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#### Obama’s PC causing congressional backdown on sanctions now – but could easily flare up again

Pak Tribune January 31, 2014 “Obama repels new Iran sanctions push, for now” http://paktribune.com/news/Obama-repels-new-Iran-sanctions-push-for-now-266486.html

President Barack Obama appears to have prevailed, for now, in a campaign to stop Congress from passing new sanctions on Iran he fears could derail nuclear diplomacy.¶ Several Democratic senators who previously backed a bipartisan sanctions bill publicly stepped back after Obama threatened a veto during his State of the Union address on Tuesday.¶ Several sources familiar with behind-the-scenes maneuvering on the bill say a number of other Democratic senators signed up for more sanctions had privately recoiled from a damaging vote against their own president. The developments appear, in the short term, to have checked momentum behind the bill, which had appeared headed for a veto-proof majority in Congress.¶ "I am strongly supporting the bill but I think a vote is unnecessary right now as long as there's visible and meaningful progress" in the negotiations, Senator Richard Blumenthal told AFP, after first expressing reservations earlier this month.¶ Democratic Senator Chris Coons made a similar declaration at a post-State of the Union event hosted by Politico.¶ "Now is not the time for a vote on an Iran sanctions bill," he said. Another Democratic Senator, Joe Manchin, now hopes Senate Majority Leader Harry Reid will not bring it up.¶ "I did not sign it with the intention that it would ever be voted upon or used upon while we're negotiating," Manchin told MSNBC television.¶ "I signed it because I wanted to make sure the president had a hammer if he needed it and showed him how determined we were to do it and use it if we had to." The White House mounted an intense campaign against a bill it feared would undermine Tehran's negotiators with conservatives back home or prompt them to ditch diplomacy.¶ Obama aides infuriated pro-sanctions senators by warning the measure could box America into a march to war to halt Tehran's nuclear program if diplomacy died.¶ The campaign included a letter to Reid from Democratic committee chairs urging he put off a sanctions vote.¶ Another letter was orchestrated from a group of distinguished foreign policy experts.¶ Multi-faith groups also weighed in and coordinated calls from constituents backing Obama on nuclear diplomacy poured into offices of key Democrats. The campaign appears for now to have overpowered the pro-sanctions push by hawkish senators and the Israel lobby, whose doubts on the Iran nuclear deal mirror those of Israeli Prime Minister Benjamin Netanyahu. Senator Johnny Isakson, a Republican co-sponsor of the legislation, said: "It looks like we're kind of frozen in place."¶ Those behind the anti-sanctions campaign though privately concede they may have won a battle, not a war.¶ The push for new sanctions will flare again ahead of the American Israel Public Affairs Committee's (AIPAC) annual conference in March, which Netanyahu is expected to address. It could also recur if the talks on a final pact extend past the six-month window set by the interim deal.¶ But for now, groups that supported the push against sanctions celebrated.¶ "This is a major victory, a crucial victory for the American public who don't want to see a war," said Kate Gould of the Friends Committee on National Legislation.¶ "For right now, it looks like it's not going to be brought up," she said but warned "there'll be other efforts to try and sabotage the process."

#### The plan is a huge loss for Obama –Democrats cracking down on war powers makes Obama look weak

Paterno 6/23/2013 (Scott, Writer for Rock the Capital, “Selfish Obama” http://www.rockthecapital.com/06/23/selfish-obama/)

Now we have a Democratic president who wants to make war and does not want to abide by the War Powers Resolution. But rather than truly test the constitutionality of the measure, he is choosing to simply claim that THIS use of US military power is not applicable.¶ This is an extraordinarily selfish act, and one liberals especially should fear. POTUS is setting a precedent that subsequent presidents will be able to use – presidents that the left might not find so “enlightened.” Left as is, President Obama has set a standard where the president can essentially attack anywhere he wants without congressional approval for as long as he wants so long as he does not commit ground forces.¶ That is an extraordinarily selfish act. Why selfish? Because the president is avoiding congress because he fears a rebuke – from his own party, no less. The politically safe way to both claim to be decisive and to not face political defeat at the hands of Democrats – a defeat that would signal White House weakness – is to avoid congress all together. Precedent be damned, there is an election to win after all.

#### Collapse of negotiations causes proliferation in the Middle East –

Kearn 1/19/14 (David, Assistant Prof at St. John's University, The Folly of New Iran Sanctions, The Huffington Post)

More pessimistic observers disagree and take much less comfort in the history of proliferation. The historical record, including the evidence of risky crisis-initiation behavior between the two Superpowers paints a less sanguine picture. More importantly, looking at the modern Middle East, an Iranian bomb would potentially transform regional security dynamics. Given the region's geography and its particular vulnerability to nuclear attack, Israel (an undeclared nuclear power) would be on high-alert for any Iranian move. Other actors like Saudi Arabia may seek to acquire their own nuclear deterrent, leading to further proliferation within a region which is already flush with radical terrorist organizations operating across various troubled states. It seems implausible that Tehran's leaders could ever believe that the delivery of a nuclear weapon on Israeli soil by Hezbollah, rather than missile would somehow go unattributed or unpunished, but the introduction of an Iranian nuclear weapons program into a region that is already so tumultuous conjures particularly grim scenarios.

#### Escalates to full scale war and causes extinction

WIMBUSH ‘7 - Hudson Institute Senior Fellow, Center for Future Security Strategies Director (S. Enders, “The End of Deterrence: A nuclear Iran will change everything.” The Weekley Standard. 1/11/2007, http://www.weeklystandard.com/Utilities/printer\_preview.asp?idArticle=13154&R=162562FD5A)

Iran is fast building its position as the Middle East's political and military hegemon, a position that will be largely unchallengeable once it acquires nuclear weapons. A nuclear Iran will change all of the critical strategic dynamics of this volatile region in ways that threaten the interests of virtually everyone else. The outlines of some of these negative trends are already visible, as other actors adjust their strategies to accommodate what increasingly appears to be the emerging reality of an unpredictable, unstable nuclear power. Iran needn't test a device to shift these dangerous dynamics into high gear; that is already happening. By the time Iran tests, the landscape will have changed dramatically because everyone will have seen it coming. The opportunities nuclear weapons will afford Iran far exceed the prospect of using them to win a military conflict. Nuclear weapons will empower strategies of coercion, intimidation, and denial that go far beyond purely military considerations. Acquiring the bomb as an icon of state power will enhance the legitimacy of Iran's mullahs and make it harder for disgruntled Iranians to oust them. With nuclear weapons, Iran will have gained the ability to deter any direct American threats, as well as the leverage to keep the United States at a distance and to discourage it from helping Iran's regional opponents. Would the United States be in Iraq if Saddam had had a few nuclear weapons and the ability to deliver them on target to much of Europe and all of Israel? Would it even have gone to war in 1991 to liberate Kuwait from Iraqi aggression? Unlikely. Yet Iran is rapidly acquiring just such a capability. If it succeeds, a relatively small nuclear outcast will be able to deter a mature nuclear power. Iran will become a billboard advertising nuclear weapons as the logical asymmetric weapon of choice for nations that wish to confront the United States. It should surprise no one that quiet discussions have already begun in Saudi Arabia, Egypt, Turkey, and elsewhere in the Middle East about the desirability of developing national nuclear capabilities to blunt Iran's anticipated advantage and to offset the perceived decline in America's protective power. This is just the beginning. We should anticipate that proliferation across Eurasia will be broad and swift, creating nightmarish challenges. The diffusion of nuclear know-how is on the verge of becoming impossible to impede. Advanced computation and simulation techniques will eventually make testing unnecessary for some actors, thereby expanding the possibilities for unwelcome surprises and rapid shifts in the security environment. Leakage of nuclear knowledge and technologies from weak states will become commonplace, and new covert supply networks will emerge to fill the gap left by the neutralization of Pakistani proliferator A. Q. Khan. Non-proliferation treaties, never effective in blocking the ambitions of rogues like Iran and North Korea, will be meaningless. Intentional proliferation to state and non-state actors is virtually certain, as newly capable states seek to empower their friends and sympathizers. Iran, with its well known support of Hezbollah, is a particularly good candidate to proliferate nuclear capabilities beyond the control of any state as a way to extend the coercive reach of its own nuclear politics. Arsenals will be small, which sounds reassuring, but in fact it heightens the dangers and risk. New players with just a few weapons, including Iran, will be especially dangerous. Cold War deterrence was based on the belief that an initial strike by an attacker could not destroy all an opponent's nuclear weapons, leaving the adversary with the capacity to strike back in a devastating retaliatory blow. Because it is likely to appear easier to destroy them in a single blow, small arsenals will increase the incentive to strike first in a crisis. Small, emerging nuclear forces could also raise the risk of preventive war, as leaders are tempted to attack before enemy arsenals grow bigger and more secure. Some of the new nuclear actors are less interested in deterrence than in using nuclear weapons to annihilate their enemies. Iran's leadership has spoken of its willingness--in their words--to "martyr" the entire Iranian nation, and it has even expressed the desirability of doing so as a way to accelerate an inevitable, apocalyptic collision between Islam and the West that will result in Islam's final worldwide triumph. Wiping Israel off the map--one of Iran's frequently expressed strategic objectives--even if it results in an Israeli nuclear strike on Iran, may be viewed as an acceptable trade-off. Ideological actors of this kind may be very different from today's nuclear powers who employ nuclear weapons as a deterrent to annihilation. Indeed, some of the new actors may seek to annihilate others and be annihilated, gloriously, in return. What constitutes deterrence in this world? Proponents of new non-proliferation treaties and many European strategists speak of "managing" a nuclear Iran, as if Iran and the new nuclear actors that will emerge in Iran's wake can be easily deterred by getting them to sign documents and by talking nicely to them. This is a lethal naiveté. We have no idea how to deter ideological actors who may even welcome their own annihilation. We do not know what they hold dear enough to be deterred by the threat of its destruction. Our own nuclear arsenal is robust, but it may have no deterrent effect on a nuclear-armed ideological adversary. This is the world Iran is dragging us into. Can they be talked out of it? Maybe. But it is getting very late to slow or reverse the momentum propelling us into this nuclear no-man's land. We should be under no illusion that talk alone--"engagement"--is a solution. Nuclear Iran will prompt the emergence of a world in which nuclear deterrence may evaporate, the likelihood of nuclear use will grow, and where deterrence, once broken, cannot be restored.

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#### The Counsel to the President of the United States should request to the Office of Legal Counsel for legal counsel and coordination on the President’s war powers authority. The Office of Legal Counsel should advise the President that he should require that persons detained indefinitely receive either civilian trials or be released.

**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 deflects loss/blame on the President

POSNER 2011 - Kirkland & Ellis Professor, University of Chicago Law School (Eric A. Posner, “Deference To The Executive In The United States After September 11: Congress, The Courts, And The Office Of Legal Counsel”, http://www.harvard-jlpp.com/wp-content/uploads/2012/01/PosnerFinal.pdf)

However, there is an important twist that complicates the analysis. The president may choose to publicize OLC’s opinions. Naturally, the president will be tempted to publicize only favorable opinions. When Congress 22 claims that a policy is illegal, the president can respond that his lawyers advised him that the policy is legal. This response at least partially deflects blame from the president. There are two reasons for this. First, the Senate consented to the appointment of these lawyers; thus, if the lawyers gave bad advice, the Senate is partly to blame, and so the blame must be shared. Second, OLC lawyers likely care about their future prospects in the legal profession, which will turn in part on their ability to avoid scandals and to render plausible legal advice; they may also seek to maintain the office’s reputation. When OLC’s opinions are not merely private advice, but are used to justify actions, then OLC takes on a quasi-judicial function. Presidents are not obliged to publicize OL C’s opinions, but clearly they see an advantage to doing so, and they have in this way given OLC quasi-judicial status.

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#### The aff results in catastrophic terrorism---releases terrorists and kills intel gathering

Jack Goldsmith 9, 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.

