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### 1

#### Iran strategy working—Congressional rebuke to command in chief flexibility spoils negotiations—results in Iran strikes and prolif

Joel Rubin, Politico, 10/20/13, Iran’s diplomatic thaw with the West, dyn.politico.com/printstory.cfm?uuid=FBFABC3B-C9A8-47F8-A9AC-BC886BCE0552

Congratulations, Congress. Your Iran strategy is working. Now what?

The diplomatic thaw between Iran and the West is advancing, and faster than most of us had imagined. This is the result of years of painstaking efforts by the Obama administration and lawmakers to pressure the Islamic Republic into deciding whether it’s in Iran’s interest to pursue diplomacy or to continue suffering under crushing economic sanctions and international isolation.

Now that Iran has made a clear decision to engage seriously in diplomatic negotiations with the West over its nuclear program, its intentions should be tested. Members of Congress should be open to seizing this opportunity by making strategic decisions on sanctions policy.

The economic sanctions against Iran that are in place have damaged the Iranian economy. A credible military threat — with more than 40,000 American troops in the Persian Gulf — stands on alert. International inspectors are closely monitoring Iran’s every nuclear move. Iran has not yet made a decision to build a bomb, does not have enough medium-enriched uranium to convert to weapons grade material for one bomb and has neither a workable nuclear warhead nor a means to deliver it at long ranges. If Iran were to make a dash for a bomb, the U.S. intelligence community estimates that it would take roughly one to two years to do so.

Congress, with its power to authorize sanctions relief, plays a crucial role in deciding whether a deal will be achieved. This gives Congress the opportunity to be a partner in what could potentially be a stunning success in advancing our country’s security interests without firing a shot.

Consider the alternative: If the administration negotiates a deal that Congress blocks, and Congress becomes a spoiler, Iran will most likely continue to accelerate its nuclear program. Then lawmakers would be left with a stark choice: either acquiesce to an unconstrained Iranian nuclear program and a potential Iranian bomb or endorse the use of force to attempt to stop it. Most military experts rate the odds of a successful bombing campaign low and worry that failed strikes would push Iran to get the bomb outright.

Iran and the United States need a political solution to this conflict. Now is the time to test the Iranians at the negotiating table, not push them away.

Congress is also being tested, but the conventional wisdom holds that lawmakers won’t show the flexibility required to make a deal. Such thinking misses the political volatility just beneath the surface: Americans simply don’t support another war in the Middle East, as the congressional debate over Syria made crystal clear. Would they back much riskier military action in Iran?

Fortunately for Congress, President Barack Obama was agile enough to seize the diplomatic route and begin to eliminate Syria’s chemical weapons. These results are advancing U.S. security interests. And members of Congress breathed a collective sigh of relief as well as they didn’t have to either vote to undercut the commander in chief on a security issue or stick a finger in the eye of their constituents.

The same can happen on Iran. By pursuing a deal, Obama can provide Congress with an escape hatch, where it won’t have to end up supporting unpopular military action or have to explain to its constituents why it failed to block an Iranian bomb. A verifiable deal with Iran that would prevent it from acquiring a nuclear weapon would require sanctions relief from Congress. But that’s an opportunity to claim victory, not a burden. And it would make Congress a partner with the president on a core security issue. Congress could then say, with legitimacy, that its tough sanctions on Iran worked — and did so without starting another unpopular American war in the Middle East.

#### Iran proliferation causes nuclear war

Edelman, distinguished fellow – Center for Strategic and Budgetary Assessments, ‘11

(Eric S, “The Dangers of a Nuclear Iran,” *Foreign Affairs*, January/February)

The reports of the Congressional Commission on the Strategic Posture of the United States and the Commission on the Prevention Of Weapons of Mass Destruction Proliferation and Terrorism, as well as other analyses, have highlighted the risk that a nuclear-armed Iran could trigger additional nuclear proliferation in the Middle East, even if Israel does not declare its own nuclear arsenal. Notably, Algeria, Bahrain, Egypt, Jordan, Saudi Arabia,Turkey, and the United Arab Emirates— all signatories to the Nuclear Nonproliferation Treaty (npt)—have recently announced or initiated nuclear energy programs. Although some of these states have legitimate economic rationales for pursuing nuclear power and although the low-enriched fuel used for power reactors cannot be used in nuclear weapons, these moves have been widely interpreted as hedges against a nuclear-armed Iran. The npt does not bar states from developing the sensitive technology required to produce nuclear fuel on their own, that is, the capability to enrich natural uranium and separate plutonium from spent nuclear fuel. Yet enrichment and reprocessing can also be used to accumulate weapons-grade enriched uranium and plutonium—the very loophole that Iran has apparently exploited in pursuing a nuclear weapons capability. Developing nuclear weapons remains a slow, expensive, and di⁄cult process, even for states with considerable economic resources, and especially if other nations try to constrain aspiring nuclear states’ access to critical materials and technology. Without external support, it is unlikely that any of these aspirants could develop a nuclear weapons capability within a decade.

There is, however, at least one state that could receive significant outside support: Saudi Arabia. And if it did, proliferation could accelerate throughout the region. Iran and Saudi Arabia have long been geopolitical and ideological rivals. Riyadh would face tremendous pressure to respond in some form to a nuclear-armed Iran, not only to deter Iranian coercion and subversion but also to preserve its sense that Saudi Arabia is the leading nation in the Muslim world. The Saudi government is already pursuing a nuclear power capability, which could be the first step along a slow road to nuclear weapons development. And concerns persist that it might be able to accelerate its progress by exploiting its close ties to Pakistan. During the 1980s, in response to the use of missiles during the Iran-Iraq War and their growing proliferation throughout the region, Saudi Arabia acquired several dozen css-2 intermediate-range ballistic missiles from China. The Pakistani government reportedly brokered the deal, and it may have also oªered to sell Saudi Arabia nuclear warheads for the css-2s, which are not accurate enough to deliver conventional warheads eªectively. There are still rumors that Riyadh and Islamabad have had discussions involving nuclear weapons, nuclear technology, or security guarantees. This “Islamabad option” could develop in one of several diªerent ways. Pakistan could sell operational nuclear weapons and delivery systems to Saudi Arabia, or it could provide the Saudis with the infrastructure, material, and technical support they need to produce nuclear weapons themselves within a matter of years, as opposed to a decade or longer. Not only has Pakistan provided such support in the past, but it is currently building two more heavy-water reactors for plutonium production and a second chemical reprocessing facility to extract plutonium from spent nuclear fuel. In other words, it might accumulate more fissile material than it needs to maintain even a substantially expanded arsenal of its own. Alternatively, Pakistan might oªer an extended deterrent guarantee to Saudi Arabia and deploy nuclear weapons, delivery systems, and troops on Saudi territory, a practice that the United States has employed for decades with its allies. This arrangement could be particularly appealing to both Saudi Arabia and Pakistan. It would allow the Saudis to argue that they are not violating the npt since they would not be acquiring their own nuclear weapons. And an extended deterrent from Pakistan might be preferable to one from the United States because stationing foreign Muslim forces on Saudi territory would not trigger the kind of popular opposition that would accompany the deployment of U.S. troops. Pakistan, for its part, would gain financial benefits and international clout by deploying nuclear weapons in Saudi Arabia, as well as strategic depth against its chief rival, India. The Islamabad option raises a host of difficult issues, perhaps the most worrisome being how India would respond. Would it target Pakistan’s weapons in Saudi Arabia with its own conventional or nuclear weapons? How would this expanded nuclear competition influence stability during a crisis in either the Middle East or South Asia? Regardless of India’s reaction, any decision by the Saudi government to seek out nuclear weapons, by whatever means, would be highly destabilizing. It would increase the incentives of other nations in the Middle East to pursue nuclear weapons of their own. And it could increase their ability to do so by eroding the remaining barriers to nuclear proliferation: each additional state that acquires nuclear weapons weakens the nonproliferation regime, even if its particular method of acquisition only circumvents, rather than violates, the NPT.

n-player competition

Were Saudi Arabia to acquire nuclear weapons, the Middle East would count three nuclear-armed states, and perhaps more before long. It is unclear how such an n-player competition would unfold because most analyses of nuclear deterrence are based on the U.S.- Soviet rivalry during the Cold War. It seems likely, however, that the interaction among three or more nuclear-armed powers would be more prone to miscalculation and escalation than a bipolar competition. During the Cold War, the United States and the Soviet Union only needed to concern themselves with an attack from the other. Multipolar systems are generally considered to be less stable than bipolar systems because coalitions can shift quickly, upsetting the balance of power and creating incentives for an attack. More important, emerging nuclear powers in the Middle East might not take the costly steps necessary to preserve regional stability and avoid a nuclear exchange. For nuclear-armed states, the bedrock of deterrence is the knowledge that each side has a secure second-strike capability, so that no state can launch an attack with the expectation that it can wipe out its opponents’ forces and avoid a devastating retaliation. However, emerging nuclear powers might not invest in expensive but survivable capabilities such as hardened missile silos or submarinebased nuclear forces. Given this likely vulnerability, the close proximity of states in the Middle East, and the very short flight times of ballistic missiles in the region, any new nuclear powers might be compelled to “launch on warning” of an attack or even, during a crisis, to use their nuclear forces preemptively. Their governments might also delegate launch authority to lower-level commanders, heightening the possibility of miscalculation and escalation. Moreover, if early warning systems were not integrated into robust command-and-control systems, the risk of an unauthorized or accidental launch would increase further still. And without sophisticated early warning systems, a nuclear attack might be unattributable or attributed incorrectly. That is, assuming that the leadership of a targeted state survived a first strike, it might not be able to accurately determine which nation was responsible. And this uncertainty, when combined with the pressure to respond quickly,would create a significant risk that it would retaliate against the wrong party, potentially triggering a regional nuclear war.

### 2

#### The President of the United States should request his Counsel and the Office of Legal Counsel for coordination over his war powers authority. The President should not initiate warfare without prior authorization from Congress, unless acting to repel armed attacks against the United States.

#### CP is competitive and solves the case ---- Coordination with OLC can ensure executive action

Trevor Morrison 11, Professor of Law at Columbia Law School, “LIBYA, ‘HOSTILITIES,’ THE OFFICE OF LEGAL COUNSEL, AND THE PROCESS OF EXECUTIVE BRANCH LEGAL INTERPRETATION,” Harvard Law Review Forum Vol.124:42, http://www.harvardlawreview.org/media/pdf/vol124\_forum\_morrison.pdf

Deeply rooted traditions treat the Justice Department’s Office of Legal Counsel (OLC) as the most important source of legal advice wit h- in the executive branch. A number of important norms guide the provision and handling of that advice. OLC bases its answers on its best view of the law, not merely its sense of what is plausible or arguable. 6 To ensure that it takes adequate account of competing perspectives within the executive branch, it typically requests and fully considers the views of other affected agencies before answering the questions put to it. Critically, once OLC arrives at an answer, it is treated as binding within the executive branch unless overruled by the Attorney General or the President. That power to overrule, moreover, is wielded extremely rarely — virtually never. As a result of these and related norms, and in spite of episodes like the notorious “torture memos,” OLC has earned a well-deserved reputation for providing credible, authoritative, thorough and objective legal analysis. The White House is one of the main beneficiaries of that reputation. When OLC concludes that a government action is lawful, its conclusion carries a legitimacy that other executive offices cannot so readily provide. That legitimacy is a function of OLC’s deep traditions and unique place within the executive branch. Other executive offices — be they agency general counsels or the White House Counsel’s Office — do not have decades-long traditions of providing legal advice based on their best view of the law after fully considering the competing positions; they have not generated bodies of authoritative precedents to inform and constrain their work; and they do not issue legal opinions that, whether or not they favor the President , are treated as presumptively binding within the executive branch. (Nor should those other offices mimic OLC; that is not their job.) Because the value of a favorable legal opinion from OLC is tied inextricably to these aspects of its work, each successive presidential administration has a strong incentive to respect and preserve them.

### 3

The affirmative re-inscribes the primacy of liberal legalism as a method of restraint

Margulies ‘11

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In an observation more often repeated than defended, we are told that the attacks of September 11 “changed everything.” Whatever merit there is in this notion, it is certainly true that 9/11—and in particular the legal response set in motion by the administration of President George W. Bush—left its mark on the academy. Nine years after 9/11, it is time to step back and assess these developments and to offer thoughts on their meaning. In Part II of this essay, we analyze the post-9/11 scholarship produced by this “emergency” framing. We argue that legal scholars writing in the aftermath of 9/11 generally fell into one of three groups: unilateralists, interventionists, and proceduralists. Unilateralists argued in favor of tilting the allocation of government power toward the executive because the state’s interest in survival is superior to any individual liberty interest, and because the executive is best able to understand and address threats to the state. Interventionists, by contrast, argued in favor of restraining the executive (principally through the judiciary) precisely to prevent the erosion of civil liberties. Proceduralists took a middle road, informed by what they perceived as a central lesson of American history.1 Because at least some overreaction by the state is an inevitable feature of a national crisis, the most one can reasonably hope for is to build in structural and procedural protections to preserve the essential U.S. constitutional framework, and, perhaps, to minimize the damage done to American legal and moral traditions. Despite profound differences between and within these groups, legal scholars in all three camps (as well as litigants and clinicians, including the authors) shared a common perspective—viz., that repressive legal policies adopted by wartime governments are temporary departures from hypothesized peacetime norms. In this narrative, metaphors of bewilderment, wandering, and confusion predominate. The country “loses its bearings” and “goes astray.” Bad things happen until at last the nation “finds itself” or “comes to its senses,” recovers its “values,” and fixes the problem. Internment ends, habeas is restored, prisoners are pardoned, repression passes. In a show of regret, we change direction, “get back on course,” and vow it will never happen again. Until the next time, when it does. This view, popularized in treatments like All the Laws but One, by the late Chief Justice Rehnquist,2 or the more thoughtful and thorough discussion in Perilous Times by Chicago’s Geoffrey Stone,3 quickly became the dominant narrative in American society and the legal academy. **This narrative also figured heavily in the many challenges to Bush-era policies,** including by the authors. The narrative permitted litigators and legal scholars to draw upon what elsewhere has been referred to as America’s “civic religion”4 and to cast the courts in the role of hero-judges5 **whom we hoped would restore legal order.**6 But by framing the Bush Administration’s response as the latest in a series of regrettable but temporary deviations from a hypothesized liberal norm, the legal academy ignored the more persistent, and decidedly illiberal, authoritarian tendency in American thought to demonize communal “others” during moments of perceived threat. Viewed in this light, what the dominant narrative identified as a brief departure caused by a military crisis is more accurately seen as part of a recurring process of intense stigmatization tied to periods of social upheaval, of which war and its accompanying repressions are simply representative (and particularly acute) illustrations. It is worth recalling, for instance, that the heyday of the Ku Klux Klan in this country, when the organization could claim upwards of 3 million members, was the early-1920s, and that the period of greatest Klan expansion began in the summer of 1920, almost immediately after the nation had “recovered” from the Red Scare of 1919–20.7 Klan activity during this period, unlike its earlier and later iterations, focused mainly on the scourge of the immigrant Jew and Catholic, and flowed effortlessly from the anti-alien, anti-radical hysteria of the Red Scare. Yet this period is almost entirely unaccounted for in the dominant post-9/11 narrative of deviation and redemption, which in most versions glides seamlessly from the madness of the Red Scare to the internment of the Japanese during World War II.8 And because we were studying the elephant with the wrong end of the telescope, we came to a flawed understanding of the beast. In Part IV, we argue that the interventionists and unilateralists came to an incomplete understanding by focusing almost exclusively on what Stuart Scheingold called “the myth of rights”—the belief that if we can identify, elaborate, and secure judicial recognition of the legal “right,” **political structures and policies will adapt their behavior to the requirements of the law** and change will follow more or less automatically.9 Scholars struggled to define the relationship between law and security primarily through exploration of structural10 and procedural questions, and, to a lesser extent, to substantive rights. And they examined the almost limitless number of subsidiary questions clustered within these issues. Questions about the right to habeas review, for instance, generated a great deal of scholarship about the handful of World War II-era cases that the Bush Administration relied upon, including most prominently Johnson v. Eisentrager and Ex Parte Quirin. 11 Regardless of political viewpoint, a common notion among most unilateralist and interventionist scholars was that when law legitimized or delegitimized a particular policy, **this would have a direct and observable effect on actual behavior**. The premise of this scholarship, in other words, was that policies “struck down” by the courts, or credibly condemned as lawless by the academy, would inevitably be changed—and that this should be the focus of reform efforts. Even when disagreement existed about the substance of rights or even which branch should decide their parameters, it reflected shared acceptance of the primacy of law, often to the exclusion of underlying social or political dynamics. Eric Posner and Adrian Vermeule, for instance, may have thought, unlike the great majority of their colleagues, that the torture memo was “standard fare.”12 But their position nonetheless accepted the notion that if the prisoners had a legal right to be treated otherwise, then the torture memo authorized illegal behavior and must be given no effect.13 Recent developments, however, cast doubt on two grounding ideas of interventionist and unilateralist scholarship—viz., that post-9/11 policies were best explained as responses to a national crisis (and therefore limited in time and scope), and that the problem was essentially legal (and therefore responsive to condemnation by the judiciary and legal academy). One might have reasonably predicted that in the wake of a string of Supreme Court decisions limiting executive power, apparently widespread and bipartisan support for the closure of Guantánamo during the 2008 presidential campaign, and the election of President Barack Obama, which itself heralded a series of executive orders that attempted to dismantle many Bush-era policies, the nation would be “returning” to a period of respect for individual rights and the rule of law. Yet the period following Obama’s election has been marked by an increasingly retributive and venomous narrative surrounding Islam and national security. **Precisely when the dominant narrative would have predicted change** and redemption, we have seen retreat and retrenchment. This conundrum is not adequately addressed by dominant strands of post-9/11 legal scholarship. In retrospect, it is surprising that much post-9/11 scholarship appears to have set aside critical lessons from previous decades as to the relationship among law, society and politics.14 Many scholars have long argued in other contexts that rights—or at least the experience of rights—are subject to political and social constraints, particularly for groups subject to historic marginalization. Rather than self-executing, rights are better viewed as contingent political resources, capable of mobilizing public sentiment and generating social expectations.15 From that view, a victory in Rasul or Boumediene no more guaranteed that prisoners at Guantánamo would enjoy the right to habeas corpus than a victory in Brown v. Board16 guaranteed that schools in the South would be desegregated.17 Rasul and Boumediene, therefore, should be seen as part (and probably only a small part) of a varied and complex collection of events, including the fiasco in Iraq, the scandal at the Abu Ghraib prison, and the use of warrantless wiretaps, as well as seemingly unrelated episodes like the official response to Hurricane Katrina. These and other events during the Bush years merged to give rise to a powerful social narrative critiquing an administration committed to lawlessness, content with incompetence, and engaged in behavior that was contrary to perceived “American values.”18 Yet the very success of this narrative, culminating in the election of Barack Obama in 2008, produced quiescence on the Left, even as it stimulated massive opposition on the Right. The result has been the emergence of a counter-narrative about national security that has produced a vigorous social backlash such that most of the Bush-era policies will continue largely unchanged, at least for the foreseeable future.19 Just as we see a widening gap between judicial recognition of rights in the abstract and the observation of those rights as a matter of fact, there appears to be an emerging dominance of proceduralist approaches, which take as a given that rights dissolve under political pressure, and, thus, are best protected by basic procedural measures. But that stance falls short in its seeming readiness to trade away rights in the face of political tension. First, it accepts the tropes du jour surrounding radical Islam—namely, that it is a unique, and uniquely apocalyptic, threat to U.S. security. In this, proceduralists do not pay adequate heed to the lessons of American history and sociology. And second, it endorses too easily the idea that procedural and structural protections will protect against substantive injustice in the face of popular and/or political demands for an outcome-determinative system that cannot tolerate acquittals. Procedures only provide protection, however, if there is sufficient political support for the underlying right. Since the premise of the proceduralist scholarship is that such support does not exist, it is folly to expect the political branches to create meaningful and robust protections. In short, a witch hunt does not become less a mockery of justice when the accused is given the right to confront witnesses. And a separate system (especially when designed for demonized “others,” such as Muslims) cannot, by definition, be equal. In the end, we urge a fuller embrace of what Scheingold called “the politics of rights,” which recognizes the contingent character of rights in American society. We agree with Mari Matsuda, who observed more than two decades ago that rights are a necessary but not sufficient resource for marginalized people with little political capital.20 To be effective, therefore, we must look beyond the courts and grapple with the hard work of long-term change with, through and, perhaps, in spite of law. These are by no means new dilemmas, but the post-9/11 context raises difficult and perplexing questions that deserve study and careful thought as our nation settles into what appears to be a permanent emergency.

