then ignore it). 50 This danger surely accounts for OLC jurisprudence being pro‐executive. 51 But it would be just as dangerous for OLC to be excessively biased in favor of the President because it would mislead him and lose its credibility with Congress. 52 As a result, the OLC could not help the President engage in L policies. So the OLC must be neither excessively pro‐President nor anti‐President. If it can avoid these extremes, it will be an enabler; if it cannot, it will be ignored. In no circumstance could it be a constraint. 53

## Flexibility

### 2AC Impact D

**No terror**

**Mueller and Stewart 12** [John Mueller is Senior Research Scientist at the Mershon Center for International Security Studies and Adjunct Professor in the Department of Political Science, both at Ohio State University, and Senior Fellow at the Cato Institute in Washington, D.C. Mark G. Stewart is Australian Research Council Professorial Fellow and Professor and Director at the Centre for Infrastructure Performance and Reliability at the University of Newcastle in Australia, “The Terrorism Delusion”, International Security, Vol. 37, No. 1 (Summer 2012), pp. 81–110]

In the eleven years since the September 11 attacks, no terrorist has been able to detonate even a primitive bomb in the United States, and except for the four explosions in the London transportation system in 2005, neither has any in the United Kingdom. Indeed, the only method by which Islamist terrorists have managed to kill anyone in the United States since September 11 has been with gunfire—inflicting a total of perhaps sixteen deaths over the period (cases 4, 26, 32).11 This limited capacity is impressive because, at one time, small-scale terrorists in the United States were quite successful in setting off bombs. Noting that the scale of the September 11 attacks has “tended to obliterate America’s memory of pre-9/11 terrorism,” Brian Jenkins reminds us (and we clearly do need reminding) that the 1970s witnessed sixty to seventy terrorist incidents, mostly bombings, on U.S. soil every year.12 The situation seems scarcely different in Europe and other Western locales. Michael Kenney, who has interviewed dozens of government officials and intelligence agents and analyzed court documents, has found that, in sharp contrast with the boilerplate characterizations favored by the DHS and with the imperatives listed by Dalmia, Islamist militants in those locations are **operationally unsophisticated,** short on know-how, **prone to making mistakes, poor at planning,** and limited in their capacity to learn.13 Another study documents the difficulties of network coordination that continually threaten the terrorists’ operational unity, trust, cohesion, and ability to act collectively.14 In addition, although some of the plotters in the cases targeting the United States harbored visions of toppling large buildings, destroying airports, setting off dirty bombs, or bringing down the Brooklyn Bridge (cared apartment, some of which did not even exist (case 15). In Norway, a neo-Nazi terrorist on his way to bomb a synagogue took a tram going the wrong way and dynamited a mosque instead.15 Although the efforts of would-be terrorists have often seemed **pathetic, even comical or absurd,** the comedy remains a dark one. Left to their own devices, at least a few of these often inept and almost always self-deluded individuals could eventually have committed some serious, if small-scale, damage.16

#### Detention causes terrorism- perpetuates the root cause of extremisim

Combs 12 (Casey- writer for the Diplomatic Courier and freelance associate for the Foreign Policy Association, citing Martin Sheinin, professor of international law and UN Special Rapporteur on human rights and counterterrorism from 2005 to 2011, January 12, “US Counterterrorism Law May “Backfire”: UN”, http://foreignpolicyblogs.com/2012/01/12/new-us-counterterrorism-law-may-backfire-un/)

When the “global war on terror” was waged following 9/11, he said, the possibility of indefinite detention was extended to terrorism, “far beyond genuine situations of international or even non-international armed conflict. And it extends indefinite detention to persons who are not combatants. For instance, persons who are held to have provided substantial support to terrorism would be subject to indefinite detention.” Against that background, Mr. Sheinan suggested several ways in which violating human rights in the course of countering terrorism can “backfire.” Rights violations can “add to causes of terrorism,” he said, “both by perpetuating ‘root causes’ that involve the alienation of communities and by providing ‘triggering causes’ through which bitter individuals make the morally inexcusable decision to turn to methods of terrorism.” Further, “these kinds of legal provisions are always open for bad faith copying by repressive governments that will use them for their own political purposes.” Though such copying was found to be less common than expected, “repressive governments may do so for their own political purposes.” “It is hard to see any practical advantage gained through the NDAA. It is just another form of what I call symbolic legislation, enacted because the legislators want to be seen as being ‘tough’ or as ‘doing something.’ The law is written as just affirming existing powers and practices and hence not providing any meaningful new tools in the combat of terrorism,” he concluded. With Washington simultaneously fostering democratic transitions across the Middle East and North Africa and gambling on military exits from Iraq and Afghanistan, such “backfires” may well hamper development of the rule of law and respect for human rights when they are needed most.

#### The squo is reverse proliferating- no impact

Kahl et. al 13 (Colin H., Senior Fellow at the Center for a New American Security and an associate professor in the Security Studies Program at Georgetown University’s Edmund A. Walsh School of Foreign Service, Melissa G. Dalton, Visiting Fellow at the Center for a New American Security, Matthew Irvine, Research Associate at the Center for a New American Security, February, “If Iran Builds the Bomb, Will Saudi Arabia Be Next?” <http://www.cnas.org/files/documents/publications/CNAS_AtomicKingdom_Kahl.pdf>, 2013)

\*\*\*cites Jacques Hymans, USC Associate Professor of IR\*\*\*

I I I . LESSONS FRO M HISTOR Y Concerns over “regional proliferation chains,” “falling nuclear dominos” and “nuclear tipping points” are nothing new; indeed, reactive proliferation fears date back to the dawn of the nuclear age.14 Warnings of an inevitable deluge of proliferation were commonplace from the 1950s to the 1970s, resurfaced during the discussion of “rogue states” in the 1990s and became even more ominous after 9/11.15 In 2004, for example, Mitchell Reiss warned that “in ways both fast and slow, we may very soon be approaching a nuclear ‘tipping point,’ where many countries may decide to acquire nuclear arsenals on short notice, thereby triggering a proliferation epidemic.” Given the presumed fragility of the nuclear nonproliferation regime and the ready supply of nuclear expertise, technology and material, Reiss argued, “a single new entrant into the nuclear club could catalyze similar responses by others in the region, with the Middle East and Northeast Asia the most likely candidates.”16 Nevertheless, predictions of inevitable proliferation cascades have historically proven false (see The Proliferation Cascade Myth text box). In the six decades since atomic weapons were first developed, nuclear restraint has proven far more common than nuclear proliferation, and cases of reactive proliferation have been exceedingly rare. Moreover, most countries that have started down the nuclear path have found the road more difficult than imagined, both technologically and bureaucratically, leading the majority of nuclear-weapons aspirants to reverse course. Thus, despite frequent warnings of an unstoppable “nuclear express,”17 William Potter and Gaukhar Mukhatzhanova astutely note that the “train to date has been slow to pick up steam, has made fewer stops than anticipated, and usually has arrived much later than expected.”18 None of this means that additional proliferation in response to Iran’s nuclear ambitions is inconceivable, but the empirical record does suggest that regional chain reactions are not inevitable. Instead, only certain countries are candidates for reactive proliferation. Determining the risk that any given country in the Middle East will proliferate in response to Iranian nuclearization requires an assessment of the incentives and disincentives for acquiring a nuclear deterrent, the technical and bureaucratic constraints and the available strategic alternatives. Incentives and Disincentives to Proliferate Security considerations, status and reputational concerns and the prospect of sanctions combine to shape the incentives and disincentives for states to pursue nuclear weapons. Analysts predicting proliferation cascades tend to emphasize the incentives for reactive proliferation while ignoring or downplaying the disincentives. Yet, as it turns out, instances of nuclear proliferation (including reactive proliferation) have been so rare because going down this road often risks insecurity, reputational damage and economic costs that outweigh the potential benefits.19 Security and regime survival are especially important motivations driving state decisions to proliferate. All else being equal, if a state’s leadership believes that a nuclear deterrent is required to address an acute security challenge, proliferation is more likely.20 Countries in conflict-prone neighborhoods facing an “enduring rival”– especially countries with inferior conventional military capabilities vis-à-vis their opponents or those that face an adversary that possesses or is seeking nuclear weapons – may be particularly prone to seeking a nuclear deterrent to avert aggression.21 A recent quantitative study by Philipp Bleek, for example, found that security threats, as measured by the frequency and intensity of conventional militarized disputes, were highly correlated with decisions to launch nuclear weapons programs and eventually acquire the bomb.22 The Proliferation Cascade Myth Despite repeated warnings since the dawn of the nuclear age of an inevitable deluge of nuclear proliferation, such fears have thus far proven largely unfounded. Historically, nuclear restraint is the rule, not the exception – and the degree of restraint has actually increased over time. In the first two decades of the nuclear age, five nuclear-weapons states emerged: the United States (1945), the Soviet Union (1949), the United Kingdom (1952), France (1960) and China (1964). However, in the nearly 50 years since China developed nuclear weapons, only four additional countries have entered (and remained in) the nuclear club: Israel (allegedly in 1967), India (“peaceful” nuclear test in 1974, acquisition in late-1980s, test in 1998), Pakistan (acquisition in late-1980s, test in 1998) and North Korea (test in 2006).23 This significant slowdown in the pace of proliferation occurred despite the widespread dissemination of nuclear know-how and the fact that the number of states with the technical and industrial capability to pursue nuclear weapons programs has significantly increased over time.24 Moreover, in the past 20 years, several states have either given up their nuclear weapons (South Africa and the Soviet successor states Belarus, Kazakhstan and Ukraine) or ended their highly developed nuclear weapons programs (e.g., Argentina, Brazil and Libya).25 Indeed, by one estimate, 37 countries have pursued nuclear programs with possible weaponsrelated dimensions since 1945, yet the overwhelming number chose to abandon these activities before they produced a bomb. Over time, the number of nuclear reversals has grown while the number of states initiating programs with possible military dimensions has markedly declined.26 Furthermore – especially since the Nuclear Non-Proliferation Treaty (NPT) went into force in 1970 – reactive proliferation has been exceedingly rare. The NPT has near-universal membership among the community of nations; only India, Israel, Pakistan and North Korea currently stand outside the treaty. Yet the actual and suspected acquisition of nuclear weapons by these outliers has not triggered widespread reactive proliferation in their respective neighborhoods. Pakistan followed India into the nuclear club, and the two have engaged in a vigorous arms race, but Pakistani nuclearization did not spark additional South Asian states to acquire nuclear weapons. Similarly, the North Korean bomb did not lead South Korea, Japan or other regional states to follow suit.27 In the Middle East, no country has successfully built a nuclear weapon in the four decades since Israel allegedly built its first nuclear weapons. Egypt took initial steps toward nuclearization in the 1950s and then expanded these efforts in the late 1960s and 1970s in response to Israel’s presumed capabilities. However, Cairo then ratified the NPT in 1981 and abandoned its program.28 Libya, Iraq and Iran all pursued nuclear weapons capabilities, but only Iran’s program persists and none of these states initiated their efforts primarily as a defensive response to Israel’s presumed arsenal.29 Sometime in the 2000s, Syria also appears to have initiated nuclear activities with possible military dimensions, including construction of a covert nuclear reactor near al-Kibar, likely enabled by North Korean assistance.30 (An Israeli airstrike destroyed the facility in 2007.31) The motivations for Syria’s activities remain murky, but the nearly 40-year lag between Israel’s alleged development of the bomb and Syria’s actions suggests that reactive proliferation was not the most likely cause. Finally, even countries that start on the nuclear path have found it very difficult, and exceedingly time consuming, to reach the end. Of the 10 countries that launched nuclear weapons projects after 1970, only three (Pakistan, North Korea and South Africa) succeeded; one (Iran) remains in progress, and the rest failed or were reversed.32 The successful projects have also generally needed much more time than expected to finish. According to Jacques Hymans, the average time required to complete a nuclear weapons program has increased from seven years prior to 1970 to about 17 years