**High risk of nuke terror---escalates and turns the case because civil-liberties crackdowns**

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Hundreds of scientific papers and reports have been published on nuclear terrorism. International conferences have been held on this threat with participation of Russian organizations, including IMEMO and the Institute of U.S. and Canadian Studies. Recommendations on how to combat the threat have been issued by the International Luxembourg Forum on Preventing Nuclear Catastrophe, Pugwash Conferences on Science and World Affairs, Russian-American Elbe Group, and other organizations. The UN General Assembly adopted the International Convention for the Suppression of Acts of Nuclear Terrorism in 2005 and cooperation among intelligence services of leading states in this sphere is developing.¶ At the same time, these efforts fall short for a number of reasons, partly because various acts of nuclear terrorism are possible. Dispersal of radioactive material by detonation of conventional explosives (“dirty bombs”) is a method that is most accessible for terrorists. With the wide spread of radioactive sources, raw materials for such attacks have become much more accessible than weapons-useable nuclear material or nuclear weapons. The use of “**dirty bombs**” will not cause many immediate casualties, but it will result into long-term radioactive contamination, contributing to the spread of **panic and socio-economic destabilization**.¶ Severe **consequences can be caused by sabotaging nuclear power plants, research reactors, and radioactive materials storage facilities. Large cities are especially vulnerable to such attacks. A large city may host dozens of research reactors with a nuclear power plant or a couple of spent nuclear fuel storage facilities and dozens of large radioactive materials storage facilities located nearby.** The past few years have seen significant efforts made to enhance organizational and physical aspects of security at facilities, especially at nuclear power plants. Efforts have also been made to improve security culture. But these efforts do not preclude the possibility that **well-trained terrorists may be able to penetrate nuclear facilities**.¶ Some estimates show that sabotage of a research reactor in a metropolis may expose hundreds of thousands to high doses of radiation. A formidable part of the city would become uninhabitable for a long time.¶ Of all the scenarios, it is building an improvised nuclear device by terrorists that poses the maximum risk. **There are no engineering problems that cannot be solved if terrorists decide to build a simple “gun-type” nuclear device.** Information on the design of such devices, as well as implosion-type devices, is available in the public domain. It is the acquisition of weapons-grade uranium that presents the sole serious obstacle. Despite numerous preventive measures taken, we cannot rule out the possibility that such materials can be bought on the black market. **Theft of weapons-grade uranium is also possible**. Research reactor fuel is considered to be particularly vulnerable to theft, as it is scattered at sites in dozens of countries. There are about 100 research reactors in the world that run on weapons-grade uranium fuel, according to the International Atomic Energy Agency (IAEA).¶ A terrorist “gun-type” uranium bomb can have a yield of least 10-15 kt, which is **comparable to the yield of the bomb dropped on Hiroshima**. The explosion of such a bomb in a modern metropolis can kill and wound hundreds of thousands and cause serious economic damage. There will also be long-term sociopsychological and political consequences.¶ The vast majority of states have introduced unprecedented security and surveillance measures at transportation and other large-scale public facilities after the terrorist attacks in the United States, Great Britain, Italy, and other countries. These measures have proved burdensome for the countries’ populations, but the public has accepted them as necessary. A nuclear terrorist attack will make the public accept further measures meant to enhance control even if these measures significantly restrict the democratic liberties they are accustomed to. Authoritarian states could be expected to adopt even more restrictive measures.¶ If a nuclear terrorist act occurs, nations will delegate tens of thousands of their secret services’ best personnel to investigate and attribute the attack. Radical Islamist groups are among those capable of such an act. We can imagine what would happen if they do so, given the anti-Muslim sentiments and resentment that conventional terrorist attacks by Islamists have generated in developed democratic countries. Mass deportation of the non-indigenous population and severe sanctions would follow such an attack in what will cause **violent protests in the Muslim world**. **Series of armed clashing terrorist attacks may follow**. The prediction that Samuel Huntington has made in his book “The Clash of Civilizations and the Remaking of World Order” may come true. Huntington’s book clearly demonstrates that it is not Islamic extremists that are the cause of the Western world’s problems. Rather there is a deep, intractable conflict that is rooted in the fault lines that run between Islam and Christianity. This is especially dangerous for Russia because these fault lines run across its territory. To sum it up, the political leadership of Russia has every reason to revise its list of factors that could undermine strategic stability.  BMD does not deserve to be even last on that list because its effectiveness in repelling massive missile strikes will be extremely low. BMD systems can prove useful only if deployed to defend against launches of individual ballistic missiles or groups of such missiles. Prioritization of other destabilizing factors—that could affect global and regional stability—merits a separate study or studies. But even without them I can conclude that nuclear terrorism should be placed on top of the list. **The threat of nuclear terrorism is real, and a successful nuclear terrorist attack would lead to a radical transformation of the global order**.  All of the threats on the revised list must become a subject of thorough studies by experts. States need to work hard to forge a common understanding of these threats and develop a strategy to combat them.

**Terrorism causes extinction---hard-line responses are key**

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Several powerful trends have aligned to profoundly change the way that the world works. Technology ¶ now allows stateless groups to organize, recruit, and fund ¶ themselves in an unprecedented fashion. That, coupled ¶ with the extreme difficulty of finding and punishing a stateless group, means that stateless groups are positioned to be ¶ lead players on the world stage. They may act on their own, ¶ or they may act as proxies for nation-states that wish to ¶ duck responsibility. Either way, stateless groups are forces ¶ to be reckoned with.¶ At the same time, a different set of technology trends ¶ means that small numbers of people can obtain incredibly ¶ lethal power. Now, for the first time in human history, a ¶ small group can be as lethal as the largest superpower. Such ¶ a group could execute an attack that could kill millions of ¶ people. It is technically feasible for such a group to kill billions of people, to end modern civilization—perhaps even ¶ to drive the human race to extinction. Our defense establishment was shaped over decades to ¶ address what was, for a long time, the only strategic threat ¶ our nation faced: Soviet or Chinese missiles. More recently, ¶ it has started retooling to address tactical terror attacks like ¶ those launched on the morning of 9/11, but the reform ¶ process is incomplete and inconsistent. A real defense will ¶ require rebuilding our **military and intelligence capabilities** from the ground up. Yet, so far, strategic terrorism has ¶ received relatively little attention in defense agencies, and ¶ the efforts that have been launched to combat this existential threat seem fragmented.¶ History suggests what will happen. The only thing that shakes America out of complacency is a direct threat from a determined adversary that confronts us with our shortcomings by **repeatedly attacking** us or hectoring **us for decades**.

#### Terrorism studies are epistemologically and methodologically valid---our authors are self-reflexive

Michael J. Boyle 8, School of International Relations, University of St. Andrews, and John Horgan, International Center for the Study of Terrorism, Department of Psychology, Pennsylvania State University, April 2008, “A Case Against Critical Terrorism Studies,” Critical Studies On Terrorism, Vol. 1, No. 1, p. 51-64

 Jackson (2007c) calls for the development of an explicitly CTS on the basis of what he argues preceded it, dubbed ‘Orthodox Terrorism Studies’. The latter, he suggests, is characterized by: (1) its poor methods and theories, (2) its state centricity, (3) its problemsolving orientation, and (4) its institutional and intellectual links to state security projects. Jackson argues that the major defining characteristic of CTS, on the other hand, should be ‘a skeptical attitude towards accepted terrorism “knowledge”’. **An implicit presumption from this is that terrorism scholars have laboured for all of these years without being aware that their area of study has an implicit bias, as well as definitional and methodological** **problems**. In fact**, terrorism scholars are not only well aware of these problems, but also have provided their own** searching **critiques** of the field at various points during the last few decades (e.g. Silke 1996, Crenshaw 1998, Gordon 1999, Horgan 2005, esp. ch. 2, ‘Understanding Terrorism’). **Some of those scholars** most associated with the critique of empiricismimplied in ‘Orthodox Terrorism Studies’ **have also engaged in deeply critical examinations of the nature of sources, methods, and data in the study of terrorism**. For example, Jackson (2007a) regularly cites the handbook produced by **Schmid and Jongman** (1988) to support his claims that theoretical progress has been limited. But this fact was well recognized by the authors; indeed, in the introduction of the second edition they **point out** that they have not revised their chapter on theories of terrorism from the first edition, because the **failure to address** persistent conceptual and **data problems** has undermined progress in the field. The point of their handbook was to sharpen and make more comprehensive the result of research on terrorism, not to glide over its methodological and definitional failings (Schmid and Jongman 1988, p. xiv). Similarly, **Silke’s** (2004) **volume on the state of the field of terrorism research performed a similar function**, highlighting the shortcomings of the field, in particular the lack of rigorous primary data collection. **A non-reflective community of scholars does not produce such scathing indictments of its own work.**

### 1NC

#### Exec flexibility on detention powers now

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

#### The aff constrains us war powers would uniquely decimate Obama and the military’s ability to calm alliances and deter enemies ---- global conflict and global nuclear war more likely