That causes endless violence – extinction

The alternative is to vote negative to endorse political, rather than legal restrictions on Presidential war powers authority

Dossa ‘99

Shiraz, Department of Political Science, St. Francis Xavier University, Antigonish, Nova Scotia, “Liberal Legalism: Law, Culture and Identity,” The European Legacy, Vol. 4, No. 3, pp. 73-87,1

No discipline in the rationalized arsenal of modernity is as rational, impartial, objective as the province of law and jurisprudence, in the eyes of its liberal enthusiasts. Law is the exemplary countenance of the conscious and calculated rationality of modern life, **it is the** emblematic face of liberal civilization. Law and legal rules symbolize the spirit of science, the march of human progress. As Max Weber, the reluctant liberal theorist of the ethic of rationalization, asserted: judicial formalism enables the legal system to operate like a technically **rational machine**. Thus it guarantees to individuals and groups within the system a relative of maximum of freedom, and greatly increases for them the possibility of predicting the legal consequences of their action. In this reading, law encapsulates the western capacity to bring order to nature and human beings, to turn the ebb and flow of life into a "rational machine" under the tutelage of "judicial formalism".19 Subjugation of the Other races in the colonial empires was motivated by power and rapacity, but it was justified and indeed rationalized, by an appeal to the civilizing influence of religion and law: western Christianity and liberal law. To the imperialist mind, "the civilizing mission of law" was fundamental, though Christianity had a part to play in this program.20 Liberal colonialists visualized law, civilization and progress as deeply connected and basic, they saw western law as neutral, universally relevant and desirable. The first claim was right in the liberal context, the second thoroughly false. In the liberal version, the mythic and irrational, emblems of thoughtlessness and fear, had ruled all life-forms in the past and still ruled the lives of the vast majority of humanity in the third world; in thrall to the majesty of the natural and the transcendent, primitive life flourished in the environment of traditionalism and lawlessness, hallmarks of the epoch of ignorance. By contrast, liberal ideology and modernity were abrasively unmythic, rational and controlled. Liberal order was informed by knowledge, science, a sense of historical progress, a continuously improving future. But this canonical, secular, bracing self-image, is tendentious and substantively illusory: it blithely scants the bloody genealogy and the extant historical record of liberal modernity, liberal politics, and particularly liberal law and its impact on the "lower races" (Hobson). In his Mythology of Modern Law, Fitzpatrick has shown that the enabling claims of liberalism, specifically of liberal law, are not only untenable but implicated in canvassing a racist justification of its colonial past and in eliding the racist basis of the structure of liberal jurisprudence.21 Liberal law is mythic in its presumption of its neutral, objective status. Specifically, the liberal legal story of its immaculate, analytically pure origin obscures and veils not just law's own ruthless, violent, even savage and disorderly trajectory, but also its constitutive association with imperialism and racism.22 In lieu of the transcendent, divine God of the "lower races", modern secular law postulated the gods of History, Science, Freedom. Liberal law was to be the instrument for realizing the promise of progress that the profane gods had decreed. Fitzpatrick's invasive surgical analysis lays bare the underlying logic of law's self-articulation in opposition to the values of cultural-racial Others, and its strategic, continuous reassertion of liberalism's superiority and the civilizational indispensability of liberal legalism. Liberal law's self-presentation presupposes a corrosive, debilitating, anarchic state of nature inhabited by the racial Others and lying in wait at the borders of the enlightened modern West. This mythological, savage Other, creature of raw, natural, unregulated fecundity and sexuality, justified the liberal conquest and control of the racially Other regions.23 Law's violence and resonant savagery on behalf of the West in its imperial razing of cultures and lands of the others, has been and still is, justified in terms of the necessary, beneficial spread of liberal civilization. Fitzpatrick's analysis parallels the impassioned deconstruction of this discourse of domination initiated by Edward Said's Orientalism, itself made possible by the pioneering analyses of writers like Aime Cesaire and Frantz Fanon. Fitzpatrick's argument is nevertheless instructive: his focus on law and its machinations unravels the one concrete province of imperial ideology that is centrally modern and critical in literally transforming and refashioning the human nature of racial Others. For liberal law carries on its back the payload of "progressive", pragmatic, **instrumental modernity**, its ideals of order and rule of law, its articulation of human rights and freedom, its ethic of procedural justice, its hostility to the sacred, to transcendence or spiritual complexity, its recasting of politics as the handmaiden of the nomos, its valorization of scientism and rationalization in all spheres of modern life. Liberal law is not synonymous with modernity tout court, but it is the exemplary voice of its rational spirit, **the custodian of its civilizational ambitions.** For the colonized Others, no non-liberal alternative is available: a non-western route to economic progress is inconceivable in liberal-legal discourse. For even the truly tenacious in the third world will never cease to be, in one sense or another, the outriders of modernity: their human condition condemns them to **playing perpetual catch-up**, eternally subservient to Western economic and technological superiority in a epoch of self-surpassing modernity.24 If the racially Other nations suffer exclusion globally, the racially other minorities inside the liberal loop enjoy the ambiguous benefits of inclusion. As legal immigrants or refugees, they are entitled to the full array of rights and privileges, as citizens (in Canada, France, U.K., U.S—Germany is the exception) they acquire civic and political rights as a matter of law. Formally, they are equal and equally deserving. In theory liberal law is inclusive, but concretely it is routinely **partial and invidious**. Inclusion is conditional: it depends on how robustly the new citizens wear and deploy their cultural difference. Two historical facts account for this phenomenon: liberal law's role in western imperialism and the Western claim of civilizational superiority that pervades the culture that sustains liberal legalism. Liberal law, as the other of the racially Other within its legal jurisdiction, differentiates and locates this other in the enemy camp of the culturally raw, irreducibly foreign, making him an unreliable ally or citizen. Law's suspicion of the others socialized in "lawless" cultures is instinctive and undeniable. Liberal law's constitutive bias is in a sense incidental: the real problem is racism or the racist basis of liberal ideology and culture.25 The internal racial other is not the juridical equal in the mind of liberal law but the juridically and humanly inferior Other, the perpetual foreigner.

### 4

#### CIR will pass now but it will be tough

Nowicki, 10-30 -- Arizona Republic's national political reporter

[Dan, and Erin Kelly, "Fleeting Hopes for Immigration Reform," AZ Central, 10-30-13, www.azcentral.com/news/politics/articles/20131029fleeting-hopes-immigration-reform.html?nclick\_check=1, accessed 10-31-13, mss]

However, reform backers point to encouraging signs in addition to the intense push by the business lobby. Key House Republicans, including Reps. Paul Ryan of Wisconsin, Mario Diaz-Balart of Florida and Darrell Issa of California, reportedly are working on proposals to address the status of the estimated 11 million undocumented immigrants who already have settled in the United States, which is the central issue for Democrats and immigration activists. The Democrat-controlled Senate on June 27 passed a sweeping reform bill that included a 13-year pathway to citizenship for immigrants who pass background checks, pay assessed taxes and fines and take other steps to get right with the law, as well as a massive investment in border security. There are indications that some Republicans are becoming impatient with the House inaction on piecemeal bills that have been talked about since the Senate bill passed. Two House Republicans — Reps. Jeff Denham of California and Ileana Ros-Lehtinen of Florida — have become the first two GOP lawmakers to sign onto a comprehensive immigration bill offered by House Democrats. Rep. Joe Heck, R-Nev., last week said in a written statement that the growing possibility that the House might punt on immigration reform in 2013 reflects “the leadership vacuum in Washington that rightly has so many people frustrated with this dysfunctional Congress.” Sen. Jeff Flake, R-Ariz., a former 12-year House member who helped negotiate the Senate bill, said Monday on Twitter that momentum appears to be building in the House. “That’s good news for Arizona, and the country,” he said in the message. For their part, Boehner and his fellow House Republican leaders have not yet publicly declared immigration reform dead, which even the most pessimistic reform supporters say means there is still a chance the House could act in November or early December. House committees so far have approved five bills, including legislation to strengthen border security and require employers to use a federal database to ensure they are hiring people who are legally eligible to work in the United States. “The speaker said last week, ‘I still think immigration reform is an important subject that needs to be addressed. And I’m hopeful,’ ” Boehner spokesman Michael Steel told The Arizona Republic on Tuesday via e-mail. “He added that he supports a step-by-step immigration process.” Businesses speak out Hoping to make sure immigration reform gets on the House’s 2013 agenda, more than 600 business, law-enforcement, religious and political leaders from Arizona and nearly 40 other states flooded Capitol Hill on Tuesday. The fly-in was organized by the U.S. Chamber of Commerce and other groups, including FWD.us, which was founded by leaders of high-tech companies. The activists, mostly self-described conservatives, met with more than 100 members of Congress to urge them to take action on broad legislation that includes a way for most undocumented immigrants in the U.S. to earn citizenship. “In every corner of the Capitol, the energy these farmers, tech leaders, police chiefs and pastors brought to the Hill was palpable,” said Ali Noorani, executive director of the National Immigration Forum. “They brought a new perspective to the debate, one informed by what they see every day in their local businesses, churches and police stations — a broken system that has a negative impact on local communities nationwide.” Peoria Vice Mayor Tony Rivero is a conservative Republican who urged Arizona’s GOP congressmen to support reform this year. His city needs more farmworkers who are legally authorized to work, and it needs its undocumented residents to come out of the shadows, he said. “My message to our congressional delegation is that, as a constituent and a conservative Republican, I support a solution to this problem,” Rivero said. “We need to secure the border, identify the people who are here illegally and put them on a path to legality and put enforcement measures in place to make sure we aren’t here again in 10 years.” Former Phoenix Police Chief Jack Harris said he told members of Arizona’s congressional delegation that the current immigration system makes police officers’ jobs more complicated. “Every community is trying to solve the problem in a different way,” he said. “In some places, you (an undocumented immigrant) can get a driver’s license. In some places, you can’t. Some places are very liberal and report almost no crimes (committed by undocumented immigrants). Others deport you for just minor infractions. There’s great confusion among the law-enforcement community about what the rules are and what their authority is.” ‘I do care about them’ The conservative lobbying efforts are in conjunction with efforts from more liberal immigration-advocacy groups. Last week, a contingent of 44 undocumented immigrants and their supporters traveled from Phoenix by bus to Washington, D.C., and Ohio in hope of meeting with Boehner to persuade him to schedule a vote on a bill that includes a pathway to citizenship. The group, which included many “dreamers,” or undocumented immigrants brought to the United States as children, never got the opportunity to talk with Boehner. However, the immigration activists from the advocacy group Promise Arizona who camped outside Franks’ house did get the chance to talk with the representative for more than 25 minutes. They initially were buoyed by his response, which they interpreted as support for a pathway to citizenship. However, Franks later clarified to The Republic that he would not support a special pathway to citizenship. Franks said he would support legalizing undocumented immigrants under certain conditions but would not allow them to subsequently seek citizenship. Or the undocumented immigrants could return to their home countries and apply for green cards and citizenship that way, he said. Franks said he didn’t fully articulate his position to the activists because he felt compassion for their pleas. “Sometimes, in any situation, you don’t hit people in the face with the worst of it,” Franks said. “I wanted them to know, while maybe we didn’t agree on everything, there were some things we do agree on. I do care about them.” Proponents are positive Glenn Hamer, president and CEO of the Arizona Chamber of Commerce and Industry, said the group of Arizonans that flew in as part of the U.S. Chamber-led D.C. visit were going to meet with all nine House members from Arizona. After morning meetings with Republican Reps. Paul Gosar, Matt Salmon and David Schweikert, Hamer said the sessions were positive. “There is complete agreement that we have a busted immigration system,” he said. “It’s fair to say that there is an understanding that we need immigration reform. It’s very clear that the House is going to pass its vision for immigration reform. If it’s simply the Senate bill or bust, then nothing will happen.” Flake said he believes the methodical and strategic lobbying by the business community, faith groups and activist organizations will **help** motivate the House. He said he is OK with House Republicans taking a step-by-step strategy rather than passing a comprehensive bill like the one he helped craft in the Senate. “My position is, if you can move it piecemeal or sequentially, that’s fine,” Flake said. “If you have to go comprehensive, that’s fine. Let’s get something to the president’s desk.” Frank Sharry, executive director of the pro-reform organization America’s Voice, said the two House Republicans who signed on to the alternative Democratic bill also are examples of **momentum**. “When that bill was first introduced, it was widely panned as a Democratic ‘message bill’ that was going nowhere and was setting up the blame game in a run toward 2014,” Sharry said. “But because Democrats made the smart move of making sure every policy in the bill was passed with bipartisan support either in the Senate or the House, it has become a serious offering and a **place where Republicans can go.** I think you will see more Republicans getting on board.” Because of Boehner’s leadership style and uneasy relationship with many of his rank-and-file members, Sharry said, it may take “a convergence and emergence of a critical mass of Republicans to convince leadership to go forward.” Hamer said he believes there is still a possibility for compromise between the House and Senate. “I don’t want to be too Pollyannaish,” he said. “Passing immigration reform is not like renaming a post office. It’s going to be tough.”

#### The plan reverses these dynamics—sparks an inter-branch fight derailing the agenda

Douglas Kriner, Assistant Profess of Political Science at Boston University, 2010, After the Rubicon: Congress, Presidents, and the Politics of Waging War, p. 67-69

Raising or Lowering Political Costs by Affecting Presidential Political Capital

Shaping both real and anticipated public opinion are two important ways in which Congress can raise or lower the political costs of a military action for the president. However, focusing exclusively on opinion dynamics threatens to obscure the much broader political consequences of domestic reaction—particularly congressional opposition—to presidential foreign policies. At least since Richard Neustadt's seminal work Presidential Power, presidency scholars have warned that **costly political battles in one policy arena frequently have significant ramifications for presidential power in other realms**. Indeed, two of Neustadt's three "cases of command"—Truman's seizure of the steel mills and firing of General Douglas MacArthur—explicitly discussed the broader political consequences of stiff domestic resistance to presidential assertions of commander-in-chief powers. In both cases, Truman emerged victorious in the case at hand—yet, Neustadt argues, each victory cost Truman dearly in terms of his future power prospects and leeway in other policy areas, many of which were more important to the president than achieving unconditional victory over North Korea."

While congressional support leaves the president's reserve of political capital intact, congressional criticism saps energy from other initiatives on the home front by forcing the president to expend energy and effort defending his international agenda. **Political capital spent shoring up support for a president's foreign policies is capital that is unavailable for his future policy initiatives**. Moreover, any weakening in the president's political clout may have immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races." Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest casualty rates in the Iraq War.6°

In addition to boding ill for the president's perceived political capital and reputation, such partisan losses in Congress only further imperil his programmatic agenda, both international and domestic. Scholars have long noted that President Lyndon Johnson's dream of a Great Society also perished in the rice paddies of Vietnam. Lacking both the requisite funds in a war-depleted treasury and the political capital needed to sustain his legislative vision, Johnson gradually let his domestic goals slip away as he hunkered down in an effort first to win and then to end the Vietnam War. In the same way, many of President Bush's **highest second-term domestic priorities**, such as Social Security and immigration reform, **failed** perhaps in large part **because the administration had to expend so much energy** and effort **waging a rear-guard action against congressional critics** of the war in Iraq.

When making their cost-benefit calculations, presidents surely consider these wider political costs of congressional opposition to their military policies. If **congressional opposition in the military arena stands to** derail other elements of his agenda, all else being equal, the president will be more likely to judge the benefits of military action insufficient to its costs than if Congress stood behind him in the international arena

#### Obama’s push locks-up a House vote, but the window is narrow

Bill Scher, The Week, 10/18/13, How to make John Boehner cave on immigration, theweek.com/article/index/251361/how-to-make-john-boehner-cave-on-immigration

Speaker John Boehner (R-Ohio) generally adheres to the unwritten Republican rule that bars him from allowing votes on bills opposed by a majority of Republicans, even if they would win a majority of the full House.

But he's caved four times this year, allowing big bills to pass with mainly Democratic support. They include repealing the Bush tax cuts for the wealthiest Americans; providing Hurricane Sandy relief; expanding the Violence Against Women act to better cover immigrants, Native Americans, and LGBT survivors of abuse; and this week's bill raising the debt limit and reopening the federal government.

Many presume the Republican House is a black hole sucking President Obama's second-term agenda into oblivion. But the list of Boehner's past retreats offers a glimmer of hope, especially to advocates of immigration reform. Though it has languished in the House, an immigration overhaul passed with bipartisan support in the Senate, and was given a fresh push by Obama in the aftermath of the debt limit deal.

The big mystery that immigration advocates need to figure out: What makes Boehner cave? Is there a common thread? Is there a sequence of buttons you can push that forces Boehner to relent?

Two of this year's caves happened when Boehner was backed up against hard deadlines: The Jan. 1 fiscal cliff and the Oct. 17 debt limit. Failure to concede meant immediate disaster. Reject the bipartisan compromise on rolling back the Bush tax cuts, get blamed for jacking up taxes on every taxpayer. Reject the Senate's three-month suspension of the debt limit, get blamed for sparking a global depression. Boehner held out until the absolute last minute both times, but he was not willing to risk blowing the deadline.

A third involved the response to an emergency: Hurricane Sandy. Conservative groups were determined to block disaster relief because — as with other federal disaster responses — the $51 billion legislative aid package did not include offsetting spending cuts. Lacking Republican votes, Boehner briefly withdrew the bill from consideration, unleashing fury from New York and New Jersey Republicans, including Gov. Chris Christie. While there wasn't a hard deadline to meet, disaster relief was a time-sensitive matter, and the pressure from Christie and his allies was unrelenting. Two weeks after pulling the bill, Boehner put it on the floor, allowing it to pass over the objections of 179 Republicans.

The fourth cave occurred in order to further reform and expand a government program: The Violence Against Women Act. The prior version of the law had been expired for over a year, as conservatives in the House resisted the Senate bill in the run-up to the 2012 election. But after Mitt Romney suffered an 18-point gender gap in his loss to Obama, and after the new Senate passed its version again with a strong bipartisan vote, Boehner was unwilling to resist any longer. Two weeks later, the House passed the Senate bill with 138 Republicans opposed.

Unfortunately for immigration advocates, there is no prospect of widespread pain if reform isn't passed. There is no immediate emergency, nor threat of economic collapse.

But there is a deadline of sorts: The 2014 midterm elections.

If we've learned anything about Boehner this month, it's that he's a party man to the bone. He dragged out the shutdown and debt limit drama for weeks, without gaining a single concession, simply so his most unruly and revolutionary-minded members would believe he fought the good fight and stay in the Republican family. What he won is party unity, at least for the time being.

What Boehner lost for his Republicans is national respectability. Republican Party approval hit a record low in both the most recent NBC/Wall Street Journal poll and Gallup poll.

Here's where immigration advocates have a window of opportunity to appeal to Boehner's party pragmatism. Their pitch: The best way to put this disaster behind them is for Republicans to score a big political victory. You need this.

A year after the Republican brand was so bloodied that the Republican National Committee had to commission a formal "autopsy," party approval is the worst it has ever been. You've wasted a year. Now is the time to do something that some voters will actually like.

There's reason to hope he could be swayed. In each of the four cases in which he allowed Democrats to carry the day, he put the short-term political needs of the Republican Party over the ideological demands of right-wing activists.

Boehner will have to do another round of kabuki. He can't simply swallow the Senate bill in a day. There will have to be a House version that falls short of activists' expectations, followed by tense House-Senate negotiations. Probably like in the most formulaic of movies, and like the fiscal cliff and debt limit deals, there will have to be an "all-is-lost moment" right before we get to the glorious ending. Boehner will need to given the room to do all this again.

But he won't do it without a push. A real good push.

#### Solves US-India relations --- builds trade relationships

LA Times 12, 11/9/2012 (Other countries eagerly await U.S. immigration reform, p. http://latimesblogs.latimes.com/world\_now/2012/11/us-immigration-reform-eagerly-awaited-by-source-countries.html)

"Comprehensive immigration reform will see expansion of skilled labor visas," predicted B. Lindsay Lowell, director of policy studies for the Institute for the Study of International Migration at Georgetown University. A former research chief for the congressionally appointed Commission on Immigration Reform, Lowell said he expects to see at least a fivefold increase in the number of highly skilled labor visas that would provide "a significant shot in the arm for India and China."¶ There is widespread consensus among economists and academics that skilled migration fosters new trade and business relationships between countries and enhances links to the global economy, Lowell said.¶ "Countries like India and China weigh the opportunities of business abroad from their expats with the possibility of brain drain, and I think they still see the immigration opportunity as a bigger plus than not," he said.

#### US/India relations are key to prevent South Asian nuclear war

Schaffer 2, Spring 2002 (Teresita – Director of the South Asia Program at the Center for Strategic and International Security, Washington Quarterly, p. Lexis)

Washington's increased interest in India since the late 1990s reflects India's economic expansion and position as Asia's newest rising power. New Delhi, for its part, is adjusting to the end of the Cold War. As a result, both giant democracies see that they can benefit by closer cooperation. For Washington, the advantages include a wider network of friends in Asia at a time when the region is changing rapidly, as well as a stronger position from which to help calm possible future nuclear tensions in the region. Enhanced trade and investment benefit both countries and are a prerequisite for improved U.S. relations with India. For India, the country's ambition to assume a stronger leadership role in the world and to maintain an economy that lifts its people out of poverty depends critically on good relations with the United States.

### 5

#### Interpretation – the affirmative must specify which federal court rules on their aff

#### They don’t that’s a voter - the phrase “Federal Judiciary” is too vague and destroys legal precision – specification is good

Andrew Marsh (Official Reporter of the proceedings of the Constitutional Convention of the State of Nevada) 1866 “Declaration of Rights” in the ‘Official Report of the Debates and Proceedings in the Constitutional Convention of the State of Nevada” p. 781, <http://books.google.com/books?id=_xoWAAAAYAAJ&pg=PA781&lpg=PA781&dq=%22the+term+federal+judiciary%22&source=bl&ots=pvPibPxnnj&sig=cZT3Ug_Z4DUQljn2aRi-bSqZ0ro&hl=en&sa=X&ei=Id5HUrK1Ca7I4AOO-4DIBg&ved=0CFEQ6AEwBA#v=onepage&q=%22the%20term%20federal%20judiciary%22&f=false>

Mr BANKS There is one term made use of in the section last read, to which I have always been very much opposed and which I would like to have changed at this time. I refer to the phrase “as the same have been or may be defined by the Federal Judiciary.” It seems to me it would be much better to say “the Supreme Court of the United States.” That would be more direct, and plainer, and we know very well that the judiciary, and the courts, are not necessarily the same in all cases, for sometimes an act may be a judicial act without being an act of the court. I do not know that it would make any material difference in point of fact, but I nevertheless much prefer to use the direct term, “the Supreme Court;” and therefore, I move to make that change in Section 2, striking out the words “Federal Judiciary,” and inserting instead the words “Supreme Court of the United States.”

The PRESIDENT. The amendment proposed is certainly proper, because there are different United States courts; for instance, the District and Circuit Courts, which are distinctive parts of the Federal Judiciary.

Mr. COLLINS. I think that change should be made.

Mr. LOCKWOOD. If my memory serves me correctly, the same change has once been proposed, and rejected.

Mr. BANKS. No, sir. I had offered an amendment to this section, and accepted the amendment to my amendment suggested by the gentleman from Storey (Mr. Fitch,) which embraced this term “Federal Judiciary,” but it will be remembered that there was at that time some considerable feeling in regard to the doctrine or principle to be enunciated by the section, and especial attention was not called to the particular phraseology employed.

The PRESIDENT. My recollection coincides with that of the gentleman from Humboldt (Mr. Banks.) The words referred to were adopted by the convention as an amendment to the original section

Mr. LOCKWOOD. I think the gentleman from Humboldt concurs with me entirely, so far. The change of the term was subsequently proposed; I think the motion came from me, although I am not altogether certain of that; at all events the change was proposed, and rejected.

Mr. BANKS. The history of the matter was this: I had proposed an amendment to change the original section, but y amendment did not embrace the full extent of the change which was finally made. Then the gentlemen from Storey (Mr. Fitch) proposed his amendment, which covered more ground than mine, and although the terms of his amendment did not suit me altogether, yet as I approved generally of the object it had in view, and saw that it would meet with the approval of the majority, I accepted his amendment.

Mr. BROSNAN. My recollection is entirely in harmony with that of the gentleman from Humboldt We had some conversation on the subject matter, in regard to which, at the time, a good deal of feeling was manifested, and it was my understanding that although the gentleman from Humboldt accepted the amendment offered by my colleague, (Mr. Fitch) yet he did not prefer to use that particular language. I know that he did entertain and express the opinion at the time, that the term “Federal Judiciary” was to[o] indefinite, or at all events not the best term to use, perhaps, but in consequence, it may be, of the feeling existing relative to the general subject matter, an amendment was not proposed, though it was talked of.

The amendment proposed by Mr. Banks, was adopted by unanimous consent.

#### Prefer it- destroys ground and education – alternate court CPs are the heart of the most educational debates on the topic. AND Precision- legal education is only created through discussion of court mechanisms which the aff avoids

#### 2AC clarification is bad – sandbagging actors moots the strategic value of the 1nc and puts the negative structurally behind from the outset.