after 1970, even as the hardware, knowledge and industrial base required for proliferation has expanded to more and more countries.33 Yet throughout the nuclear age, many states with potential security incentives to develop nuclear weapons have nevertheless abstained from doing so.34 Moreover, contrary to common expectations, recent statistical research shows that states with an enduring rival that possesses or is pursuing nuclear weapons are not more likely than other states to launch nuclear weapons programs or go all the way to acquiring the bomb, although they do seem more likely to explore nuclear weapons options.35 This suggests that a rival’s acquisition of nuclear weapons does not inevitably drive proliferation decisions. One reason that reactive proliferation is not an automatic response to a rival’s acquisition of nuclear arms is the fact that security calculations can cut in both directions. Nuclear weapons might deter outside threats, but leaders have to weigh these potential gains against the possibility that seeking nuclear weapons would make the country or regime less secure by triggering a regional arms race or a preventive attack by outside powers. Countries also have to consider the possibility that pursuing nuclear weapons will produce strains in strategic relationships with key allies and security patrons. If a state’s leaders conclude that their overall security would decrease by building a bomb, they are not likely to do so.36 Moreover, although security considerations are often central, they are rarely sufficient to motivate states to develop nuclear weapons. Scholars have noted the importance of other factors, most notably the perceived effects of nuclear weapons on a country’s relative status and influence.37 Empirically, the most highly motivated states seem to be those with leaders that simultaneously believe a nuclear deterrent is essential to counter an existential threat and view nuclear weapons as crucial for maintaining or enhancing their international status and influence. Leaders that see their country as naturally at odds with, and naturally equal or superior to, a threatening external foe appear to be especially prone to pursuing nuclear weapons.38 Thus, as Jacques Hymans argues, extreme levels of fear and pride often “combine to produce a very strong tendency to reach for the bomb.”39 Yet here too, leaders contemplating acquiring nuclear weapons have to balance the possible increase to their prestige and influence against the normative and reputational costs associated with violating the Nuclear Non-Proliferation Treaty (NPT). If a country’s leaders fully embrace the principles and norms embodied in the NPT, highly value positive diplomatic relations with Western countries and see membership in the “community of nations” as central to their national interests and identity, they are likely to worry that developing nuclear weapons would damage (rather than bolster) their reputation and influence, and thus they will be less likely to go for the bomb.40 In contrast, countries with regimes or ruling coalitions that embrace an ideology that rejects the Western dominated international order and prioritizes national self-reliance and autonomy from outside interference seem more inclined toward proliferation regardless of whether they are signatories to the NPT.41 Most countries appear to fall in the former category, whereas only a small number of “rogue” states fit the latter. According to one count, before the NPT went into effect, more than 40 percent of states with the economic resources to pursue nuclear programs with potential military applications did so, and very few renounced those programs. Since the inception of the nonproliferation norm in 1970, however, only 15 percent of economically capable states have started such programs, and nearly 70 percent of all states that had engaged in such activities gave them up.42 The prospect of being targeted with economic sanctions by powerful states is also likely to factor into the decisions of would-be proliferators. Although sanctions alone proved insufficient to dissuade Iraq, North Korea and (thus far) Iran from violating their nonproliferation obligations under the NPT, this does not necessarily indicate that sanctions are irrelevant. A potential proliferator’s vulnerability to sanctions must be considered. All else being equal, the more vulnerable a state’s economy is to external pressure, the less likely it is to pursue nuclear weapons. A comparison of states in East Asia and the Middle East that have pursued nuclear weapons with those that have not done so suggests that countries with economies that are highly integrated into the international economic system – especially those dominated by ruling coalitions that seek further integration – have historically been less inclined to pursue nuclear weapons than those with inward-oriented economies and ruling coalitions.43 A state’s vulnerability to sanctions matters, but so too does the leadership’s assessment regarding the probability that outside powers would actually be willing to impose sanctions. Some would-be proliferators can be easily sanctioned because their exclusion from international economic transactions creates few downsides for sanctioning states. In other instances, however, a state may be so vital to outside powers – economically or geopolitically – that it is unlikely to be sanctioned regardless of NPT violations. Technical and Bureaucratic Constraints In addition to motivation to pursue the bomb, a state must have the technical and bureaucratic wherewithal to do so. This capability is partly a function of wealth. Richer and more industrialized states can develop nuclear weapons more easily than poorer and less industrial ones can; although as Pakistan and North Korea demonstrate, cash-strapped states can sometimes succeed in developing nuclear weapons if they are willing to make enormous sacrifices.44 A country’s technical know-how and the sophistication of its civilian nuclear program also help determine the ease and speed with which it can potentially pursue the bomb. The existence of uranium deposits and related mining activity, civilian nuclear power plants, nuclear research reactors and laboratories and a large cadre of scientists and engineers trained in relevant areas of chemistry and nuclear physics may give a country some “latent” capability to eventually produce nuclear weapons. Mastery of the fuel-cycle – the ability to enrich uranium or produce, separate and reprocess plutonium – is particularly important because this is the essential pathway whereby states can indigenously produce the fissile material required to make a nuclear explosive device.45 States must also possess the bureaucratic capacity and managerial culture to successfully complete a nuclear weapons program. Hymans convincingly argues that many recent would-be proliferators have weak state institutions that permit, or even encourage, rulers to take a coercive, authoritarian management approach to their nuclear programs. This approach, in turn, politicizes and ultimately undermines nuclear projects by gutting the autonomy and professionalism of the very scientists, experts and organizations needed to successfully build the bomb.46 Alternative Sources of Nuclear Deterrence Historically, the availability of credible security guarantees by outside nuclear powers has provided a potential alternative means for acquiring a nuclear deterrent without many of the risks and costs associated with developing an indigenous nuclear weapons capability. As Bruno Tertrais argues, nearly all the states that developed nuclear weapons since 1949 either lacked a strong guarantee from a superpower (India, Pakistan and South Africa) or did not consider the superpower’s protection to be credible (China, France, Israel and North Korea). Many other countries known to have pursued nuclear weapons programs also lacked security guarantees (e.g., Argentina, Brazil, Egypt, Indonesia, Iraq, Libya, Switzerland and Yugoslavia) or thought they were unreliable at the time they embarked on their programs (e.g., Taiwan). In contrast, several potential proliferation candidates appear to have abstained from developing the bomb at least partly because of formal or informal extended deterrence guarantees from the United States (e.g., Australia, Germany, Japan, Norway, South Korea and Sweden).47 All told, a recent quantitative assessment by Bleek finds that security assurances have empirically significantly reduced proliferation proclivity among recipient countries.48 Therefore, if a country perceives that a security guarantee by the United States or another nuclear power is both available and credible, it is less likely to pursue nuclear weapons in reaction to a rival developing them. This option is likely to be particularly attractive to states that lack the indigenous capability to develop nuclear weapons, as well as states that are primarily motivated to acquire a nuclear deterrent by security factors (as opposed to status-related motivations) but are wary of the negative consequences of proliferation.

### 2AC Flexibility DA

#### Flexibility is irrelevant

COHEN 13 - fellow of the Century Foundation, foreign policy columnist for the Guardian (Michael Cohen, “Contrary to popular belief, President Obama doesn't have a magic wand”, May 8, http://www.theguardian.com/commentisfree/2013/may/08/obama-not-lame-duck-gop-obstructs-everything)

Yet, the belief that the president carries a leadership magic wand to convince recalcitrant political opponents (and some allies) to do his bidding is not merely restricted to Congressional relations, it's evident in foreign policy as well.¶ As death tolls have mounted in the Syrian civil war perhaps the loudest criticism of President Obama is that he won't act to stop violence. But this is based on the dubious notion that the US military can stop the violence in Syria. Consider, for example, the "plan" put forward by Bill Keller in the New York Times. The US should move "to assert control of the arming and training of rebels … cultivating insurgents who commit to negotiating an orderly transition to a nonsectarian Syria." In addition, the US must¶ "make clear to President Assad that if he does not cease his campaign of terror and enter negotiations on a new order, he will pay a heavy price. When he refuses, we send missiles against his military installations until he, or more likely those around him, calculate that they should sue for peace." ¶ What can President Obama be thinking in rejecting an idea as elegantly simple as this one?¶ Indeed, virtually every argument for the use of force in Syria – chronicled in great detail here by Micah Zenko – including maintaining US credibility, sending a message to Iran or North Korea, winning back the confidence of the Arab league, maintaining influence with the Syrian rebels all lead in one direction … success! If only the president will show leadership, then good things will happen. Yet, if there is any lesson that could be drawn from the wars fought by the US over the past 10 years, it is that America's ability to shape events in foreign locales is limited and rarely works out well as the proponents of military force promise.¶ To be sure, foreign policy is one of the few places where presidents can exercise significant institutional power (and largely because Congress has abdicated its oversight responsibilities). But being able to act with greater flexibility does not equal an optimal outcome – a point that the presidencies of Truman, Johnson, Nixon and Bush amply demonstrate.¶ In the end, presidents, like all of us, are prisoners to events outside their control. At home and abroad they are hamstrung both by the interests of other actors in our political system and by the national interests of other nations – and of course by adherence to a Constitution that was purposely written to prevent any president from becoming too powerful. If you want to blame anyone for why the president can't do what you believe he should, blame them. Obama just works here.

#### Courts will constrain Obama on detention now- Hedges ruling coming- but it isn’t sufficient to solve the aff

RT 9/3 (Supreme Court to rule on fate of indefinite detention for Americans under NDAA http://rt.com/usa/ndaa-scotus-hedges-suit-359/)

The United States Supreme Court is being asked to hear a federal lawsuit challenging the military’s legal ability to indefinitely detain persons under the National Defense Authorization Act of 2012, or NDAA. According to Pulitzer Prize-winning journalist Chris Hedges — a co-plaintiff in the case — attorneys will file paperwork in the coming days requesting that the country’s high court weigh in on Hedges v. Obama and determine the constitutionality of a controversial provision that has continuously generated criticism directed towards the White House since signed into law by President Barack Obama almost [two years ago](http://rt.com/trends/national-defense-authorization-act-indefinite-detention/) and defended adamantly by his administration in federal court in the years since.

### 2AC Intel Link

#### Guantanamo doesn’t provide intel to stop terror but it does increase the chances of it

Greenberg 7 (Karen- Director of the Center on National Security and permanent member of the Council on Foreign Relations while Research for this article was contributed by Center on Law and Security Research Fellow Francesca Laguardia, February, “8 Reasons to Close GUANTANAMO NOW”, lexis)

#5 It undermines intelligence efforts¶ Despite the tens of thousands of hours of interrogation that have taken place at Guantanamo, very little worthwhile intelligence has been extracted. What information is left is now five years old, and it is doubtful that any Guantanamo prisoner has knowledge of a ticking bomb or a current plot.¶ And while the government maintains that detainees can provide a primer on jihad networks and al-Qaeda's strategic goals, at this point, the information is likely out of date. Besides, what can be extracted from individuals who, for the most part, were the wrong people to imprison in the first place.¶ According to a report by Seton Hall School of Law, 86 percent of detainees were arrested by Pakistan or the Northern Alliance and "handed over to the United States at a time when the United States offered large bounties for capture of suspected enemies."¶ Moreover, Guantanamo's very existence has alienated potential inside sources of information. Two years ago, at a Center on Law and Security conference in Florence, Italy, two of Europe's leading terrorism magistrates pointed out that attempts to infiltrate terrorist cells had become much more difficult in the wake of rising public anger over Guantanamo.¶ ¶ #6 It creates new enemies¶ Guantanamo has fomented that which it was created to combat -- anti-American extremism and jihad. Guantanamo is just the public face of a global network of "ghost prisons." According to Human Rights First (formerly the Lawyers' Committee for Human Rights), the United States has acknowledged 20 detention centers in Afghanistan, in addition to the bases at Bagram and Kandahar; as a prison near the Afghan borde

ases 2, 8, 12, 19, 23, 30, 42), all were nothing more than **wild fantasies,** far beyond the plotters’ capacities however much they may have been encouraged in some instances by FBI operatives. Indeed, in many of the cases, target selection is effectively a random process, lacking guile and careful planning. Often, it seems, targets have been chosen almost capriciously and simply for their convenience. For example, a would-be bomber targeted a mall in Rockford, Illinois, because it was nearby (case 21). Terrorist plotters in Los Angeles in 2005 drew up a list of targets that were all within a 20-mile radius of their shr in Kohat, Pakistan; and the al Jafr prison in Jordan. This suggests that Guantanamo may have been a smokescreen for more inhumane, less legal incarceration and interrogation practices elsewhere.¶ According to Armando Spataro, a senior Italian prosecutor known for his work on global terrorism, Guantanamo and the U.S. renditions policy "is extremely damaging to all our efforts to integrate our Muslim communities." Muslims around the world are asking why there is so little international opposition to the U.S. policy of imprisonment without due process. The collateral damage of Guantanamo -- the incarceration of nearly 800 individuals who are denied legal rights, who regularly report being abused and who face a lifetime of imprisonment -- is incalculable. It breeds new angers and resentments, and thus new enemies.