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

As a prescriptive matter, Part II also shows that examination of threatened force and the credibility requirements for its effectiveness calls into question many orthodoxies of the policy advantages and risks attendant to various allocations of legal war powers, including the existing one and proposed reforms.23 Most functional arguments about war powers focus on fighting wars or hostile engagements, but that is not all – or even predominantly – what the United States does with its military power. Much of the time it seeks to avert such clashes while achieving its foreign policy objectives: to bargain, coerce, deter.24 The President’s flexibility to use force in turn affects decision-making about threatening it, with major implications for securing peace or dragging the United States into conflicts. Moreover, constitutional war power allocations affect potential conflicts not only because they may constrain U.S. actions but because they may send signals and shape other states’ (including adversaries’) expectations of U.S. actions.25 That is, most analysis of war-powers law is inward-looking, focused on audiences internal to the U.S. government and polity, but thinking about threatened force prompts us to look outward, at how war-powers law affects external perceptions among adversaries and allies. Here, extant political science and strategic studies offer few clear conclusions, but they point the way toward more sophisticated and realistic policy assessment of legal doctrine and proposed reform. More generally, as explained in Part III, analysis of threatened force and war powers exposes an under-appreciated relationship between constitutional doctrine and grand strategy. Instead of proposing a functionally optimal allocation of legal powers, as legal scholars are often tempted to do, this Article in the end denies the tenability of any such claim. Having identified new spaces of war and peace powers that legal scholars need to take account of in understanding how those powers are really exercised, this Article also highlights the extent to which any normative account of the proper distribution of authority over this area depends on many matters that cannot be predicted in advance or expected to remain constant.26 Instead of proposing a policy-optimal solution, this Article concludes that the allocation of constitutional war powers is – and should be –geopolitically and strategically contingent; the actual and effective balance between presidential and congressional powers over war and peace in practice necessarily depends on fundamental assumptions and shifting policy choices about how best to secure U.S. interests against potential threats.27 I. Constitutional War Powers and Threats of Force Decisions to go to war or to send military forces into hostilities are immensely consequential, so it is no surprise that debates about constitutional war powers occupy so much space. But one of the most common and important ways that the United States uses its military power is by threatening war or force – and the constitutional dimensions of that activity receive almost no scrutiny or even theoretical investigation. A. War Powers Doctrine and Debates The Constitution grants Congress the powers to create military forces and to “declare war,”28 which the Supreme Court early on made clear includes the power to authorize limited uses of force short of full-blown war.29 The Constitution then vests the President with executive power and designates him commander in chief of the armed forces,30 and it has been well-accepted since the Founding that these powers include unilateral authority to repel invasions if the United States is attacked.31 Although there is nearly universal acceptance of these basic starting points, there is little legal agreement about how the Constitution allocates responsibility for the vast bulk of cases in which the United States has actually resorted to force. The United States has declared war or been invaded only a handful of times in its history, but it has used force – sometimes large-scale force – hundreds of other times.32 Views split over questions like when, if ever, the President may use force to deal with aggression against third parties and how much unilateral discretion the President has to use limited force short of full-blown war. For many lawyers and legal scholars, at least one important methodological tool for resolving such questions is to look at historical practice, and especially the extent to which the political branches acquiesced in common practices.33 Interpretation of that historical practice for constitutional purposes again divides legal scholars, but most would agree at least descriptively on some basic parts of that history. In particular, most scholars assess that from the Founding era through World War II, Presidents and Congresses alike recognized through their behavior and statements that except in certain narrow types of contingencies, congressional authorization was required for large-scale military operations against other states and international actors, even as many Presidents pushed and sometimes crossed those boundaries.34 Whatever constitutional constraints on presidential use of force existed prior to World War II, however, most scholars also note that the President asserted much more extensive unilateral powers to use force during and after the Cold War, and many trace the turning point to the 1950 Korean War.35 Congress did not declare war in that instance, nor did it expressly authorize U.S. participation.36 From that point forward, presidents have asserted broad unilateral authority to use force to address threats to U.S. interests, including threats to U.S. allies, and that neither Congress nor courts pushed back much against this expanding power.37 Concerns about expansive presidential war-making authority spiked during the Vietnam War. In the wind-down of that conflict, Congress passed – over President Nixon’s veto – the War Powers Resolution,38 which stated its purpose as to ensure the constitutional Founders’ original vision that the “collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.”39 Since then, presidentialists have argued that the President still retains expansive authority to use force abroad to protect American interests,40 and congressionalists argue that this authority is tightly circumscribed.41 These constitutional debates have continued through the first decade of the 21st century. Constitutional scholars split, for example, over President Obama’s power to participate in coalition operations against Libya without congressional authorization in 2011, especially after the War Powers Resolution’s 60-day clock expired.42 Some argue that President Obama’s use of military force without specific congressional authorization in that case reflects the broad constitutional discretion presidents now have to protect American interests, at least short of full-blown “war”, while others argue that it is the latest in a long record of presidential violations of the Constitution and the War Powers Resolution.43 B. Threats of Force and Constitutional Powers These days it is usually taken for granted that – whether or not he can make war unilaterally – the President is constitutionally empowered to threaten the use of force, implicitly or explicitly, through diplomatic means or shows of force. It is never seriously contested whether the President may declare that United States is contemplating military options in response to a crisis, or whether the President may move substantial U.S. military forces to a crisis region or engage in military exercises there. To take the Libya example just mentioned, is there any constitutional limitation on the President’s authority to move U.S. military forces to the Mediterranean region and prepare them very visibly to strike?44 Or his authority to issue an ultimatum to Libyan leaders that they cease their brutal conduct or else face military action? Would it matter whether such threats were explicit versus implicit, whether they were open and public versus secret, or whether they were just a bluff? If not a constitutional obstacle, could it be argued that the War Powers Resolution’s reporting requirements and limits on operations were triggered by a President’s mere ultimatum or threatening military demonstration, insofar as those moves might constitute a “situation where imminent involvement in hostilities is clearly indicated by the circumstances”? These questions simply are not asked (at least not anymore).45 If anything, most lawyers would probably conclude that the President’s constitutional powers to threaten war are not just expansive but largely beyond Congress’s authority to regulate directly. From a constitutional standpoint, to the extent it is considered at all, the President’s power to threaten force is probably regarded to be at least as broad as his power to use it. One way to look at it is that the power to threaten force is a lesser included element of presidential war powers; the power to threaten to use force is simply a secondary question, the answer to which is bounded by the primary issue of the scope of presidential power to actually use it. If one interprets the President’s defensive war powers very broadly, to include dealing with aggression not only directed against U.S. territories but also against third parties,46 then it might seem easy to conclude that the President can also therefore take steps that stop short of actual armed intervention to deter or prevent such aggression. If, however, one interprets the President’s powers narrowly, for example, to include only limited unilateral authority to repel attacks against U.S. territory,47 then one might expect objections to arguably excessive presidential power to include his unilateral threats of armed intervention. Another way of looking at it is that in many cases, threats of war or force might fall within even quite narrow interpretations of the President’s inherent foreign relations powers to conduct diplomacy or his express commander in chief power to control U.S. military forces – or some combination of the two – depending on how a particular threat is communicated. A President’s verbal warning, ultimatum, or declared intention to use military force, for instance, could be seen as merely exercising his role as the “sole organ” of U.S. foreign diplomacy, conveying externally information about U.S. capabilities and intentions.48 A president’s movement of U.S. troops or warships to a crisis region or elevation of their alert level could be seen as merely exercising his dayto- day tactical control over forces under his command.49 Generally it is not seriously contested whether the exercise of these powers alone could so affect the likelihood of hostilities or war as to intrude on Congress’s powers over war and peace.50 We know from historical examples that such unilateral military moves, even those that are ostensibly pure defensive ones, can provoke wars – take, for example, President Polk’s movement of U.S. forces to the contested border with Mexico in 1846, and the resulting skirmishes that led Congress to declare war.51 Coming at the issue from Congress’s Article I powers rather than the President’s Article II powers, the very phrasing of the power “To declare War” puts most naturally all the emphasis on the present tense of U.S. military action, rather than its potentiality. Even as congressionalists advance interpretations of the clause to include not merely declarative authority but primary decision-making authority as to whether or not to wage war or use force abroad, their modern-day interpretations do not include a power to threaten war (except perhaps through the specific act of declaring it). None seriously argues – at least not any more – that the Declare War Clause precludes presidential threats of war. This was not always the case. During the early period of the Republic, there was a powerful view that beyond outright initiation of armed hostilities or declaration of war, more broadly the President also could not unilaterally take actions (putting aside actual military attacks) that would likely or directly risk war,52 provoke a war with another state,53 or change the condition of affairs or relations with another state along the continuum from peace to war.54 To do so, it was often argued, would usurp Congress’s prerogative to control the nation’s state of peace or war.55 During the Quasi-War with France at the end of the 18th century, for example, some members of Congress questioned whether the President, absent congressional authorization, could take actions that visibly signaled an intention to retaliate against French maritime harassment,56 and even some members of President Adams’ cabinet shared doubts.57 Some questions over the President’s power to threaten force arose (eventually) in relation to the Monroe Doctrine, announced in an 1823 presidential address to Congress and which in effect declared to European powers that the United States would oppose any efforts to colonize or reassert control in the Western Hemisphere.58 “Virtually no one questioned [Monroe’s proclamation] at the time. Yet it posed a constitutional difficulty of the first importance.”59 Of course, Monroe did not actually initiate any military hostilities, but his implied threat – without congressional action – risked provoking rather than deterring European aggression and by putting U.S. prestige and credibility on the line it limited Congress’s practical freedom of action if European powers chose to intervene.60 The United States would have had at the time to rely on British naval power to make good on that tacit threat, though a more assertive role for the President in wielding the potential for war or intervention during this period went hand in hand with a more sustained projection of U.S. power beyond its borders, especially in dealing with dangers emanating from Spanish-held Florida territory.61 Monroe’s successor, John Quincy Adams, faced complaints from opposition members of Congress that Monroe’s proclamation had exceeded his constitutional authority and had usurped Congress’s by committing the United States – even in a non-binding way – to resisting European meddling in the hemisphere.62 The question whether the President could unilaterally send militarily-threatening signals was in some respects a mirror image of the issues raised soon after the Constitution was ratified during the 1793 Neutrality Controversy: could President Washington unilaterally declare the United States to be neutral as to the war among European powers. Washington’s politically controversial proclamation declaring the nation “friendly and impartial” in the conflict between France and Great Britain (along with other European states) famously prompted a back-and-forth contest of public letters by Alexander Hamilton and James Madison, writing pseudonymously as “Pacificus” and “Helvidius”, about whether the President had such unilateral power or whether it belonged to Congress.63 Legal historian David Currie points out the irony that the neutrality proclamation was met with stronger and more immediate constitutional scrutiny and criticism than was Monroe’s threat. After all, Washington’s action accorded with the principle that only Congress, representing popular will, should be able to take the country from the baseline state of peace to war, whereas Monroe’s action seemed (at least superficially) to commit it to a war that Congress had not approved.64 Curiously (though for reasons offered below, perhaps not surprisingly) this issue – whether there are constitutional limits on the President’s power to threaten war – has almost vanished completely from legal discussion, and that evaporation occurred even before the dramatic post-war expansion in asserted presidential power to make war. Just prior to World War II, political scientist and presidential powers theorist Edward Corwin remarked that “[o]f course, it may be argued, and has in fact been argued many times, that the President is under constitutional obligation not to incur the risk of war in the prosecution of a diplomatic policy without first consulting Congress and getting its consent.”65 “Nevertheless,” he continued,66 “the supposed principle is clearly a maxim of policy rather than a generalization from consistent practice.” In his 1945 study World Policing and the Constitution, James Grafton Rogers noted: [E]xamples of demonstrations on land and sea made for a variety of purposes and under Presidents of varied temper and in different political climates will suffice to make the point. The Commander-in-Chief under the Constitution can display our military resources and threaten their use whenever he thinks best. The weakness in the diplomatic weapon is the possibility of dissidence at home which may cast doubt on our serious intent. The danger of the weapon is war.67 At least since then, however, the importance to U.S. foreign policy of threatened force has increased dramatically, while legal questions about it have receded further from discussion. In recent decades a few prominent legal scholars have addressed the President’s power to threaten force, though in only brief terms. Taylor Reveley noted in his volume on war powers the importance of allocating constitutional responsibility not only for the actual use of force but also “[v]erbal or written threats or assurances about the circumstances in which the United States will take military action …, whether delivered by declarations of American policy, through formal agreements with foreign entities, by the demeanor or words of American officials, or by some other sign of national intent.”68 Beyond recognizing the critical importance of threats and other non-military actions in affecting war and peace, however, Reveley made little effort to address the issue in any detail. Among the few legal scholars attempting to define the limiting doctrinal contours of presidentially threatened force, Louis Henkin wrote in his monumental Foreign Affairs and the Constitution that: Unfortunately, the line between war and lesser uses of force is often elusive, sometimes illusory, and the use of force for foreign policy purposes can almost imperceptibly become a national commitment to war. Even when he does not use military force, the President can incite other nations or otherwise plunge or stumble this country into war, or force the hand of Congress to declare or to acquiesce and cooperate in war. As a matter of constitutional doctrine, however, one can declare with confidence that a President begins to exceed his authority if he willfully or recklessly moves the nation towards war…69 The implication seems to be that the President may not unilaterally threaten force in ways that are dramatically escalatory and could likely lead to war, or perhaps that the President may not unilaterally threaten the use of force that he does not have the authority to initiate unilaterally.70 Jefferson Powell, who generally takes a more expansive view than Henkin of the President’s war powers, argues by contrast that “[t]he ability to warn of, or threaten, the use of military force is an ordinary and essential element in the toolbox of that branch of government empowered to formulate and implement foreign policy.”71 For Powell, the President is constantly taking actions as part of everyday international relations that carry a risk of military escalation, and these are well-accepted as part of the President’s broader authority to manage, if not set, foreign policy. Such brief mentions are in recent times among the rare exceptions to otherwise barren constitutional discussion of presidential powers to threaten force. That the President’s authority to threaten force is so well-accepted these days as to seem self-evident is not just an academic phenomenon. It is also reflected in the legal debates among and inside all three branches of government. In 1989, Michael Reisman observed: Military maneuvers designed to convey commitment to allies or contingent threats to adversaries … are matters of presidential competence. Congress does not appear to view as within its bailiwick many low-profile contemporaneous expressions of gunboat diplomacy, i.e., the physical interposition of some U.S. war-making capacity as communication to an adversary of United States’ intentions and capacities to oppose it.72 This was and remains a correct description but understates the pattern of practice, insofar as even major and high-profile expressions of coercive diplomacy are regarded among all three branches of government as within presidential competence. In Dellums v. Bush – perhaps the most assertive judicial scrutiny of presidential power to use large-scale force abroad since the end of the Cold War – the district court dismissed on ripeness grounds congressmembers’ suit challenging President George H. W. Bush’s intended military operations against Iraq in 1991 and seeking to prevent him from initiating an offensive attack against Iraq without first securing explicit congressional authorization for such action.73 That at the time of the suit the President had openly threatened war – through ultimatums and deployment of several hundred thousand U.S. troops – but had not yet “committed to a definitive course of action” to carry out the threat meant there was no justiciable legal issue, held the court.74 The President’s threat of war did not seem to give the district court legal pause at all; quite the contrary, the mere threat of war was treated by the court as a non-issue entirely.75 There are several reasons why constitutional questions about threatened force have dropped out of legal