### Solvency

#### Executive will circumvent judicial review on the merits – will force sua sponte decision

Darren Wheeler (Assistant Professor of Political Science and Public Administration at the University of North Florida, USA) December 2009 “Checking Presidential Detention Power in the War on Terror: What Should We Expect from the Judiciary?” Presidential Studies Quarterly¶ Volume 39, Issue 4, pages 677–700, Wiley Online Library

A second example, the case of alleged “dirty bomber” José Padilla, also illustrates the difficulties that courts may have in checking the actions of other political actors when they are acting in judicial time. José Padilla was originally arrested in May 2002 on a material witness warrant related to a criminal investigation into the events of 9/11. Rather than release Padilla when the warrant expired, President Bush designated him an enemy combatant and transferred him to a naval brig in South Carolina. Padilla's counsel filed a habeas corpus challenge in New York District Court (where Padilla had originally been held) arguing for his release. Padilla's challenge proceeded from the district court to the Second Circuit Court of Appeals and eventually to the Supreme Court, where, in 2004, the Court decided that Padilla had filed his habeas petition in the wrong district.4 If he wanted to challenge his detention, he would have to re-file his case in South Carolina, where he was being held. Padilla did just this and the case made its way up the federal court system again, this time via the Fourth Circuit Court of Appeals. However, as Padilla's new legal challenge was poised to reach the Supreme Court again (it was now 2006), the Bush administration suddenly decided to transfer Padilla to civilian custody and file federal criminal charges.5 This effectively short-circuited Padilla's attempt to have the Supreme Court review the merits of his case. Padilla's legal odyssey through the federal court system had lasted more than five years, without the Supreme Court ever ruling on the merits of Padilla's legal arguments. Padilla was first held in the criminal justice system, designated an enemy combatant when it became convenient for the administration to do so, and then transferred back to civilian custody in an apparent attempt to avoid judicial review of his constitutional claims (Ball 2007). The judiciary moved slowly, while the president moved quickly in order to achieve his desired outcomes.

#### This will force the plan’s decision to be reactive – congress and the president will enforce their will on detention policy empirically

Darren Wheeler (Assistant Professor of Political Science and Public Administration at the University of North Florida, USA) December 2009 “Checking Presidential Detention Power in the War on Terror: What Should We Expect from the Judiciary?” Presidential Studies Quarterly¶ Volume 39, Issue 4, pages 677–700, Wiley Online Library

The Bush administration also had to deal with legal claims of noncitizen detainees housed at the American naval base in Guantánamo Bay, Cuba. Did these noncitizen detainees have access to American courts? This question first began to work its way up the federal court system in 2002 in the case of Rasul v. Bush.6 In 2004, the Supreme Court eventually concluded that the detainees did have access to federal courts, but as it left other questions regarding detainee rights unanswered, the legal challenges continued. Dozens of detainees filed habeas corpus suits challenging their detention.7 The cases were consolidated and appealed to the District of Columbia Circuit Court of Appeals under the name of Boumediene v. Bush. Initial oral arguments in these cases were held in September 2005, yet the circuit court's decision—a ruling against the detainees—was not issued until February 20, 2007, more than 17 months after the case was filed. The court had used this length of time to hear two sets of oral arguments and four rounds of briefing on seemingly innumerable questions related to the case.8 While this case was before the D.C. Circuit, the Bush administration instituted a review process for Guantánamo detainees known as a Combat Status Review Tribunal that was designed to determine whether the detainees were properly designated as enemy combatants (Wolfowitz 2004). Congress also got into the act by passing the Detainee Treatment Act of 2005 (DTA) and the Military Commissions Act of 2006 (MCA). These acts were an attempt to spell out the limited legal rights of Guantánamo detainees with greater clarity. These actions by Congress and the president affected the rights of Guantánamo detainees in a number of important ways. However, the important thing to note for the purposes of this discussion is that they changed the legal status and legal rights of the detainees while the circuit court was trying to reach its decision. Other political actors were moving quickly and proactively. The courts were moving slowly and as a result were forced to respond to the actions of others.

### Terror

#### Aff causes terror ---releases them and kills intel gathering

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

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

#### Terror threat low now- weakened terrorists not focused on large-scale attacks on the West- best intel

Ackerman, 13 -- Wired senior reporter

[Spencer, "Spy Chiefs Point to a Much, Much Weaker Al-Qaida," Wired, 3-13-13, www.wired.com/dangerroom/2013/03/spy-terrorism/, accessed 9-18-13, mss]

Don’t ever expect the heads of the U.S.’ 16-agency spy apparatus to say it outright. But the testimony they provided Tuesday morning to a Senate panel described al-Qaida, the scourge of the U.S. for 12 years, as a threat that’s on the verge of becoming a spent force, if they’re not already. James Clapper, the director of national intelligence, and his colleagues at the CIA, Defense Intelligence Agency, National Counterterrorism Center and State Department, never made that contention outright to the Senate Select Committee on Intelligence on Tuesday. But in their annual public briefing on the threats America faces, they focused on their budgets and on cyber attacks more than they did terrorism. Not only was that itself a big change in the annual exercise, what they said about the threat from al-Qaida was mostly cheerful news. Al-Qaida’s core in Pakistan is so degraded that it is “probably unable to carry out complex, large-scale attacks in the West,” Clapper testified. (.pdf) Its regional affiliates, in Iraq, Somalia and northern Africa, are focused on local attacks. Despite all the online propaganda seeking to radicalize American Muslim, homegrown jihadis will attempt “fewer than ten domestic plots per year.” Last year, the plots hit the single digits; no one died from them. Matt Olsen, the director of the National Counterterrorism Center, testified that those attempts are and are likely to remain “unsophisticated.” Those al-Qaida manages to inspire may be “wayward knuckleheads,” Olsen said, but they’ll remain a challenge for the spy apparatus to monitor and disrupt. The exception is al-Qaida in the Arabian Peninsula, the Yemen affiliate of the organization, which remains the one most inclined to attack the U.S. at home. FBI director Robert Mueller said the threat to U.S. airliners from that affiliate is “undiminished.” Attacking outside Yemen remains a priority for the organization. But Clapper said they’ll have to balance that agenda with both their aspirations in Yemen and the degree to which “they have individuals who can manage, train, and deploy operatives for U.S. operations.” To be clear, not a single spy chief said that al-Qaida is no longer a big deal. Not a single spy chief said that al-Qaida no longer threatens the United States. And not a single spy chief so much as hinted that it’s time for U.S. officials to consider the global war on terrorism finished. Ever since the Benghazi attack of September, those officials and their spy chiefs have stopped predicting that al-Qaida is on the verge of defeat. If anything, Clapper warned that the budget crunch he’s under might make it harder to spot and prevent the next al-Qaida attack. Yet the picture they presented of al-Qaida is no longer one of a determined global movement growing in strength; seeking the world’s deadliest weapons; and capable of pulling off complex, mass-casualty assaults. Benghazi, and the January attack on an Algerian oil field, look like models for the terrorist threats of the future: ones that occur far from U.S. soil, launched by unaffiliated groups that are primarily focused on a local agenda, yet sufficiently inspired by al-Qaida’s rhetoric or sympathetic to its worldview that unsecured western targets of opportunity are in its cross-hairs. Left unsaid and un-debated at the hearing: whether that diminished threat means it’s time to roll back the U.S. global wartime apparatus; or whether it’s only diminished because of an aggressive wartime apparatus that **needs to keep doing what it’s doing, lest the threat re-emerge**.

#### No WMD terror- recruitment/lethality tradeoff

Shapiro, 13 – Princeton University politics and international affairs professor

[Jacob N., Ph.D. Political Science, Association for Analytic Learning about Islam and Muslim Societies faculty fellow, Center for Economic Research in Pakistan research fellow, Princeton University Empirical Studies of Conflict Project co-director, Council on Foreign Relations member, World Politics associate editor, "The Business Habits of Highly Effective Terrorists," Foreign Affairs, 8-14-13, www.foreignaffairs.com/articles/139817/jacob-n-shapiro/the-business-habits-of-highly-effective-terrorists?page=show, accessed 8-18-13, mss]

In addition to being a ruthless jihadist, Ayman al-Zawahiri long ago earned a reputation for being a terrible boss. When he took over al Qaeda in 2011, senior U.S. intelligence officials were already pointing out his penchant for micro-management. (In one instance in the 1990s, he reached out to operatives in Yemen to castigate them for buying a new fax machine when their old one was working just fine.) Reports that last week’s terror alert was triggered when Zawahiri reached out to Nasir al-Wuhayshi, his second-in-command and the leader of al Qaeda in the Arabian Peninsula -- a communication that Washington predictably managed to intercept -- only hardened the impression that he lacks the savvy to run a global terror organization. But few of Zawahiri’s many critics have paused to consider what the task of leading a terror organization actually entails. It is true that Zawahiri’s management style has made his organization vulnerable to foreign intelligence agencies and provoked disgruntlement among the terrorist rank and file, not to mention drawing last week’s drone strikes. But it is equally true that Zawahiri had few other options. Given that terrorists are, by definition, engaged in criminal activity, you would think that they would place a premium on secrecy. But historically, many terrorist groups have been meticulous record keepers. Members of the Red Brigades, an Italian terrorist group active in the 1970s and early 1980s, report having spent more time accounting for their activities than actually training or preparing attacks. From 2005 through at least 2010, senior leaders of al Qaeda in Iraq kept spreadsheets detailing salary payments to hundreds of fighters, among many other forms of written records. And when the former military al Qaeda military commander Mohammed Atef had a dispute with Midhat Mursi al-Sayid Umar, an explosives expert for the Egyptian Islamic Jihad, in the 1990s, one of his complaints was that Umar failed to turn in his receipts for a trip he took with his family. Such bureaucracy makes terrorists vulnerable to their enemies. But terrorists do it anyway. In part, that is because large-scale terror plots and extended terror campaigns require so much coordination that they cannot be carried out without detailed communication among the relevant actors and written records to help leaders track what is going on. Gerry Bradley, a former terrorist with the Provisional Irish Republican Army, for example, describes in his memoir how he required his subordinates in Belfast in 1973 to provide daily reports on their proposed operations so that he could ensure that the activities of subunits did not conflict. Several leaders of the Kenyan Mau Mau insurgency report that, as their movement grew in the early 1950s, they needed to start maintaining written accounting records and fighter registries to monitor their finances and personnel. But the deeper part of the answer is that the managers of terrorist organizations face the same basic challenges as the managers of any large organization. What is true for Walmart is true for al Qaeda: Managers need to keep tabs on what their people are doing and devote resources to motivate their underlings to pursue the organization’s aims. In fact, terrorist managers face a much tougher challenge. Whereas most businesses have the blunt goal of maximizing profits, terrorists’ aims are more precisely calibrated: An attack that is too violent can be just as damaging to the cause as an attack that is not violent enough. Al Qaeda in Iraq learned this lesson in Anbar Province in 2006, when the local population turned against them, partly in response to the group’s violence against civilians who disagreed with it. Terrorist leaders also face a stubborn human resources problem: Their talent pool is inherently unstable. Terrorists are obliged to seek out recruits who are predisposed to violence -- that is to say, young men with a chip on their shoulder. Unsurprisingly, these recruits are not usually disposed to following orders or recognizing authority figures. Terrorist managers can craft meticulous long-term strategies, but those are of little use if the people tasked with carrying them out want to make a name for themselves right now. Terrorist managers are also obliged to place a premium on bureaucratic control, because they lack other channels to discipline the ranks. When Walmart managers want to deal with an unruly employee or a supplier who is defaulting on a contract, they can turn to formal legal procedures. Terrorists have no such option. David Ervine, a deceased Irish Unionist politician and onetime bomb maker for the Ulster Volunteer Force (UVF), neatly described this dilemma to me in 2006. “We had some very heinous and counterproductive activities being carried out that the leadership didn’t punish because they had to maintain the hearts and minds within the organization,” he said, referring to a period in the late 1980s when he and the other leaders had made a strategic calculation that the Unionist cause was best served by focusing on nonviolent political competition. In Ervine’s (admittedly self-interested) telling, the UVF’s senior leaders would have ceased violence much earlier than the eventual 1994 cease-fire, but they could not do so because the rank and file would have turned on them. For terrorist managers, the only way to combat those “counterproductive activities” is to keep a tight rein on the organization. Recruiting only the most zealous will not do the trick, because, as the alleged chief of the Palestinian group Black September wrote in his memoir, “diehard extremists are either imbeciles or traitors.” So someone in Zawahiri’s position has his hands full: To pull off a major attack, [they need]~~he needs~~ to coordinate among multiple terrorists, track what his operatives are doing regardless of their intentions, and motivate them to follow orders against their own maverick instincts. Fortunately for the rest of us, the things terrorists do to achieve these tasks **sow the seeds of their undoing**. Placing calls, sending e-mails, keeping spreadsheets, and having members request reimbursements all create opportunities for intelligence agencies to learn what terrorists are up to and then disrupt them. In that way, Zawahiri’s failures are not just a reflection of his personal weaknesses but a case study in the inherent limits that all terror groups face. That is good news, of course, for potential terror targets: As long as our intelligence and law enforcement agencies remain vigilant, **there is no way terrorist** organization**s** **will ever rise above the level of** the **tolerable nuisance**, which is what they have been for the last decade. But for aspiring terror managers, it is a dispiriting reminder that **there is no escape from the red tape that** ultimately **dooms their cause**.

[Matt note: gender-modified]

#### Alt Cause- Unrestrained drone use collapses legitimacy

Kennedy, 13 [“Drones: Legitimacy and Anti-Americanism”, Greg Kennedy is a Professor of Strategic Foreign Policy at the Defence Studies Department, King's College London, based at the Joint Services Command and Staff College, Defence Academy of the United Kingdom, in Shrivenham, Parameters 42(4)/43(1) Winter-Spring 2013]

The exponential rise in the use of drone technology in a variety of military and non-military contexts represents a real challenge to the framework of established international law and it is both right as a matter of principle, and inevitable as a matter of political reality, that the international community should now be focusing attention on the standards applicable to this technological development, particularly its deployment in counterterrorism and counter-insurgency initiatives, and attempt to reach a consensus on the legality of its use, and the standards and safeguards which should apply to it.4 deliver deadly force is taking place in both public and official domains in the United States and many other countries.5 The four key features at the heart of the debate revolve around: who is controlling the weapon system; does the system of control and oversight violate international law governing the use of force; are the drone strikes proportionate acts that provide military effectiveness given the circumstances of the conflict they are being used in; and does their use violate the sovereignty of other nations and allow the United States to disregard formal national boundaries? Unless these four questions are dealt with in the near future the impact of the unresolved legitimacy issues will have a number of repercussions for American foreign and military policies: “Without a new doctrine for the use of drones that is understandable to friends and foes, the United States risks achieving near-term tactical benefits in killing terrorists while incurring potentially significant longer-term costs to its alliances, global public opinion, the war on terrorism and international stability.”6 This article will address only the first three critical questions. The question of who controls the drones during their missions is attracting a great deal of attention. The use of drones by the Central Intelligence Agency (CIA) to conduct “signature strikes” is the most problematic factor in this matter. Between 2004 and 2013, CIA drone attacks in Pakistan killed up to 3,461—up to 891 of them civilians.7 Not only is the use of drones by the CIA the issue, but subcontracting operational control of drones to other civilian agencies is also causing great concern.8 Questions remain as to whether subcontractors were controlling drones during actual strike missions, as opposed to surveillance and reconnaissance activities. Nevertheless, the intense questioning of John O. Brennan, President Obama’s nominee for director of the CIA in February 2013, over drone usage, the secrecy of their controllers and orders, and the legality of their missions confirmed the level of concern America’s elected officials have regarding the legitimacy of drone use. Furthermore, perceptions and suspicions of illegal clandestine intelligence agency operations, already a part of the public and official psyche due to experiences from Vietnam, Iran-Contra, and Iraq II and the weapons of mass destruction debacle, have been reinforced by CIA management of drone capability. Recent revelations about the use of secret Saudi Arabian facilities for staging American drone strikes into Yemen did nothing to dissipate such suspicions of the CIA’s lack of legitimacy in its use of drones.9 The fact that the secret facility was the launching site for drones used to kill American citizens Anwar al-Awlaki and his son in September 2011, both classified by the CIA as al-Qaeda-linked threats to US security, only deepened such suspicions. Despite the fact that Gulf State observers and officials knew about American drones operating from the Arabian peninsula for years, the existence of the CIA base was not openly admitted in case such knowledge should “ . . . damage counter-terrorism collaboration with Saudi Arabia.”10 The fallout from CIA involvement and management of drone strikes prompted Senator Dianne Feinstein, Chairwoman of the Senate Intelligence Committee, to suggest the need for a court to oversee targeted killings. Such a body, she said, would replicate the Foreign Intelligence Surveillance Court, which oversees eavesdropping on American soil.11 Most importantly, such oversight would go a long way towards allaying fears of the drone usage lacking true political accountability and legitimacy. In addition, as with any use of force, drone strikes in overseas contingency operations can lead to increased attacks on already weak governments partnered with the United States. They can lead to retaliatory attacks on local governments and may contribute to local instability. Those actions occur as a result of desires for revenge and frustrations caused by the strikes. Feelings of hostility are often visited on the most immediate structures of authority—local government officials, government buildings, police, and the military.12 It can thus be argued that, at the strategic level, drone strikes are fuelling anti-American resentment among enemies and allies alike. Those reactions are often based on questions regarding the legality, ethicality, and operational legitimacy of those acts to deter opponents. Therefore, specifically related to the reaction of allies, the military legitimacy question arises if the use of drones endangers vital strategic relationships.13 One of the strategic relationships being affected by the drone legitimacy issue is that of the United States and the United Kingdom. Targeted killing, by drone strike or otherwise, is not the sole preserve of the United States. Those actions, however, attract more negative attention to the United States due to its prominence on the world’s stage, its declarations of support for human rights and democratic freedoms, and rule-of-law issues, all which appear violated by such strikes. This complexity and visibility make such targeted killings important for Anglo-American strategic relations because of the closeness of that relationship and the perception that Great Britain, therefore, condones such American activities. Because the intelligence used in such operations is seen by other nations as a shared Anglo-American asset, the use of such intelligence to identify and conduct such killings, in the opinion those operations.14 Finally, the apparent gap between stated core policies and values and the ability to practice targeted killings appears to be a starkly hypocritical and deceitful position internationally, a condition that once again makes British policymakers uncomfortable with being tarred by such a brush.15 The divide between US policy and action is exacerbated by drone technology, which makes the once covert practice of targeted killing commonplace and undeniable. It may also cause deep-rooted distrust due to a spectrum of legitimacy issues. Such questions will, therefore, undermine the US desire to export liberal democratic principles. Indeed, it may be beneficial for Western democracies to achieve adequate rather than decisive victories, thereby setting an example of restraint for the international order.16 The United States must be willing to engage and deal with drone-legitimacy issues across the entire spectrum of tactical, operational, strategic, and political levels to ensure its strategic aims are not derailed by operational and tactical expediency.

#### NSA scandal makes counter-terror distrust inevitable

**AP ’13** [Associated Press, “US counterterrorism officials defend Internet and phone surveillance to skeptical lawmakers,” June 12, <http://www.foxnews.com/us/2013/06/12/us-counterterrorism-officials-defend-internet-and-phone-surveillance-to/>]

Lawmakers voiced their confusion and concern, and some called for the end of sweeping surveillance programs by U.S. spy agencies after receiving an unusual briefing on the government's yearslong collection of phone records and Internet usage.¶ "People aren't satisfied," Rep. Tim Murphy, R-Pa., said as he left the briefing Tuesday. "More detail needs to come out."¶ The phalanx of FBI, legal and intelligence officials who briefed the entire House was the latest attempt to soothe outrage over National Security Agency programs that collect billions of Americans' phone and Internet records. Since they were revealed last week, the programs have spurred distrust in the Obama administration from around the world.¶ Congressional leaders and intelligence committee members have been routinely briefed about the spy programs, officials said, and Congress has at least twice renewed laws approving them. But the disclosure of their sheer scope stunned some lawmakers, shocked foreign allies from nations with strict privacy protections and emboldened civil liberties advocates who long have accused the government of being too invasive in the name of national security.

### Modeling

#### US legal modeling fails- can’t shape norms

**Law and Versteeg ’12** [David S. Law, Professor of Law and Professor of Political Science, Washington University in St. Louis. B.A., M.A., Ph.D., Stanford University; J.D., Harvard Law School; B.C.L. in European and Comparative Law, University of Oxford, Mila Versteeg, Associate Professor, University of Virginia School of Law. B.A., LL.M., Tilburg University; LL.M., Harvard Law School; D.Phil., University of Oxford, “The Declining Influence of the United States Constitution,” New York University Law Review, Vol. 87, No. 3, pp. 762-858, June 2012, online]