### 2AC Release Link

#### Seriously the risk of this link is 5 thousandths of a percent

Eppinger 13 (Monica-Assistant Professor, Saint Louis University School of Law and Department of Sociology and Anthropology; J.D., Yale Law School; Ph.D. Anthropology, University of California Berkeley, Winter, “REALITY CHECK: DETENTION IN THE WAR ON TERROR”, Catholic University Law Review-Lexis)

Second, serious consideration should be given to the low rates of recidivism by those held in preventive detention in Afghanistan. In 2010, Vice Admiral Harward, U.S./ISAF commander of detainee operations in Afghanistan, said that of a detainee population numbering over 3,000 in all the years of conflict in Afghanistan, he had documented only seventeen cases in which those released from preventive detention returned to the battlefield. 219 That is a recidivism rate of roughly one-half of one percent. Reasons for that astonishingly low rate of battlefield recapture need to be investigated and analyzed. Is the low rate because of treatment or training that took place during detention? Is it related to community guarantees extracted at the time of release? Is it because too many were detained in the first place, including wrong place/wrong time non-combatants? Or is the figure a result of under-reporting, understandably missing, in the fog of war, released detainees who did return to the battlefield? Reasons for the low rate of recidivism or, in the case of the wrongly detained, first-time fighting by released detainees should be carefully analyzed and lessons extracted for future conduct.

### 2AC Intel Co-Op

#### Indefinite detention undermines international coop and alliances- also causes terrorism

Scheinin 12 (Martin Scheinin 12 is Professor of International Law and Former UN Special Rapporteur on Human Rights and Counter-Terrorism, "Should Human Rights Take a Back Seat in Wartime?" 1-11-12, www.realclearworld.com/articles/2012/01/11/national\_defense\_authorization\_act\_scheinin\_interview-full.html, DOA: 7-23-13)

CLC: As a world leader and active promoter of universal human rights, the practice of indefinite detention without charge would seem to clash with U.S. ideals. Could you comment on this contradiction? MS: One of the main lessons learned in the international fight against terrorism is that counter-terrorism professionals have gradually come to learn and admit that human rights violations are not an acceptable shortcut in an effective fight against terrorism. Such measures tend to backfire in multiple ways. They result in legal problems by hampering prosecution, trial and punishment. The use of torture is a clear example here. They also tend to alienate the communities with which authorities should be working in order to detect and prevent terrorism. And they add to causes of terrorism, both by perpetuating "root causes" that involve the alienation of communities and by providing "triggering causes" through which bitter individuals make the morally inexcusable decision to turn to methods of terrorism. The NDAA is just one more step in the wrong direction, by aggravating the counterproductive effects of human rights violating measures put in place in the name of countering terrorism. CLC: Does the NDAA afford the U.S. a practical advantage in the fight against terrorism? Or might the law undermine its global credibility? MS: It is hard to see any practical advantage gained through the NDAA. It is just another form of what I call symbolic legislation, enacted because the legislators want to be seen as being "tough" or as "doing something." The law is written as just affirming existing powers and practices and hence not providing any meaningful new tools in the combat of terrorism. By constraining the choices by the executive, it nevertheless hampers effective counter-terrorism work, including criminal investigation and prosecution, as well as international counter-terrorism cooperation, markedly in the issue of closing the Guantanamo Bay detention facility. Hence, it carries the risk of distancing the United States from its closest allies and the international community generally. And of course these kinds of legal provisions are always open for bad faith copying by repressive governments that will use them for their own political purposes. CLC: Do you think the U.S. adoption of the indefinite detention provisions sets a precedent for other countries to do so? MS: Of course, these kinds of legal provisions are always open for bad faith copying by repressive governments that will use them for their own political purposes. Nevertheless, one of the conclusions I drew at the end of my six-year tenure as United Nations Special Rapporteur on human rights and counter-terrorism was that such copying of bad laws is less frequent than expected. It is much more common that countries are willing to learn from each other about what really works in the fight against terrorism, and for my part I did my best to identify and promote such best practice. There are a lot of good models showing how laws can at the same time comply with human rights and produce real results in the fight against terrorism. I don't think countries genuinely concerned about terrorism will be tempted to follow the NDAA approach. But repressive governments may do so for their own political purposes.

## Court Capital

### 2AC Impact D

#### The plan’s alliance building solves every 1NC impact- also solves energy insecurity

**Ikenberry, 11** (Professor of Politics and International Affairs at Princeton University, “A World of Our Making,” Spring,<http://www.democracyjournal.org/20/a-world-of-our-making.php?page=all>)

Grand strategy is a set of coordinated and sustained policies designed to address the long-term threats and opportunities that lie beyond the country’s shores. Given the great shifts in the global system and the crisis of liberal hegemonic order, how should the United States pursue grand strategy in the coming years? The answer is that the United States should work with others to rebuild and renew the institutional foundations of the liberal international order and along the way re-establish its own authority as a global leader. The United States is going to need to invest in alliances, partnerships, multilateral institutions, special relationships, great-power concerts, cooperative security pacts, and democratic security communities. That is, the United States will need to return to the great tasks of liberal order building. It is useful to distinguish between two types of grand strategy: positional and milieu oriented. With a positional grand strategy, a great power seeks to diminish the power or threat embodied in a specific challenger state or group of states. Examples are Nazi Germany, Imperial Japan, the Soviet bloc, and perhaps—in the future—Greater China. With a milieu-oriented grand strategy, a great power does not target a specific state but seeks to structure its general international environment in ways that are congenial with its long-term security. This might entail building the infrastructure of international cooperation, promoting trade and democracy in various regions of the world, and establishing partnerships that might be useful for various contingencies. My point is that under conditions of unipolarity, in a world of diffuse threats, and with pervasive uncertainty over what the specific security challenges will be in the future, this milieu-based approach to grand strategy is necessary. The United States does not face the sort of singular geopolitical threat that it did with the fascist and communist powers of the last century. Indeed, compared with the dark days of the 1930s or the Cold War, America lives in an extraordinarily benign security environment. Rather than a single overriding threat, the United States and other countries face a host of diffuse and evolving threats. Global warming, nuclear proliferation, jihadist terrorism, energy security, health pandemics—these and other dangers loom on the horizon. Any of these threats could endanger Americans’lives and way of life either directly or indirectly by destabilizing the global system upon which American security and prosperity depends. What is more, these threats are interconnected—and it is their interactive effects that represent the most acute danger. And if several of these threats materialize at the same time and interact to generate greater violence and instability, then the global order itself, as well as the foundations of American national security, would be put at risk. What unites these threats and challenges is that they are all manifestations of rising security interdependence. More and more of what goes on in other countries matters for the health and safety of the United States and the rest of the world. Many of the new dangers—such as health pandemics and transnational terrorist violence—stem from the weakness of states rather than their strength. At the same time, technologies of violence are evolving, providing opportunities for weak states or nonstate groups to threaten others at a greater distance.When states are in a situation of security interdependence, they cannot go it alone. They must negotiate and cooperate with other states and seek mutual restraints and protections. The United States cannot hide or protect itself from threats under conditions of rising security interdependence. It must **get out in the world and** **work with other states to build frameworks of cooperation** and leverage capacities for action against this unusually diverse, diffuse, and unpredictable array of threats and challenges. This is why a milieu-based grand strategy is attractive. The objective is to shape the international environment to maximize your capacities to protect the nation from threats. To engage in liberal order building is to **invest in** international cooperative frameworks—that is, rules, institutions, **partnerships,** networks, standby capacities, social knowledge, etc.—in which the United Statesoperates. To build international order is to increase the global stock of “social capital”—which is the term Pierre Bourdieu, Robert Putnam, and other social scientists have used to define the actual and potential resources and capacities within a political community, manifest in and through its networks of social relations, that are available for solving collective problems.

### 2AC Court Capital DA

#### Kennedy won’t uphold Schuette ban – he’ll vote on precedent.

Smith, Law Professor at Suffolk University, 6-24

[Robert, “Supreme Court Decision "Did Nothing to … Clarify Constitutional Issues Surrounding Affirmative Action”’, Suffolk University News, 6-24-13,

<http://www.suffolk.edu/news/17966.php#.UeARsUFvP_m>, RSR]

“If the Supreme Court were to reverse the lower court in Schuette and rule that Michigan can create a constitutional ban on affirmative action, then it could achieve what conservatives might consider a ‘second-best’ option. The four conservative justices were unable in Fisher and earlier Supreme Court decisions to have the Supreme Court create a national ban on affirmative action (as part of U.S. constitutional law). But if the Court upholds the Michigan constitutional amendment, it would allow for state-by-state bans of affirmative action that would not be subject to Supreme Court review.¶ “It is likely, however, that the court will not allow the Michigan amendment to stand. Justice Kennedy is likely to refuse to join the four conservative justices in allowing a total ban on affirmative action, much as he has done in prior affirmative action decisions.”