discussions. First, the more politically salient debate about the President’s unilateral power to use force has probably swallowed up this seemingly secondary issue. As explained below, it is a mistake to view threats as secondary in importance to uses of force, but they do not command the same political attention and their impacts are harder to measure.76 Second, the expansion of American power after World War II, combined with the growth of peacetime military forces and a set of defense alliance commitments (developments that are elaborated below) make at least some threat of force much more common – in the case of defensive alliances and some deterrent policies, virtually constant – and difficult to distinguish from other forms of everyday diplomacy and security policy.77 Besides, for political and diplomatic reasons, presidents rarely threaten war or intervention without at least a little deliberate ambiguity. As historian Marc Trachtenberg puts it: “It often makes sense … to muddy the waters a bit and avoid direct threats.”78 Any legal lines one might try to draw (recall early attempts to restrict the President’s unilateral authority to alter the state of affairs along the peacetime-wartime continuum) have become blurrier and blurrier. In sum, if the constitutional power to threaten war ever posed a serious legal controversy, it does so no more. As the following section explains, however, threats of war and armed force have during most of our history become a greater and greater part of American grand strategy, defined here as long-term policies for using the country’s military and non-military power to achieve national goals. The prominent role of threatened force in U.S. strategy has become the focus of political scientists and other students of security strategy, crises, and responses – but constitutional study has not adjusted accordingly.79 C. Threats of Force and U.S. Grand Strategy While the Korean and Vietnam Wars were generating intense study among lawyers and legal scholars about constitutional authority to wage military actions abroad, during that same period many political scientists and strategists – economists, historians, statesmen, and others who studied international conflict – turned their focus to the role of threatened force as an instrument of foreign policy. The United States was building and sustaining a massive war-fighting apparatus, but its security policy was not oriented primarily around waging or winning wars but around deterring them and using the threat of war – including demonstrative military actions – to advance U.S. security interests. It was the potential of U.S. military might, not its direct application or engagement with the enemy, that would do much of the heavy lifting. U.S. military power would be used to deter the Soviet Union and other hostile states from taking aggressive action. It would be unsheathed to prompt them to back down over disputes. It would reassure allies that they could depend on U.S. help in defending themselves. All this required that U.S. willingness to go to war be credible in the eyes of adversaries and allies alike. Much of the early Cold War study of threatened force concerned nuclear strategy, and especially deterrence or escalation of nuclear war. Works by Albert Wohlstetter, Herman Kahn, and others not only studied but shaped the strategy of nuclear threats, as well as how to use limited applications of force or threats of force to pursue strategic interests in remote parts of the globe without sparking massive conflagrations.80 As the strategic analyst Bernard Brodie wrote in 1946, “Thus far the chief purpose of our military establishment has been to win wars. From now on its chief purpose must be to avert them.”81 Toward that end, U.S. government security and defense planners during this time focused heavily on preserving and improving the credibility of U.S. military threats – while the Soviet Union was doing likewise.82 The Truman administration developed a militarized version of containment strategy against the Soviet empire, emphasizing that stronger military capabilities were necessary to prevent the Soviets from seizing the initiative and to resist its aggressive probes: “it is clear,” according to NSC-68, the government document which encapsulated that strategy, “that a substantial and rapid building up of strength in the free world is necessary to support a firm policy intended to check and to roll back the Kremlin's drive for world domination.”83 The Eisenhower administration’s “New Look” policy and doctrine of “massive retaliation” emphasized making Western collective security both more effective and less costly by placing greater reliance on deterrent threats – including threatened escalation to general or nuclear war. As his Secretary of State John Foster Dulles explained, “[t]here is no local defense which alone will contain the mighty landpower of the Communist world. Local defenses must be reinforced by the further deterrent of massive retaliatory power.”84 As described in Evan Thomas’s recent book, Ike’s Bluff, Eisenhower managed to convince Soviet leaders that he was ready to use nuclear weapons to check their advance in Europe and elsewhere. In part due to concerns that threats of massive retaliation might be insufficiently credible in Soviet eyes (especially with respect to U.S. interests perceived as peripheral), the Kennedy administration in 1961 shifted toward a strategy of “flexible response,” which relied on the development of a wider spectrum of military options that could quickly and efficiently deliver varying degrees of force in response to foreign aggression.85 Throughout these periods, the President often resorted to discrete, limited uses of force to demonstrate U.S. willingness to escalate. For example, in 1961 the Kennedy administration (mostly successfully in the short-run) deployed intervention-ready military force immediately off the coast of the Dominican Republic to compel its government's ouster,86 and that same year it used military exercises and shows of force in ending the Berlin crisis;87 in 1964, the Johnson administration unsuccessfully used air strikes on North Vietnamese targets following the Tonkin Gulf incidents, failing to deter what it viewed as further North Vietnamese aggression.88 The point here is not the shifting details of U.S. strategy after World War II – during this era of dramatic expansion in asserted presidential war powers – but the central role of credible threats of war in it, as well as the interrelationship of plans for using force and credible threats to do so. Also during this period, the United States abandoned its long-standing aversion to “entangling alliances,”89 and committed to a network of mutual defense treaties with dependent allies. Besides the global collective security arrangement enshrined in the UN Charter, the United States committed soon after World War II to mutual defense pacts with, for example, groups of states in Western Europe (the North Atlantic Treaty Organization)90 and Asia (the Southeast Asia Treaty Organization,91 as well as a bilateral defense agreement with the Republic of Korea,92 Japan,93 and the Republic of China,94 among others). These alliance commitments were part of a U.S. effort to “extend” deterrence of Communist bloc aggression far beyond its own borders.95 “Extended deterrence” was also critical to reassuring these U.S. allies that their security needs would be met, in some instances to head off their own dangerous rearmament.96 Among the leading academic works on strategy of the 1960s and 70s were those of Thomas Schelling, who developed the theoretical structure of coercion theory, arguing that rational states routinely use the threat of military force – the manipulation of an adversary’s perceptions of future risks and costs with military threats – as a significant component of their diplomacy.97 Schelling distinguished between deterrence (the use of threats to dissuade an adversary from taking undesired action) and compellence (the use of threats to persuade an adversary to behave a certain way), and he distinguished both forms of coercion from brute force: “[B]rute force succeeds when it is used, whereas the power to hurt is most successful when held in reserve. It is the threat of damage to come that can make someone yield of comply. It is latent violence that can influence someone’s choice.”98 Alexander George, David Hall, and William Simons then led the way in taking a more empirical approach, reviewing case studies to draw insights about the success and failure of U.S. coercive threats, analyzing contextual variables and their effects on parties’ reactions to threats during crises. Among their goals was to generate lessons informed by history for successful strategies that combine diplomatic efforts with threats or demonstrations of force, recognizing that the United States was relying heavily on threatened force in addressing security crises. Coercive diplomacy – if successful – offered ways to do so with minimal actual application of military force.99 One of the most influential studies that followed was Force Without War: U.S. Armed Forces as a Political Instrument, a Brookings Institution study led by Barry Blechman and Stephen Kaplan and published in 1977.100 They studied “political uses of force”, defined as actions by U.S. military forces “as part of a deliberate attempt by the national authorities to influence, or to be prepared to influence, specific behavior of individuals in another nation without engaging in a continued contest of violence.”101 Blechman and Kaplan’s work, including their large data set and collected case studies, was important for showing the many ways that threatened force could support U.S. security policy. Besides deterrence and compellence, threats of force were used to assure allies (thereby, for example, avoiding their own drive toward militarization of policies or crises) and to induce third parties to behave certain ways (such as contributing to diplomatic resolution of crises). The record of success in relying on threatened force has been quite mixed, they showed. Blechman and Kaplan’s work, and that of others who built upon it through the end of the Cold War and the period that has followed,102 helped understand the factors that correlated with successful threats or demonstrations of force without resort or escalation to war, especially the importance of credible signals.103 After the Cold War, the United States continued to rely on coercive force – threatened force to deter or compel behavior by other actors – as a central pillar of its grand strategy. During the 1990s, the United States wielded coercive power with varied results against rogue actors in many cases that, without the overlay of superpower enmities, were considered secondary or peripheral, not vital, interests: Iraq, Somalia, Haiti, Bosnia, and elsewhere. For analysts of U.S. national security policy, a major puzzle was reconciling the fact that the United States possessed overwhelming military superiority in raw terms over any rivals with its difficult time during this era in compelling changes in their behavior.104 As Daniel Byman and I wrote about that decade in our study of threats of force and American foreign policy: U.S. conventional and nuclear forces dwarf those of any adversaries, and the U.S. economy remains the largest and most robust in the world. Because of these overwhelming advantages, the United States can threaten any conceivable adversary with little danger of a major defeat or even significant retaliation. Yet coercion remains difficult. Despite the United States’ lopsided edge in raw strength, regional foes persist in defying the threats and ultimatums brought by the United States and its allies. In confrontations with Somali militants, Serb nationalists, and an Iraqi dictator, the U.S. and allied record or coercion has been mixed over recent years…. Despite its mixed record of success, however, coercion will remain a critical element of U.S. foreign policy.105 One important factor that seemed to undermine the effectiveness of U.S. coercive threats during this period was that many adversaries perceived the United States as still afflicted with “Vietnam Syndrome,” unwilling to make good on its military threats and see military operations through.106 Since the turn of the 21st Century, major U.S. security challenges have included non-state terrorist threats, the proliferation of nuclear and other weapons of mass destruction (WMD), and rapidly changing power balances in East Asia, and the United States has accordingly been reorienting but retaining its strategic reliance on threatened force. The Bush Administration’s “preemption doctrine” was premised on the idea that some dangerous actors – including terrorist organizations and some states seeking WMD arsenals – are undeterrable, so the United States might have to strike them first rather than waiting to be struck.107 On one hand, this was a move away from reliance on threatened force: “[t]he inability to deter a potential attacker, the immediacy of today’s threats, and the magnitude of potential harm that could be caused by our adversaries’ choice of weapons, do not permit” a reactive posture.108 Yet the very enunciation of such a policy – that “[t]o forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively”109 – was intended to persuade those adversaries to alter their policies that the United States regarded as destabilizing and threatening. Although the Obama administration pulled back from this rhetoric and placed greater emphasis on international institutions, it has continued to rely on threatened force as a key pillar of its strategy with regard to deterring threats (such as aggressive Iranian moves), intervening in humanitarian crises (as in Libya), and reassuring allies.110 With regard to East Asia, for example, the credible threat of U.S. military force is a significant element of U.S. strategy for deterring Chinese and North Korean aggression as well as reassuring other Asian powers of U.S. protection, to avert a destabilizing arms race.111 D. The Disconnect Between Constitutional Discourse and Strategy There is a major disconnect between the decades of work by strategists and many political scientists on American security policy and practice since the Second World War and legal analysis and scholarship of constitutional war powers during that period. Lawyers and strategists have been relying on not only distinct languages but distinct logics of military force – in short, when it comes to using U.S. military power, lawyers think in terms of “going to war” while strategists focus on potential war and processes leading to it. These framings manifest in differing theoretical starting points for considering how exercises of U.S. military might affect war and peace, and they skew the empirical insights and normative prescriptions about Presidential power often drawn from their analyses. 1. Lawyers’ Misframing Lawyers’ focus on actual uses of force – especially engagements with enemy military forces – as constitutionally salient, rather than including threats of force in their understanding of modern presidential powers tilts analysis toward a one-dimensional strategic logic, rather than a more complex and multi-dimensional and dynamic logic in which the credible will to use force is as important as the capacity to do so. As discussed above, early American constitutional thinkers and practitioners generally wanted to slow down with institutional checks decisions to go to war, because they thought that would make war less likely. “To invoke a more contemporary image,” wrote John Hart Ely of their vision, “it takes more than one key to launch a missile: It should take quite a number to start a war.”112 They also viewed the exercise of military power as generally a ratchet of hostilities, whereby as the intensity of authorized or deployed force increased, so generally did the state of hostilities between the United States and other parties move along a continuum from peace to war.113 Echoes of this logic still reverberate in modern congressionalist legal scholarship: the more flexibly the President can use military force, the more likely it is that the United States will find itself in wars; better, therefore, to clog decisions to make war with legislative checks.114 Modern presidentialist legal scholars usually respond that rapid action is a virtue, not a vice, in exercising military force.115 Especially as a superpower with global interests and facing global threats, presidential discretion to take rapid military action – endowed with what Alexander Hamilton called “[d]ecision, activity, secrecy, and dispatch”116 – best protects American interests. In either case the emphasis tends overwhelmingly to be placed on actual military engagements with adversaries. Strategists and many political scientists, by contrast, view some of the most significant use of military power as starting well before armed forces clash – and including important cases in which they never actually do. Coercive diplomacy and strategies of threatened force, they recognize, often involve a set of moves and countermoves by opposing sides and third parties before or even without the violent engagement of opposing forces. It is often the parties’ perceptions of anticipated actions and costs, not the actual carrying through of violence, that have the greatest impact on the course of events and resolution or escalation of crises. Instead of a ratchet of escalating hostilities, the flexing of military muscle can increase as well as decrease actual hostilities, inflame as well as stabilize relations with rivals or enemies. Moreover, those effects are determined not just by U.S. moves but by the responses of other parties to them – or even to anticipated U.S. moves and countermoves.117 Indeed, as Schelling observed, strategies of brinkmanship sometimes operate by “the deliberate creation of a recognizable risk of war, a risk that one does not completely control.”118 This insight – that effective strategies of threatened force involve not only great uncertainty about the adversary’s responses but also sometimes involve intentionally creating risk of inadvertent escalation119 – poses a difficult challenge for any effort to cabin legally the President’s power to threaten force in terms of likelihood of war or some due standard of care.120 2. Lawyers’ Selection Problems Methodologically, a lawyerly focus on actual uses of force – a list of which would then commonly be used to consider which ones were or were not authorized by Congress – vastly undercounts the instances in which presidents wield U.S. military might. It is already recognized by some legal scholars that studying actual uses of force risks ignoring instances in which President contemplated force but refrained from using it, whether because of political, congressional, or other constraints.121 The point here is a different one: that some of the most significant (and, in many instances, successful) presidential decisions to threaten force do not show up in legal studies of presidential war powers that consider actual deployment or engagement of U.S. military forces as the relevant data set. Moreover, some actual uses of force, whether authorized by Congress or not, were preceded by threats of force; in some cases these threats may have failed on their own to resolve the crisis, and in other cases they may have precipitated escalation. To the extent that lawyers are interested in understanding from historical practice what war powers the political branches thought they had and how well that understanding worked, they are excluding important cases. Consider, as an illustration of this difference in methodological starting point, that for the period of 1946-1975 (during which the exercise of unilateral Presidential war powers had its most rapid expansion), the Congressional Research Service compilation of instances in which the United States has utilized military forces abroad in situations of military conflict or potential conflict to protect U.S. citizens or promote U.S. interests – which is often relied upon by legal scholars studying war powers – lists only about two dozen incidents.122 For the same time period, the Blechman and Kaplan study of political uses of force (usually threats) – which is often relied upon by political scientists studying U.S. security strategy – includes dozens more data-point incidents, because they divide up many military crises into several discrete policy decisions, because many crises were resolved with threat-backed diplomacy, and because many uses of force were preceded by overt or implicit threats of force.123 Among the most significant incidents studied by Blechman and Kaplan but not included in the Congressional Research Service compilation at all are the 1958-59 and 1961 crises over Berlin and the 1973 Middle East War, during which U.S. Presidents signaled threats of superpower war, and in the latter case signaled particularly a willingness to resort to nuclear weapons.124 Because the presidents did not in the end carry out these threats, these cases lack the sort of authoritative legal justifications or reactions that accompany actual uses of force. It is therefore difficult to assess how the executive branch and congress understood the scope of the President’s war powers in these cases, but historical inquiry would probably show the executive branch’s interpretation to be very broad, even to include full-scale war and even where the main U.S. interest at stake was the very credibility of U.S. defense commitments undergirding its grand strategy, not simply the interests specific to divided Germany and the Middle East region.