The appeal of American constitutionalism as a model for other countries appears to be waning in more ways than one. Scholarly¶ attention has thus far focused on global judicial practice: There is a¶ growing sense, backed by more than purely anecdotal observation,¶ that foreign courts cite the constitutional jurisprudence of the U.S.¶ Supreme Court less frequently than before.247 But the behavior of¶ those who draft and revise actual constitutions exhibits a similar pattern.¶ Our empirical analysis shows that the content of the U.S.¶ Constitution is becoming increasingly atypical by global standards.¶ Over the last three decades, other countries have become less likely to¶ model the rights-related provisions of their own constitutions upon¶ those found in the U.S. Constitution. Meanwhile, global adoption of key structural features of the Constitution, such as federalism, presidentialism, and a decentralized model of judicial review, is at best¶ stable and at worst declining. In sum, rather than leading the way for¶ global constitutionalism, the U.S. Constitution appears instead to be losing its appeal as a model for constitutional drafters elsewhere. The¶ idea of adopting a constitution may still trace its inspiration to the¶ United States, but the manner in which constitutions are written¶ increasingly does not.¶ If the U.S. Constitution is indeed losing popularity as a model for¶ other countries, what—or who—is to blame? At this point, one can¶ only speculate as to the actual causes of this decline, but five possible hypotheses suggest themselves: (1) the advent of a superior or more¶ attractive competitor; (2) a general decline in American hegemony;¶ (3) judicial parochialism; (4) constitutional obsolescence; and (5) a creed of American exceptionalism.¶ With respect to the first hypothesis, there is little indication that¶ the U.S. Constitution has been displaced by any specific competitor.¶ Instead, the notion that a particular constitution can serve as a dominant¶ model for other countries may itself be obsolete. There is an¶ increasingly clear and broad consensus on the types of rights that a¶ constitution should include, to the point that one can articulate the¶ content of a generic bill of rights with considerable precision.248 Yet it is difficult to pinpoint a specific constitution—or regional or international¶ human rights instrument—that is clearly the driving force¶ behind this emerging paradigm. We find only limited evidence that global constitutionalism is following the lead of either newer national¶ constitutions that are often cited as influential, such as those of¶ Canada and South Africa, or leading international and regional¶ human rights instruments such as the Universal Declaration of¶ Human Rights and the European Convention on Human Rights.¶ Although Canada in particular does appear to exercise a quantifiable¶ degree of constitutional influence or leadership, that influence is not¶ uniform and global, but more likely reflects the emergence and evolution¶ of a shared practice of constitutionalism among common law¶ countries.249 Our findings suggest, instead, that the development of¶ global constitutionalism is a polycentric and multipolar process that is¶ not dominated by any particular country.250 The result might be likened¶ to a global language of constitutional rights, but one that has¶ been collectively forged rather than modeled upon a specific¶ constitution.¶ Another possibility is that America’s capacity for constitutional¶ leadership is at least partly a function of American “soft power” more¶ generally.251 It is reasonable to suspect that the overall influence and appeal of the United States and its institutions have a powerful spillover¶ effect into the constitutional arena. The popularity of American¶ culture, the prestige of American universities, and the efficacy of¶ American diplomacy can all be expected to affect the appeal of¶ American constitutionalism, and vice versa. All are elements of an¶ overall American brand, and the strength of that brand helps to determine¶ the strength of each of its elements. Thus, any erosion of the¶ American brand may also diminish the appeal of the Constitution for¶ reasons that have little or nothing to do with the Constitution itself.¶ Likewise, a decline in American constitutional influence of the type¶ documented in this Article is potentially indicative of a broader decline in American soft power.¶ There are also factors specific to American constitutionalism that¶ may be reducing its appeal to foreign audiences. Critics suggest that¶ the Supreme Court has undermined the global appeal of its own jurisprudence¶ by failing to acknowledge the relevant intellectual contributions of foreign courts on questions of common concern252 and by¶ pursuing interpretive approaches that lack acceptance elsewhere.253¶ On this view, the Court may bear some responsibility for the declining¶ influence of not only its own jurisprudence, but also the actual U.S.¶ Constitution: One might argue that the Court’s approach to constitutional¶ issues has undermined the appeal of American constitutionalism¶ more generally, to the point that other countries have become¶ unwilling to look either to American constitutional jurisprudence or¶ to the U.S. Constitution itself for inspiration.254¶ It is equally plausible, however, that responsibility for the¶ declining appeal of American constitutionalism lies with the idiosyncrasies¶ of the Constitution itself rather than the proclivities of the¶ Supreme Court. As the oldest formal constitution still in force and one of the most rarely amended constitutions in the world,255 the U.S.¶ Constitution contains relatively few of the rights that have become¶ popular in recent decades.256 At the same time, some of the provisions¶ that it does contain may appear increasingly problematic, unnecessary,¶ or even undesirable with the benefit of two hundred years of¶ hindsight.257 It should therefore come as little surprise if the U.S.¶ Constitution strikes those in other countries—or, indeed, members of¶ the U.S. Supreme Court258—as out of date and out of line with global¶ practice.259 Moreover, even if the Court were committed to interpreting¶ the Constitution in tune with global approaches, it would still¶ lack the power to update the actual text of the document. Indeed,¶ efforts by the Court to update the Constitution via interpretation may¶ actually reduce the likelihood of formal amendment by rendering such¶ amendment unnecessary as a practical matter.260 As a result, there is¶ only so much that the U.S. Supreme Court can do to make the U.S.¶ Constitution an attractive formal template for other countries. The¶ obsolescence of the Constitution, in turn, may undermine the appeal¶ of American constitutional jurisprudence. Foreign courts have little¶ reason to follow the Supreme Court’s lead on constitutional issues if¶ the Supreme Court is saddled with the interpretation of an unusual¶ and obsolete constitution.261 No amount of ingenuity or solicitude for¶ foreign law on the part of the Court can entirely divert attention from¶ the fact that the Constitution itself is an increasingly atypical¶ document. One way to put a more positive spin on the U.S. Constitution’s¶ status as a global outlier is to emphasize its role in articulating and¶ defining what is unique about American national identity. Many¶ scholars have opined that formal constitutions serve an expressive¶ function as statements of national identity.262 This view finds little¶ support in our own empirical findings, which suggest instead that constitutions¶ tend to contain relatively standardized packages of rights.263¶ Nevertheless, to the extent that constitutions do serve such a function,¶ the distinctiveness of the U.S. Constitution may reflect the uniqueness¶ of America’s national identity. In this vein, various scholars have¶ argued that the U.S. Constitution lies at the very heart of an¶ “American creed of exceptionalism,” which combines a belief that the¶ United States occupies a unique position in the world with a commitment¶ to the qualities that set the United States apart from other countries.¶ 264 From this perspective, the Supreme Court’s reluctance to¶ make use of foreign and international law in constitutional cases¶ amounts not to parochialism, but rather to respect for the exceptional¶ character of the nation and its constitution.265¶ Unfortunately, it is clear that the reasons for the declining influence¶ of American constitutionalism cannot be reduced to anything as¶ simple or attractive as a longstanding American creed of exceptionalism.¶ Historically, American exceptionalism has not prevented other¶ countries from following the example set by American constitutionalism.¶ The global turn away from the American model is a relatively recent development that postdates the Cold War. If the U.S.¶ Constitution does in fact capture something profoundly unique about¶ the United States, it has surely been doing so for longer than the last¶ thirty years.¶ A complete explanation of the declining influence of American¶ constitutionalism in other countries must instead be sought in more¶ recent history, such as the wave of constitution making that followed¶ the end of the Cold War.266 During this period, America’s newfound¶ position as lone superpower might have been expected to create¶ opportunities for the spread of American constitutionalism. But this¶ did not come to pass.¶ Once global constitutionalism is understood as the product of a¶ polycentric evolutionary process, it is not difficult to see why the U.S.¶ Constitution is playing an increasingly peripheral role in that process.¶ No evolutionary process favors a species that is frozen in time. At¶ least some of the responsibility for the declining global appeal of¶ American constitutionalism lies not with the Supreme Court, or with a¶ broader penchant for exceptionalism, but rather with the static character¶ of the Constitution itself. If the United States were to revise the¶ Bill of Rights today—with the benefit of over two centuries of experience,¶ and in a manner that addresses contemporary challenges while¶ remaining faithful to the nation’s best traditions—there is no guarantee¶ that other countries would follow its lead. But the world would¶ surely pay close attention.

#### No US judicial modeling- EU model outweighs

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It is perhaps ironic that the most popular innovation of American¶ constitutionalism has been judicial review,64 given that this celebrated¶ institution is nowhere mentioned in the U.S. Constitution itself.¶ Today, the majority of the world’s constitutions mandate judicial¶ review in some form, as shown in Figure 9.65 In 1946, only 25% of all¶ constitutions explicitly provided for judicial review; by 2006, that proportion¶ had increased to 82%. The particular form of judicial review that has proven most popular,¶ however, is not the form that was pioneered by the United¶ States.66 Under the American model, the power of judicial review is¶ vested in courts of general jurisdiction, which rule upon the constitutionality¶ of government action as the need arises in the course of ordinary¶ litigation.67 Under the European model, by contrast, the power¶ to decide constitutional questions is exercised exclusively by a¶ specialized constitutional court that stands apart from the regular judiciary.68 The prototypical examples of this model are the constitutional¶ courts that Hans Kelsen devised for Austria.69 A further distinction¶ is routinely drawn between concrete review, which characterizes¶ the American model, and abstract review, which typifies the¶ European model. In a system of concrete review, courts decide constitutional¶ questions in the course of ordinary litigation, as part of what¶ Americans would call a case or controversy,70 whereas in a system of¶ abstract review, the constitutionality of a law can be decided in the¶ absence of a concrete, adversarial dispute and, indeed, before the law¶ has even gone into effect.71¶ Over the last six decades, a growing proportion of constitutions¶ have adopted the European model of abstract review by specialized¶ courts, as opposed to the American model of concrete review by ordinary courts. At the close of World War II, the American model¶ enjoyed a commanding lead over the European model as the choice of¶ over 80% of constitution makers, but its popularity began to erode in¶ the 1970s. By the mid-1990s, the European model had overtaken the¶ American model as the choice of over half the world’s constitutions.¶ Figure 10 illustrates these global trends. The creation of specialized¶ constitutional courts of the European variety has proven especially¶ popular among newly democratic states, where distrust of existing¶ judicial institutions associated with the old regime is often widespread.¶ 72 Thus, although the U.S. Constitution may have pioneered¶ the idea of binding judicial enforcement of individual rights—an idea¶ that now enjoys nearly universal acceptance—it is no longer the¶ leading source of inspiration for how such enforcement is to be institutionalized.¶ America’s long and successful experience with judicial¶ review may be responsible for encouraging other countries to adopt¶ the practice, but the form of judicial review that other countries actually¶ choose to adopt has a more European than American flavor.

#### Wars now disprove African escalation

Straus ’13 (Scott Straus, Professor in the Department of Political Science at the University of Wisconsin, African Arguments, part of the Guardian Africa Network, Scott Straus, “Africa is becoming more peaceful, despite the war in Mali”, <http://www.guardian.co.uk/world/2013/jan/30/africa-peaceful-mali-war>, January 30, 2013)

Recent events in Mali, the Central African Republic, the Democratic Republic of the Congo, and Sudan seem to confirm one of the most durable stereotypes of Africa, namely that the continent is unstable and uniquely prone to nasty political violence. Writing in Foreign Policy two years ago, New York Times east Africa correspondent and Pulitzer Prize winner Jeffrey Gettleman espoused this view. He painted a dismal picture of pointless wars waged by brutes and criminals "spreading across Africa like a viral pandemic."

#### Wars won’t be large-scale

Straus ’13 (Scott Straus for African Arguments, part of the Guardian Africa Network, Scott Straus is a professor in the Department of Political Science at the University of Wisconsin, “Africa is becoming more peaceful, despite the war in Mali”, http://www.guardian.co.uk/world/2013/jan/30/africa-peaceful-mali-war, January 30, 2013)

The bigger point is that we may be witnessing significant shifts in the nature of political violence on the continent. Wars are on the decline since the 1990s, but the character of warfare is also changing. Today there are fewer big wars fought for state control in which insurgents maintain substantial control of territory and put up well-structured armies to fight their counterparts in the state – Mali not withstanding. Such wars were modal into the 1990s. From southern Africa in Angola, Mozambique, Namibia, and even Zimbabwe to the long wars in the Horn in Ethiopia, Eritrea, and Sudan to the Great Lakes wars in Rwanda and Uganda, the typical armed conflict in Africa involved two major, territory-holding armies fighting each other for state control. Today's wars typically are smaller. They most often involve small insurgencies of factionalised rebels on the peripheries of states. Today's wars also play out differently. They exhibit cross-border dimensions, and rather than drawing funding from big external states they depend on illicit trade, banditry, and international terrorist networks. Typical of today's wars are the rebels in Casamance, in the Ogaden region of Ethiopia, various armed groups in Darfur, and the Lord's Resistance Army. The latter typifies an emerging trend of trans-national insurgents. The LRA moves across multiple states in the Great Lakes region. Northern Mali is another case in point – prior to seizing control of the north, the Islamists moved across multiple countries in the Sahel. Once they gained territorial control in 2012, they attracted fighters from Nigeria and across North Africa. Moreover, these are not non-ideological wars, as Gettleman claims. The jihadis in Mali and Somalia, the separatists in Casamance, and the rebels in Darfur are certainly fighting for a cause.

#### No impact to congo collapse- Boukongou is a professor in an unrelated field and doesn’t impact biodiversity loss

#### No impact to the environment

Easterbrook ‘95 (Gregg, Distinguished Fellow @ The Fullbright Foundation and Reuters Columnist, “A Moment on Earth,” p. 25, 1995)

In the aftermath of events such as Love Canal or the Exxon Valdez oil spill, every reference to the environment is prefaced with the adjective "fragile." "Fragile environment" has become a welded phrase of the modern lexicon, like "aging hippie" or "fugitive financier." But the notion of a fragile environment is profoundly wrong. Individual animals, plants, and people are distressingly fragile. The environment that contains them is close to indestructible. The living environment of Earth has survived ice ages; bombardments of cosmic radiation more deadly than atomic fallout; solar radiation more powerful than the worst-case projection for ozone depletion; thousand-year periods of intense volcanism releasing global air pollution far worse than that made by any factory; reversals of the planet's magnetic poles; the rearrangement of continents; transformation of plains into mountain ranges and of seas into plains; fluctuations of ocean currents and the jet stream; 300-foot vacillations in sea levels; shortening and lengthening of the seasons caused by shifts in the planetary axis; collisions of asteroids and comets bearing far more force than man's nuclear arsenals; and the years without summer that followed these impacts. Yet hearts beat on, and petals unfold still. Were the environment fragile it would have expired many eons before the advent of the industrial affronts of the dreaming ape. Human assaults on the environment, though mischievous, are pinpricks compared to forces of the magnitude nature is accustomed to resisting.

#### Egypt won’t model the U.S-- their Stumf evidence

#### a) only cites Hungry as a example of a country that modeled the US- there’s no correlation to Egypt

#### b) its too old and doesn’t assume the Egyptian coup which changed the game the military and the Brotherhood are at odds with each other

#### Modeling in Egypt fails- empirics

Holliday 13 (Sam, is a graduate of the U. S. Military Academy at West Point, a former director of Stability Studies at the Army War College, and a retired army colonel. He earned a master's in public affairs from the University of Pittsburgh and a doctorate in international relations from the University of South Carolina, August 21, 2013, “US Policy for Egypt”, http://www.unc.edu/depts/diplomat/item/2013/0912/oped/op09\_holliday.html///TS)

Since World War II the foreign policy of the United States has treated militant factions in conflict as parties in a system of parliamentary government. There has been an obsession with (1) authority of a central government, (2) rule of law to replace custom and tradition, (3) democracy defined as universal suffrage and elections, and (4) human rights. This perspective has much in common with 19th century colonialism. The post-1950s tunnel vision of American policy makers squandered billions of dollars—with few long-term benefits. The US should not repeat this error in Egypt. On the other hand, there are places where Western political, economic and social ideas have taken root since World War II. After growing pains, the cultures of India, Japan, Taiwan, Singapore, and South Korea absorbed many ideas from the West to create their own version of representative government, a market economy, and civil rights. The record in Islamic countries is far less promising. Western ideas are openly championed in Malaysia, Indonesia, Niger, and Mali and are putting up a fight against fundamentalist Islam. Turkey is a special case; for years it adopted many Western ideas, but now seems to be going in the other direction. However, throughout Southwest Asia and northern Africa only intellectuals propose Western ideas of democracy, while the people and practical politicians have only adopted Western ideas about statism—not those about representative governance. The military in Egypt, in a coalition with business, the judiciary, young liberals, and those Muslims who oppose the Third Jihad, can bring about change. The US can do very little to determine the outcome—and should not attempt to force Egypt to adopt Western-style democracy or to force Egypt to duplicate our political, social and legal systems.

#### Egypt instability is inevitable

Glick 13 (Caroline, writer for the Jerusalem Post, BA in Political Science from Columbia University, Master's degree in Public Policy from Harvard University’s Kennedy School of Government, “Column One: Israel’s reviled strategic wisdom”, http://www.jpost.com/Opinion/Columnists/Column-One-Israels-reviled-strategic-wisdom-318818///TS)

Mubarak was able to maintain power for 29 years because he ran a police state that the people feared. That fear was dissipated in 2011. This absence of fear will bring Egyptians to the street to topple any government they feel is failing to deliver on its promises – as they did this week. Given Egypt’s dire economic plight, it is impossible to see how any government will be able to deliver on any promises – large or small – that its politicians will make during electoral campaigns. And so government after government will share the fates of Mubarak and Morsi. Beyond economic deprivation, today tens of millions of Egyptians feel they were unlawfully and unjustly ousted from power on Wednesday. The Muslim Brotherhood and the Salafists won big in elections hailed as free by the West. They have millions of supporters who are just as fanatical today as they were last week. They will not go gently into that good night.

#### No Middle East war- leaders weak

Cook ‘7 (Steven, CFR senior fellow for Mid East Studies. BA in international studies from Vassar College, an MA in international relations from the Johns Hopkins School of Advanced International Studies, and both an MA and PhD in political science from the University of Pennsylvania, Ray Takeyh, CFR fellow, and Suzanne Maloney, Brookings fellow, Why the Iraq war won't engulf the Mideast, <http://www.iht.com/bin/print.php?id=6383265>, June 28, 2007)

Underlying this anxiety was a scenario in which Iraq's sectarian and ethnic violence spills over into neighboring countries, producing conflicts between the major Arab states and Iran as well as Turkey and the Kurdistan Regional Government. These wars then destabilize the entire region well beyond the current conflict zone, involving heavyweights like Egypt. This is scary stuff indeed, but with the exception of the conflict between Turkey and the Kurds, the scenario is far from an accurate reflection of the way Middle Eastern leaders view the situation in Iraq and calculate their interests there. It is abundantly clear that major outside powers like Saudi Arabia, Iran and Turkey are heavily involved in Iraq. These countries have so much at stake in the future of Iraq that it is natural they would seek to influence political developments in the country. Yet, the Saudis, Iranians, Jordanians, Syrians, and others are very unlikely to go to war either to protect their own sect or ethnic group or to prevent one country from gaining the upper hand in Iraq. The reasons are fairly straightforward. First, Middle Eastern leaders, like politicians everywhere, are primarily interested in one thing: self-preservation. Committing forces to Iraq is an inherently risky proposition, which, if the conflict went badly, could threaten domestic political stability. Moreover, most Arab armies are geared toward regime protection rather than projecting power and thus have little capability for sending troops to Iraq. Second, there is cause for concern about the so-called blowback scenario in which jihadis returning from Iraq destabilize their home countries, plunging the region into conflict. Middle Eastern leaders are preparing for this possibility. Unlike in the 1990s, when Arab fighters in the Afghan jihad against the Soviet Union returned to Algeria, Egypt and Saudi Arabia and became a source of instability, Arab security services are being vigilant about who is coming in and going from their countries. In the last month, the Saudi government has arrested approximately 200 people suspected of ties with militants. Riyadh is also building a 700 kilometer wall along part of its frontier with Iraq in order to keep militants out of the kingdom. Finally, there is no precedent for Arab leaders to commit forces to conflicts in which they are not directly involved. The Iraqis and the Saudis did send small contingents to fight the Israelis in 1948 and 1967, but they were either ineffective or never made it. In the 1970s and 1980s, Arab countries other than Syria, which had a compelling interest in establishing its hegemony over Lebanon, never committed forces either to protect the Lebanese from the Israelis or from other Lebanese. The civil war in Lebanon was regarded as someone else's fight. Indeed, this is the way many leaders view the current situation in Iraq. To Cairo, Amman and Riyadh, the situation in Iraq is worrisome, but in the end it is an Iraqi and American fight. As far as Iranian mullahs are concerned, they have long preferred to press their interests through proxies as opposed to direct engagement. At a time when Tehran has access and influence over powerful Shiite militias, a massive cross-border incursion is both unlikely and unnecessary. So Iraqis will remain locked in a sectarian and ethnic struggle that outside powers may abet, but will remain within the borders of Iraq. The Middle East is a region both prone and accustomed to civil wars. But given its experience with ambiguous conflicts, the region has also developed an intuitive ability to contain its civil strife and prevent local conflicts from enveloping the entire Middle East.

#### No impact to Suez cutoff – oil can be redirected, the tanker market is flexible, and the possible impact on prices is negligible

**Newell, 11** – Administrator for the Energy Information Administration, U.S. Department of Energy, and Gendell Associate Professor of Energy and Environmental Economics at Duke University’s Nicholas School of the Environment (Richard, 2/10. STATEMENT before the COMMITTEE ON ENERGY AND COMMERCE SUBCOMMITTEE ON ENERGY AND POWER, U.S. HOUSE OF REPRESENTATIVES. http://democrats.energycommerce.house.gov/sites/default/files/image\_uploads/Newell\_Testimony.pdf)

Second, EIA took an in-depth look at a concern more directly related to Egypt involving the possibility of disruption of the Suez Canal and/or the Sumed (Suez-Mediterranean) pipeline. EIA estimates that roughly 3.1 million bbl/d (January-November 2010 average, 2.9 million bbl/d in 2009) of crude oil and oil products transit the Suez Canal or the Sumed pipeline, representing about 6 percent of total daily global waterborne oil movements. About 20-25 percent of global liquefied natural gas (LNG) shipments also pass through the canal, and several European countries are heavily dependent on those shipments. Information available to EIA as of February 8, when this written testimony was finalized, suggests that the canal and oil pipeline are both operating normally. However, a gas pipeline in Egypt’s Sinai Peninsula exploded on February 5. Jordan relies on Egyptian gas to generate around 80% of its electricity. Israel receives about 40 percent of its natural gas imports from Egypt, and 15 percent of Israeli electricity generation is met by this natural gas. Reports suggest the gas pipeline may remain shut down for about a week. While we are not aware of any reports of any current disruptions to canal or oil pipeline activity, we recognize that policymakers may want to understand the possible implications for energy markets of a disruption of these routes. For reasons outlined below, however, we would expect the direct effects of any such closures to be manageable, although there would undoubtedly be an adjustment period. ƒ Full diversion of all Suez Canal/Sumed flows around Africa is an extreme worst-case scenario, since it is likely that some crude or product streams would be redirected to reduce the need for such movements if the canal and the pipeline are disrupted. ƒ Even assuming a scenario where all 3.1 million barrels of crude and product that flow through the Suez Canal and Sumed daily (January-November 2010 data) were diverted around Africa, the increase in tanker requirements traffic would be modest in the context of current global oil shipment flows. Oil diverted around Africa could require an extra 6000 miles and 12 days of transit, with the actual values depending upon the exact destination. ƒ Our contacts in the tanker community suggest that the tanker market remains relatively relaxed. About 45 million bbl/d of waterborne oil shipments are moving daily with a spare capacity margin of roughly 10 percent or 4 to 5 million barrels per day. ƒ Even if tanker rates were to increase significantly in a disruption scenario involving closure of the Suez Canal/Sumed transport route, which is again contrary to the indications above, tanker costs represent a very small component of overall delivered crude costs. For example, tanker costs from the Persian Gulf to the Gulf of Mexico generally fall within the range of $1 to $2 per barrel, so even a major increase in tanker rates would have little impact on delivered oil prices.

**No risk of shutdown – military insiders**

**Krauss, 11** – Toronto bureau chief for the New York Times (Clifford, 2/2. “Shippers Concerned Over Possible Suez Canal Disruptions.” http://www.nytimes.com/2011/02/03/world/middleeast/03suez.html)

As violence has broken out in Egypt, concern has turned to the risk of the blocking of the Suez Canal or nearby pipelines, which could pose a threat to world energy supplies. So far, [oil](http://topics.nytimes.com/top/news/business/energy-environment/oil-petroleum-and-gasoline/index.html?inline=nyt-classifier) and gas flows through Egypt have not been interrupted, and the army has stepped up security around the canal and pipelines. But rising tensions in the port of Suez have led several shipping companies to order their ships not to change crews in Egypt. Meanwhile, disruptions in government port services have slowed the discharge of some crude oil cargo at the Red Sea port of Ain Sukhna, at the southern entrance to the Suez Canal. “Potentially, we see attacks on employees of shipping companies and attempted attacks on vessels docked in ports if you see more violent demonstrations around the ports,” said Helima L. Croft, a director and geopolitical strategist at Barclays Capital. “It could be very problematic.” Egypt is not a major oil producer, and Western oil and gas companies have halted most drilling in the country. But it is a crucial link for oil and gas headed to Europe, Asia and the United States. More than two million barrels of oil and petroleum products traverse the Suez Canal daily, speeding the transit of crude and gas supplies that shippers would otherwise have to send around the Horn of Africa, prolonging delivery times and expenses. About 4.5 percent of global oil supplies flow through the canal and the Sumed pipeline, which connects the Red Sea with the Mediterranean. About 14 percent of the global liquefied natural gas trade is shipped through the canal as well, providing critical supplies to Spain, and to a lesser extent, South Korea and the United States. Egypt also produces about 3 percent of the world’s liquefied natural gas supplies at two export terminals, which were reported to be operating normally. Gen. James Mattis, head of the United States Central Command responsible for military operations in the region, said on Tuesday that it was inconceivable that anyone would want to disrupt the canal. “Were it to happen, obviously, we would have to deal with it diplomatically, economically, militarily, whatever, but that to me is a hypothetical,” Reuters quoted him as saying to a policy group in London. There are already signs of slowing cargo operations at the Alexandria and Damietta Ports, which handle container and bulk shipments of grains and other goods. Canal traffic has not yet been affected, although employees must leave their posts early to comply with the government curfew that begins in the late afternoon. Egypt has historically taken strong measures to assure oil and gas traffic, and interruptions have been rare. The army is trained to operate the canal in case of any strikes. The canal was closed for several months during the 1956 Suez crisis, and it was blockaded by the military for eight years after the 1967 war with Israel. In recent years, it has been considered a safe passageway.