#### The court will rule on all of the things

**Pieklo 9/17 (**[Jessica Mason Pieklo](http://rhrealitycheck.org/author/jessica-pieklo/), Senior Legal Analyst, RH Reality Check. “6 Supreme Court Cases to Watch This Term” http://rhrealitycheck.org/article/2013/09/17/six-supreme-court-cases-to-watch-this-term/)

The United States Supreme Court term begins in October, and while the entire docket has not yet been set, already it’s shaping up to be a historic term, with decisions on abortion protests, legislative prayer, and affirmative action, just to name a few. Here are the key cases we’re keeping an eye on as the term starts up. 1. Cline v. Oklahoma Coalition for Reproductive Justice The Supreme Court looks poised to re-enter the abortion debate,

and it could do so as early as this year if it takes up Cline, the first of the recent wave of state-level restrictions to reach the high court. Cline involves a [challenge to an Oklahoma statute](http://rhrealitycheck.org/article/2013/06/28/scotus-poised-to-enter-medical-abortion-ban-debate/) that requires abortion-inducing drugs, including [RU-486](http://rhrealitycheck.org/tag/ru-486/), to be administered strictly according to the specific Food and Drug Administration labeling despite the fact that new research and best practices make that labeling out of date. Such “off-label” use of drugs is both legal and widespread in the United States as science, standards of care, and clinical practice often supercede the original FDA label on a given drug. In the case of cancer drugs, for example, the American Cancer Society [notes](http://www.cancer.org/treatment/treatmentsandsideeffects/treatmenttypes/chemotherapy/off-label-drug-use) that “New uses for [many] drugs may have been found and there’s often medical evidence from research studies to support the new use [even though] the makers of the drugs have not put them through the formal, lengthy, and often costly process required by the FDA to officially approve the drug for new uses.” Off-label use of RU-486 is based on the most recent scientific findings that suggest lower dosages of the drug and higher rates of effectiveness when administered in conjunction with a follow-up drug (Misoprostol). According to trial court findings, the alternative protocols are safer for women and more effective. But, according to the state and defenders of the law, there is great uncertainty about these off-label uses and their safety. When the issue reached the supreme court of Oklahoma, the court held in a very brief opinion that the Oklahoma statute was facially invalid under [Planned Parenthood v. Casey](http://www.oyez.org/cases/1990-1999/1991/1991_91_744). In Casey, a plurality of justices held that a state may legitimately regulate abortions from the moment of gestation as long as that regulation does not impose an undue burden on a woman’s right to choose an abortion. Later, in [Gonzales v. Carhart](http://www.oyez.org/cases/2000-2009/2006/2006_05_380), a majority of the Supreme Court, led by Justice Anthony Kennedy, interpreted Casey to allow state restrictions on specific abortion procedures when the government “reasonably concludes” that there is medical uncertainty about the safety of the procedure and an alternative procedure is available. Cline, then, could present an important test on the limits of Casey and whether, under Gonzales, the Court will permit states to ban medical abortions. But it’s not entirely clear the Court will actually take up Cline. At the lower court proceedings, the challengers argued that the Oklahoma statute bars the use of RU-486’s follow-up drug (Misoprostol) as well as the use of Methotrexate to terminate an ectopic pregnancy. If so, the statute then bars both any drug-induced abortion and eliminates the preferred method for ending an ectopic pregnancy. Attorneys defending the restriction deny the law has those effects, and do not argue that if it did such restrictions would be constitutional. With this open question of state law—whether the statute prohibits the preferred treatment for ectopic pregnancies—the Supreme Court told the Oklahoma Supreme Court those disputed questions of state law. So a lot depends on how the Oklahoma Supreme Court proceeds. Should the Oklahoma Supreme Court hold that the Oklahoma statute is unconstitutional because it prohibits the use of Misoprostol and Methotrexate, this case could be over without the Supreme Court weighing in. But if the Oklahoma Supreme Court invalidates the law insofar as it prohibits alternative methods for administering RU-486, the Supreme Court will almost certainly take a look. 2. Town of Greece v. Galloway The Roberts Court is set to weigh in on the issue of when, and how, [government prayer](http://rhrealitycheck.org/article/2013/05/24/reason-for-concern-as-roberts-court-agrees-to-hear-government-prayer-case/) practices can exist without violating the Establishment Clause’s ban on the intermingling of church and state. In [Marsh v. Chambers](http://www.oyez.org/cases/1980-1989/1982/1982_82_23), the Supreme Court upheld Nebraska’s practice of opening each legislative session with a prayer, based largely on an unbroken tradition of that practice dating back to the framing of the Constitution. In Marsh, the Court adopted two apparent limits to a legislative prayer practice: The government may not select prayer-givers based on a discriminatory motive, and prayer opportunities may not be exploited to proselytize in favor of one religion or disparage another. Prior to 1999, the town of Greece, New York, opened every legislative session with a moment of silence. Then, in 1999 and at the request of the town’s supervisor, the town switched to opening its legislative sessions with a prayer. Nearly all of those prayers were delivered by Christian clergy members and, unlike other city councils, there was no requirement that the prayers be inclusive or non-denominational. City officials selected speakers off a list of local religious leaders provided by the Greece Chamber of Commerce. From 1999 through 2007, Christians delivered every single invocation prayer, in part because the list provided by the area Chamber of Commerce included only Christian religious officials despite the fact that other denominations exist in the community. The practice was challenged by a group of citizens who argued it violated the Establishment Clause. The U.S. Court of Appeals for the Second Circuit acknowledged that the Town of Greece had not violated either of Marsh’s limits in its practices, but still invalidated the town’s practices. Applying the “reasonable observer” standard drawn from [County of Allegheny v. American Civil Liberties Union, Greater Pittsburgh Chapter](http://www.oyez.org/cases/1980-1989/1988/1988_87_2050), the court concluded that a reasonable observer would view the town as endorsing Christianity over other religions, because its process of composing a list of prayer-givers from clergy within its geographic boundaries and volunteers virtually guaranteed the person delivering the prayer would be a Christian, because most of the prayers contained uniquely Christian references, and because prayer-givers invited participation and town officials participated in the prayers. The reasonable observer test appears headed for a fall. In County of Alleghany, Justice Kennedy in his dissent criticized the reasonable observer test as insensitive to traditions and unworkable for governments and courts to apply. He argued that religious accommodations are consistent with the Establishment Clause as long as they do not coerce attendance at, or participation in, a religious observance, or directly fund religion. Justice Kennedy’s perspective is an important one. To begin with, the makeup of the Court is different now than the last time it considered these issues. Justice Sandra Day O’Connor has been replaced by Justice Samuel Alito, for example, and the Court has veered hard to the right. It is conceivable then that the Court could view this case as an opportunity to abandon, or at least reconsider and revise, the reasonable observer test. If so, the decision could affect not only the constitutionality of legislative prayers, but also all religious accommodations, including the public display of religious symbols. It could also offer a glimpse into the Court’s thinking on another religious accommodation likely to come before it this term: the challenges under the [Religious Freedom Restoration Act](http://www.law.cornell.edu/uscode/text/42/chapter-21B) to the [contraception benefit](http://rhrealitycheck.org/tag/birth-control-benefit/) in the Affordable Care Act. 3. McCullen v. Coakley Regardless of whether or not the Supreme Court ultimately takes up Cline v. Oklahoma Coalition for Reproductive Justice, the Court will take up the issue of abortion clinic protests in [McCullen v. Coakley](http://www.scotusblog.com/case-files/cases/mccullen-v-coakley/), a challenge that looks at the constitutionality of Massachusetts’ clinic buffer zone law. The last time the Supreme Court looked at the issue of clinic buffer zones was in [Hill v. Colorado](http://www.oyez.org/cases/1990-1999/1999/1999_98_1856). In Hill, the Court held that a law limiting protest and “sidewalk counseling” within eight feet of a person entering a health-care facility in order to protect persons entering the facility from unwanted speech did not violate the First Amendment. Critical to the Court’s decision in Hill was its conclusion that the prohibition was content neutral because it arguably prevented both pro-choice and anti-choice speakers from entering the eight-foot zone. The Massachusetts statute at issue in McCullen takes a different approach to get to the same purpose as the law upheld in Hill. The Massachusetts law prohibits anyone from entering a public sidewalk within 35 feet of a reproductive health-care facility, but exempts from that buffer employees of the facility acting within the scope of employment. The Massachusetts statute raises questions not resolved in Hill, including whether the employee exemption renders the Massachusetts statute content-based, meaning that it places a limitation on free speech depending on the subject matter, since arguably employees can use the exemption to deliver pro-choice messages. The Massachusetts statute differs in two other potentially significant differences also. First it applies only to reproductive health-care facilities, making its abortion-specific purpose more apparent, and has a larger buffer zone, making conversational speech more difficult. Ultimately, this case may end up being more about whether the Supreme Court sympathizes with anti-abortion protestors rather than the differences between the Massachusetts statute and Hill. In Hill, the justices in the majority were especially sympathetic to the plight of patients who want to undergo a private medical procedure in peace, without being subjected to the emotional turmoil of confrontational protests. The dissenters in Hill now find themselves in the conservative majority under the Roberts Court, a fact that could drive the outcome here. In Hill, conservative justices like Antonin Scalia ignored the plight of patients and instead accused the majority of creating a special brand of reduced First Amendment protection for abortion protesters that would be viewed as intolerable if applied to any other speaker. And that perspective shift—from concerns over patients’ rights to concerns over protesters’ rights—could make all the difference in this case. 4. McCutcheon v. Federal Election Commission If you thought Citizens United was bad, just wait until you hear about [McCutcheon v. Federal Election Commission](http://www.scotusblog.com/case-files/cases/mccutcheon-v-federal-election-commission/) (FEC). In [Citizens United v. FEC](http://www.oyez.org/cases/2000-2009/2008/2008_08_205), the Court held that restrictions on independent campaign expenditures that prohibited corporations from direct election spending violate the First Amendment. As bad as that decision was, it left intact the underlying holding in [Buckley v. Valeo](http://www.oyez.org/cases/1970-1979/1975/1975_75_436) that Congress may limit campaign contributions on the reasoning that limits on campaign contributions are thought to impinge less on First Amendment freedoms and have a stronger nexus to preventing corruption. At issue in McCutcheon is this underlying holding in Buckley when the Court considers the constitutionality of federal aggregate contribution limits—that is, the total amount that can be contributed to all candidates, party committees, or political action committees (PACs). Those are in contrast to base limits on candidate contributions that set limits on individual donations. In Buckley, the Court summarily upheld aggregate contribution limits as a means of preventing circumvention of the base limits on candidate contributions. The rationale was that, without aggregate limits, persons could circumvent the base limits on candidate contributions through massive un-earmarked contributions to political committees likely to contribute to a person’s favored candidate. The Roberts Court appears eager to take up aggregate limits because they limit not only the amount a person can contribute to a candidate, but the number of persons to whom a person can make a full base-level contribution. These kinds of restrictions appear all but certain to fall in a post-Citizens United world. At the time Buckley was decided, there were no base limits on party committees or PACs. Now there are. If the Supreme Court feels those new base limits adequately address the risk of circumvention that justified Buckley’s upholding aggregate contribution limits, then by Supreme Court logic there’s no reason to keep the aggregate limits in place. The Obama administration is defending the aggregate limits, arguing it is just as easy now to circumvent the base limits as when Buckley was decided, which is why the aggregate limits are necessary. Given the slow unwind of campaign finance law by the Roberts Court, it seems unlikely they will be persuaded by the Obama administration’s reasoning. 5. Schuette v. Coalition to Defend Affirmative Action If the Roberts Court appears set on dismantling individual contribution limits, it also appears set to strike another blow to affirmative action plans. Last summer, in [Fisher v. University of Texas at Austin](http://www.law.cornell.edu/supct/cert/11-345), the Court held that universities have limited authority to consider race in admissions to further diversity. At issue in [Schuette](http://www.scotusblog.com/case-files/cases/schuette-v-coalition-to-defend-affirmative-action/) is whether or not Michigan violated the Equal Protection Clause by amending its constitution to prohibit race- and sex-based discrimination or preferential treatment in public university admissions decisions. In 2006, Michigan voters approved the Michigan Civil Rights Initiative (MCRI), a measure that amended the state constitution to prohibit all use of race in public university admissions, as well as in public contracting and employment. A coalition of African-American student groups, faculty members, and public-sector labor unions immediately challenged the MCRI as a violation of the Fourteenth Amendment. In answering that question, the Court will have to tackle the restricting doctrine. Under the restricting doctrine, a state may not remove authority to decide a racial issue from one political entity and lodge it in another when doing so creates a more burdensome political hurdle. The Court has applied that doctrine only twice, first in [Hunter v. Erickson](http://holmes.oyez.org/cases/1960-1969/1968/1968_63), to invalidate a reallocation of authority over the decision to prohibit racial discrimination in housing, and then in [Washington v. Seattle School District No. 1](http://www.oyez.org/cases/1980-1989/1981/1981_81_9), to invalidate a reallocation of authority over the decision whether to bus students to achieve racial integration in the schools. The question before the Roberts Court is whether the political restructuring doctrine invalidates the MCRI. The Sixth Circuit Court of Appeals held that it did, because affirmative action is a racial issue of particular concern to racial minorities, and it is more difficult for minorities to obtain favorable action through the constitutional amendment process. In defending the MCRI, Michigan argues the political restructuring doctrine applies to reallocations of authority over measures to ensure equal opportunity, not those that give racial preference. It’s difficult to see the distinction, especially given the connection between graduating college and economic opportunity, but it is a distinction Michigan stands by. Michigan also argues that the political restructuring doctrine should not apply to admission decisions made by unelected university officials because they are not part of any “political process” as envisioned in earlier decisions. Should the Court accept Michigan’s argument, voters in any state dissatisfied with the affirmative action policies at their state universities could follow Michigan’s lead and vote to eliminate them through constitutional amendment. On the other hand, a decision finding the MCRI did in fact violate equal protection guarantees of the 14th Amendment would protect current policies from falling victim to voter dissatisfaction like in Michigan. 6. Township of Mount Holly v. Mount Holly Gardens Citizens in Action The Supreme Court is also poised to gut federal housing discrimination protections when it considers [whether to limit the federal housing discrimination law](http://www.scotusblog.com/case-files/cases/mount-holly-v-mt-holly-gardens-citizens-in-action-inc/) to cases of actual and proven bias against racial minorities. Mount Holly, New Jersey, argues it cannot be held liable for housing discrimination for redeveloping a depressed neighborhood and reducing the number of homes that are available to African Americans and Latinos. Specifically, the Roberts Court will examine whether the Fair Housing Act forbids actions by cities or mortgage lenders that have a “discriminatory effect” on racial minorities. According to census data, Mount Holly has a white majority. The town council decided that one neighborhood of about 330 homes was “in need of redevelopment.” Known as Mount Holly Gardens, this neighborhood was home to most of the Black and Latino residents in the town. The town council then voted to buy all the homes in the Gardens area for prices ranging from $32,000 to $49,000. They were to be replaced with new homes ranging from $200,000 to $250,000. In 2008, a community group representing the Gardens residents sued the city, arguing that its redevelopment plan was discriminatory and illegal because it would have a disparate impact on low-income African Americans and Latinos. City officials counter that they were not trying to displace minorities—rather, they were trying to improve a blighted part of town, not engage in illegal discrimination. Furthermore, they claim, the [Fair Housing Act](http://www.justice.gov/crt/about/hce/title8.php) does not cover these kinds of discrimination claims. Given the Roberts Court’s willingness to severely restrict the scope of other key pieces of civil rights legislation, like Title VII and the Voting Rights Act, there’s plenty of reason to believe the Fair Housing Act is the next to get gutted. In addition to these high-profile challenges, the Supreme Court will also look at whether individual government workers can be held liable for [age discrimination claims](http://www.scotusblog.com/case-files/cases/madigan-v-levin/), whether or not federal labor laws allow employees to [change clothes at work](http://www.scotusblog.com/case-files/cases/sandifer-v-united-states-steel-corporation/), and the extent of President Obama’s [recess appointment powers](http://www.scotusblog.com/case-files/cases/national-labor-relations-board-v-noel-canning/). In many ways, the Roberts Court is picking up right where it left off last term—with an eye toward narrowing as much as possible the reach and effect of the greatest achievements of the civil rights movement.