Of course, one might argue that because the threatened military actions were never carried out in these cases, it is impossible to know if the President would have sought congressional authorization or how Congress would have reacted to the use of force; nonetheless, it is easy to see that in crises like these a threat by the President to use force, having put U.S. credibility on the line in addition to whatever other foreign policy stakes were at issues, would have put Congress in a bind. 3. Lawyers’ Mis-Assessment Empirically, analysis of and insights gleaned from any particular incident – which might then be used to evaluate the functional merits of presidential powers – looks very different if one focuses predominantly on the actual use of force instead of considering also the role of threatened force. Take for example, the Cuban Missile Crisis – perhaps the Cold War’s most dangerous event. To the rare extent that they consider domestic legal issues of this crisis at all, lawyers interested in the constitutionality of President Kennedy’s actions generally ask only whether he was empowered to initiate the naval quarantine of Cuba, because that is the concrete military action Kennedy took that was readily observable and that resulted in actual engagement with Soviet forces or vessels – as it happens, very minimal engagement.125 To strategists who study the crisis, however, the naval quarantine is not in itself the key presidential action; after all, as Kennedy and his advisers realized, a quarantine alone could not remove the missiles that were already in Cuba. The most consequential presidential actions were threats of military or even nuclear escalation, signaled through various means including putting U.S. strategic bombers on highest alert.126 The quarantine itself was significant not for its direct military effects but because of its communicative impact in showing U.S. resolve. If one is focused, as lawyers often are, on presidential military action that actually engaged the enemy in combat or nearly did, it is easy to dismiss this case as not very constitutionally significant. If one focuses on it, as strategists and political scientists often do, on nuclear brinkmanship, it is arguably the most significant historical exercise of unilateral presidential powers to affect war and peace.127 Considering again the 1991 Gulf War, most legal scholars would dismiss this instance as constitutionally a pretty uninteresting military conflict: the President claimed unilateral authority to use force, but he eventually sought and obtained congressional authorization for what was ultimately – at least in the short-run – a quite successful war. For the most part this case is therefore neither celebrated nor decried much by either side of legal war powers debates,128 though some congressionalist scholars highlight the correlation of congressional authorization for this war and a successful outcome.129 Political scientists look at the case differently, though. They often study this event not as a successful war but as failed coercive diplomacy, in that the United States first threatened war through a set of dramatically escalating steps that ultimately failed to persuade Saddam Hussein to withdraw from Kuwait.130 Some political scientists even see U.S. legal debate about military actions as an important part of this story, assessing that adversaries pay attention to congressional arguments and moves in evaluating U.S. resolve (an issue taken up in greater detail below) and that congressional opposition to Bush’s initial unilateralism in this case undermined the credibility of U.S. threats.131 Whether one sees the Gulf War as a case of (successful) war, as lawyers usually do, or (unsuccessful) threatened war, as political scientists usually do, colors how one evaluates the outcome and the credit one might attach to some factors such as vocal congressional opposition to initially-unilateral presidential moves. Notice also that legal analysis of Presidential authority to use force is sometimes thought to turn partly on the U.S. security interests at stake, as though those interests are purely contextual and exogenous to U.S. decision-making and grand strategy. In justifying President Obama’s 2011 use of force against the Libyan government, for example, the Justice Department’s Office of Legal Counsel concluded that the President had such legal authority “because he could reasonably determine that such use of force was in the national interest,” and it then went on to detail the U.S. security and foreign policy interests.132 The interests at stake in crises like these, however, are altered dramatically if the President threatens force: doing so puts the credibility of U.S. threats at stake, which is important not only with respect to resolving the crisis at hand but with respect to other potential adversaries watching U.S. actions.133 The President’s power to threaten force means that he may unilaterally alter the costs and benefits of actually using force through his prior actions.134 The U.S. security interests in carrying through on threats are partly endogenous to the strategy embarked upon to address crises (consider, for example, that once President George H.W. Bush placed hundred of thousands of U.S. troops in the Persian Gulf region and issued an ultimatum to Saddam Hussein in 1990, the credibility of U.S. threats and assurances to regional allies were put on the line).135 Moreover, interests at stake in any one crisis cannot simply be disaggregated from broader U.S. grand strategy: if the United States generally relies heavily on threats of force to shape the behavior of other actors, then its demonstrated willingness or unwillingness to carry out a threat and the outcomes of that action affect its credibility in the eyes of other adversaries and allies, too.136 It is remarkable, though in the end not surprising, that the executive branch does not generally cite these credibility interests in justifying its unilateral uses of force. It does cite when relevant the U.S. interest in sustaining the credibility of its formal alliance commitments or U.N. Security Council resolutions, as reasons supporting the President’s constitutional authority to use force.137 The executive branch generally refrains from citing the similar interests in sustaining the credibility of the President’s own threats of force, however, probably in part because doing so would so nakedly expose the degree to which the President’s prior unilateral strategic decisions would tie Congress’s hands on the matter. \* \* \* In sum, lawyers’ focus on actual uses of force – usually in terms of armed clashes with an enemy or the placement of troops into hostile environments – does not account for much vaster ways that President’s wield U.S. military power and it skews the claims legal scholars make about the allocation of war powers between the political branches. A more complete account of constitutional war powers should recognize the significant role of threatened force in American foreign policy. II. Democratic Checks on Threatened Force The previous Parts of this Article showed that, especially since the end of World War II, the United States has relied heavily on strategies of threatened force in wielding its military might – for which credible signals are a necessary element – and that the President is not very constrained legally in any formal sense in threatening war. Drawing on recent political science scholarship, this Part takes some of the major questions often asked by students of constitutional war powers with respect to the actual use of force and reframes them in terms of threatened force. First, as a descriptive matter, in the absence of formal legal checks on the President’s power to threaten war, is the President nevertheless informally but significantly constrained by democratic institutions and processes, and what role does Congress play in that constraint? Second, as a normative matter, what are the strategic merits and drawbacks of this arrangement of democratic institutions and constraints with regard to strategies of threatened force? Third, as a prescriptive matter, although it is not really plausible that Congress or courts would ever erect direct legal barriers to the President’s power to threaten war, how might legal reform proposals to more strongly and formally constrain the President’s power to use force indirectly impact his power to threaten it effectively? For reasons discussed below, I do not consider whether Congress could legislatively restrict directly the President’s power to threaten force or war; in short, I set that issue aside because assuming that were constitutionally permissible, even ardent congressionalists have exhibited no interest in doing so, and instead have focused on legally controlling the actual use of force. Political science insights that bear on these questions emerge from several directions. One is from studies of Congress’ influence on use of force decisions, which usually assume that Congress’s formal legislative powers play only a limited role in this area, and the effects of this influence on presidential decision-making about threatened force. Another is international relations literature on international bargaining138 as well as literature on the theory of democratic peace, the notion that democracies rarely, if ever, go to war with one another.139 In attempting to explain the near-absence of military conflicts between democracies, political scientists have examined how particular features of democratic governments – electoral accountability, the institutionalized mobilization of political opponents, and the diffusion of decision-making authority regarding the use of force among executive and legislative branches – affect decision-making about war.140 These and other studies, in turn, have led some political scientists (especially those with a rational choice theory orientation) to focus on how those features affect the credibility of signals about force that governments send to adversaries in crises.141 My purpose in addressing these questions is to begin painting a more complete and detailed picture of the way war powers operate, or could operate, than one sees when looking only at actual wars and use of force. This is not intended to be a comprehensive account but an effort to synthesize some strands of scholarship from other fields regarding threatened force to inform legal discourse about how war powers function in practice and the strategic implications of reform. The answers to these questions also bear on raging debates among legal scholars on the nature of American executive power and its constraint by law. Initially they seem to support the views of those legal scholars who have long believed that in practice law no longer seriously binds the President with respect to war-making.142 That view has been taken even further recently by Eric Posner and Adrian Vermeule, who argue that “[l]aw does little constraint the modern executive” at all, but also observe that “politics and public opinion” operate effectively to cabin executive powers.143 The arguments offered here, however, do more to support the position of those legal scholars who describe a more complex relationship between law and politics, including that law is constitutive of the processes of political struggle.144 That law helps constitute the processes of political struggles is true of any area of public policy, though, and what is special here is the added importance of foreign audiences – including adversaries and allies, alike – observing and reacting to those politics, too. Democratic Constraints on the Power to the Threaten Force Whereas most lawyers usually begin their analysis of the President’s and Congress’s war powers by focusing on their formal legal authorities, political scientists usually take for granted these days that the President is – in practice – the dominant branch with respect to military crises and that Congress wields its formal legislative powers in this area rarely or in only very limited ways. A major school of thought, however, is that congressional members nevertheless wield significant influence over decisions about force, and that this influence extends to threatened force, so that Presidents generally refrain from threats that would provoke strong congressional opposition. Even without any serious prospect for legislatively blocking the President’s threatened actions, Congress under certain conditions can loom large enough to force Presidents to adjust their policies; even when it cannot, congressional members can oblige the President expend lots of political capital. As Jon Pevehouse and William Howell explain: When members of Congress vocally oppose a use of force, they undermine the president’s ability to convince foreign states that he will see a fight through to the end. Sensing hesitation on the part of the United States, allies may be reluctant to contribute to a military campaign, and adversaries are likely to fight harder and longer when conflict erupts— thereby raising the costs of the military campaign, decreasing the president’s ability to negotiate a satisfactory resolution, and increasing the probability that American lives are lost along the way. Facing a limited band of allies willing to participate in a military venture and an enemy emboldened by domestic critics, presidents may choose to curtail, and even abandon, those military operations that do not involve vital strategic interests. 145 This statement also highlights the important point, alluded to earlier, that force and threatened force are not neatly separable categories. Often limited uses of force are intended as signals of resolve to escalate, and most conflicts involve bargaining in which the threat of future violence – rather than what Schelling calls “brute force”146 – is used to try to extract concessions. The formal participation of political opponents in legislative bodies provides them with a forum for registering dissent to presidential policies of force through such mechanisms floor statements, committee oversight hearings, resolution votes, and funding decisions.147 These official actions prevent the President “from monopolizing the nation’s political discourse” on decisions regarding military actions can thereby make it difficult for the President to depart too far from congressional preferences.148 Members of the political opposition in Congress also have access to resources for gathering policy relevant information from the government that informs their policy preferences. Their active participation in specialized legislative committees similarly gives opponent party members access to fact-finding resources and forums for registering informed dissent from decisions within the committee’s purview.149 As a result, legislative institutions within democracies can enable political opponents to have a more immediate and informed impact on executive’s decisions regarding force than can opponents among the general public. Moreover, studies suggest that Congress can actively shape media coverage and public support for a president’s foreign policy engagements.150 In short, these findings among political scientists suggest that, even without having to pass legislation or formally approve of actions, Congress often operates as an important check on threatened force by providing the president’s political opponents with a forum for registering dissent from the executive’s decisions regarding force in ways that attach domestic political costs to contemplated military actions or even the threats to use force. Under this logic, Presidents, anticipating dissent, will be more selective in issuing¶ threats in the first place, making only those commitments that would not incite¶ widespread political opposition should the threat be carried through.151 Political¶ opponents within a legislature also have few electoral incentives to collude in an¶ executive’s bluff, and they are capable of expressing opposition to a threatened use of¶ force in ways that could expose the bluff to a threatened adversary.152 This again narrows¶ the President’s range of viable policy options for brandishing military force. Counter-intuitively, given the President’s seemingly unlimited and unchallenged¶ constitutional power to threaten war, it may in some cases be easier for members of¶ Congress to influence presidential decisions to threaten military action than presidential¶ war decisions once U.S. forces are already engaged in hostilities. It is widely believed¶ that once U.S. armed forces are fighting, congress members’ hands are often tied: policy¶ opposition at that stage risks being portrayed as undermining our troops in the field.153¶ Perhaps, it could be argued, the President takes this phenomenon into account and¶ therefore discounts political opposition to threatened force; he can assume that such¶ opposition will dissipate if he carries it through. Even if that is true, before that point¶ occurs, however, members of Congress may have communicated messages domestically¶ and communicated signals abroad that the President will find difficult to counter.154 The bottom line is that a body of recent political science, while confirming the¶ President’s dominant position in setting policy in this area, also reveals that policymaking¶ with respect to threats of force is significantly shaped by domestic politics and¶ that Congress is institutionally positioned to play a powerful role in influencing those¶ politics, even without exercising its formal legislative powers. Given the centrality of¶ threatened force to U.S. foreign policy strategy and security crises, this suggests that the¶ practical war powers situation is not so imbalanced toward the President as many assume. B. Democratic Institutions and the Credibility of Threats A central question among constitutional war powers scholars is whether robust¶ checks – especially congressional ones – on presidential use of force lead to “sound”¶ policy decision-making. Congressionalists typically argue that legislative control over¶ war decisions promotes more thorough deliberation, including more accurate weighing of¶ consequences and gauging of political support of military action.155 Presidentialists¶ usually counter that the executive branch has better information and therefore better¶ ability to discern the dangers of action or inaction, and that quick and decisive military¶ moves are often required to deal with security crises.156 If we are interested in these sorts of functional arguments, then reframing the¶ inquiry to include threatened force prompts critical questions whether such checks also¶ contribute to or detract from effective deterrence and coercive diplomacy and therefore¶ positively or negatively affect the likelihood of achieving aims without resort to war.