#### No Middle East war- leaders weak

Cook ‘7 (Steven, CFR senior fellow for Mid East Studies. BA in international studies from Vassar College, an MA in international relations from the Johns Hopkins School of Advanced International Studies, and both an MA and PhD in political science from the University of Pennsylvania, Ray Takeyh, CFR fellow, and Suzanne Maloney, Brookings fellow, Why the Iraq war won't engulf the Mideast, <http://www.iht.com/bin/print.php?id=6383265>, June 28, 2007)

Underlying this anxiety was a scenario in which Iraq's sectarian and ethnic violence spills over into neighboring countries, producing conflicts between the major Arab states and Iran as well as Turkey and the Kurdistan Regional Government. These wars then destabilize the entire region well beyond the current conflict zone, involving heavyweights like Egypt. This is scary stuff indeed, but with the exception of the conflict between Turkey and the Kurds, the scenario is far from an accurate reflection of the way Middle Eastern leaders view the situation in Iraq and calculate their interests there. It is abundantly clear that major outside powers like Saudi Arabia, Iran and Turkey are heavily involved in Iraq. These countries have so much at stake in the future of Iraq that it is natural they would seek to influence political developments in the country. Yet, the Saudis, Iranians, Jordanians, Syrians, and others are very unlikely to go to war either to protect their own sect or ethnic group or to prevent one country from gaining the upper hand in Iraq. The reasons are fairly straightforward. First, Middle Eastern leaders, like politicians everywhere, are primarily interested in one thing: self-preservation. Committing forces to Iraq is an inherently risky proposition, which, if the conflict went badly, could threaten domestic political stability. Moreover, most Arab armies are geared toward regime protection rather than projecting power and thus have little capability for sending troops to Iraq. Second, there is cause for concern about the so-called blowback scenario in which jihadis returning from Iraq destabilize their home countries, plunging the region into conflict. Middle Eastern leaders are preparing for this possibility. Unlike in the 1990s, when Arab fighters in the Afghan jihad against the Soviet Union returned to Algeria, Egypt and Saudi Arabia and became a source of instability, Arab security services are being vigilant about who is coming in and going from their countries. In the last month, the Saudi government has arrested approximately 200 people suspected of ties with militants. Riyadh is also building a 700 kilometer wall along part of its frontier with Iraq in order to keep militants out of the kingdom. Finally, there is no precedent for Arab leaders to commit forces to conflicts in which they are not directly involved. The Iraqis and the Saudis did send small contingents to fight the Israelis in 1948 and 1967, but they were either ineffective or never made it. In the 1970s and 1980s, Arab countries other than Syria, which had a compelling interest in establishing its hegemony over Lebanon, never committed forces either to protect the Lebanese from the Israelis or from other Lebanese. The civil war in Lebanon was regarded as someone else's fight. Indeed, this is the way many leaders view the current situation in Iraq. To Cairo, Amman and Riyadh, the situation in Iraq is worrisome, but in the end it is an Iraqi and American fight. As far as Iranian mullahs are concerned, they have long preferred to press their interests through proxies as opposed to direct engagement. At a time when Tehran has access and influence over powerful Shiite militias, a massive cross-border incursion is both unlikely and unnecessary. So Iraqis will remain locked in a sectarian and ethnic struggle that outside powers may abet, but will remain within the borders of Iraq. The Middle East is a region both prone and accustomed to civil wars. But given its experience with ambiguous conflicts, the region has also developed an intuitive ability to contain its civil strife and prevent local conflicts from enveloping the entire Middle East.

#### Economy instability doesn’t affect international security

Barnett ‘9 (Thomas P.M. Barnett, senior managing director of Enterra Solutions LLC, “The New Rules: Security Remains Stable Amid Financial Crisis,” 8/25/2009, http://www.aprodex.com/the-new-rules--security-remains-stable-amid-financial-crisis-398-bl.aspx)

When the global financial crisis struck roughly a year ago, the blogosphere was ablaze with all sorts of scary predictions of, and commentary regarding, ensuing conflict and wars -- a rerun of the Great Depression leading to world war, as it were. Now, as global economic news brightens and recovery -- surprisingly led by China and emerging markets -- is the talk of the day, it's interesting to look back over the past year and realize how globalization's first truly worldwide recession has had virtually no impact whatsoever on the international security landscape. None of the more than three-dozen ongoing conflicts listed by GlobalSecurity.org can be clearly attributed to the global recession. Indeed, the last new entry (civil conflict between Hamas and Fatah in the Palestine) predates the economic crisis by a year, and three quarters of the chronic struggles began in the last century. Ditto for the 15 low-intensity conflicts listed by Wikipedia (where the latest entry is the Mexican "drug war" begun in 2006). Certainly, the Russia-Georgia conflict last August was specifically timed, but by most accounts the opening ceremony of the Beijing Olympics was the most important external trigger (followed by the U.S. presidential campaign) for that sudden spike in an almost two-decade long struggle between Georgia and its two breakaway regions. Looking over the various databases, then, we see a most familiar picture: the usual mix of civil conflicts, insurgencies, and liberation-themed terrorist movements. Besides the recent Russia-Georgia dust-up, the only two potential state-on-state wars (North v. South Korea, Israel v. Iran) are both tied to one side acquiring a nuclear weapon capacity -- a process wholly unrelated to global economic trends. And with the United States effectively tied down by its two ongoing major interventions (Iraq and Afghanistan-bleeding-into-Pakistan), our involvement elsewhere around the planet has been quite modest, both leading up to and following the onset of the economic crisis: e.g., the usual counter-drug efforts in Latin America, the usual military exercises with allies across Asia, mixing it up with pirates off Somalia's coast). Everywhere else we find serious instability we pretty much let it burn, occasionally pressing the Chinese -- unsuccessfully -- to do something. Our new Africa Command, for example, hasn't led us to anything beyond advising and training local forces. So, to sum up: \* No significant uptick in mass violence or unrest (remember the smattering of urban riots last year in places like Greece, Moldova and Latvia?); \* The usual frequency maintained in civil conflicts (in all the usual places); \* Not a single state-on-state war directly caused (and no great-power-on-great-power crises even triggered); \* No great improvement or disruption in great-power cooperation regarding the emergence of new nuclear powers (despite all that diplomacy); \* A modest scaling back of international policing efforts by the system's acknowledged Leviathan power (inevitable given the strain); and \* No serious efforts by any rising great power to challenge that Leviathan or supplant its role. (The worst things we can cite are Moscow's occasional deployments of strategic assets to the Western hemisphere and its weak efforts to outbid the United States on basing rights in Kyrgyzstan; but the best include China and India stepping up their aid and investments in Afghanistan and Iraq.) Sure, we've finally seen global defense spending surpass the previous world record set in the late 1980s, but even that's likely to wane given the stress on public budgets created by all this unprecedented "stimulus" spending. If anything, the friendly cooperation on such stimulus packaging was the most notable great-power dynamic caused by the crisis. Can we say that the world has suffered a distinct shift to political radicalism as a result of the economic crisis? Indeed, no. The world's major economies remain governed by center-left or center-right political factions

that remain decidedly friendly to both markets and trade. In the short run, there were attempts across the board to insulate economies from immediate damage (in effect, as much protectionism as allowed under current trade rules), but there was no great slide into "trade wars." Instead, the World Trade Organization is functioning as it was designed to function, and regional efforts toward free-trade agreements have not slowed. Can we say Islamic radicalism was inflamed by the economic crisis? If it was, that shift was clearly overwhelmed by the Islamic world's growing disenchantment with the brutality displayed by violent extremist groups such as al-Qaida. And looking forward, austere economic times are just as likely to breed connecting evangelicalism as disconnecting fundamentalism. At the end of the day, the economic crisis did not prove to be sufficiently frightening to provoke major economies into establishing global regulatory schemes, even as it has sparked a spirited -- and much needed, as I argued last week -- discussion of the continuing viability of the U.S. dollar as the world's primary reserve currency. Naturally, plenty of experts and pundits have attached great significance to this debate, seeing in it the beginning of "economic warfare" and the like between "fading" America and "rising" China. And yet, in a world of globally integrated production chains and interconnected financial markets, such "diverging interests" hardly constitute signposts for wars up ahead. Frankly, I don't welcome a world in which America's fiscal profligacy goes undisciplined, so bring it on -- please! Add it all up and it's fair to say that this global financial crisis has proven the great resilience of America's post-World War II international liberal trade order.

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**Constraints through executive coordination solves signaling**

**POSNER & VERMEULE 2006** --- \*Prof of Law at U Chicago, AND \*\* Prof of Law at Harvard (9/19/2006, Eric A. Posner & Adrian Vermeule, “The Credible Executive,” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=931501)>)

IV. Executive Signaling: Law and Mechanisms

We suggest that the executive’s credibility problem can be solved by second-order mechanisms of executive signaling. In the general case, well-motivated executives send credible signals by taking actions that are more costly for ill-motivated actors than for well-motivated ones, thus distinguishing themselves from their ill-motivated mimics. Among the specific mechanisms we discuss, an important subset involve executive self-binding, whereby executives commit themselves to a course of action that would impose higher costs on ill-motivated actors. Commitments themselves have value as signals of benign motivations.

This departs from the usual approach in legal scholarship. Legal theory has often discussed self-binding by “government” or government officials. In constitutional theory, it is often suggested that constitutions represent an attempt by “the people” to bind “themselves” against their own future decisionmaking pathologies, or relatedly that constitutional prohibitions represent mechanisms by which governments commit themselves not to expropriate investments or to exploit their populations.71 Whether or not this picture is coherent,72 it is not the question we examine here, although some of the relevant considerations are similar.73 We are not concerned with binding the president so that he cannot abuse his powers, but with how he might bind himself or take other actions that enhance his credibility, so that he can generate support from the public and other members of the government.

Furthermore, our question is subconstitutional; it is whether a well-motivated executive, acting within an established set of constitutional and statutory rules, can use signaling to generate public trust. Accordingly we proceed by assuming that no constitutional amendments or new statutes will be enacted. Within these constraints, what can a well-motivated executive do to bootstrap himself to credibility? The problem for the well-motivated executive is to credibly signal his benign motivations; in general, the solution is to engage in actions that are less costly for good types than for bad types.

We begin with some relevant law; then examine a set of possible mechanisms, emphasizing both the conditions under which they might succeed and the conditions under which they might not; and then examine the costs of credibility.

A. A Preliminary Note on Law and Self-Binding

Many of our mechanisms are unproblematic from a legal perspective, as they involve presidential actions that are clearly lawful. But a few raise legal questions; in particular, those that involve self-binding.74 Can a president bind himself to respect particular first-order policies? With qualifications, the answer is “yes, at least to the same extent that a legislature can.” Formally, a duly promulgated executive rule or order binds even the executive unless and until it is validly abrogated, thereby establishing a new legal status quo.75 The legal authority to establish a new status quo allows a president to create inertia or political constraints that will affect his own future choices. In a practical sense, presidents, like legislatures, have great de facto power to adopt policies that shape the legal landscape for the future**.** A president might commit himself to a long-term project of defense procurement or infrastructure or foreign policy, narrowing his own future choices and generating new political coalitions that will act to defend the new rules or policies.

More schematically, we may speak of formal and informal means of self-binding:

(1) The president might use formal means to bind himself. This is possible in the sense that an executive order, if otherwise valid, legally binds the president while it is in effect and may be enforced by the courts. It is not possible in the sense that the president can always repeal the executive order if he can bear the political and reputational costs of doing so.

(2) The president might use informal means to bind himself. This is not only possible but frequent and important. Issuing an executive rule providing for the appointment of special prosecutors, as Nixon did, is not a formal self-binding.76 However, there may be large political costs to repealing the order. This effect does not depend on the courts’ willingness to enforce the order, even against Nixon himself. Court enforcement makes the order legally binding while it is in place, but only political and reputational enforcement can protect it from repeal. Just as a dessert addict might announce to his friends that he is going on a no-dessert diet in order to raise the reputational costs of backsliding and thus commit himself, so too the repeal of an executive order may be seen as a breach of faith even if no other institution ever enforces it.

In what follows, we will invoke both formal and informal mechanisms. For our purposes, the distinction between the authority to engage in de jure self-binding (legally limited and well-defined) and the power to engage in de facto self-binding (broad and amorphous) is secondary. So long as policies are deliberately chosen with a view to generating credibility, and do so by constraining the president’s own future choices in ways that impose greater costs on ill-motivated presidents than on well-motivated ones, it does not matter whether the constraint is formal or informal.

B. Mechanisms

What signaling mechanisms might a well-motivated executive adopt to credibly assure voters, legislators and judges that his policies rest on judgments about the public interest, rather than on power-maximization, partisanship or other nefarious motives? Intrabranch separation of powers. In an interesting treatment of related problems, Neal Katyal suggests that the failure of the Madisonian system counsels “internal separation of powers” within the executive branch.77 Abdication by Congress means that there are few effective checks on executive power; second-best substitutes are necessary. Katyal proposes some mechanisms that would be adopted by Congress, such as oversight hearings by the minority party, but his most creative proposals are for arrangements internal to the executive branch, such as redundancy and competition among agencies, stronger civil-service protections and internal adjudication of executive controversies by insulated “executive” decisionmakers who resemble judges in many ways.78Katyal’s argument is relevant because the mechanisms he discusses might be understood as signaling devices, but his overall approach is conceptually flawed, on two grounds. First, the assumption that second-best constraints on the executive should reproduce the Madisonian separation of powers within the executive branch is never defended. The idea seems to be that this is as close as we can get to the first-best, while holding constant everything else in our constitutional order. But the general theory of second-best states that approaching as closely as possible to the first-best will not necessarily be the preferred strategy;79 the best approach may be to adjust matters on other margins as well, in potentially unpredictable ways. If the Madisonian system has failed in the ways Katyal suggests, the best compensating adjustment might be, for all we know, to switch to a parliamentary system. (We assume that no large-scale changes of this sort are possible, whereas Katyal seemingly assumes that they are, or at least does not make clear his assumptions in this regard). Overall, Katyal’s view has a kind of fractal quality – each branch should reproduce within itself the very same separation of powers structure that also describes the whole system – but it is not explained why the constitutional order should be fractal.

Second, Katyal’s proposals for internal separation of powers are self-defeating: the motivations that Katyal ascribes to the executive are inconsistent with the executive adopting or respecting the prescriptions Katyal recommends.80 Katyal never quite says so explicitly, but he clearly envisions the executive as a power-maximizing actor, in the sense that the president seeks to remove all constraints on his current choices.81 Such an executive would not adopt or enforce the internal separation of powers to check himself. Executive signaling is not, even in principle, a solution to the lack of constraints on a power-maximizing executive in the sense Katyal implicitly intends. Although an illmotivated executive might bind himself to enhance his strategic credibility, as explained above, he would not do so in order to restore the balance of powers. Nor is it possible, given Katyal’s premise of legislative passivity or abdication, that Congress would force the internal separation of powers on the executive. In what follows, we limit ourselves to proposals that are consistent with the motivations, beliefs, and political opportunities that we ascribe to the well-motivated executive, to whom the proposals are addressed. This limitation ensures that the proposals are not self-defeating, whatever their costs.

The contrast here must not be drawn too simply. A well-motivated executive, in our sense, might well attempt to increase his power. The very point of demonstrating credibility is to encourage voters and legislators to increase the discretionary authority of the executive, where all will be made better off by doing so. Scholars such as Katyal who implicitly distrust the executive, however, do not subscribe to this picture of executive motivations. Rather, they see the executive as an unfaithful agent of the voters; the executive attempts to maximize his power even where fully-informed voters would prefer otherwise. An actor of that sort will have no incentive to adopt proposals intended to constrain that sort of actor.

Independent commissions. We now turn to some conceptually coherent mechanisms of executive signaling. Somewhat analogously to Katyal’s idea of the internal separation of powers, a well-motivated executive might establish independent commissions to review policy decisions, either before or after the fact. Presidents do this routinely, especially after a policy has had disastrous outcomes, but sometimes beforehand as well. Independent commissions are typically blue-ribbon and bipartisan.82

We add to this familiar process the idea that the President might gain credibility by publicly committing or binding himself to give the commission authority on some dimension. The president might publicly promise to follow the recommendations of such a commission, or to allow the commission to exercise de facto veto power over a policy decision before it is made, or might promise before the policy is chosen that the commission will be given power to review its success after the fact. To be sure, there will always be some wiggle room in the terms of the promise, but that is true of almost all commitments, which raise the costs of wiggling out even if they do not completely prevent it.

Consider whether George W. Bush’s credibility would have been enhanced had he appointed a blue-ribbon commission to examine the evidence for weapons of mass destruction in Iraq before the 2003 invasion, and publicly promised not to invade unless the commission found substantial evidence of their existence. Bush would have retained his preexisting legal authority to order the invasion even if the commission found the evidence inadequate, but the political costs of doing so would have been large. Knowing this, and knowing that Bush shared that knowledge, the public could have inferred that Bush’s professed motive – elimination of weapons of mass destruction – was also his real motive. Public promises that inflict reputational costs on badly motivated behavior help the well-motivated executive to credibly distinguish himself from the ill-motivated one.

The more common version of this tactic is to appoint commissions after the relevant event, as George W. Bush did to investigate the faulty reports by intelligence agencies that Iraq possessed weapons of mass destruction.83 If the president appoints after-the-fact commissions, the commissions can enhance his credibility for the next event—by showing that he will be willing, after that event, to subject his statements to scrutiny by public experts. Here, however, the demonstration of credibility is weaker, because there is no commitment to appoint any after-the-fact commissions in the future – merely a plausible inference that the president’s future behavior will track his past behavior.

Bipartisan appointments. In examples of the sort just mentioned, the signaling arises from public position-taking. The well-motivated executive might produce similar effects through appointments to office.84 A number of statutes require partisan balance on multimember commissions; although these statutes are outside the scope of our discussion, we note that presidents might approve them because they allow the president to commit to a policy that legislators favor, thus encouraging legislators to increase the scope of the delegation in the first place.85 For similar reasons, presidents may consent to restrictions on the removal of agency officials, because the restriction enables the president to commit to giving the agency some autonomy from the president’s preferences.86

Similar mechanisms can work even where no statutes are in the picture. As previously mentioned, during World War II, FDR appointed Republicans to important cabinet positions, making Stimson his Secretary of War. Clinton appointed William Cohen, a moderate Republican, as Secretary of Defense in order to shore up his credibility on security issues. Bipartisanship of this sort might improve the deliberation that precedes decisions, by impeding various forms of herding, cascades and groupthink;87 however, we focus on its credibility-generating effects. By (1) expanding the circle of those who share the president’s privileged access to information, (2) ensuring that policy is partly controlled by officials with preferences that differ from the president’s, and (3) inviting a potential whistleblower into the tent, bipartisanship helps to dispel the suspicion that policy decisions rest on partisan motives or extreme preferences, which in turn encourages broader delegations of discretion from the public and Congress.

A commitment to bipartisanship is only one way in which appointments can generate credibility. Presidents might simply appoint a person with a reputation for integrity, as when President Nixon appointed Archibald Cox as special prosecutor (although plausibly Nixon did so because he was forced to do so by political constraints, rather than as a tactic for generating credibility). A person with well-known preferences on a particular issue, even if not of the other party or widely respected for impartiality, can serve as a credible whistleblower on that issue. Thus presidents routinely award cabinet posts to leaders of subsets of the president’s own party, leaders whose preferences are known to diverge from the president’s on the subject; one point of this is to credibly assure the relevant interest groups that the president will not deviate (too far) from their preferences.

The Independent Counsel Statute institutionalized the special prosecutor and strengthened it. But the statute proved unpopular and was allowed to lapse in 1999.88 This experience raises two interesting questions. First, why have presidents confined themselves to appointing lawyers to investigate allegations of wrongdoing; why have they not appointed, say, independent policy experts to investigate allegations of policy failure? Second, why did the Independent Counsel Statute fail? Briefly, the statute failed because it was too difficult to control the behavior of the prosecutor, who was not given any incentive to keep his investigation within reasonable bounds.89 Not surprisingly, policy investigators would be even less constrained since they would not be confined by the law, and at the same time, without legal powers they would probably be ignored on partisan grounds. A commission composed of members with diverse viewpoints is harder to ignore, if the members agree with each other.

More generally, the decision by presidents to bring into their administrations members of other parties, or persons with a reputation for bipartisanship and integrity, illustrates the formation of domestic coalitions of the willing. Presidents can informally bargain around the formal separation of powers90 by employing subsets of Congress, or of the opposing party, to generate credibility while maintaining a measure of institutional control. FDR was willing to appoint Knox and Stimson, but not to give the Republicans in Congress a veto. Truman was willing to ally with Arthur Vandenbergh but not with all the Republicans; Clinton was willing to appoint William Cohen but not Newt Gingrich. George W. Bush likewise made a gesture towards credibility by briefing members of the Senate Intelligence Committee – including Democrats – on the administration’s secret surveillance program(s), which provided a useful talking point when the existence of the program(s) was revealed to the public.

Counter-partisanship. Related to bipartisanship is what might be called counterpartisanship: presidents have greater credibility when they choose policies that cut against the grain of their party’s platform or their own presumed preferences.91 Only Nixon could go to China, and only Clinton could engineer welfare reform. Voters and publics rationally employ a political heuristic: the relevant policy, which voters are incapable of directly assessing, must be highly beneficial if it is chosen by a president who is predisposed against it by convictions or partisan loyalty.92 Accordingly, those who wish to move U.S. terrorism policy towards greater security and less liberty might do well to support the election of a Democrat.93 By the same logic, George W. Bush is widely suspected of nefarious motives when he rounds up alleged enemy combatants, but not when he creates a massive prescription drug benefit.

Counter-partisanship can powerfully enhance the president’s credibility, but it depends heavily on a lucky alignment of political stars. A peace-loving president has credibility when he declares a military emergency but not when he appeases; a belligerent president has credibility when he offers peace but not when he advocates military solutions. A lucky nation has a well-motivated president with a belligerent reputation when international tensions diminish (Ronald Reagan) and a president with a pacific reputation when they grow (Abraham Lincoln, who opposed the Mexican War). But a nation is not always lucky.

Transparency. The well-motivated executive might commit to transparency, as a way to reduce the costs to outsiders of monitoring his actions.94 The FDR strategy of inviting potential whistleblowers from the opposite party into government is a special case of this; the implicit threat is that the whistleblower will make public any evidence of partisan motivations. The more ambitious case involves actually exposing the executive’s decisionmaking processes to observation. To the extent that an ill-motivated executive cannot publicly acknowledge his motivations or publicly instruct subordinates to take them into account in decisionmaking, transparency will exclude those motivations from the decisionmaking process. The public will know that only a well-motivated executive would promise transparency in the first place, and the public can therefore draw an inference to credibility.

Credibility is especially enhanced when transparency is effected through journalists with reputations for integrity or with political preferences opposite to those of the president. Thus George W. Bush gave Bob Woodward unprecedented access to White House decisionmaking, and perhaps even to classified intelligence,95 with the expectation that the material would be published. This sort of disclosure to journalists is not real-time transparency – no one expects meetings of the National Security Council to appear on CSPAN – but the anticipation of future disclosure can have a disciplining effect in the present. By inviting this disciplining effect, the administration engages in signaling in the present through (the threat of) future transparency.