# 1AR

## Flex

### Flex irrelevant

#### A multitude of other actors hamper presidential flexibility

Rozell 12

(Mark Rozell, Professor of Public Policy, George Mason University, “From Idealism to Power: The Presidency in the Age of Obama” 2012, <http://www.libertylawsite.org/book-review/from-idealism-to-power-the-presidency-in-the-age-of-obama/>)

A substantial portion of Goldsmith’s book presents in detail his case that various forces outside of government, and some within, are responsible for hamstringing the president in unprecedented fashion: Aggressive, often intrusive, journalism, that at times endangers national security; human rights and other advocacy groups, some domestic and other cross-national, teamed with big resources and talented, aggressive lawyers, using every legal category and technicality possible to complicate executive action; courts thrust into the mix, having to decide critical national security law controversies, even when the judges themselves have little direct knowledge or expertise on the topics brought before them; attorneys within the executive branch itself advising against actions based on often narrow legal interpretations and with little understanding of the broader implications of tying down the president with legalisms.

### No deference

#### Precedent has already been established- no deference

Flaherty 2011 (Martin Flaherty, Leitner Professor of International Law, Fordham Law School, “Judicial Foreign Relations Authority After 9/11,” NYLS Law Review, http://www.nylslawreview.com/wordpress/wp-content/uploads/2011/08/Flaherty-56-1.pdf)

For a time the forces of judicial isolationism appeared to have gained traction and ¶ may yet carry the day. It is all the more surprising, then, that the Supreme Court ¶ reasserted the judiciary’s traditional foreign affairs role in the areas in which its ¶ opponents assert deference is most urgent—national security, terrorism, and war. Yet ¶ so far, in every major case arising out of 9/11, the Court has rejected the position ¶ staked out by the executive branch, even when supported by Congress. At critical ¶ points, moreover, each of these rejections involved the Court reclaiming its primacy ¶ in legal interpretation, an area in which advocates of judicial deference have appeared ¶ to make substantial progress. The Court nonetheless rejected deference in statutory ¶ construction in Rasul v. Bush.¶ 16 It took the same tack with regard to treaties in ¶ Hamdan v. Rumsfeld.¶ 17 It further rejected deference in constitutional interpretation in ¶ both Hamdi v. Rumsfeld18 and Boumediene v. Bush.¶ 19 Together, these cases represent a ¶ stunning reassertion of the judiciary’s proper role in foreign relations. Whether ¶ reassertion will mean restoration, however, still remains to be seen.

### New Impact

#### Checks on the Presidents power solves deterrence better- makes our threats credible

**Waxman 13** (Matthew C- Professor of Law at Columbia Law School; Adjunct Senior Fellow for Law and Foreign Policy, Council on Foreign Relations, “The Constitutional Power to Threaten War”, Forthcoming in Yale Law Journal, vol. 123 (2014), 8/25/2013, PDF)

A second argument, this one advanced by some congressionalists, is that stronger legislative checks on presidential uses of force would improve deterrent and coercive strategies by making them more selective and credible. The most credible U.S. threats, this argument holds, are those that carry formal approval by Congress, which reflects strong public support and willingness to bear the costs of war; requiring express legislative backing to make good on threats might therefore be thought to enhance the potency of threats by encouraging the President to seek congressional authorization before acting.181 A frequently cited instance is President Eisenhower’s request (soon granted) for standing congressional authorization to use force in the Taiwan Straits crises of the mid- and late-1950s – an authorization he claimed at the time was important to bolstering the credibility of U.S. threats to protect Formosa from Chinese aggression.182 (Eisenhower did not go so far as to suggest that congressional authorization ought to be legally required, however.) “It was [Eisenhower’s] seasoned judgment … that a commitment the United States would have much greater impact on allies and enemies alike because it would represent the collective judgment of the President and Congress,” concludes Louis Fisher. “Single-handed actions taken by a President, without the support of Congress and the people, can threaten national prestige and undermine the presidency. Eisenhower’s position was sound then. It is sound now.”183 A critical assumption here is that legal requirements of congressional participation in decisions to use force filters out unpopular uses of force, the threats of which are unlikely to be credible and which, if unsuccessful, undermine the credibility of future U.S. threats.¶ A third view is that legal clarity is important to U.S. coercive and deterrent strategies; that ambiguity as to the President’s powers to use force undermines the credibility of threats. Michael Reisman observed, for example, in 1989: “Lack of clarity in the allocation of competence and the uncertain congressional role will sow uncertainty among those who depend on U.S. effectiveness for security and the maintenance of world order. Some reduction in U.S. credibility and diplomatic effectiveness may result.”184 Such stress on legal clarity is common among lawyers, who usually regard it as important to planning, whereas strategists tend to see possible value in “constructive ambiguity”, or deliberate fudging of drawn lines as a negotiating tactic or for domestic political purposes.185 A critical assumption here is that clarity of constitutional or statutory design with respect to decisions about force exerts significant effects on foreign perceptions of U.S. resolve to make good on threats, if not by affecting the substance of U.S. policy commitments with regard to force then by pointing foreign actors to the appropriate institution or process for reading them.

#### Even if terrorists have fissile material, they can’t build the bomb and transport it

Mueller 2012 (John, Senior Research Scientist at the Mershon Center for International Security Studies and Adjunct Professor in the Department of Political Science, both at Ohio State University, and Senior Fellow at the Cato Institute. Mark G. Stewart is Australian Research Council Professorial Fellow and Professor and Director at the Centre for Infrastructure Performance and Reliability at the University of Newcastle in Australia, The Terrorism Delusion, International Security, Vol. 37, No. 1 (Summer 2012), pp. 81–110)

Over the course of time, such essentially delusionary thinking has been internalized and institutionalized in a great many ways. For example, an extrapolation of delusionary proportions is evident in the common observation that, because terrorists were able, mostly by thuggish means, to crash airplanes into buildings, they might therefore be able to construct a nuclear bomb. In 2005 an FBI report found that, despite years of well-funded sleuthing, the Bureau had yet to uncover a single true al-Qaida sleeper cell in the United States. The report was secret but managed to be leaked. Brian Ross, “Secret FBI Report Questions Al Qaeda Capabilities: No ‘True’ Al Qaeda Sleeper Agents Have Been Found in U.S.,” ABC News, March 9, 2005. Fox News reported that the FBI, however, observed that “just because there’s no concrete evidence of sleeper cells now, doesn’t mean they don’t exist.” “FBI Can’t Find Sleeper Cells,” Fox News, March 10, 2005. Jenkins has run an internet search to discover how often variants of the term “al-Qaida” appeared within ten words of “nuclear.” There were only seven hits in 1999 and eleven in 2000, but the number soared to 1,742 in 2001 and to 2,931 in 2002. 47 By 2008, Defense Secretary Robert Gates was assuring a congressional committee that what keeps every senior government leader awake at night is “the thought of a terrorist ending up with a weapon of mass destruction, especially nuclear.” 48 Few of the sleepless, it seems, found much solace in the fact that an al-Qaida computer seized in Afghanistan in 2001 indicated that the group’s budget for research on weapons of mass destruction (almost all of it focused on primitive chemical weapons work) was $2,000 to $4,000. 49 In the wake of the killing of Osama bin Laden, officials now have many more al-Qaida computers, and nothing in their content appears to suggest that the group had the time or inclination, let alone the money, to set up and staff a uranium-seizing operation, as well as a fancy, super-high-technology facility to fabricate a bomb. This is a process that requires trusting corrupted foreign collaborators and other criminals, obtaining and transporting highly guarded material, setting up a machine shop staffed with top scientists and technicians, and rolling the heavy, cumbersome, and untested finished product into position to be detonated by a skilled crew—all while attracting no attention from outsiders. 50 If the miscreants in the American cases have been unable to create and set off even the simplest conventional bombs, it stands to reason that none of them were very close to creating, or having anything to do with, nuclear weapons—or for that matter biological, radiological, or chemical ones. In fact, with perhaps one exception, none seems to have even dreamed of the prospect; and the exception is José Padilla (case 2), who apparently mused at one point about creating a dirty bomb—a device that would disperse radiation—or even possibly an atomic one. His idea about isotope separation was to put uranium into a pail and then to make himself into a human centrifuge by swinging the pail around in great arcs. Even if a weapon were made abroad and then brought into the United States, its detonation would require individuals in-country with the capacity to receive and handle the complicated weapons and then to set them off. Thus far, the talent pool appears, to put mildly, very thin. There is delusion, as well, in the legal expansion of the concept of “weapons of mass destruction.” The concept had once been taken as a synonym for nuclear weapons or was meant to include nuclear weapons as well as weapons yet to be developed that might have similar destructive capacity. After the Cold War, it was expanded to embrace chemical, biological, and radiological weapons even though those weapons for the most part are incapable of committing destruction that could reasonably be considered “massive,” particularly in comparison with nuclear ones. 52

#### There are so many barriers and they are so incompetant that there’s virtually no risk

Mueller 2012 (John, Senior Research Scientist at the Mershon Center for International Security Studies and Adjunct Professor in the Department of Political Science, both at Ohio State University, and Senior Fellow at the Cato Institute. Mark G. Stewart is Australian Research Council Professorial Fellow and Professor and Director at the Centre for Infrastructure Performance and Reliability at the University of Newcastle in Australia, The Terrorism Delusion, International Security, Vol. 37, No. 1)

In 2009, the U.S. Department of Homeland Security (DHS) issued a lengthy report on protecting the homeland. Key to achieving such an objective should be a careful assessment of the character, capacities, and desires of potential terrorists targeting that homeland. Although the report contains a section dealing with what its authors call “the nature of the terrorist adversary,” the section devotes only two sentences to assessing that nature: “The number and high profile of international and domestic terrorist attacks and disrupted plots dur- ing the last two decades underscore the determination and persistence of terrorist organizations. Terrorists have proven to be relentless, patient, opportunistic, and flexible, learning from experience and modifying tactics and targets to exploit perceived vulnerabilities and avoid observed strengths.”8

This description may apply to some terrorists somewhere, including at least a few of those involved in the September 11 attacks. Yet, it scarcely describes the vast majority of those individuals picked up on terrorism charges in the United States since those attacks. The inability of the DHS to consider this fact even parenthetically in its fleeting discussion is not only amazing but perhaps delusional in its single-minded preoccupation with the extreme. In sharp contrast, the authors of the case studies, with remarkably few exceptions, describe their subjects with such words as incompetent, ineffective, unintelligent, idiotic, ignorant, inadequate, unorganized, misguided, muddled, amateurish, dopey, unrealistic, moronic, irrational, and foolish.9 And in nearly all of the cases where an operative from the police or from the Federal Bureau of Investigation was at work (almost half of the total), the most appropriate descriptor would be “gullible.”