¶ Here, recent political science provides some reason for optimism, though the scholarship¶ in this area is neither yet well developed nor conclusive. To be sure, “soundness” of policy with respect to force is heavily laden with¶ normative assumptions about war and the appropriate role for the United States in the¶ broader international security system, so it is difficult to assess the merits and¶ disadvantages of constitutional allocations in the abstract. That said, whatever their¶ specific assumptions about appropriate uses of force in mind, constitutional war powers¶ scholars usually evaluate the policy advantages and dangers of decision-making¶ allocations narrowly in terms of the costs and outcomes of actual military engagements¶ with adversaries. The importance of credibility to strategies of threatened force adds important new¶ dimensions to this debate. On the one hand, one might intuitively expect that robust democratic checks would generally be ill-suited for coercive threats and negotiations –¶ that institutional centralization and secrecy of decision-making might better equip nondemocracies¶ to wield threats of force. As Quincy Wright speculated in 1944, autocracies¶ “can use war efficiently and threats of war even more efficiently” than democracies,157¶ especially the American democracy in which vocal public and congressional opposition¶ may undermine threats.158 Moreover, proponents of democratic checks on war powers¶ usually assume that careful deliberation is a virtue in preventing unnecessary wars, but¶ strategists of deterrence and coercion observe that perceived irrationality is sometimes¶ important in conveying threats: “don’t test me, because I might just be crazy enough to¶ do it!”159 On the other hand, some political scientists have recently called into question this¶ view and concluded that the institutionalization of political contestation and some¶ diffusion of decision-making power in democracies of the kind described in the previous¶ section make threats to use force rare but especially credible and effective in resolving¶ international crises without actual resort to armed conflict. In other words, recent¶ arguments in effect turn some old claims about the strategic disabilities of democracies¶ on their heads: whereas it used to be generally thought that democracies were ineffective¶ in wielding threats because they are poor at keeping secrets and their decision-making is¶ constrained by internal political pressures, a current wave of political science accepts this¶ basic description but argues that these democratic features are really strategic virtues.160 Rationalist models of crisis bargaining between states assume that because war is¶ risky and costly, states will be better off if they can resolve their disputes through¶ bargaining rather than by enduring the costs and uncertainties of armed conflict.161¶ Effective bargaining during such disputes – that which resolves the crisis without a resort¶ to force – depends largely on states’ perceptions of their adversary’s capacity to wage an¶ effective military campaign and its willingness to resort to force to obtain a favorable¶ outcome. A state targeted with a threat of force, for example, will be less willing to resist¶ the adversary’s demands if it believes that the adversary intends to wage and is capable of¶ waging an effective military campaign to achieve its ends. In other words, if a state¶ perceives that the threat from the adversary is credible, that state has less incentive to¶ resist such demands if doing so will escalate into armed conflict. The accuracy of such perceptions, however, is often compromised by¶ informational asymmetries that arise from private information about an adversary’s¶ relative military capabilities and resolve that prevents other states from correctly¶ assessing another states’ intentions, as well as by the incentives states have to¶ misrepresent their willingness to fight – that is, to bluff.162 Informational asymmetries¶ increase the potential for misperception and thereby make war more likely; war,¶ consequentially, can be thought of in these cases as a “bargaining failure.”163 Some political scientists have argued in recent decades – contrary to previously common wisdom – that features and constraints of democracies make them better suited than non-democracies to credibly signal their resolve when they threaten force. To bolster their bargaining position, states will seek to generate credible signals of their resolve by taking actions that can enhance the credibility of such threats, such as mobilizing military forces or making “hand-tying” commitments from which leaders cannot back down without suffering considerable political costs domestically.164 These domestic audience costs, according to some political scientists, are especially high for leaders in democratic states, where they may bear these costs at the polls.165 Given the potentially high domestic political and electoral repercussions democratic leaders face from backing down from a public threat, they have considerable incentives to refrain from bluffing. An adversary that understands these political vulnerabilities is thereby more likely to perceive the threats a democratic leader does issue as highly credible, in turn making it more likely that the adversary will yield.166 Other scholars have recently pointed to the special role of legislative bodies in signaling with regard to threatened force. This is especially interesting from the perspective of constitutional powers debates, because it posits a distinct role for Congress – and, again, one that does not necessarily rely on Congress’s ability to pass binding legislation that formally confines the President. Kenneth Schultz, for instance, argues that the open nature of competition within democratic societies ensures that the interplay of opposing parties in legislative bodies over the use of force is observable not just to their domestic publics but to foreign actors; this inherent transparency within democracies – magnified by legislative processes – provides more information to adversaries regarding the unity of domestic opponents around a government’s military and foreign policy decisions.167 Political opposition parties can undermine the credibility of some threats by the President to use force if they publicly voice their opposition in committee hearings, public statements, or through other institutional mechanisms. Furthermore, legislative processes – such as debates and hearings – make it difficult to conceal or misrepresent preferences about war and peace. Faced with such institutional constraints, Presidents will incline to be more selective about making such threats and avoid being undermined in that way.168 This restraining effect on the ability of governments to issue threats simultaneously makes those threats that the government issues more credible, if an observer assumes that the President would not be issuing it if he anticipated strong political opposition. Especially when members of the opposition party publicly support an executive’s threat to use force during a crisis, their visible support lends additional credibility to the government’s threat by demonstrating that political conditions domestically favor the use of force should it be necessary.169 In some cases, Congress may communicate greater willingness than the president to use force, for instance through non-binding resolutions.170 Such powerful signals of resolve should in theory make adversaries more likely to back down. The credibility-enhancing effects of legislative constraints on threats are subject to dispute. Some studies question the assumptions underpinning theories of audience costs – specifically the idea that democratic leaders suffer domestic political costs to failing to make good on their threats, and therefore that their threats are especially credible171 – and others question whether the empirical data supports claims that democracies have credibility advantages in making threats.172 Other scholars dispute the likelihood that leaders will really be punished politically for backing down, especially if the threat was not explicit and unambiguous or if they have good policy reasons for doing so.173 Additionally, even if transparency in democratic institutions allows domestic dissent from threats of force to be visible to foreign audiences, it is not clear that adversaries would interpret these mechanisms as political scientists expect in their models of strategic interaction, in light of various common problems of misperception in international relations.174 These disputes are not just between competing theoretical models but also over the links between any of the models and real-world political behavior by states. At this point there remains a dearth of good historical evidence as to how foreign leaders interpret political maneuvers within Congress regarding threatened force. Nevertheless, at the very least, strands of recent political science scholarship cast significant doubt on the intuition that democratic checks are inherently disadvantageous to strategies of threatened force. Quite the contrary, they suggest that legislative checks – or, indeed, even the signaling functions that Congress is institutionally situated to play with respect to foreign audiences interpreting U.S. government moves – can be harnessed in some circumstances to support such strategies. C. Legal Reform and Strategies of Threatened Force Among legal scholars of war powers, the ultimate prescriptive question is whether the President should be constrained more formally and strongly than he currently is by legislative checks, especially a more robust and effective mandatory requirement of congressional authorization to use force. Calls for reform usually take the form of narrowing and better enforcement (by all three branches of government) of purported constitutional requirements for congressional authorization of presidential uses of force or revising and enforcing the War Powers Resolutions or other framework legislation requiring express congressional authorization for such actions.175 As applied to strategies of threatened force, generally under these proposals the President would lack authority to make good on them unilaterally (except in whatever narrow circumstances for which he retains his own unilateral authority, such as deterring imminent attacks on the United States). Whereas legal scholars are consumed with the internal effects of war powers law, such as whether and when it constrains U.S. government decision-making, the analysis contained in the previous section shifts attention externally to whether and when U.S. law might influence decision-making by adversaries, allies, and other international actors. In prescriptive terms, if the President’s power to use force is linked to his ability to threaten it effectively, then any consideration of war powers reform on policy outcomes and longterm interests should include the important secondary effects on deterrent and coercive strategies – and how U.S. legal doctrine is perceived and understood abroad.176 Would stronger requirements for congressional authorization to use force reduce a president’s opportunities for bluffing, and if so would this improve U.S. coercive diplomacy by making ensuing threats more credible? Or would it undermine diplomacy by taking some threats off the table as viable policy options? Would stronger formal legislative powers with respect to force have significant marginal effects on the signaling effects of dissent within Congress, beyond those effects already resulting from open political discourse? These are difficult questions, but the analysis and evidence above helps generate some initial hypotheses and avenues for further research and analysis. One might ask at this point why, though, having exposed as a hole in war powers legal discourse the tendency to overlook threatened force, this Article does not take up whether Congress should assert some direct legislative control of threats – perhaps statutorily limiting the President’s authority to make them or establishing procedural conditions like presidential reporting requirements to Congress. This Article puts such a notion aside for several reasons. First, for reasons alluded to briefly above, such limits would be very constitutionally suspect and difficult to enforce.177 Second, even the most ardent war-power congressionalists do not contemplate such direct limits on the President’s power to threaten; they are not a realistic option for reform. Instead, this Article focuses on the more plausible – and much more discussed – possibility of strengthening Congress’s power over the ultimate decision whether to use force, but augments the usual debate over that question with appreciation for the importance of credible threats. A claim previously advanced from a presidentialist perspective is that stronger legislative checks on war powers is harmful to coercive and deterrent strategies, because it establishes easily-visible impediments to the President’s authority to follow through on threats. This was a common policy argument during the War Powers Resolution debates in the early 1970s. Eugene Rostow, an advocate inside and outside the government for executive primacy, remarked during consideration of legislative drafts that any serious restrictions on presidential use of force would mean in practice that “no President could make a credible threat to use force as an instrument of deterrent diplomacy, even to head off explosive confrontations.”178 He continued: In the tense and cautious diplomacy of our present relations with the Soviet Union, as they have developed over the last twenty-five years, the authority of the President to set clear and silent limits in advance is perhaps the *most* important of all the powers in our constitutional armory to prevent confrontations that could carry nuclear implications. … [I]t is the diplomatic power the President needs most under the circumstance of modern life—the power to make a credible threat to use force in order to prevent a confrontation which might escalate.179 In his veto statement on the War Powers Resolution, President Nixon echoed these concerns, arguing that the law would undermine the credibility of U.S. deterrent and coercive threats in the eyes of both adversaries and allies – they would know that presidential authority to use force would expire after 60 days, so absent strong congressional support they could assume U.S. withdrawal at that point.180 In short, those who oppose tying the president’s hands with mandatory congressional authorization requirements to use force sometimes argue that doing so incidentally and dangerously ties his hands in threatening it. A critical assumption here is that presidential flexibility, preserved in legal doctrine, enhances the credibility of presidential threats to escalate.