There are complex tradeoffs here, because transparency can have a range of harmful effects. As far as process is concerned, decisionmakers under public scrutiny may posture for the audience, may freeze their views or positions prematurely, and may hesitate to offer proposals or reasons for which they can later be blamed if things go wrong.96 As for substance, transparency can frustrate the achievement of programmatic or policy goals themselves. Where security policy is at stake, secrecy is sometimes necessary to surprise enemies or to keep them guessing. Finally, one must take account of the incentives of the actors who expose the facts—especially journalists who might reward presidents who give them access by portraying their decisionmaking in a favorable light.97

We will take up the costs of credibility shortly.98 In general, however, the existence of costs does not mean that the credibility-generating mechanisms are useless. Quite the contrary: where the executive uses such mechanisms, voters and legislators can draw an inference that the executive is well-motivated, precisely because the existence of costs would have given an ill-motivated executive an excuse not to use those mechanisms.

#### OLC advice can force constraints on the Executive

BRADLEY\* AND MORRISON\*\* 2013 - \*William Van Alstyne Professor of Law, Duke Law School AND \*\* Liviu Librescu Professor of Law, Columbia Law School (Curtis A. Bradley AND Trevor W. Morrison, "Presidential Power, Historical Practice, And Legal Constraint”, January 15, 2013, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2191700)

Perhaps the most obvious way that law can have a constraining effect is if the relevant actors have internalized the legal norms, whether those norms are embodied in authoritative text, judicial decisions, or practice. When speaking of such internalization as it relates to the presidency, it is important to note that presidents act through a wide array of agencies and departments, and that presidential decisions are informed—and often made, for all practical purposes—by officials other than the President. In most instances involving presidential power, therefore, the relevant question is whether there has been an internalization of legal norms by the Executive Branch.

The Executive Branch contains thousands of lawyers. 117 The President and other executive officials are regularly advised by these lawyers, and sometimes they themselves are lawyers. Although lawyers serve in a wide variety of roles throughout the Executive Branch, their experience of attending law school means that they have all had a common socialization—a socialization that typically entails taking law seriously on its own terms. 118 Moreover, the law schools attended by virtually all U.S. government lawyers are American law schools, which means that the lawyers are socialized in an ethos associated with being part of the American polity and that takes for granted the American style of law and government. 119 These lawyers are also part of a professional community with at least a loosely shared set of norms of argumentative plausibility. Finally, as government lawyers they inherit a set of institutional practices from their predecessors, including a general tendency to privilege established ways of doing things. 120

Certain legal offices within the Executive Branch have developed their own distinctive law-internalizing practices. This is particularly true in places like OLC, which, as noted above, provides legal advice based on its best view of the law. OLC has developed a range of practices and traditions—including a strong norm of adhering to its own precedents even across administrations—that help give it some distance and relative independence from the immediate political and policy preferences of its clients across the Executive Branch, and that make it easier for OLC to act on its own internalization of legal norms. 121 Of course, OLC’s practices are not the only way for a government legal office to internalize the law. For example, an office committed not to seeking the best view of the law but to providing professionally responsible legal defenses of certain already determined policy positions could still operate under legal constraints if it took the limits of professional responsibility seriously. As noted above, although it can be difficult to identify with consistent precision the outer boundaries of legal plausibility, a commitment to remain within those boundaries is a commitment to a type of legal constraint.

If Executive Branch legal offices operate on the basis of certain internalized norms that treat law as a constraint, the next question is whether those offices have any effect on the actual conduct of the Executive Branch. In the case of OLC, there are two key points. First, although OLC possesses virtually no “mandatory” jurisdiction, there is a general expectation that, outside the litigation context, legal questions of special complexity, controversy, or importance will be put to OLC to address. 122 Second, established traditions treat OLC’s legal conclusions as *presumptively* binding within the Executive Branch, unless overruled by the Attorney General or the President (which happens extremely rarely). 123 Combined, these practices make OLC the most significant source of centralized legal advice within the Executive Branch.

Still, OLC addresses only a very small fraction of all the legal questions that arise within the Executive Branch, and a complete picture of the extent to which executive officials internalize legal norms (or are affected by others who internalize such norms) must extend well beyond that office. 124 Looking across the Executive Branch more broadly, there may be a practical imperative driving at least some measure of legal norm internalization. The Executive Branch is a vast bureaucracy, or series of bureaucracies. Executive officials responsible for discharging the government’s various policy mandates cannot act effectively without a basic understanding of who is responsible for what, and how government power is to be exercised—all topics regulated by law, including practice-based law. 125 Some of the understandings produced by those allocations are probably so internalized that the relevant actors cannot even imagine (at least in any serious way) a different regime.

Even on the more high profile policy questions that receive the attention of the White House itself, the internalization of law may have a constraining effect. There are lawyers in the White House, of course, including the Office of Counsel to the President (otherwise known as the White House Counsel’s Office). Some commentators—most notably Bruce Ackerman, as part of his general claim that the Executive Branch tends towards illegality— have characterized that office as populated by “superloyalists” who face “an overwhelming incentive to tell [the President] that the law allows [him] to do whatever [he] want[s] to do.” 126 If that were an accurate portrayal, it would suggest that there is little to no internalization of the law in the White House Counsel’s Office. But there are serious descriptive deficiencies in that account. 127 Still, politics does surely suffuse much of the work of the White House Counsel’s Office in a way that is not true of all of the Executive Branch. The more fundamental point, however, is that it is in the nature of modern government that the President’s power to act often depends at least in part on the input and actions of offices and departments outside the White House. That commonly includes the input of legal offices from elsewhere across the Executive Branch. 128 To the extent that those offices internalize the relevant legal norms, the President may be constrained by law without regard to whether he or his most senior White House advisers think about the law.

Internalization of legal norms may at least partially explain the now-famous standoff during the George W. Bush Administration between high-ranking lawyers in the Justice Department and various White House officials over the legality of a then-secret warrantless surveillance program. The program was deeply important to the White House, but the Attorney General, Deputy Attorney General, and head of OLC all refused to certify the legality of the program unless certain changes were made. When the White House threatened to proceed with the program without certification from the Justice Department, the leaders of the Department (along with the Director of the FBI and others) all prepared to resign. Ultimately, the White House backed down and acceded to the changes. 129 Some substantial part of the explanation for why the Justice Department officials acted as they did seems to lie in their internalization of a set of institutional norms that not only take law seriously as a constraint, but that insist on a degree of independence in determining what the law requires. 130 Buckling under pressure from the White House was evidently inconsistent with the Justice Department officials’ understanding of their professional roles.

#### The President has institutional incentives to listen to the OLC---incentives to maintain the OLC's credibility are bigger than the incentive to specific interests that the plan affects

Trevor Morrison 11, Professor of Law at Columbia Law School, “LIBYA, ‘HOSTILITIES,’ THE OFFICE OF LEGAL COUNSEL, AND THE PROCESS OF EXECUTIVE BRANCH LEGAL INTERPRETATION,” Harvard Law Review Forum Vol.124:42, http://www.harvardlawreview.org/media/pdf/vol124\_forum\_morrison.pdf

These questions parallel the kinds of questions that are inevitable when the President overrules OLC. Indeed, the institutional incentives against too readily overruling OLC are basically the same as the incentives against ousting OLC altogether. In either case, the White House will face difficult questions from the press and will be exposed to political attack by its adversaries in Congress. 25

These questions and criticisms underscore how wrong it is to suppose that OLC can be ousted from its role “without anybody considering it improper.” 26 Indeed, the notion that a President determined to pursue a particular policy can simply cast about for a favorable legal opinion and then rely on it with impunity ignores the reality of government today. As long as the President’s decision is publicly disclosed, questions about the substance and process of the decision will be asked. Answers that depict a highly anomalous process will raise further questions. That may be the ultimate check here: the prospect of public criticism and political reprisal encourages the White House to maintain OLC’s traditional role even when doing so cuts against its immediate policy preferences. And that is as it should be.

#### Internal constraints are key neg ground – it matches the academic debate

Sinnar, assistant professor of law at Stanford Law School, May 2013

(Shirin, “Protecting Rights from Within? Inspectors General and National Security Oversight,” 65 Stan. L. Rev. 1027, Lexis)

More than a decade after September 11, 2001, the debate over which institutions of government are best suited to resolve competing liberty and national security concerns continues unabated. While the Bush Administration's unilateralism in detaining suspected terrorists and authorizing secret surveillance initially raised separation of powers concerns, the Obama Administration's aggressive use of drone strikes to target suspected terrorists, with little oversight, demonstrates how salient these questions remain. Congress frequently lacks the [\*1029] information or incentive to oversee executive national security actions that implicate individual rights. Meanwhile, courts often decline to review counterterrorism practices challenged as violations of constitutional rights out of concern for state secrets or institutional competence. n1

These limitations on traditional external checks on the executive - Congress and the courts - have led to increased academic interest in potential checks within the executive branch. Many legal scholars have argued that executive branch institutions supply, or ought to supply, an alternative constraint on executive national security power. Some argue that these institutions have comparative advantages over courts or Congress in addressing rights concerns; others characterize them as a second-best option necessitated by congressional enfeeblement and judicial abdication.

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## Solvo

#### Plan causes extraordinary rendition shift

Kenneth Anderson 09, Professor of International Law at American University, 5/31, “Security Issues Like Squeezing Jello? Reversion to the Mean? Jack Goldsmith on the Effects of Security Alternatives,” http://opiniojuris.org/2009/05/31/security-issues-like-squeezing-jello-reversion-to-the-mean-jack-goldsmith-on-the-effects-of-security-alternatives/#sthash.TB1xcePu.dpuf

One way you might look at this is that there is a sort-of national security constant that remains in equilibrium over time, using one tactic or another, gradually evolving but representing over time a reversion to the national security mean. Or you might say that national security, seen over time, looks a little like squeezing jello – if squeezed one place it pops out another. ¶ I think Jack is right that the administration – any administration – tends to strive for a certain equilibrium, as it is confronted with a flow of threats that the public discounts to near-zero but which it does not see itself quite so able to do, however much it might want to. However, as the op-ed also notes, and I agree, these methods are not completely equivalent or compensating. That is so not just with regards to third party costs, but also with respect to security as such. Intelligence gathering, by all accounts not very effective to begin with, has become much more difficult. This is not compensation, it is a seemingly permanent downward shift in the security mean. ¶ Besides the consequences that Jack identifies, I would add that the current move to semi-compensating policies means two things. First, intelligence is likely to be increasingly outsourced to foreign intelligence services. That can provide valuable information, but it will be increasingly uncorroborated and subject to filtering by those services. That is not good. ¶ Second, in a somewhat unrelated matter, I would guess that future conflicts, where not fought by Predator, will be increasingly outsourced to proxy forces. ¶ In the focus on intelligence and security, I think this second point has not received sufficient attention. The United States has a long familiarity with proxy forces as a form of deniability, among other things – Ronald Reagan, for example, faced with many limitations placed by Congress on his uses of force, found proxy forces an essential element of his foreign policy, in Central America particularly. The domestic risks that policy can entail are illustrated by the Iran-Contra contra-temps; on the other hand, Reagan was reasonably successful in pursuing his administration’s anti-Communist and anti-Soviet policy aims in Salvador and Nicaragua, among other places, by proxy forces. ¶ But I would be quite surprised if proxy war were not today under active discussion for places like Somalia (where we have already undertaken measures close to it) and other places. More precisely, I would surprised if it were not an active discussion among the New Liberal Realists of the Obama administration, whatever the transnationalists say or think.¶ In any case, whether those last two speculations prove true or not, the tendency of the administration to seek compensating policies seems likely at a minimum to complicate the issues of Guantanamo, Bagram, and other matters besides.

#### Means they solve nothing

Anna-Katherine Staser McGill 12, School of Graduate and Continuing Studies in Diplomacy, Norwich University, David Gray, Campbell University, Summer 2012, “Challenges to International Counterterrorism Intelligence Sharing,” http://globalsecuritystudies.com/McGill%20Intel%20Share.pdf

The CIA’s use of “extraordinary rendition”, the practice of transporting a suspect to a third country for interrogation, has also stoked the ire of many traditional allies. Critics charge that this tactic quite simply allows the CIA to sidestep international laws and obligations by conducting interrogations in nations with poor human-rights records. In 2003, an Italian magistrate formally indicted 13 CIA agents for allegedly kidnapping an Italian resident and transporting him to a third country for interrogation. Ultimately 22 CIA agents and one US military officer were convicted in absentia of crimes connected to the abduction (Stewart, 1). The case not only heightened criticism of the US in Italy but challenged U.S. strategic communications aimed at reducing anti-Americanism worldwide (Reveron 462). According to Julianne Smith, director of the Europe program at the Center for Strategic and International Studies (CSIS), “[extraordinary rendition] makes it extremely difficult [for European governments] to stand shoulder-to-shoulder with the U.S.” (Heller 1).

## Terror

#### Military detention is key to combating terrorism

Michael Tomatz 13, Colonel, B.A., University of Houston, J.D., University of Texas, LL.M., The Army Judge Advocate General Legal Center and School (2002); serves as the Chief of Operations and Information Operations Law in the Pentagon. AND Colonel Lindsey O. Graham B.A., University of South Carolina, J.D., University of South Carolina, serves as the Senior Individual Mobilization Augmentee to The Judge Advocate Senior United States Senator from South Carolina, “NDAA 2012: CONGRESS AND CONSENSUS ON ENEMY DETENTION,” 69 A.F. L. Rev. 1

In bringing the conference report to the Senate floor, which all 26 Senate conferees signed, Senator Carl Levin emphasized the depth and breadth of flexibility left to the Executive branch. As he explained, the final bill does not restrain law enforcement agencies from conducting investigations or interrogations. n87 "If and when a determination is made that a suspect is a foreign al-Qaeda terrorist, that person would be slated for transfer to military custody under procedures written by the Executive branch." n88 Importantly, even after transfer "all existing law enforcement tools remain available to the FBI and other law enforcement agencies." n89 Military detention and military commissions trials for foreign al-Qaeda terrorists may enjoy Congressional preference, but are not the only means of dealing with foreign terrorists in what is fundamentally an all-in approach designed to give the Executive primary and residual authorities to deal with a complex threat. A preference for military detention ensures the availability of established tactics, techniques and procedures not necessarily present in the civilian justice system, and is ultimately meant to enhance intelligence gathering and prevent dangerous enemy forces from returning to the fight.

#### We lose the cases --- emboldens terrorism

Jack Goldsmith 06, a law professor at Harvard, and Eric A. Posner, a law professor at the University of Chicago, 8/4/06, “A Better Way on Detainees,” http://www.washingtonpost.com/wp-dyn/content/article/2006/08/03/AR2006080301257.html

Everyone involved in the contentious negotiations between the White House and Congress over the proper form for military commissions seems to agree on at least one thing: that al-Qaeda and Taliban terrorists ought to be prosecuted. We think this assumption is wrong: Terrorist trials are both unnecessary and unwise.¶ The United States holds more than 400 terrorism suspects at Guantanamo Bay, and 500 or so more at Bagram air base in Afghanistan. Five years after the Sept. 11 attacks, it has announced plans for military trials for only 10 of these detainees. The 10 do not include the al-Qaeda leaders in U.S. custody or the numerous small fry who served as foot soldiers for al-Qaeda or the Taliban. They are, at best, medium-fry terrorists.¶ Why only 10? Because it is difficult to try terrorists in this war. For most detainees, the government lacks evidence of overt crimes such as murder. It can prosecute these detainees only for the vague and problematic crime of conspiracy to commit a terrorist act based on membership in and training with al-Qaeda or the Taliban. Beyond this problem, witnesses are scattered around the globe, and much of the evidence is in a foreign language, or classified, or hearsay -- in many cases all of these things.¶ Even if these obstacles are overcome, the prosecution of Zacarias Moussaoui shows that trials of political enemies are more difficult, more time-consuming and, in the end, more circuslike than an ordinary criminal trial. The defendant or his lawyers will use a trial not to contest guilt but rather to rally followers and demoralize foes.¶ These are some of the reasons the Bush administration sought to use military commissions with fewer procedural protections than ordinary trials. But commissions have proved politically and legally difficult to implement. Even if they can be made to work, skeptics will still regard them as kangaroo courts.¶ There is a better and easier way to deal with captured terrorists. The Supreme Court has made clear that the conflicts with al-Qaeda and the Taliban are governed by the laws of war, and the laws of war permit detention of enemy soldiers without charge or trial until hostilities end. The purpose of wartime detention is not to punish but to prevent soldiers from returning to the battlefield. A legitimate wartime detainee is dangerous, like a violent mental patient subject to civil confinement, and that is reason enough to hold him. This has been the legal justification for terrorist detentions to date, and it will almost certainly be the basis for future detentions.¶ The main concern with military detentions is that the war will last a long time, perhaps indefinitely. If so, detention could mean a life sentence. We don't yet know whether this concern is warranted. But there are several ways to assure Americans and the world that the system is as fair and humane as circumstances permit.¶ Congress should require a rigorous process for determining the status of enemy combatants that includes some form of representation for the detainee. It should establish periodic review, perhaps yearly, to determine whether the detainee remains dangerous and thus warrants continued detention. It should insist that detainees live in genuinely humane conditions appropriate for very long-term detention. And it should urge the president to endeavor to transfer detainees to their home countries when feasible, and with appropriate human rights guarantees.¶ The executive branch has already introduced many elements of this system. With congressional blessing and amplification, the system will appear more legitimate and will better withstand judicial and public scrutiny.¶ Such a system will not assuage the complaints of those, especially our allies, who reject the military model for terrorism and abhor long-term detention without trial. But Congress and the president have consistently endorsed the military model since Sept. 11. And our allies have not proposed a better system than military detention that both ensures American security and respects human rights. Politicized trials would do little more to address these concerns of our allies, and we have no feasible alternative to military detention for most terrorists in custody.

#### **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.

## Modeling

#### US judicial isolationism means no modeling

**Law and Versteeg ’12** [David S. Law, Professor of Law and Professor of Political Science, Washington University in St. Louis. B.A., M.A., Ph.D., Stanford University; J.D., Harvard Law School; B.C.L. in European and Comparative Law, University of Oxford, Mila Versteeg, Associate Professor, University of Virginia School of Law. B.A., LL.M., Tilburg University; LL.M., Harvard Law School; D.Phil., University of Oxford, “The Declining Influence of the United States Constitution,” New York University Law Review, Vol. 87, No. 3, pp. 762-858, June 2012, online]

There are also factors specific to American constitutionalism that¶ may be reducing its appeal to foreign audiences. Critics suggest that¶ the Supreme Court has undermined the global appeal of its own jurisprudence¶ by failing to acknowledge the relevant intellectual contributions¶ of foreign courts on questions of common concern252 and by¶ pursuing interpretive approaches that lack acceptance elsewhere.253¶ On this view, the Court may bear some responsibility for the declining¶ influence of not only its own jurisprudence, but also the actual U.S.¶ Constitution: One might argue that the Court’s approach to constitutional¶ issues has undermined the appeal of American constitutionalism¶ more generally, to the point that other countries have become¶ unwilling to look either to American constitutional jurisprudence or¶ to the U.S. Constitution itself for inspiration.254

#### US courts aren’t modeled

**Liptak ’08** [Adam, Pulitzer Prize finalist for Journalism and Supreme Court correspondent for The New York Times, “U.S. Supreme Court's global influence is waning,” 9-17-08, <http://www.nytimes.com/2008/09/17/world/americas/17iht-18legal.16249317.html?pagewanted=all&_r=0>]

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

#### Authoritarian states don’t follow norms

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

The second benefit to foreigners of distinctive U.S. legal norms is information. The costs and benefits of our norms will be visible for all to see. n268 Particularly in an era of increased empirical social science testing, over time we will be able to analyze and identify the effects of differences in norms between the United States and other nations. n269 Such diversity benefits foreigners as foreign nations can decide to adopt our good norms and avoid our bad ones. The only noteworthy counterargument is the claim that U.S. norms will have more harmful effects than those of raw international law, yet other nations will still copy them. But both parts of this proposition seem doubtful. First, U.S. law emerges from a democratic process that creates a likelihood that it will cause less harm than rules that emerge from the nondemocratic processes [\*1235] that create international law. Second, other democratic nations can use their own political processes to screen out American norms that might cause harm if copied. Of course, many nations remain authoritarian. n270 But our norms are not likely to have much influence on their choice of norms. Authoritarian states are likely to select norms that serve the interests of those in power, regardless of the norms we adopt. It is true that sometimes they might cite our norms as cover for their decisions. But the crucial word here is "cover." They would have adopted the same rules, anyway. The cover may bamboozle some and thus be counted a cost. But this would seem marginal compared to the harm of allowing raw international law to trump domestic law.