In all, as Shikha Dalmia has put it, would-be terrorists need to be “radicalized enough to die for their cause; Westernized enough to move around without raising red flags; ingenious enough to exploit loopholes in the security apparatus; meticulous enough to attend to the myriad logistical details that could torpedo the operation; self-sufficient enough to make all the preparations without enlisting outsiders who might give them away; disciplined enough to maintain complete secrecy; and—above all—psychologically tough enough to keep functioning at a high level without cracking in the face of their own impending death.”10 The case studies examined in this article certainly do not abound with people with such characteristics.

#### Attribution means terrorists wont get the weapons

**Lieber and Press 13 –** Keir A. Lieber is Associate Professor in the Edmund A. Walsh School of Foreign Service and the Department¶ of Government at Georgetown University. Daryl G. Press is Associate Professor of Government at¶ Dartmouth College. ( Lieber, Keir A.; Press, Daryl G. International Security. Summer2013, Vol. 38 Issue 1, p80-104. 25p. 1 Chart, 3 Graphs.

The United States and its allies should be able to deter nuclear-armed states¶ from passing their weapons to terrorists, because a terrorist nuclear strike¶ would not remain anonymous for long and would soon be traced back to the¶ originating state. This conclusion is based on two empirical findings. First,¶ among the relevant past cases of conventional terrorist attacks—those targeting¶ the homelands of powerful states and causing significant casualties—almost all¶ were successfully attributed to the perpetrating terrorist organization. Second,¶ linking the attributed terrorist organization to a state sponsor would not be¶ difficult. Few foreign terrorist organizations have state sponsors; those that do¶ typically have only one; and only one suspected state sponsor of terrorism¶ (Pakistan) has nuclear weapons or sufficient stockpiles of nuclear materials.

Furthermore, potential sponsors of nuclear terror face a wicked dilemma:¶ to maintain distance by passing the weapon to a terrorist group they do not¶ know well or trust, or to maintain control by giving it to a group they have cooperated¶ with repeatedly. The former strategy is mind-bogglingly dangerous;¶ the latter option makes attribution from terror group to sponsor simple.

Our findings have two important policy implications. First, the fear of nuclear¶ attack by proxy by itself does not justify costly military steps to prevent¶ nuclear proliferation. Nuclear proliferation may pose a variety of other risks,¶ and the appropriate level of U.S. efforts to stop proliferation should depend on¶ the cumulative effect of these risks, but the dangers of a nuclear handoff to terrorists¶ have been overstated. For example, Iranian leaders would have to be¶ crazy or suicidal to think that they could give a nuclear weapon to one of their¶ terrorist collaborators and face no repercussions. If leaders were that irrational,¶ the bigger problem would be direct nuclear attack without concern for the¶ retaliatory consequences, not the alleged problem of a nuclear handoff.

A second implication is that instead of publicly stressing the dangers of¶ nuclear attack by proxy and lamenting the limits of U.S. nuclear forensic capabilities¶ (and thus potentially misleading enemies to overestimate the feasibility¶ of an anonymous attack against America), the United States should be advertising¶ its impressive record of attributing highly lethal terrorist attacks. Understating¶ one’s own capabilities is a reasonable strategy for luring an enemy into¶ making an unwise attack, but it is a disastrous policy if the goal is deterrence.¶ The most effective way to deter countries from passing weapons to terrorists is¶ to demonstrate the ease of nuclear attribution and the devastating consequences¶ of such attribution to the sponsoring state.

**No threat to America and institutions solve material decline**

**Cohen and Zenko 12** \*Micah Zenko is a Fellow in the Center for Preventive Action at the Council on Foreign Relations. Michael A. Cohen is a Fellow at the Century Foundation [March/April 2012, Clear and Present Safety: The United States Is More Secure Than Washington Thinks, Foreign Affairs]