### Case

#### No inherency- their Lennard evidence says that the NDAA is moving towards closing Guantinimo: means the squo solves the aff.

#### Civilian trials are rigged- the State gets the results it wants

Silverglate 10-6-13 [Harvey Silverglate, a Boston criminal defense and civil liberties lawyer, is the author, most recently, of "Three Felonies a Day: How the Feds Target the Innocent" (Encounter Books, updated second edition 2011), “How Prosecutors Rig Trials by Freezing Assets,” <http://online.wsj.com/article/SB10001424127887324110404578630561814823892.html>]

On Oct. 16, the Supreme Court will hear oral arguments on a claim brought by husband and wife Brian and Kerri Kaley. The Kaleys are asking the high court to answer a serious and hotly contested question in the federal criminal justice system: Does the Constitution allow federal prosecutors to seize or freeze a defendant's assets before the prosecution has shown at a pretrial hearing that those assets were illegally obtained?¶ Such asset freezes often prevent a defendant from hiring the trial counsel of his choice to mount a vigorous defense, thus increasing the likelihood of the government extracting a guilty plea or verdict. Because asset forfeiture almost automatically follows conviction, a pretrial freeze ultimately enables the Justice Department to grab the frozen assets for use by executive-branch law enforcement agencies. It is a neat, vicious circle. What crimes are the Kaleys charged with? Kerri Kaley was a sales representative for a subsidiary of Johnson & Johnson JNJ +1.90% . Beginning in 2005, the fedsin Florida investigated her, her husband Brian, and other sales reps for reselling medical devices given to them by hospitals. The hospitals had previously bought and stocked the devices but no longer needed or wanted the overstock since the company was offering new products. Knowing that the J&J subsidiary had already been paid for the now-obsolete products and was focused instead on selling new models, the sales reps resold the old devices and kept the proceeds.¶ The feds had various theories for why this "gray market" activity was a crime, even though prosecutors could not agree on who owned the overstocked devices and, by extension, who were the supposed victims of the Kaleys' alleged thefts. The J&J subsidiary never claimed to be a victim.¶ The Kaleys were confident that they would prevail at trial if they could retain their preferred lawyers. A third defendant did go to trial with her counsel of choice and was acquitted. But the Justice Department made it impossible for the Kaleys to pay their chosen lawyers for trial.¶ The government insisted that as long as the Kaleys' assets—including bank accounts and their home—could be traced to the sale of the medical devices, all of those assets could be frozen. The Kaleys were not allowed to go a step further and show that their activities were in no way criminal, since this would be determined by a trial. But the Kaleys insisted that if the government wanted to freeze their funds, the court had to hold a pretrial hearing on the question of the legality of how the funds were earned.¶ The Kaleys complained that the asset freeze effectively deprived them of their Sixth Amendment right to the counsel of their choice—the couple couldn't afford to hire the defense that they wanted. Prosecutors and the trial judge responded that the Kaleys could proceed with a public defender. This wouldn't have been an encouraging prospect for them, for while public counsel is often quite skilled, such legal aid wouldn't meet the requirements the Kaleys believed they needed for this complex defense. Choice of counsel in a free society, one would think, lies with the defendant, not with the prosecutor or the judge. (The Kaleys' chosen trial lawyers have agreed to stick with the case during the pretrial tussling over the asset-freeze question, but trying the case before a jury would be much more expensive and would require the frozen funds.)¶ Federal asset-forfeiture statutes like the one the Kaleys are fighting are actually a relatively recent invention. Before 1970, when Congress adopted the first provisions seeking to strip organized-crime figures of ill-gotten racketeering gains, there were no such laws (with the exception of the Civil War-era Confiscation Acts providing for the forfeiture of property of Confederate soldiers).¶ Since 1970, however, such federal statutes have expanded to cover a breathtaking number of crimes, from the sale of fraudulent passports and contraband cigarettes right up to murder and drug trafficking. An authoritative treatise, the 4th edition of the encyclopedia "Federal Practice & Procedure," asserts that federal forfeiture is now available "for almost every crime." In January, the New York Times quoted Manhattan U.S. Attorney Preet Bharara as saying that asset forfeiture is "an important part of the culture" and "an example of the government being efficient and bringing home the bacon." In 2012 alone, federal prosecutors seized more than $4 billion in assets. The Justice Department is allowed by law to put that bacon to use however prosecutors wish—to pay informants, provide snazzy cars to cooperating witnesses, whatever.¶ The Kaleys are hardly alone. The recently completed prosecution of Conrad Black indicates starkly how such seizures can torpedo a defendant's chance of getting a fair trial. In his 2007 high-profile case, Mr. Black, a former newspaper publisher indicted for alleged fraud and related crimes in the sale of Hollinger International, endured a federal freeze of his major unencumbered asset, the cash proceeds from the sale of his New York City apartment. That freeze prevented him from being able to retain the legal counsel upon whom he had relied before the asset freeze.¶ Mr. Black ultimately was convicted on two counts, winning on all the others in a shifting array of counts that numbered more than a dozen. Last year, having served his 42-month prison sentence, he filed a petition in federal court seeking to vacate his convictions on the ground that the government's asset-forfeiture tactics had deprived him of his counsel of choice. That effort foundered when the judge concluded that Mr. Black's trial counsel—not his counsel of choice, it must be noted, but rather the counsel he could afford after the asset freeze—had failed to properly raise and hence preserve the issue for later appellate review.¶ The Supreme Court has now threatened to upset the game that is so lucrative for the government and disabling for defendants. On March 18, the court agreed to consider the Kaleys' claim that the asset freeze without a hearing on the merits of the underlying criminal charge violated their constitutional rights. At oral argument in mid-October, the broader question will be whether, after four decades of federal asset seizures, the high court will put a freeze on the Justice Department.

#### 1st piece of Loizdou ev doesn’t say that the executive will necessarily abuse the law in the war on terror…international institutions check breach of ilaw---the example that your Loizdou evidence cites is contrived and assanine, just because the British prime minister could administer life whenever he wanted during WW1 and WW2 doesn’t mean that any executive today including Obama would do the same, nor does their Loizdou evidence contextualize that example to the war on terror.

#### Obama empirically exploits detention loopholes

Calabresi ’11 [Massimo Calabresi joined the Washington bureau of TIME in 1999 and has covered the CIA, State, Justice, Treasury, Congress and the White House. He covered the wars in Bosnia, Croatia and Kosovo as TIME's Central Europe bureau chief from 1995 to 1999 and the collapse of the Soviet Union as a freelancer in Moscow in 1991, “Why Obama Is Threatening to Veto a Defense Bill Over Detention Policy,” Nov. 18, <http://swampland.time.com/2011/11/18/why-obama-is-threatening-to-veto-a-defense-bill-over-detention-policy/>]

The White House is threatening to veto a long-awaited defense funding bill over a perennial policy dispute: whether the President can prosecute terrorists in civilian courts, or must transfer them to military custody. The battle has raged since the very first day of Barack Obama’s presidency, but this time Obama’s opponent is not the GOP. It’s the powerful Democratic chairman of the Senate Armed Services Committee, Carl Levin of Michigan.¶ Originally, Levin worked with the SASC’s conservative Democrats (like Joe Lieberman) and GOP members (like John McCain and Lindsey Graham) to produce a bill that would have mandated transfer of captured terrorists to military custody. The White House briefed wary liberals two weeks ago not to worry, though, that they were engaged in negotiations with Levin and the GOP to change the language. “They were very optimistic that they were going to get an agreement,” says one Senate aide.¶ But last Tuesday, Levin marked up the bill in private and moved it straight to the Senate floor, where Senate majority leader Harry Reid promptly scheduled it for debate. And while Levin had responded to some of the White House’s concerns, he didn’t give it much of what it wanted, and even hawkish national security lawyers are objecting.¶ Levin says he accepted White House changes to a section that for the first time gives legislative authority for the indefinite detention of Americans in the U.S. And he inserted several loopholes that he says soften the requirement that al-Qaeda terrorists arrested in the U.S. must be transferred to military custody.¶ The administration in response issued a four-page “Statement of Administration Policy” (pdf) Thursday, stating that the bill “would tie the hands of our intelligence and law enforcement professionals” and would be “inconsistent with the fundamental American principle that our military does not patrol our streets.” Further, the administration said, Levin’s loopholes—particularly a provision allowing the Administration to issue a waiver–“fails to address these concerns.”¶ Said the White House: “Any bill that challenges or constraines the President’s critical authorities to collect intelligence, incapacitate dangerous terrorists, and protect the Nation would prompt the President’s senior advisers to recommend a veto.”¶ On the floor of the Senate Friday, Levin said he’d accepted all of the Administration’s changes regarding indefinite detention, and that the requirement to transfer suspects to military detention “does not mandate military custody” because of the waiver. “Nothing is automatic,” Levin said.¶ “The White House got rolled,” says the Senate aide, who admits the bill is nevertheless likely to pass. “The votes don’t exist to change it,” the aide says. Moreover, the White House veto threat is significantly more vague than previous ones on the subject of detention, declining to refer specifically to the authorization bill itself, and leaving the Administration a way out if it decides it doesn’t want to continue this fight with a veto in an election year.