#### Friendly democracies can decipher between good and bad US norms, and authoritarian nations don’t care either way

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

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

## ENVIRO

### V Double bind- either the environment is resilient or its destruction is inevitable

Lazarus ‘10 (Richard J. Lazarus, prof of law at Georgetown University Law Center, “Human Nature, the Laws of Nature, and the Nature of Environmental Law” 24 VA. ENVTL. L.J. 231-261, January 2010)

Some environmental pollution is, of course, unavoidable. Basic human life requires the consumption of the surrounding natural environment. While the First Law of Thermodynamics provides for the conservation of energy (and classical physics for the conservation Of mass),16 the Second Law provides for the inevitable increases in entropy that result from human activity. The term "entropy" refers to the degree of disorder in a system. For instance, as energy is transformed from one form to another, some energy is lost as heat; as the energy decreases, the disorder in the system, and hence the entropy, increases. IS Natural resource destruction and environmental contamination is a form of entropy. Disorder in the ecosystem is increased when common resources such as air and water are polluted. Disorder is likewise increased whenever complex natural resources are broken down into smaller parts. In consuming natural resources to provide the basic necessities of energy, food, shelter, and clothing, humankind necessarily increases entropy in parts of the ecosystem in the form of polluted global resources and destroyed natural resources. Fundamental human biological processes compel it. Human life depends, as life does in many animals, on a series of chemical reactions within the cells of the human body capable of breaking down complex chemical compounds such as glucose into its component parts of carbon dioxide and water.19 The technical name of the necessary biochemical process for the breakdown of glucose is carbohydrate catabolism, which itself consists of three major stages: glycosis, citric acid cycle (known as the "Krebs cycle") and phosphorylation.20 For the purposes of this essay, however, what is important for the nonscientific reader to understand is how these many biochemical processes ultimately depend on the breaking down of more complex and ordered chemical compounds into less complex and more disordered chemical elements. Some natural resource destruction and environmental pollution are necessarily implicated by such processes. As energy is transformed from one form to another, natural resources are consumed and contamination of existing natural resources results. To the extent, moreover, that it is human nature to seek to survive, it is human nature to undertake activities that cause such natural resource destruction and environmental pollution. That central threshold proposition should be noncontroversial. What is no doubt more controversial is whether it is similarly human nature to consume the natural environment in a nonsustainable fashion. Garrett Hardin's classic article "The Tragedy of the Commons," published in Science in 1968,21 offers a disturbing answer to that question. Although Hardin's central thesis is well-known, it is worth emphasis here by repetition: The tragedy of the commons develops in this way. Picture a pasture open to all. It is to be expected that each herdsman will try to keep as many cattle as possible on the commons. Such an arrangement may work reasonably satisfactorily for centuries because tribal wars, poaching, and disease keep the numbers of both man and beast well below the carrying capacity of the land. Finally, however, comes the day of reckoning, that is, the day when the long-desired goal of social stability becomes a reality. At this point, the inherent logic of the commons remorselessly generates tragedy. As a rational being, each herdsman seeks to maximize his gain. Explicitly or implicitly, more or less consciously, he asks, "What is the utility to me of adding one more animal to my herd?" . .. [T]he rational herdsman concludes that the only sensible course for him to pursue is to add another animal to his herd. And another. .. But this is the conclusion reached by each and every rational herdsman sharing a commons. Therein is the tragedy. Each man is locked into a system that compels him to increase his herd without limit-in a world that is limited. Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom in a commons brings ruin to all.22 Hardin describes his thesis in the limited context of human nature faced with a pasture for animal grazing, but it all too easily extends with potentially catastrophic results to many contemporary environmental settings. The expansive reach of modern technology has turned the once seemingly infinite into the finite. Populations of ocean fisheries can be irreversibly destroyed. Underground aquifers of drinking water supplies can be forever lost. And, of course, potentially destructive global climate change may occur from increased loadings of carbon to the atmosphere from anywhere in the globe. Modern technology also has its limits, as the nation was tragically reminded in the aftermath of Hurricane Katrina this past year. Modern technology allowed for the development of a major metropolitan area where nature, standing alone, would have precluded any such possibility. New Orleans was largely below sea level and existed only by grace of a complex series of levees designed to keep water from flowing along its natural course. Even when properly constructed, such levees are no match, however, for the enormous force of hurricanes like Katrina, especially when thousands of acres of surrounding wetlands, which might have otherwise provided some natural protection from flood waters, are filled to satisfy ever-rising demands for residential, commercial, and industrial development. The upshot: the devastation of a city, the loss of human life, and the destruction of an invaluable aquatic ecosystem by floodwaters laden with toxic contaminants.23 Hardin's central insight regarding the implications of human nature for the natural environment extends much further, however, than to just the potential tragic destruction of resource commons. Each of the individual actors in Hardin's proffered tragedy cause ruin to all because of their inability to look beyond the here and now. They perceive well their own, present short-term needs. They are unable to apprehend and take into account the longerterm implications for individual persons at other times or in other places. Even if presented by information detailing those broader spatial and temporal impacts, they would be unable on their own to temper their own immediate actions as necessary to avoid the resource common's tragic destruction. The risks facing New Orleans have been well-known for decades. Yet, short-term needs always trumped government's willingness and ability to expend the massive resources necessary to guard against long-term, low-risk events, even if of potentially catastrophic consequences.z4 More recent research into behavioral psychology and human cognitive biases offers contemporary confirmation of Hardin's basic thesis. Experimental research shows that humans strongly favor avoidance of immediate costs over less immediate, longerterm, and distant risks. Dubbed by some a "myopia" bias, scientists argue that a strong basic desire to avoid immediate costs is present throughout nature and is deeply rooted in evolutionary biology.25 Others similarly argue that human genetic evolution has systematically favored consumerism and materialism, *i.e.,* the so-called "selfish gene. "26 When, over thousands of years ago, human beings relied on hunting and gathering to get their next meal, long-term planning was of little value. After all, without a means of preserving food, there was little reason to plan. It was better to consume what one found when one found it, especially when there was no assurance that more would be found tomorrow. "Our brains were built for a world in which the currency of the day did lose value over time. Put simply: food rotS."27 "[N]ature created within us a short-sighted set of moral instincts."28 Selfish shortsightedness and materialism became dominant tendencies in the competition with other species for survival. "Rather than leave some precious energy lying around to mold or be stolen, put it in your stomach and have your body convert the food into an energy savings account. "29 The drive for survival arguably extended to the production of heirs-survival by the passing of genes to one's children-and the accumulation of material wealth often seen as a necessary prerequisite for successful reproduction. *3D* And, "even though wealth may not relate to babies in an industrialized world, our instincts come from a time when concerns over material possessions were crucial."31 One commentator has gone so far as to suggest, provocatively, that "[h]uman failings, such as those that some call the Seven Deadly Sins, may all derive from our evolutionary traps. "32

## Glick

**Escalates**

**Glick, 07** (Caroline, Senior Middle East Fellow – Center for Security Policy, “Condi’s African Holiday”, 12-12, [http://www.centerforsecuritypolicy.org/home.aspx?sid=56&categoryid=56&subcategoryid=90&newsid=11568](http://www.centerforsecuritypolicy.org/home.aspx?sid=56&categoryid=56&subcategoryid=90&newsid=11568%29))

US Secretary of State Condoleezza Rice introduced a new venue for her superficial and destructive stewardship of US foreign policy during her lightning visit to the Horn of Africa last Wednesday. The Horn of **Africa is a dangerous and strategically vital place. Small wars**, which rage continuously, **can easily escalate into big wars. Local conflicts have regional and global aspects. All** of the **conflicts in this tinderbox, which controls shipping lanes** from the Indian Ocean into the Red Sea, **can** potentially **give rise to regional, and** indeed **global conflagrations between competing regional actors and global powers**. Located in and around the Horn of Africa are the states of Eritrea, Djibouti, Ethiopia, Somalia, Sudan and Kenya. Eritrea, which gained independence from Ethiopia in 1993 after a 30-year civil war, is a major source of regional conflict. Eritrea has a nagging border dispute with Ethiopia which could easily ignite. The two countries fought a bloody border war from 1998-2000 over control of the town of Badme. Although a UN mandated body determined in 2002 that the disputed town belonged to Eritrea, Ethiopia has rejected the finding and so the conflict festers. Eritrea also fights a proxy war against Ethiopia in Somalia and in Ethiopia's rebellious Ogaden region. In Somalia, Eritrea is the primary sponsor of the al-Qaida-linked Islamic Courts Union which took control of Somalia in June, 2006. In November 2006, the ICU government declared jihad against Ethiopia and Kenya. Backed by the US, Ethiopia invaded Somalia last December to restore the recognized Transitional Federal Government to power which the ICU had deposed. Although the Ethiopian army successfully ousted the ICU from power in less than a week, backed by massive military and financial assistance from Eritrea, as well as Egypt and Libya, the ICU has waged a brutal insurgency against the TFG and the Ethiopian military for the past year. The senior ICU leadership, including Sheikh Hassan Dahir Aweys and Sheikh Sharif Ahmed have received safe haven in Eritrea. In September, the exiled ICU leadership held a nine-day conference in the Eritrean capital of Asmara where they formed the Alliance for the Re-Liberation of Somalia headed by Ahmed. Eritrean President-for-life Isaias Afwerki declared his country's support for the insurgents stating, "The Eritrean people's support to the Somali people is consistent and historical, as well as a legal and moral obligation." Although touted in the West as a moderate, Ahmed has openly supported jihad and terrorism against Ethiopia, Kenya and the West. Aweys, for his part, is wanted by the FBI in connection with his role in the bombing of the US embassies in Kenya and Tanzania in 1998. Then there is Eritrea's support for the Ogaden separatists in Ethiopia. The Ogaden rebels are Somali ethnics who live in the region bordering Somalia and Kenya. The rebellion is run by the Ogaden National Liberation Front (ONLF) which uses terror and sabotage as its preferred methods of warfare. It targets not only Ethiopian forces and military installations, but locals who wish to maintain their allegiance to Ethiopia or reach a negotiated resolution of the conflict. In their most sensationalist attack to date, in April ONLF terror forces attacked a Chinese-run oil installation in April killing nine Chinese and 65 Ethiopians. Ethiopia, for its part has fought a brutal counter-insurgency to restore its control over the region. Human rights organizations have accused Ethiopia of massive human rights abuses of civilians in Ogaden. Then there is Sudan. As Eric Reeves wrote in the Boston Globe on Saturday, "The brutal regime in Khartoum, the capital of Sudan, has orchestrated genocidal counter-insurgency war in Darfur for five years, and is now poised for victory in its ghastly assault on the region's African populations." The Islamist government of Omar Hasan Ahmad al-Bashir is refusing to accept non-African states as members of the hybrid UN-African Union peacekeeping mission to Darfur that is due to replace the undermanned and demoralized African Union peacekeeping force whose mandate ends on December 31. Without its UN component of non-African states, the UN Security Council mandated force will be unable to operate effectively. Khartoum's veto led Jean-Marie Guehenno, the UN undersecretary for peacekeeping to warn last month that the entire peacekeeping mission may have to be aborted. And the Darfur region is not the only one at risk. Due to Khartoum's refusal to carry out the terms of its 2005 peace treaty with the Southern Sudanese that ended Khartoum's 20-year war and genocide against the region's Christian and animist population, the unsteady peace may be undone. Given Khartoum's apparent sprint to victory over the international community regarding Darfur, there is little reason to doubt that once victory is secured, it will renew its attacks in the south. **The conflicts in the Horn of Africa have regional and global dimensions**. Regionally, Egypt has played a central role in sponsoring and fomenting conflicts. Egypt's meddling advances its interest of preventing the African nations from mounting a unified challenge to Egypt's colonial legacy of extraordinary rights to the waters of the Nile River which flows through all countries of the region.

## THEIR INTERNAL LINK EV

#### Transitioning countries model US Judicial Review and Separation of Powers

Stumpf 13 [István , Justice on the Constitutional Court of Hungary, Model, Resource, or Outlier? What Effect Has the U.S. Constitution Had on the Recently Adopted Constitutions of Other Nations?, 5/29/13, <http://www.heritage.org/research/lecture/2013/05/model-resource-or-outlier-what-effect-has-the-us-constitution-had-on-the-recently-adopted-constitutions-of-other-nations>]

In summary, let me say that Hungary, of course, has different legal traditions from that of the United States. The American Founding could start from scratch; no continental European nation has had an opportunity to do that. In the last 20 years, Hungarian legal scholars and practitioners have developed much stronger ties with European academia—the German influence is particularly strong—but as you have seen, there is a very strong interest in the American constitutional heritage, and we should by no means underestimate the United States Constitution as a model for other nations**.** The basic notions of rule of law, separation of powers, natural law, judicial review, and human rights came to life thanks to the example of the United States in the last 225 years, which in turn has influenced the entirety of Western civilization, including Hungary. The theoretical foundations of American constitutionalism, the works of American legal scholars, and the practice of the U.S. Supreme Court are valuable resources and strong points of reference for lawyers in Hungary and all over the world. I am confident that it is for the benefit of the American academia to study from time to time how the concepts and institutions of American constitutionalism flourish or face difficulties in other countries. It is an honor for me to be here and take part in this conversation. As Hungary sets out to solidify its commitment to truths that are self-evident, to the protection of unalienable rights, to a limited but effective government, and to a renewed constitutionalism, I am convinced that we may in the future inspire one another. Let me close with this thought: There is much talk about a post-American era and American decline. As a young scholar visiting America since the 1980s, I got to know this country through road trips across the heartland as well as Ivy League university lecture halls, and I can tell you that the ideals of the Founding Fathers, the principles of the U.S. Constitution, and the Declaration of Independence were not and are not in decline. On the contrary, democracies around the world, old and new, need them now more than ever. As Chief Justice John Marshall said, “The people made the Constitution, and the people can unmake it. It is the creature of their own will, and lives only by their will.”

## Africa Defense

#### Regional cooperation checks

Straus ’13 (Scott Straus for African Arguments, part of the Guardian Africa Network, Scott Straus is a professor in the Department of Political Science at the University of Wisconsin, “Africa is becoming more peaceful, despite the war in Mali”, <http://www.guardian.co.uk/world/2013/jan/30/africa-peaceful-mali-war>, January 30, 2013)

Finally, conflict reduction mechanisms, in particular international peacekeeping and regional diplomacy, have substantially increased on the continent. Peacekeeping is more prevalent and especially more robust than in the 1990s. Regional bodies such as the African Union, Eccowas, Eccas, IGAD, and SADC are quite active in most conflict situations. They have exhibited greater resolves in conflicts as diverse as Côte d'Ivoire, Sudan, the Central African Republic, and Madagascar.

#### B) Specifically the US

Miranda ’13 (Luis Miranda, Journalist for the Real Agenda, “U.S. Military increases involvement in African conflict”, http://real-agenda.com/2013/01/30/22156/, January 30, 2013)

As confessed last week by Hillary Clinton, the world can expect the United States to continue balkanizing sensible regions of the planet indefinitely. With major combat operations ending in the Middle East, recently growing economic and political tension in Africa opened the door for the U.S. to launch another operation in a supposed effort to curb the spread of Al-Qaeda and its affiliates in that continent. Now, the United States reached an agreement with the Government of Niger for immediate installation in that country of a drone base, which will be used to ‘support’ France’s military operation in Mali, which means the beginning of a greater U.S. military involvement in the fight in North Africa. With this agreement, the Pentagon will start reconnaissance flights over Malian territory and deploy any number any number of troops anywhere in Mali or even neighboring countries. It is possible that, at a later stage, the drones could be used to directly attack the groups identified as enemies, as is being done in Pakistan, Afghanistan and Yemen, where the U.S., almost on a daily basis, murders men, women and children are thought to be members of terrorist organizations or who are deemed as collateral damage — as the military says. The U.S. military presence in Niger, whose scope has not been officially confirmed in Washington, represents a significant shift in the so-called war against terrorism, so far concentrated in the Middle East and Asia. The steps taken by the Pentagon now open a new front in Africa. So far, the U.S. only had one official base in the small state of Djibouti, where the military stations about 2,000 soldiers and from where it launches attacks over Yemeni territory. This base, however, is too far away for operations in ​​Mali, Algeria, Libya and Mauritania, where the U.S. Al-Qaeda affiliated groups concentrate their forces. The agreement with Niger, which was confirmed by official sources in the country, will allow the U.S. to have military installations in the desert area of ​​Agadez, in northern Niger, near the borders with Mali and Algeria. “Niger has given the green light for the use of its territory for collecting surveillance to improve data collection of Islamist movements,” said a source quoted by Reuters. Other U.S. media say that the U.S. is negotiating a similar agreement with Burkina Faso, on the southern border of Mali, and that the permanent presence of drones could be extended even to Algeria, a country with which Washington maintains good relations and that Secretary of State Hillary Clinton visited last October to discuss the security situation and the supposed extremist threat.

**And even if they win the impact – the timeframe for solvency is generations**

Mandelbaum 7 – foreign affairs professor, , Professor and Director of the American Foreign Policy program at the Johns Hopkins University, School of Advanced International Studies (Michael, September/ October, “Democracy Without America”, <http://www.foreignaffairs.com/articles/62833/michael-mandelbaum/democracy-without-america?page=show>,)

What the world of the twenty-first century calls democracy is in fact the fusion of two distinct political traditions. One is liberty -- that is, individual freedom. The other is popular sovereignty: rule by the people. Popular sovereignty made its debut on the world stage with the French Revolution, whose architects asserted that the right to govern belonged not to hereditary monarchs, who had ruled in most places at most times since the beginning of recorded history, but rather to the people they governed. Liberty has a much longer pedigree, dating back to ancient Greece and Rome. It consists of a series of political zoning ordinances that fence off and thus protect sectors of social, political, and economic life from government interference. The oldest form of liberty is the inviolability of private property, which was part of the life of the Roman Republic. Religious liberty arose from the split in Christendom provoked by the Protestant Reformation of the sixteenth century. Political liberty emerged later than the other two forms but is the one to which twenty-first-century uses of the word "freedom" usually refer. It connotes the absence of government control of speech, assembly, and political participation. Well into the nineteenth century, the term "democracy" commonly referred to popular sovereignty alone, and a regime based on popular sovereignty was considered certain to suppress liberty. The rule of the people, it was believed, would lead to corruption, disorder, mob violence, and ultimately tyranny. In particular, it was widely thought that those without property would, out of greed and envy, move to seize it from its owners if the public took control of the government. At the end of the nineteenth century and the beginning of the twentieth, liberty and popular sovereignty were successfully merged in a few countries in western Europe and North America. This fusion succeeded in no small part due to the expansion of the welfare state in the wake of the Great Depression and World War II, which broadened the commitment to private property by giving everyone in society a form of it and prevented mass poverty by providing a minimum standard of living to all. Even then, however, the democratic form of government did not spread either far or wide. Popular sovereignty, or at least a form of it, became all but universal by the second half of the twentieth century. The procedure for implementing this political principle -- holding an election -- was and remains easy. In the first three-quarters of the twentieth century, most countries did not choose their governments through free and fair elections. However, most governments could claim to be democratic at least in the sense that they differed from the traditional forms of governance -- monarchy and empire. The leaders did not inherit their positions, and they came from the same national groups as the people they governed. These governments embodied popular sovereignty in that the people controlling them were neither hereditary monarchs nor foreigners. If popular sovereignty is relatively easy to establish, the other component of democracy, liberty, is far more difficult to secure. This accounts for both the delay in democracy's spread around the world in the twentieth century and the continuing difficulties in establishing it in the twenty-first. Putting the principle of liberty into practice requires institutions: functioning legislatures, government bureaucracies, and full-fledged legal systems with police, lawyers, prosecutors, and impartial judges. Operating such institutions requires skills, some of them highly specialized. And the relevant institutions must be firmly anchored in values: people must believe in the importance of protecting these zones of social and civic life from state interference.The institutions, skills, and values that liberty requires cannot be called into existence by fiat any more than it is possible for an individual to master the techniques of basketball or ballet without extensive training. The relevant unit of time for creating the social conditions conducive to liberty is, at a minimum, a generation. Not only does the apparatus of liberty take time to develop, it must be developed independently and domestically; it cannot be sent from elsewhere and implanted, ready-made. The requisite skills and values can be neither imported nor outsourced.

## ECON

#### GROWING NOW AND RESLIENT – THEIR EV

**Business Day 13** (January 18, Ivor Ichikowitz, “Stability in Africa now key to world economy” http://www.bdlive.co.za/world/africa/2013/01/18/stability-in-africa-now-key-to-world-economy)

A significant change in the way the world’s leaders are starting to see Africa was revealed this week but has gone almost entirely unreported. Christine Lagarde, **the head of the** International Monetary Fund **(IMF**), was in Cote d’Ivoire’s capital, Abidjan, and **identified conflict as the "enemy number one" of Africa’s economic growth**. She said: "**Security is too fragile … if there is no peace, the people simply won’t have the confidence or courage to invest in their own future and neither will (foreign investors**)." However, **Lagarde did not stop at security being significant merely because it crippled economic development in Africa. She said it was vital for the financial stability of the entire world**. "It’s clear that **emerging countries are the motor of world economic growth**," she said, backing the IMF’s projections that sub-Saharan Africa will grow 5.25% this year, second only to Asia’s boom economies and well above the world average of 3.6%. To hear the recognition from such a leading figure in the international community that security is one of Africa’s core problems was incredibly uplifting. It echoes statements I made last year, when I said: "Capitalism is the most powerful driving force behind Africa’s economic development…. Stability is crucial because the growing middle classes (up to a third of all Africans) will spend more money if they feel confident, and they will feel more confident if they feel safe. The next stage will be to convince private investors that no sudden, unexpected or violent shift in government will happen and make their funds disappear overnight." Lagarde said: "I cannot help but be impressed by the continent’s resilience … in the face of the most serious disturbances seen by the world’s economy since the Great Depression." While the leading economies are struggling to tiptoe back into growth, **it is to Africa that the world is turning for impetus.** Lagarde’s recognition of this is a minor historical moment in **Africa**’s relations with the rest of the world — instead of Africa being seen as a drain, it **has been accepted as a vital driver of the global economy by one of its leading figures.** Global leaders have previously come close but have never been so explicit. When US President Barack Obama visited Ghana in 2009, he said: "Your prosperity can expand America’s. Your health and security can contribute to the world’s…. All of us must strive for the peace and security necessary for progress." He also said that "**development depends upon good governance**" but I would say that, beyond this, good governance depends on stable societies. I would venture that Lagarde agrees. I have had the privilege to work with many African countries to strengthen the capabilities and capacity of their defence, police and peacekeeping forces. I have seen first-hand the benefits for economic activity, inward investment, regional stability and long-term growth that stability can bring. **Africa** cannot rely solely on its booming sectors, such as oil, for its growth. It **needs to build strong and wide economic foundations. Its projected growth might be second only to Asia’s, but unlike Asia it is happening in the absence of the institutional framework necessary to absorb that growth and direct it** towards more investment in things such as infrastructure, health, education and public transport.

# 1NR

### Overview

**IMMIGRATION solves their resource tradeoff internal**

**GRISWOLD 2**. [Daniel T., associate director of the Cato Institute’s Center for Trade Policy Studies, 10-15-2002, http://www.freetrade.org/pubs/pas/tpa-019.pdf]

Members of Congress rightly understood, when crafting the legislation, that **Mexican migration is not a threat to national security**. Indeed, **legalizing and regularizing the movement of workers across the U.S.-Mexican border could enhance our national security** **by bringing** much of **the underground labor market into the open**, **encouraging** newly documented **workers to cooperate** fully **with law enforcement** officials, **and freeing resources for border security and the war on terrorism**. Legalization of Mexican migration would drain a large part of the underground swamp that facilitates illegal immigration. **It would reduce the demand for fraudulent documents, which** in turn **would reduce the supply avail- able for terrorists trying to operate** surrepti- tiously **inside the U**nited **S**tates. **It would encourage** millions of currently undocumented **workers to make themselves known to authorities** by registering with the government, **reducing cover for terrorists who manage to enter the country and overstay their visas**. **Legalization would allow the government to devote more of its resources to keeping ter- rorists out of the country**. Before September 11, the U.S. government had stationed more than four times as many border enforcement agents on the Mexican border as along the Canadian border, even though the Canadian border is more than twice as long and has been the preferred border of entry for Middle Easterners trying to enter the United States illegally. 74 A system that allows Mexican work- ers to enter the United States legally would free up thousands of government personnel and save an estimated $3 billion a year75—resources that would then be available to fight terrorism. **The ongoing effort to stop** Mexican **migration only diverts attention and resources from the war on terrorism**. Yet some anti-immigra- tion groups continue to demand that even more effort be devoted to stopping Mexican migra- tion. According to Steven Camarota of the Center for Immigration Studies, “A real effort to control the border with Mexico would require perhaps 20,000 agents and the development of a system of formidable fences and other barriers along those parts of the border used for illegal crossings.”76 Such a policy would be a waste of resources and personnel and would do nothing to make America more secure against terrorists.