Last August, the Republican presidential contender Mitt Romney performed what has become a quadrennial rite of passage in American presidential politics: he delivered a speech to the annual convention of the Veterans of Foreign Wars. His message was rooted in another grand American tradition: hyping foreign threats to the United States. It is "wishful thinking," Romney declared, "that the world is becoming a safer place.The opposite is true. Consider simply the jihadists, a near- nuclear Iran, a turbulent Middle East, an unstable Pakistan, a delusional North Korea, an assertive Russia, and an emerging global power called China. No, the world is not becoming safer." Not long after, U.S. Secretary of Defense Leon Panetta echoed Romney's statement. In a lecture last October, Panetta warned of threats arising "from terrorism to nuclear proliferation; from rogue states to cyber attacks; from revolutions in the Middle East, to economic crisis in Europe, to the rise of new powers such as China and India. All of these changes represent security, geopolitical, economic, and demographic shifts in the international order that make the world more unpredictable, more volatile and, yes, more dangerous." General Martin Dempsey, chairman of the Joint Chiefs of Staff, concurred in a recent speech, arguing that "the number and kinds of threats we face have increased significantly." And U.S. Secretary of State Hillary Clinton reinforced the point by claiming that America resides today in a "very complex, dangerous world." Within the foreign policy elite, there exists a pervasive belief that the post-Cold War world is a treacherous place, full of great uncertainty and grave risks. A 2009 survey conducted by the Pew Research Center for the People and the Press found that 69 percent of members of the Council on Foreign Relations believed that for the United States at that moment, the world was either as dangerous as or more dangerous than it was during the Cold War. Similarly, in 2008, the Center for American Progress surveyed more than 100 foreign policy experts and found that 70 percent of them believed that the world was becoming more dangerous. Perhaps more than any other idea, this belief shapes debates on U.S. foreign policy and frames the public's understanding of international affairs. There is just one problem. It is simply wrong. The world that the United States inhabits today is a remarkably safe and secure place. It is a world with fewer violent conflicts and greater political freedom than at virtually any other point in human history. All over the world, people enjoy longer life expectancy and greater economic opportunity than ever before.The United States faces no plausible existential threats, no great-power rival, and no near-term competition for the role of global hegemon. The U.S. military is the world's most powerful, and even in the middle of a sustained downturn, the U.S. economy remains among one of the world's most vibrant and adaptive. Although the United States faces a host of international challenges, they pose little risk to the overwhelming majority of American citizens and can be managed with existing diplomatic, economic, and, to a much lesser extent, military tools. This reality is barely reflected in U.S. national security strategy or in American foreign policy debates. President Barack Obama's most recent National Security Strategy aspires to "a world in which America is stronger, more secure, and is able to overcome our challenges while appealing to the aspirations of people around the world." Yet that is basically the world that exists today. The United States is the world's most powerful nation, unchallenged and secure. But the country's political and policy elite seems unwilling to recognize this fact, much less integrate it into foreign policy and national security decision-making. The disparity between foreign threats and domestic threatmongering results from a confluence of factors. The most obvious and important is electoral politics. **Hyping dangers serves the interests of both political parties.** For Republicans, who have long benefited from attacking Democrats for their alleged weakness in the face of foreign threats, there is little incentive to tone down the rhetoric; the notion of a dangerous world plays to perhaps their greatest political advantage. For Democrats, who are fearful of being cast as feckless, acting and sounding tough is a shield against gop attacks and an insurance policy in case a challenge to the United States materializes into a genuine threat. **Warnings about a dangerous world also benefit powerful bureaucratic interests**. The specter of looming dangers sustains and justifies the massive budgets of the military and the intelligence agencies, along with the national security infrastructure that exists outside government-defense contractors, lobbying groups, think tanks, and academic departments. There is also a pernicious feedback loop at work. Because of the chronic exaggeration of the threats facing the United States, Washington overemphasizes military approaches to problems (including many that could best be solved by nonmilitary means). The militarization of foreign policy leads, in turn, to further dark warnings about the potentially harmful effects of any effort to rebalance U.S. national security spending or trim the massive military budget- warnings that are inevitably bolstered by more threat exaggeration. Last fall, General Norton Schwartz, the U.S. Air Force chief of staff, said that defense cuts that would return military spending to its 2007 level would undermine the military's "ability to protect the nation" and could create "dire consequences." Along the same lines, Panetta warned that the same reductions would "invite aggression" from enemies. These are a puzzling statements given that the U.S. defense budget is larger than the next 14 countries' defense budgets combined and that the United States still maintains weapons systems designed to fight an enemy that disappeared 20 years ago. Of course, threat inflation is not new. During the Cold War, although the United States faced genuine existential threats, American political leaders nevertheless hyped smaller threats or conflated them with larger ones. Today, there are no dangers to the United States remotely resembling those of the Cold War era, yet policymakers routinely talk in the alarmist terms once used to describe superpower conflict. Indeed, the mindset of the United States in the post-9/11 world was best (albeit crudely) captured by former Vice President Dick Cheney. While in o/ce, Cheney promoted the idea that the United States must prepare for even the most remote threat as though it were certain to occur. The journalist Ron Suskind termed this belief "the one percent doctrine," a reference to what Cheney called the "one percent chance that Pakistani scientists are helping al Qaeda build or develop a nuclear weapon." According to Suskind, Cheney insisted that the United States must treat such a remote potential threat "as a certainty in terms of our response." Such hair-trigger responsiveness is rarely replicated outside the realm of national security, even when the government confronts problems that cause Americans far more harm than any foreign threat. According to an analysis by the budget expert Linda Bilmes and the economist Joseph Stiglitz, in the ten years since 9/11, the combined direct and indirect costs of the U.S. response to the murder of almost 3,000 of its citizens have totaled more than $3 trillion. A study by the Urban Institute, a nonpartisan think tank, estimated that during an overlapping period, from 2000 to 2006, 137,000 Americans died prematurely because they lacked health insurance. Although the federal government maintains robust health insurance programs for older and poor Americans, its response to a national crisis in health care during that time paled in comparison to its response to the far less deadly terrorist attacks. Rather than Cheney's one percent doctrine, what the United States actually needs is a 99 percent doctrine: a national security strategy based on the fact that the United States is a safe and well- protected country and grounded in the reality that the opportunities for furthering U.S. interests far exceed the threats to them. Fully comprehending the world as it is today is the best way to keep the United States secure and resistant to the overreactions that have defined its foreign policy for far too long. Better than ever The United States, along with the rest of the world, currently faces a period of economic and political uncertainty. But consider four long-term global trends that underscore just how misguided the constant fear-mongering in U.S. politics is: the falling prevalence of violent conflict, the declining incidence of terrorism, the spread of political freedom and prosperity, and the global improvement in public health. In 1992, there were 53 armed conflicts raging in 39 countries around the world; in 2010, there were 30 armed conflicts in 25 countries. Of the latter, only four have resulted in at least 1,000 battle-related deaths and can therefore be classified as wars, according to the Uppsala Conflict Data Program: the conflicts in Afghanistan, Iraq, Pakistan, and Somalia, two of which were started by the United States. Today, wars tend to be low-intensity conflicts that, on average, kill about 90 percent fewer people than did violent struggles in the 1950s. Indeed, the first decade of this century witnessed fewer deaths from war than any decade in the last century. Meanwhile, the world's great powers have not fought a direct conflict in more than 60 years-"the longest period of major power peace in centuries," as the Human Security Report Project puts it. Nor is there much reason for the United States to fear such a war in the near future: no state currently has the capabilities or the inclination to confront the United States militarily. Much of the fear that suffuses U.S. foreign policy stems from the trauma of 9/11. Yet although the tactic of terrorism remains a scourge in localized conflicts, between 2006 and 2010, the total number of terrorist attacks declined by almost 20 percent, and the number of deaths caused by terrorism fell by 35 percent, according to the U.S. State Department. In 2010, more than three-quarters of all victims of terrorism-meaning deliberate, politically motivated violence by nonstate groups against noncombatant targets-were injured or killed in the war zones of Afghanistan, Iraq, Pakistan, and Somalia. Of the 13,186 people killed by terrorist attacks in 2010, only 15, or 0.1 percent, were U.S. citizens. In most places today-and especially in the United States-the chances of dying from a terrorist attack or in a military conflict have fallen almost to zero. As violence and war have abated, freedom and democratic governance have made great gains. According to Freedom House, there were 117. And during that time, the number of autocracies declined from 62 to 48. To be sure, in the process of democratizing, states with weak political institutions can be more prone to near-term instability, civil wars, and interstate conflict. Nevertheless, over time, democracies tend to have healthier and better-educated citizens, almost never go to war with other democracies, and are less likely to fight nondemocracies. Economic bonds among states are also accelerating, even in the face of a sustained global economic downturn. Today, 153 countries belong to the World Trade Organization and are bound by its dispute-resolution mechanisms. Thanks to lowered trade barriers, exports now make up more than 30 percent of gross world product, a proportion that has tripled in the past 40 years. The United States has seen its exports to the world's fastest-growing economies increase by approximately 500 percent over the past decade. Currency flows have exploded as well, with $4 trillion moving around the world in foreign exchange markets every day. Remittances, an essential instrument for reducing poverty in developing countries, have more than tripled in the past decade, to more than $440 billion each year. Partly as a result of these trends, poverty is on the decline: in 1981, half the people living in the developing world survived on less than $1.25 a day; today, that figure is about one-sixth. Like democratization, economic development occasionally brings with it significant costs. In particular, economic liberalization can strain the social safety net that supports a society's most vulnerable populations and can exacerbate inequalities. Still, from the perspective of the United States, increasing economic interdependence is a net positive because trade and foreign direct investment between countries generally correlate with long-term economic growth and a reduced likelihood of war. A final trend contributing to the relative security of the United States is the improvement in global health and well-being. People in virtually all countries, and certainly in the United States, are living longer and healthier lives. In 2010, the number of people who died from aids- related causes declined for the third year in a row. Tuberculosis rates continue to fall, as do the rates of polio and malaria. Child mortality has plummeted worldwide, thanks in part to expanded access to health care, sanitation, and vaccines. In 1970, the global child mortality rate (deaths of children under five per 1,000) was 141; in 2010, it was 57. In 1970, global average life expectancy was 59, and U.S. life expectancy was 70. Today, the global figure is just under 70, and the U.S. figure is 79. These vast improvements in health and well-being contribute to the global trend toward security and safety because countries with poor human development are more war-prone. Phantom menace None of this is meant to suggest that the United States faces no major challenges today. Rather, the point is that the problems confronting the country are manageable and pose minimal risks to the lives of the overwhelming majority of Americans. None of them-separately or in combination-justifies the alarmist rhetoric of policymakers and politicians or should lead to the conclusion that Americans live in a dangerous world. Take terrorism. Since 9/11, no security threat has been hyped more. Considering the horrors of that day, that is not surprising. But the result has been a level of fear that is completely out of proportion to both the capabilities of terrorist organizations and the United States' vulnerability. On 9/11, al Qaeda got tragically lucky. Since then, the United States has been preparing for the one percent chance (and likely even less) that it might get lucky again. But al Qaeda lost its safe haven after the U.S.-led invasion of Afghanistan in 2001, and further military, diplomatic, intelligence, and law enforcement efforts have decimated the organization, which has essentially lost whatever ability it once had to seriously threaten the United States. According to U.S. o/cials, al Qaeda's leadership has been reduced to two top lieutenants: Ayman al-Zawahiri and his second-in-command, Abu Yahya al-Libi. Panetta has even said that the defeat of al Qaeda is "within reach."The near collapse of the original al Qaeda organization is one reason why, in the decade since 9/11, the U.S. homeland has not suffered any large-scale terrorist assaults. All subsequent attempts have failed or been thwarted, owing in part to the incompetence of their perpetrators. Although there are undoubtedly still some terrorists who wish to kill Americans, their dreams will likely continue to be frustrated by their own limitations and by the intelligence and law enforcement agencies of the United States and its allies. As the threat from transnational terrorist groups dwindles, the United States also faces few risks from other states. China is the most obvious potential rival to the United States, and there is little doubt that China's rise will pose a challenge to U.S. economic interests. Moreover, there is an unresolved debate among Chinese political and military leaders about China's proper global role, and the lack of transparency from China's senior leadership about its long-term foreign policy objectives is a cause for concern. However, the present security threat to the U.S. mainland is practically nonexistent and will remain so. Even as China tries to modernize its military, its defense spending is still approximately one-ninth that of the United States. In 2012, the Pentagon will spend roughly as much on military research and development alone as China will spend on its entire military. While China clumsily flexes its muscles in the Far East by threatening to deny access to disputed maritime resources, a recent Pentagon report noted that China's military ambitions remain dominated by "regional contingencies" and that the People's Liberation Army has made little progress in developing capabilities that "extend global reach or power projection." In the coming years, China will enlarge its regional role, but this growth will only threaten U.S. interests if Washington attempts to dominate East Asia and fails to consider China's legitimate regional interests. It is true that China's neighbors sometimes fear that China will not resolve its disputes peacefully, but this has compelled Asian countries to cooperate with the United States, maintaining bilateral alliances that together form a strong security architecture and limit China's room to maneuver. The strongest arguments made by those warning of Chinese influence revolve around economic policy. The list of complaints includes a host of Chinese policies, from intellectual property theft and currency manipulation to economic espionage and domestic subsidies. Yet none of those is likely to lead to direct conflict with the United States beyond the competition inherent in international trade, which does not produce zero-sum outcomes and is constrained by dispute-resolution mechanisms, such as those of the World Trade Organization. If anything, China's export-driven economic strategy, along with its large reserves of U.S. Treasury bonds, suggests that Beijing will continue to prefer a strong United States to a weak one. Nuclear fear It is a matter of faith among many American politicians that Iran is the greatest danger now facing the country. But if that is true, then the United States can breathe easy: Iran is a weak military power. According to the International Institute for Strategic Studies, Iran's "military forces have almost no modern armor, artillery, aircraft or major combat ships, and un sanctions will likely obstruct the purchase of high-technology weapons for the foreseeable future." Tehran's stated intention to project its interests regionally through military or paramilitary forces has made Iran its own worst enemy. Iran's neighbors are choosing to balance against the Islamic Republic rather than fall in line behind its leadership. In 2006, Iran's favorability rating in Arab countries stood at nearly 80 percent; today, it is under 30 percent. Like China's neighbors in East Asia, the Gulf states have responded to Iran's belligerence by participating in an emerging regional security arrangement with the United States, which includes advanced conventional weapons sales, missile defenses, intelligence sharing, and joint military exercises, all of which have further isolated Iran. Of course, the gravest concerns about Iran focus on its nuclear activities.Those fears have led to some of the most egregiously alarmist rhetoric: at a Republican national security debate in November, Romney claimed that an Iranian nuclear weapon is "the greatest threat the world faces." But it remains unclear whether Tehran has even decided to pursue a bomb or has merely decided to develop a turnkey capability. Either way, Iran's leaders have been su/ciently warned that the United States would respond with overwhelming force to the use or transfer of nuclear weapons. Although a nuclear Iran would be troubling to the region, the United States and its allies would be able to contain Tehran and deter its aggression-and the threat to the U.S. homeland would continue to be minimal. Overblown fears of a nuclear Iran are part of a more generalized American anxiety about the continued potential of nuclear attacks. Obama's National Security Strategy claims that "the American people face no greater or more urgent danger than a terrorist attack with a nuclear weapon." According to the document, "international peace and security is threatened by proliferation that could lead to a nuclear exchange. Indeed, since the end of the Cold War, the risk of a nuclear attack has increased." If the context is a state-against-state nuclear conflict, the latter assertion is patently false. The demise of the Soviet Union ended the greatest potential for international nuclear conflict. China, with only 72 intercontinental nuclear missiles, is eminently deterrable and not a credible nuclear threat; it has no answer for the United States' second- strike capability and the more than 2,000 nuclear weapons with which the United States could strike China. In the past decade, Cheney and other one-percenters have frequently warned of the danger posed by loose nukes or uncontrolled fissile material. In fact, the threat of a nuclear device ending up in the hands of a terrorist group has diminished markedly since the early 1990s, when the Soviet Union's nuclear arsenal was dispersed across all of Russia's 11 time zones, all 15 former Soviet republics, and much of eastern Europe. Since then, cooperative U.S.-Russian eaorts have resulted in the substantial consolidation of those weapons at far fewer sites and in comprehensive security upgrades at almost all the facilities that still possess nuclear material or warheads, making the possibility of theft or diversion unlikely. Moreover, the lessons learned from securing Russia's nuclear arsenal are now being applied in other countries, under the framework of Obama's April 2010 Nuclear Security Summit, which produced a global plan to secure all nuclear materials within four years. Since then, participants in the plan, including Chile, Mexico, Ukraine, and Vietnam, have fulfilled more than 70 percent of the commitments they made at the summit. Pakistan represents another potential source of loose nukes. The United States' military strategy in Afghanistan, with its reliance on drone strikes and cross-border raids, has actually contributed to instability in Pakistan, worsened U.S. relations with Islamabad, and potentially increased the possibility of a weapon falling into the wrong hands. Indeed, Pakistani fears of a U.S. raid on its nuclear arsenal have reportedly led Islamabad to disperse its weapons to multiple sites, transporting them in unsecured civilian vehicles. But even in Pakistan, the chances of a terrorist organization procuring a nuclear weapon are infinitesimally small. The U.S. Department of Energy has provided assistance to improve the security of Pakistan's nuclear arsenal, and successive senior U.S. government o/cials have repeated what former Secretary of Defense Robert Gates said in January 2010: that the United States is "very comfortable with the security of Pakistan's nuclear weapons." A more recent bogeyman in national security debates is the threat of so-called cyberwar. Policymakers and pundits have been warning for more than a decade about an imminent "cyber-Pearl Harbor" or "cyber-9/11." In June 2011, then Deputy Defense Secretary William Lynn said that "bits and bytes can be as threatening as bullets and bombs." And in September 2011, Admiral Mike Mullen, then chairman of the Joint Chiefs of Staff, described cyberattacks as an "existential" threat that "actually can bring us to our knees." Although the potential vulnerability of private businesses and government agencies to cyberattacks has increased, the alleged threat of cyberwarfare crumbles under scrutiny. No cyberattack has resulted in the loss of a single U.S. citizen's life. Reports of "kinetic-like" cyber- attacks, such as one on an Illinois water plant and a North Korean attack on U.S. government servers, have proved baseless. Pentagon networks are attacked thousands of times a day by individuals and foreign intelligence agencies; so, too, are servers in the private sector. But the vast majority of these attacks fail wherever adequate safeguards have been put in place. Certainly, none is even vaguely comparable to Pearl Harbor or 9/11, and most can be offset by commonsense prevention and mitigation efforts. A new approach Defenders of the status quo might contend that chronic threat inflation and an overmilitarized foreign policy have not prevented the United States from preserving a high degree of safety and security and therefore are not pressing problems. Others might argue that although the world might not be dangerous now, it could quickly become so if the United States grows too sanguine about global risks and reduces its military strength. Both positions underestimate the costs and risks of the status quo and overestimate the need for the United States to rely on an aggressive military posture driven by outsized fears. Since the end of the Cold War, most improvements in U.S. security have not depended primarily on the country's massive military, nor have they resulted from the constantly expanding definition of U.S. national security interests. The United States deserves praise for promoting greater international economic interdependence and open markets and, along with a host of international and regional organizations and private actors, more limited credit for improving global public health and assisting in the development of democratic governance. But although U.S. military strength has occasionally contributed to creating a conducive environment for positive change, those improvements were achieved mostly through the work of civilian agencies and nongovernmental actors in the private and nonprofit sectors. The record of an overgrown post-Cold War U.S. military is far more mixed. Although some U.S.-led military eaorts, such as the nato intervention in the Balkans, have contributed to safer regional environments, the U.S.-led wars in Afghanistan and Iraq have weakened regional and global security, leading to hundreds of thousands of casualties and refugee crises (according to the O/ce of the un High Commissioner for Refugees, 45 percent of all refugees today are fleeing the violence provoked by those two wars). Indeed, overreactions to perceived security threats, mainly from terrorism, have done significant damage to U.S. interests and threaten to weaken the global norms and institutions that helped create and sustain the current era of peace and security. None of this is to suggest that the United States should stop playing a global role; rather, it should play a diaerent role, one that emphasizes soft power over hard power and inexpensive diplomacy and development assistance over expensive military buildups. Indeed, the most lamentable cost of unceasing threat exaggeration and a focus on military force is that the main global challenges facing the United States today are poorly resourced and given far less attention than "sexier" problems, such as war and terrorism. These include climate change, pandemic diseases, global economic instability, and transnational criminal networks-all of which could serve as catalysts to severe and direct challenges to U.S. security interests. But these concerns are less visceral than alleged threats from terrorism and rogue nuclear states.They require long-term planning and occasionally painful solutions, and they are not constantly hyped by well-financed interest groups. As a result, they are given short shrift in national security discourse and policymaking. To avoid further distorting U.S. foreign policy and to take advantage of today's relative security and stability, policymakers need to not only respond to a 99 percent world but also solidify it. They should start by strengthening the global architecture of international institutions and norms that can promote U.S. interests and ensure that other countries share the burden of maintaining global peace and security. International institutions such as the un (and its a/liated agencies, such as the International Atomic Energy Agency), regional organizations (the African Union, the Organization of American States, the European Union, and the Association of Southeast Asian Nations), and international financial institutions can formalize and reinforce norms and rules that regulate state behavior and strengthen global cooperation, provide legitimacy for U.S. diplomatic efforts, and offer access to areas of the world that the United States cannot obtain unilaterally. American leadership must be commensurate with U.S. interests and the nature of the challenges facing the country. The United States should not take the lead on every issue or assume that every problem in the world demands a U.S. response. In the majority of cases, the United States should "lead from behind"-or from the side, or slightly in the front-but rarely, if ever, by itself. That approach would win broad public support. According to the Chicago Council on Global Affairs' most recent survey of U.S. public opinion on international affairs, less than ten percent of Americans want the country to "continue to be the pre-eminent world leader in solving international problems." The American people have long embraced the idea that their country should not be the world's policeman; for just as long, politicians from both parties have expressed that sentiment as a platitude. The time has come to act on that idea. If the main challenges in a 99 percent world are transnational in nature and require more development, improved public health, and enhanced law enforcement, then it is crucial that the United States maintain a sharp set of nonmilitary national security tools. American foreign policy needs fewer people who can jump out of airplanes and more who can convene roundtable discussions and lead negotiations. But owing to cuts that began in the 1970s and accelerated significantly during its reorganization in the 1990s, the U.S. Agency for International Development (usaid) has been reduced to a hollow shell of its former self. In 1990, the agency had 3,500 permanent employees.Today, it has just over 2,000 staffers, and the vast majority of its budget is distributed via contractors and nongovernmental organizations. Meanwhile, with 30,000 employees and a $50 billion budget, the State Department's resources pale in comparison to those of the Pentagon, which has more than 1.6 million employees and a budget of more than $600 billion. More resources and attention must be devoted to all elements of nonmilitary state power-not only usaid and the State Department but also the Millennium Challenge Corporation, the National Endowment for Democracy, and a host of multilateral institutions that deal with the underlying causes of localized instability and ameliorate their effects at a relatively low cost. As U.S. General John Allen recently noted,"In many respects, usaid's efforts can do as much- over the long term-to prevent conflict as the deterrent effect of a carrier strike group or a marine expeditionary force." Allen ought to know: he commands the 100,000 U.S. troops fighting in Afghanistan. Upgrading the United States' national security toolbox will require reducing the size of its armed forces. In an era of relative peace and security, the U.S. military should not be the primary prism through which the country sees the world. As a fungible tool that can back up coercive threats, the U.S. military is certainly an important element of national power. However, it contributes very little to lasting solutions for 99 percent problems. And the Pentagon's enormous budget not only wastes precious resources; it also warps national security thinking and policymaking. Since the military controls the overwhelming share of the resources within the national security system, policymakers tend to perceive all challenges through the distorting lens of the armed forces and respond accordingly. This tendency is one reason the U.S. military is so big. But it is also a case of the tail wagging the dog: the vast size of the military is a major reason every challenge is seen as a threat. More than 60 years of U.S. diplomatic and military efforts have helped create a world that is freer and more secure. In the process, the United States has fostered a global environment that bolsters U.S. interests and generally accepts U.S. power and influence. The result is a world far less dangerous than ever before. The United States, in other words, has won. Now, it needs a national security strategy and an approach to foreign policy that reflect that reality..