De Los Santos 2-9. [Michael, political writer, contributor @ Policy Mic, "3 Ways Immigration Reform Will Lead to a Stronger American Economy" Policy Mic -- www.policymic.com/articles/25301/3-ways-immigration-reform-will-lead-to-a-stronger-american-economy]

Immigration, immigration, immigration: it seems that reform has become the hot topic of the day now that the debt ceiling debate is temporarily over. PolicyMic has published at least 16 articles over the last week that dealt with the topic. We have had a bipartisan panel and President Obama release ideas for immigration reform, and you can expect it to play a significant role in his upcoming State of the Union address. With the economy still the biggest driver of dissatisfaction in this country, how will passing immigration reform impact the economic recovery? Passing a comprehensive package will positively impact the economy in three key areas: consumption, tax revenue and job creation.¶ 1. Consumption:¶ Consumption is driven by wages, and so to understand how consumption will improve, we have to look at wage increases. Immigration reform does not just impact the immigrant community, but U.S.-born workers as well. Our first glimpses are the effects of President Reagan's Immigration Reform and Control Act of 1986. While immigrants still made less than their U.S. born-comrades, they still saw their incomes increase by 15% years following their legalization. While anti-immigration reform groups will dispute the effectiveness of the reforms of 1986, they can’t refute the increase in wages.¶ These wage increases also extended to U.S.-born workers. The Economic Policy Institute looked at the impact immigration had on wages of the non-immigrant community. What they found was that between 1994 and 2007, wages increased by 0.4% over foreign-born workers. This also extended to those with less than a high school education, who still saw a 0.3% increase during that same time as a result of immigration. These aren't huge gains, but the size of the gains wasn't as important as what they indicated: more workers mean a bigger economy. The influx of immigrant workers meant more people were earning wages, and therefore spending more and growing the economy, which in turn meant higher wages and more opportunities for everyone.¶ 2. Tax Revenue:¶ The increase in wage earners, wages, and spending leads to higher tax revenues. A 2010 study by the University of Southern California estimated that undocumented Latino workers missed out on $2.2 billion in income. As a result, the state of California missed out on $310 million in income taxes. They also determined that the federal government lost out on $1.4 billion in taxes.¶ Furthermore, the Congressional Budget Office and the Joint Committee on Taxation estimated that the Comprehensive Immigration Reform Act of 2006 would have generated $66 billion in new revenue between 2007 and 2016. This increase in revenue would have more than offset the estimated increase in entitlement spending of $54 billion.¶ 3. Job Creation:¶ The final area for consideration is job creation. Ezra Klein of The Washington Post examined this in a recent post. Small businesses are drivers of the economy, and as Klein points out, immigrants start business and file patents at a much higher rate than the non-immigrant community.¶ Our economy is struggling to create jobs and encourage consumer spending, and all levels of government are struggling to generate the necessary revenues and right spending cuts to tackle growing debt.¶ These factors make immigration reform a nobrainer. A comprehensive immigration plan addresses all three of these key areas to fixing our economy. In fact, immigration reform should be looked at as more than just immigration policy – it's economic policy. The economy and our country will be better because of it.

**Fast tracking EB visas is vital to cyber defense**

**McLarty**, **9** - President Of McLarty Associates, Former White House Chief of Staff and Task Force Co-Chair (Thomas, U.S. Immigration Policy: Report of a CFR-Sponsored Independent Task Force, July 18, 2009, <http://www.cfr.org/publication/19759/us_immigration_policy.html>)

QUESTIONER: Hi. I'm Frank Finelli with the Carlyle Group. I'd like to just ask a follow up on some of the national security comments. **We have seen, when you look at the table of the top 20 firms that are** H1-B **visa requestors, at least 15 of those are IT firms.** And as we're seeing across industry, **much of the hardware and software that's used in this country is** not only manufactured now overseas, but it's **developed overseas by scientists and engineers who were educated here in the United States.** We're seeing a lot more activity around cyber-security, certainly noteworthy attacks here very recently. It's becoming an increasingly dominant set of requirements across not only to the Department of Defense, but the Department of Homeland Security and the critical infrastructure that's held in private hands. **Was there any discussion** or any interest from DOD or DHS as you undertook this review on the security things **about what can be done to try to generate a more effective group of IT experts** here in the United States, many of which are coming to the U.S. institutions, academic institutions from overseas and often returning back? This potentially puts us at a competitive disadvantage going forward. MCLARTY: Yes. And I think your question largely is the answer as well. I mean, clearly we have less talented students here studying -- or put another way, more **talented students studying in other countries that are gifted, talented, really have a tremendous ability to develop these kind of technology and scientific advances**, we're going to be put at an increasingly disadvantage. Where **if they come here** -- and I kind of **like** Dr. Land's approach of **the green card** being handed to them or carefully put in their billfold or purse as they graduate -- **then**, obviously, **that's going to strengthen**, I think, our system, **our security needs.**

#### Cyberattack comparatively outweighs a nuclear war

McCleskey 11 Dallas Morning News Reporter (Clayton, March 29, 2011, “More questions than answers on cyber security,” http://dallasmorningviewsblog.dallasnews.com/2011/03/worried-that-yo.html/)//DR. H

I knew the threat from cyber warfare was serious, but I didn't put it up there on the same level as a nuclear holocaust. Until today. Speaking this morning in Washington, former national security advisor Brent Scowcroft compared the cyber threat to the danger posed by nuclear weapons during the Cold War. He said, "Cyber has the same capabilities," before adding that actually, "in many ways it's more daunting."¶ At a conference hosted by Georgetown University and the Atlantic Council, Scowcroft joined with policy makers and defense experts to debate how the U.S. can better handle security in cyberspace.¶ Texan Congressman Mac Thornberry warned that "our laws, policies and regulations are not keeping up with the challenge" posed by cyber threats, adding, "while we fiddle, our vulnerability continues to grow."¶ "What is the responsibility of the Department of Defense to defend the private sector?" asked Thornberry. "If we have a fleet of bombers coming to bomb the Houston ship channel, it's pretty clear," he said. But what about WikiLeaks attacking Visa and MasterCard? The answer is less clear.¶ Lest anyone in the audience failed to grasp just how big - and potentially dangerous - the Internet is, Lieutenant General Charles Croom - former director of the Defense Information Systems Agency - said: "It is the most disruptive thing for our species since European man's discovery of the Western hemisphere."¶ Move over, Columbus. You've been replaced by Facebook.¶ Cyber threats come in all shapes in sizes. There are full-blown attacks, mere disruptions and then your standard data nabbing. A full-on attack could be devastating. The Los Angeles Times delivers this account about how easy it was for one hacker to break-in to the system that controls LA's drinking water. The danger is very real:¶ Terrorist groups such as Al Qaeda don't yet have the capability to mount such attacks, experts say, but potential adversaries such as China and Russia do, as do organized crime and hacker groups that could sell their services to rogue states or terrorists.¶ U.S. officials say China already has laced the U.S. power grid and other systems with hidden malware that could be activated to devastating effect.¶ When it comes to countries - like China - going after the American government's data, former National Security Agency and CIA director, General Michael Hayden said we shouldn't be so outraged. "Adult nations steal information from each other," he said. It's up to us to figure out how to secure our secrets.¶ As if all that wasn't scary enough, the threat is not just that foreigners will e-attack or that homegrown computer-geeks-turned-cyber-warriors will target the American government. Hayden warned that we also have to worry about so-called "cyber patriots," American hackers that take defense policy into their own hands by launching attacks on foreign governments.¶ The conference came up with more questions than answers. So it was fitting that Hayden wrapped up the panel discussion by calling for a national dialogue on cyber security, privacy and how the U.S. government plans to face this ever-changing challenge.¶ The general warned, "The game is on."¶

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### Will Pass

#### CIR will pass now-

#### 1. Momentum- key House republicans are tackling legalization, multiple defections for a comprehensive approach, comprehensive lobbying is opening possibilities. Prefer predictive evidence- The democratic bill is bipartisan, which means more people will move there over time- that’s 1NC Nowicki.

**Will pass with Obama leadership**

**Sanders 10/28**, Bob Ray Sanders, columnist for the Fort Worth Star-Telegram, “There’s no better time for Obama to push immigration reform,” October 28, 2013, <http://articles.sun-sentinel.com/2013-10-28/news/fl-bscol-immigration-oped1028-20131028_1_immigration-bill-immigration-reform-house-speaker-john-boehner>

Just a few months ago, **immigration reform looked promising, garnering bipartisan support in the Senate**. A measure that was long overdue passed the upper chamber in Congress last June, **but has been stalled in the House** as recalcitrant Republicans simply couldn't stomach the idea of providing a path to citizenship for the millions of illegal immigrants already in the country.¶ **While the Senate bill has its faults** — including adding 700 miles of new fencing along the U.S.-Mexico border **— it is a compromise that**, if passed, **would be a giant step toward** [**improvinghttp://images.intellitxt.com/ast/adTypes/icon1.png**](http://articles.sun-sentinel.com/2013-10-28/news/fl-bscol-immigration-oped1028-20131028_1_immigration-bill-immigration-reform-house-speaker-john-boehner) **the entire immigration system** and, at the same time, bringing illegal immigrants out of the shadows.¶ [**Obama**http://images.intellitxt.com/ast/adTypes/icon1.png](http://articles.sun-sentinel.com/2013-10-28/news/fl-bscol-immigration-oped1028-20131028_1_immigration-bill-immigration-reform-house-speaker-john-boehner) **got re-elected partly on his promise to pursue the issue aggressively**, receiving 71 percent of the Latino vote. He has not been as aggressive as many would like, even though they're willing to cut him a little slack because of all the uncontrollable international crises and manufactured domestic distractions (like the shutdown of the government) he has had to deal with.¶ **But he shouldn't let anything get in his way this time, even though Republicans in the House are vowing not to negotiate** with him because the president stood his ground and refused to negotiate on his healthcare law in connection with raising the debt ceiling and ending the [governmenthttp://images.intellitxt.com/ast/adTypes/icon1.png](http://articles.sun-sentinel.com/2013-10-28/news/fl-bscol-immigration-oped1028-20131028_1_immigration-bill-immigration-reform-house-speaker-john-boehner) shutdown.¶ House Speaker John **Boehner,** who has refused to bring the Senate bill to a vote, has **said he won't bring any immigration legislation to the floor until a majority of his Republican caucus agrees**.¶ That, in effect, means never. Or, if there is a bill that the majority of his party would support, you can almost bet it will be terribly inadequate, one that would not pass the Senate and one that the president wouldn't sign if it did.¶ **Boehner**, who has been on the losing end a lot lately, **ought to be pressured into bringing the Senate bill to a vote**. It's clear that on many of the important matters facing this country, the majority of his party in the House will reject just about anything the president supports.¶ Therefore, **it will be left up to the House Democrats and the moderate Republicans who are not afraid of the "tea party" to get an immigration bill passed**.¶ Since the government shutdown fiasco, in which the GOP unmistakably was the loser, **the president has the upper hand, and he should take the opportunity to press forward with his agenda**.¶ **By no means am I suggesting that Obama become a bully or deliberately attempt to undermine Boehner's leadership, but he shouldn't back away from this fight again.**

**Shutdown decreased tea party influence in CIR**

**Horowitz 10-29** (Rob Horowitz is a strategic and communications consultant who provides general consulting, public relations, direct mail services and polling for national and state issue organizations, various non-profits and elected officials and candidates. He is an Adjunct Professor of Political Science at the University of Rhode Island. GoLocal Prov, "Rob Horowitz: Comprehensive Immigration Reform Is Back", http://www.golocalprov.com/politics/rob-horowitz-comprehensive-immigration-reform-is-back/, 10-29-13)

**There is still strong entrenched hard line right wing opposition in the House to immigration reform. But the fallout from the recent shutdown fight has made business leaders and organizations who were dismayed at the apparent willingness of the Tea Party wing of the House Republicans to risk economic havoc, more determined than ever to stand up and fight on issues like immigration reform, which they strongly believe will be a big economic boost and good for the nation as a whole**.

### A2 Healthcare Thumper

#### No impact- Sebelius gets the blame

Page, 10-30 – USA TODAY Washington bureau chief

[Susan, "First Take: For Obama, the value of a lightning rod," USA Today, 10-31-13, www.usatoday.com/story/news/politics/2013/10/30/first-take-sebelius-value-as-lightning-rod-for-obama/3312591/, accessed 10-31-13, mss]

First Take: For Obama, the value of a lightning rod

Despite Republican demands for her resignation, Kathleen Sebelius is likely to keep her job as secretary of Health and Human Services and her role as the public face of the Affordable Care Act. After more than three hours of being grilled at a House committee Wednesday, the better question might be why, exactly, does she want it? After apologizing to Americans for this month's troubled rollout of the federal health-exchange website, Sebelius told the Energy and Commerce Committee that she was the one who should be held responsible. "Hold me accountable for the debacle," she said when Rep. Marsha Blackburn, R-Tenn., suggested one of her deputies was to blame. "I'm responsible." Later, Rep. Gregg Harper, R-Miss., argued that President Obama should bear the ultimate responsibility. "No, sir, we are responsible," Sebelius replied. When he persisted, she finally said with exasperation, "Whatever — yes, he is the president." Whether she is responsible or not, there is little chance Obama would demand or even desire Sebelius' exit from the hot seat. For a president under fire, having an aide who has become a lightning rod during a controversy in fact can be a useful division of duties. Soon after Sebelius finally left the hearing room, Obama was boarding Air Force One to make a speech about his signature health care law before an audience in Boston,

**Zero impact on Obama – Sebelius is taking all the heat**

**Condon 10/30,** Stephanie Condon, political correspondent for CBS News, “Sebelius: ‘Hold Me Accountable for the Debacle’ of HealthCare.gov,” October 30, 2013, <http://www.cbsnews.com/8301-250_162-57609977/sebelius-hold-me-accountable-for-the-debacle-of-healthcare.gov/>

**Health and Human Services Secretary** Kathleen **Sebelius** on Wednesday **offered the Obama administration's second formal apology to the American people for HealthCare.gov, the dysfunctional Obamacare website. "You deserve better, I apologize,"** Sebelius said to the public in her opening remarks to the House Energy and Commerce Committee. **"I'm accountable to you... I'm committed to earning your confidence back by fixing the site.**"¶ The secretary acknowledged that since HealthCare.gov launched on Oct. 1, the experience of trying to sign up for a private insurance plan on the site has been "miserably frustrating" for many people. She assured the committee and the public that "we have a plan in place" to fix the site and reiterated the administration's promise to have it working for the vast majority of visitors by the end of November.¶ Sebelius said that even though the site isn't "fully functioning," consumers are using it "every day" and they have "plenty of time" to sign up -- the open enrollment period lasts through the end of March.¶ **Rep**. Marsha **Blackburn**, R-Tenn., **asked Sebelius who is "responsible for this debacle," to which Sebelius replied, "Hold me accountable for the debacle. I'm responsible."**¶

### Primary

#### Recent backing proves immigration coming now

Lee, 10-30 -- Think Progress immigration reporter

[Esther Yu-Hsi, "Third House Republican Backs Democrats’ Immigration Reform Bill," thinkprogress.org/immigration/2013/10/30/2862871/house-republican-supports-democrats-immigration/, accessed 10-31-13, mss]

On Wednesday, Rep. David Valadao (R-CA) became the third House Republican to support an immigration reform bill introduced by Democrats, helping to build momentum for a vote by the end of the congressional year. Valadao’s support follows two other House Republicans, Reps. Jeff Denham (R-CA) and Ileana Ros-Lehtinen (R-FL) both of whom said earlier this week that they would support the bill as cosponsors. “I have been working with my colleagues on both sides of the aisle to find common ground on the issue of immigration reform. Recently, I have focused my efforts on joining with like-minded Republicans in organizing and demonstrating to Republican Leadership broad support within the Party to address immigration reform in the House by the end of the year,” stated Congressman Valadao in a press release. “By supporting H.R. 15 I am strengthening my message: Addressing immigration reform in the House cannot wait. I am serious about making real progress and will remain committed to doing whatever it takes to repair our broken immigration system.” Based on his history of immigrant-friendly policies, Valadao’s support may not necessarily be surprising. Latinos comprise 65.8 percent of the voter age population in his district. More than 75 percent of all Latino voters believe that immigration reform is incredibly important and a top priority. In early June, Valadao supported the basic framework of the Senate immigration bill. He was also only one of six House Republicans to vote against an amendment by Rep. Steve King (R-IA) that would give immigration authorities wider discretion to deport undocumented immigrants. At the time Valadao said, “That King amendment, I just didn’t think it was good policy.” Supporting immigration reform could provide a massive economic boost to Valadao’s state of California– according to a White House report, reform would increase the total personal income of California families by $29.1 billion by 2020. Immigration reform would help to expand the guest worker program in his agriculture-heavy district, which would likely create 9,426 new jobs for U.S. citizens and immigrants in the agriculture, retail trade, and construction sector. Like Rep. Joe Garcia (D-FL) who introduced the House Democrats’ bill, Valadao may have a personal reason for supporting immigration reform. His parents are Portuguese immigrants and he is fluent in Portuguese and Spanish. Valadao’s public support lends **additional bipartisanship** to what had been a strictly Democratic bill up until a week ago. And it’s something that Denham– the first House Republican to support the immigration bill– hoped to break during a Google Hangout interview with Garcia on Wednesday. During the Google Hangout, Denham said, “I believe it’s critical to get it done this year. If we don’t get it done, we’ll have to deal with Continuing Resolution issues, like the budget. These are issues that have deadlines. The challenge for immigration is that there is no real deadline so we need to create self-imposed deadlines. We really have to increase the pressure and the focus… ultimately, just saying no, that’s amnesty.”

**Top of Obama’s agenda now**

**Murthy Law Firm 10-28** (Murthy Law Firm specializes in US Immigration Law, "Prospects for Immigration Reform Remain Murky, Post-Shutdown", http://www.murthy.com/2013/10/28/prospects-for-immigration-reform-remain-murky-post-shutdown/, 10-28-13)

Shortly after the shutdown ended, President Obama spoke from the White House about the need to move forward with several key agenda items that were stalled "for the duration" - specifically: passing a budget, reforming our nation's immigration system, and passing the long-awaited farm bill. [See Remarks by the President on the Reopening of the Government, White House Press Office, 17.Oct.2013.] **The President's first priority, after fixing the budget - a tall order unto itself - is to pass meaningful and comprehensive immigration reform. Speaking from the State Dining Room, the President told reporters:¶ "…the Senate has already passed a bill with strong bipartisan support that would make the biggest commitment to border security in our history; would modernize our legal immigration system; make sure everyone plays by the same rules, makes sure that folks who came here illegally have to pay a fine, pay back taxes, meet their responsibilities**. That bill has already passed the Senate. And economists estimate that if that bill becomes law, our economy would be 5 percent larger two decades from now. That's $1.4 trillion in economic growth.¶ "The majority of Americans think this is the right thing to do. And it's sitting there waiting for the House to pass it. Now, if the House has ideas on how to improve the Senate bill, let's hear them. **Let's start the negotiations. But let's not leave this problem to keep festering for another year, or two years, or three years. This can and should get done by the end of the year."**

**Post shutdown GOP need a rally cry- that’s CIR**

**Glover 10-29** (Robert W. Glover is the CLAS-Honors preceptor of political science at the University of Maine where his research focuses on the politics of immigration in the United States. He is a member of the Maine Regional Network, part of the Scholars Strategy Network, Bangor Daily News, "Redemption song: Why progress on immigration reform could restore America’s faith in Congress", https://bangordailynews.com/2013/10/29/opinion/redemption-song-why-progress-on-immigration-reform-could-restore-americas-faith-in-congress/, 10-29-13)

It has been an interesting several weeks in American politics. **Partisan brinksmanship in Congress led to a 16-day government** **shutdown** estimated to have cost the American economy $24 billion (up to $72 million in Maine alone). The United States faced down the threat of breaching the debt ceiling and a default. In a recent poll, **nearly half of Americans surveyed suggested that replacing everyone in Congress might not be such a bad idea.¶ What, if anything, might Congress do to restore its tarnished reputation?¶ The U.S. Congress,** particularly the bitterly divided House of Representatives, **needs to show the American people that it is capable of taking on hard issues and actually producing legislation. Thankfully, such an issue already exists, and the legislation designed to address it has been sitting on the desks of every member of the House: comprehensive immigration reform**.

#### Plan doesn’t avoid this- kriner

### AT: India Resiliency

#### U.S.-India relations are high but not resilient

Tellis 12 – Senior Associate, South Asia Program (Ashley J., 11/29, “A New Friendship: U.S.-India Relations,” http://carnegieendowment.org/globalten/?fa=50147)

Building on this evolution in American policy toward India since Bill Clinton, President Barack Obama has already underscored India’s strategic and economic significance for the United States. Future policies should build on Obama’s vision but even more importantly translate it into an “all of government” effort that deepens the partnership on multiple dimensions. This goal, however, could prove challenging and will require strong resolve. The second Obama term will likely confront a series of potentially serious dangers relating to Iran, Pakistan, Afghanistan, Syria, and possibly China—in addition to all the domestic challenges of accelerating a slow economic recovery. Given these realities, it is possible that the task of exploiting breakthroughs will be shortchanged amid the struggle to overcome calamities. In Washington, as in many other capitals, addressing the urgent invariably dominates engaging the important. Strong U.S.-India relations will continue to be important for American interests in the years ahead. But continuing the renovation of U.S.-India ties represents an opportunity to be realized rather than a crisis to be overcome. The difference between a distracted and a concerted effort to sustain a favorable Asian geopolitical equilibrium could set the course for the relationship. The evolving U.S.-India strategic partnership could simply languish as yet another historical curiosity embodying some vague potential or it could actually advance important common interests.

#### Comprehensive reform is key to prevent food insecurity

Gaskill ’10 (Ron Gaskill is director of congressional relations for the American Farm Bureau Federation. Worker shortage urges immigration reform efforts April 9, 2010 Season Right for Meaningful Immigration Reform By Ron Gaskill)

Even in these times of higher-than-usual unemployment, most farmers and ranchers still struggle to find all the workers they need for a successful season. Serious concerns that not enough domestic workers will choose to work in agriculture has become a harsh reality across the countryside. About 15 million people in the United States choose non-farm jobs at wages that are actually lower than what they could earn by working alongside farmers and ranchers. The on-farm jobs and opportunities are there, but many workers choose not to take advantage of them. The issue is rapidly moving from one centered on a lack of resources, to one with food insecurity at its heart. Farmers and ranchers are the ones being squeezed; caught between a domestic labor force that doesn’t want agricultural work, government policy that fails to recognize the seriousness of the problem and an administration that consistently makes it harder to hire workers. U.S. consumers will continue to eat fresh fruits and vegetables regardless of how the labor scenario ultimately plays out. But, whether or not those fruits and vegetables are grown in the U.S. or imported from other countries where labor is more plentiful greatly concerns Farm Bureau. It’s past time for our nation’s policymakers to translate grassroots concern into meaningful action. As much as we believe in a farmer’s right to farm, Farm Bureau fully respects the right of U.S. workers to choose other lines of work. But, on the flip side, as employers, we must be able to legally employ those who do want to work, even if they’re from other countries. Comprehensive immigration reform is needed, so that America’s farmers and ranchers can continue to produce an abundant supply of safe, healthy food, as well as renewable fuels and fiber for our nation.

#### **And food scarcity leads to World War 3**

Calvin 98- William H. Calvin, Theoretical Neurophysiologist @ the University of Washington, January 1998, "The great climate flip-flop," The Atlantic Monthly 281(1):47-64, http://williamcalvin.com/1990s/1998AtlanticClimate.htm, ACC: 6.28.07, p. online

The population-crash scenario is surely the most appalling. Plummeting crop yields will cause some powerful countries to try to take over their neighbors or distant lands — if only because their armies, unpaid and lacking food, will go marauding, both at home and across the borders. The better-organized countries will attempt to use their armies, before they fall apart entirely, to take over countries with significant remaining resources, driving out or starving their inhabitants if not using modern weapons to accomplish the same end: eliminating competitors for the remaining food. This will be a worldwide problem — and could easily lead to a Third World War — but Europe's vulnerability is particularly easy to analyze. The last abrupt cooling, the Younger Dryas, drastically altered Europe's climate as far east as Ukraine. Present-day Europe has more than 650 million people. It has excellent soils, and largely grows its own food. It could no longer do so if it lost the extra warming from the North Atlantic.