**No impact to power transitions**

**Macdonald and parent 11** (Paul, **Assistant Professor of Political Science at Williams College, and Joseph, Assistant Professor of Political Science at the University of Miami. “Graceful Decline? The Surprising Success of Great Power Retrenchment”. International Security** Spring 2011, Vol. 35, No. 4, Pages 7-44.)

Contrary to these predictions, our analysis suggests some grounds for optimism. Based on the historical track record of great powers facing acute relative decline, the United States should be able to retrench in the coming decades. In the next few years, the United States is ripe to overhaul its military, shift burdens to its allies, and work to decrease costly international commitments. It is likely to initiate and become embroiled in fewer militarized disputes than the average great power and to settle these disputes more amicably. Some might view this prospect with apprehension, fearing the steady erosion of U.S. credibility. Yet our analysis suggests that retrenchment need not signal weakness. Holding on to exposed and expensive commitments simply for the sake of one’s reputation is a greater geopolitical gamble than withdrawing to cheaper, more defensible frontiers.

Some observers might dispute our conclusions, arguing that hegemonic transitions are more conflict prone than other moments of acute relative decline. We counter that there are deductive and empirical reasons to doubt this argument. Theoretically, hegemonic powers should actually find it easier to manage acute relative decline. Fallen hegemons still have formidable capability, which threatens grave harm to any state that tries to cross them. Further, they are no longer the top target for balancing coalitions, and recovering hegemons may be influential because they can play a pivotal role in alliance formation. In addition, hegemonic powers, almost by definition, possess more extensive overseas commitments; they should be able to more readily identify and eliminate extraneous burdens without exposing vulnerabilities or exciting domestic populations.

We believe the empirical record supports these conclusions. In particular, periods of hegemonic transition do not appear more conflict prone than those of acute decline. The last reversal at the pinnacle of power was the Anglo- American transition, which took place around 1872 and was resolved without armed confrontation. The tenor of that transition may have been inºuenced by a number of factors: both states were democratic maritime empires, the United States was slowly emerging from the Civil War, and Great Britain could likely coast on a large lead in domestic capital stock. Although China and the United States differ in regime type, similar factors may work to cushion the impending Sino-American transition. Both are large, relatively secure continental great powers, a fact that mitigates potential geopolitical competition.93 China faces a variety of domestic political challenges, including strains among rival regions, which may complicate its ability to sustain its economic performance or engage in foreign policy adventurism.94

**Latent power solves**

**Wohlforth 7** (William, Professor of Government – Dartmouth College, “Unipolar Stability”, Harvard International Review, Spring, http://hir.harvard.edu/articles/1611/3/)

US military forces are stretched thin, its budget and trade deficits are high, and the country continues to finance its profligate ways by borrowing from abroad—notably from the Chinese government. These developments have prompted many analysts to warn that the United States suffers from “imperial overstretch.” And if US power is overstretched now, the argument goes, unipolarity can hardly be sustainable for long. The problem with this argument is that it fails to distinguish between actual and latent power. One must be careful to take into account both the level of resources that can be mobilized and the degree to which a government actually tries to mobilize them. And how much a government asks of its public is partly a function of the severity of the challenges that it faces. Indeed, one can never know for sure what a state is capable of until it has been seriously challenged. Yale historian Paul Kennedy coined the term “imperial overstretch” to describe the situation in which a state’s actual and latent capabilities cannot possibly match its foreign policy commitments. This situation should be contrasted with what might be termed “self-inflicted overstretch”—a situation in which a state lacks the sufficient resources to meet its current foreign policy commitments in the short term, but has untapped latent power and readily available policy choices that it can use to draw on this power. This is arguably the situation that the United States is in today. But the US government has not attempted to extract more resources from its population to meet its foreign policy commitments. Instead, it has moved strongly in the opposite direction by slashing personal and corporate tax rates. Although it is fighting wars in Afghanistan and Iraq and claims to be fighting a global “war” on terrorism, the United States is not acting like a country under intense international pressure. Aside from the volunteer servicemen and women and their families, US citizens have not been asked to make sacrifices for the sake of national prosperity and security. The country could clearly devote a greater proportion of its economy to military spending: today it spends only about 4 percent of its GDP on the military, as compared to 7 to 14 percent during the peak years of the Cold War. It could also spend its military budget more efficiently, shifting resources from expensive weapons systems to boots on the ground. Even more radically, it could reinstitute military conscription, shifting resources from pay and benefits to training and equipping more soldiers. On the economic front, it could raise taxes in a number of ways, notably on fossil fuels, to put its fiscal house back in order. No one knows for sure what would happen if a US president undertook such drastic measures, but there is nothing in economics, political science, or history to suggest that such policies would be any less likely to succeed than China is to continue to grow rapidly for decades. Most of those who study US politics would argue that the likelihood and potential success of such power-generating policies depends on public support, which is a function of the public’s perception of a threat. And as unnerving as terrorism is, there is nothing like the threat of another hostile power rising up in opposition to the United States for mobilizing public support. With latent power in the picture, it becomes clear that unipolarity might have more built-in self-reinforcing mechanisms than many analysts realize. It is often noted that the rise of a peer competitor to the United States might be thwarted by the counterbalancing actions of neighboring powers. For example, China’s rise might push India and Japan closer to the United States—indeed, this has already happened to some extent. There is also the strong possibility that a peer rival that comes to be seen as a threat would create strong incentives for the United States to end its self-inflicted overstretch and tap potentially large wellsprings of latent power.