#### Your young evidence doesn’t actually say that the United States is a security state- we are missing several characteristics to fit the description

#### a) freedom of speech is allowed in the United States, which means we do obviously allow expressions of dissent

#### b) there are separation of powers in the United States last time I checked…just because Bush and Obama have in some instances abused their powers, doesn’t mean that we are on the path to Nazi Germany…

#### There’s also no alternative, we stop trying to prevent an attack, an attack is actually coming now, its not paranoia, we have a multitude of scholars on our side

#### Changing discursive practices doesn’t alter the material reality of state practices or help create better policy for the oppressed

Jarvis, 00 (Darryl, lecturer in IR at the University of Sydney, International relations and the challenge of postmodernism, 2000, p. 128-130)

Perhaps more alarming though is the outright violence Ashley recom-mends in response to what at best seem trite, if not imagined, injustices. Inculpating modernity, positivism, technical rationality, or realism with violence, racism, war, and countless other crimes not only smacks of anthropomorphism but, as demonstrated by Ashley's torturous prose and reasoning, requires a dubious logic to malce such connections in the first place. Are we really to believe that ethereal entities like positivism, mod-ernism, or realism emanate a "violence" that marginalizes dissidents? Indeed, where is this violence, repression, and marginalization? As self- professed dissidents supposedly exiled from the discipline, Ashley and Walker appear remarkably well integrated into the academy-vocal, pub-lished, and at the center of the Third Debate and the forefront of theo-retical research. Likewise, is Ashley seriously suggesting that, on the basis of this largely imagined violence, global transformation (perhaps even rev-olutionary violence) is a necessary, let alone desirable, response? Has the rationale for emancipation or the fight for justice been reduced to such vacuous revolutionary slogans as "Down with positivism and rationality"? The point is surely trite. Apart from members of the academy, who has heard of positivism and who for a moment imagines that they need to be emancipated from it, or from modernity, rationality, or realism for that matter? In an era of unprecedented change and turmoil, of new political and military configurations, of war in the Balkans and ethnic cleansing, is Ashley really suggesting that some of the greatest threats facing humankind or some of the great moments of history rest on such innocu-ous and largely unknown nonrealities like positivism and realism? These are imagined and fictitious enemies, theoretical fabrications that represent arcane, self-serving debates superfluous to the lives of most people and, arguably, to most issues of importance in international relations. More is the pity that such irrational and obviously abstruse debate should so occupy us at a time of great global turmoil. That it does and continues to do so reflects our lack of judicious criteria for evaluating the-ory and, more importantly, the lack of attachment theorists have to the real world. Certainly it is right and proper that we ponder the depths of our theoretical imaginations, engage in epistemological and ontological debate, and analyze the sociology of our lmowledge.37 But to suppose that this is the only task of international theory, let alone the most important one, smacks of intellectual elitism and displays a certain contempt for those who search for guidance in their daily struggles as actors in international politics. What does Ashley's project, his deconstructive efforts, or valiant fight against positivism say to the truly marginalized, oppressed, and des-titute? How does it help solve the plight of the poor, the displaced refugees, the casualties of war, or the emigres of death squads? Does it in any way speak to those whose actions and thoughts comprise the policy and practice of international relations? On all these questions one must answer no. This is not to say, of course, that all theory should be judged by its technical rationality and problem-solving capacity as Ashley forcefully argues. But to suppose that problem-solving technical theory is not necessary-or is in some way bad-is a contemptuous position that abrogates any hope of solving some of the nightmarish realities that millions confront daily. As Holsti argues, we need ask of these theorists and their theories the ultimate question, "So what?" To what purpose do they deconstruct, problematize, destabilize, undermine, ridicule, and belittle modernist and rationalist approaches? Does this get us any further, make the world any better, or enhance the human condition? In what sense can this "debate toward [a] bottomless pit of epistemology and metaphysics" be judged pertinent, relevant, help-ful, or cogent to anyone other than those foolish enough to be scholasti-cally excited by abstract and recondite debate.38 Contrary to Ashley's assertions, then, a poststructural approach fails to empower the marginalized and, in fact, abandons them. Rather than ana-lyze the political economy of power, wealth, oppression, production, or international relations and render an intelligible understanding of these processes, Ashley succeeds in ostracizing those he portends to represent by delivering an obscure and highly convoluted discourse. If Ashley wishes to chastise structural realism for its abstractness and detachment, he must be prepared also to face similar criticism, especially when he so adamantly intends his work to address the real life plight of those who struggle at marginal places. If the relevance of Ashley's project is questionable, so too is its logic and cogency. First, we might ask to what extent the postmodern "empha-sis on the textual, constructed nature of the world" represents "an unwar-ranted extension of approaches appropriate for literature to other areas of human practice that are more constrained by an objective reality. "39 All theory is socially constructed and realities like the nation-state, domestic and international politics, regimes, or transnational agencies are obviously social fabrications. But to what extent is this observation of any real use? Just because we acknowledge that the state is a socially fabricated entity, or that the division between domestic and international society is arbitrar-ily inscribed does not make the reality of the state disappear or render invisible international politics. Whether socially constructed or objectively given, the argument over the ontological status of the state is of no particular moment. Does this change our experience of the state or somehow diminish the political-economic-juridical-military functions of the state? To recognize that states are not naturally inscribed but dynamic entities continually in the process of being made and reimposed and are therefore culturally dissimilar, economically different, and politically atypical, while perspicacious to our historical and theoretical understanding of the state, in no way detracts from its reality, practices, and consequences. Similarly, few would object to Ashley's hermeneutic interpretivist understanding of the international sphere as an artificially inscribed demarcation. But, to paraphrase Holsti again, so what? This does not malce its effects any less real, diminish its importance in our lives, or excuse us from paying serious attention to it. That international politics and states would not exist with-out subjectivities is a banal tautology. The point, surely, is to move beyond this and study these processes. Thus, while intellectually interesting, constructivist theory is not an end point as Ashley seems to think, where we all throw up our hands and announce there are no foundations and all real-ity is an arbitrary social construction. Rather, it should be a means of rec-ognizing the structurated nature of our being and the reciprocity between subjects and structures through history. Ashley, however, seems not to want to do this, but only to deconstruct the state, international politics, and international theory on the basis that none of these is objectively given but fictitious entities that arise out of modernist practices of representa-tion. While an interesting theoretical enterprise, it is of no great conse- quence to the study of international politics. Indeed, structuration theory has long talcen care of these ontological dilemmas that otherwise seem to preoccupy Ashley.40

#### Don’t be fooled by their ethical mumbo jumbo --- Butler’s ethics is nothing but utilitarianism that prioritizes the other first. Means they link to all their util and aggregate calculations bad arguments & you still weigh our offense.

Boucher 06, Geoff Boucher, lecturer in literary studies at Deakin University, Australia, Parrhesia, 2006, No. 1, p. 136-137

If Butler seeks to challenge the supposed supremacy of the political individual by dethroning the moral narcissism of the sovereign ego, then the resources she has at her disposal are limited by her insistence on the pre-social character of the ultra-ethical relation to the other. As usual, Butler seems to pre-empt criticism of her position by taking refuge in a damagingly abstract conception of moral action; nonetheless, it is possible to say of this position that any combination of constrained agency and infinite responsibility that demands that the subject act for the (unknown) good of the other must result in something close to paralysis. Indeed, the consequentialist position that she presently advocates 95 seems to oscillate. According to Butler, although divided by power and condemned to a permanent nucleus of opacity installed in the very heart of the speaking "I" by its ambiguous sociality, the melancholy subject must – despite all of the constraints on agency outlined in the various revisions of the theory of performativity – take responsibility for the incalculable consequences of its actions upon the other, even, indeed especially, when the subject accuses the other of being a persecutor. On the one hand, this might be read as an ultra-ethical stance that negatively limits the formulation of moral maxims by prescribing that "thou shalt not kill," but providing no concrete guidance on how to modify any concrete set of historical circumstances (thus voiding the force of the consequentialist argument, which relies upon the eminent practicality of its moral calculus). On the other hand, it might mean that the moral calculus performed by the self applies only to another individual, on the basis of the potentially condescending idea of acting so as to maximise the good of the other person. But all this is, finally, not a real challenge to moral and political individualism, for a consequentialism that acts for the good of others, taken one-by-one, is finally just a means for aggregating preferences based on the best guess about the other's interests, rights and values. In summary, Butler's theory of performativity, seeking to outline a "stylistics of existence" based on individual subversion of cultural norms, lands in an oscillation between voluntarism and determinism. Butler's resolution of this problem tends to evacuate institutional determinacy from the theory and produces a politics of performativity that is unsatisfactory in terms of its abstract individualism. This problem is compounded by a deconstructive understanding of speech acts and an idealist ontology of performative materialisation. Butler's effort to ground her politics in an ethics of alterity results in an ethics that swings between a pre-ethical openness to the other incapable of generating new moral norms, and an endorsement of consequentialism based in the potentially condescending ideal of the good of the other. The methodological individualism that all this suggests constrains Butler's account of the social field to the classical opposition between individual and society, generating a perspective that conceptualises marginal subversion in terms of the resistance of the individual to hegemonic norms and ethical alterity in terms of the duty of one individual towards another. Ultimately, for all her hostility to liberal political philosophy, her own alternative seems to be only another, somewhat more radical version of moral and political individualism.

#### You evaluate high magnitude impacts first

Sissela Bok, Professor of Philosophy @ Brandies. 1988. From “Applied Ethics and Ethical Theory.”

The same argument can be made for Kant’s other formulations of the Categorical Imperative: “So act as to use humanity, both in your own person and in the person of every other, always at the same time as an end, never simply as a means”; and “So act as if you were always through actions a law-making member in a universal Kingdom of Ends.” No one with a concern for humanity could consistently will to risk eliminating humanity in the person of himself and every other or to risk the death of all members in a universal Kingdom of Ends for the sake of justice. To risk their collective death for the sake of following one’s conscience would be, as Rawls said, “irrational, crazy.” And to say that one did not intend such a catastrophe, but that one merely failed to stop other persons from bringing it about would be beside the point when the end of the world was at stake. For although it is true that we cannot be held responsible for most of the wrongs that others commit, the Latin maxim presents a case where we would have to take such a responsibility seriously—perhaps to the point of deceiving, bribing, even killing an innocent person, in order that the world not perish.

#### All lives are infinitely valuable. The only ethical option is to maximize the number saved.

David Cummisky, Professor of Philosophy @ Bates College. 1996. “Kantian Consequentialism.” Pg. 131.

Finally, even if one grants that saving two persons with dignity cannot outweigh and compensate for killing one-because dignity cannot be added and summed in this way-this point still does not justify deontological constraints. On the extreme interpretation, **why would not killing one person be a stronger obligation than saving two persons**? If I am **concerned with the priceless dignity of each**, it would seem that I may still save two; it is just that my reason cannot be that the two compensate for the loss of one. Consider Hill's example of a priceless object: If I can save two of three priceless statues only by destroying one, then I cannot claim that saving two makes up for the loss of the one. But similarly, the loss of the two is not outweighed by the one **that was not destroy yed**. Indeed, even if dignity cannot be simply summed up, how is the extreme interpretation inconsistent with the idea that I should save as many priceless objects as possible? Even if two do not simply outweigh and thus compensate for the loss of the one, each is priceless; thus, I have good reason to save as many as I can. In short, it is not clear how the extreme interpretation justifies the killing/letting-die distinction or even how it conflicts with the conclusion that the more persons with dignity who are saved, the better.

#### The prisoners are not bare life—there are rules that prevent true reduction

Halit Tagma 09, Professor of Political Science, Arizona State , “Homo Sacer vs. Homo Soccer Mom: Reading Agamben and Foucault in the War on Terror,” Alternatives: Global, Local, Political, Vol. 34, No. 4 (Oct.-Dec. 2009), pp. 407-435

Thus in some respects, prisoners of the "war on terror" might be understood as homo sacer. However, there are also particularities in the way the prisoners are handled that call for a critical re-evaluation of the (non) space of Guántanamo. If in the classical Foucauldian teminology sovereign power is about "taking or granting life," and biopower is about "letting live and making life," then what can be said about the power operating in Guántanamo that "forces to live" when prisoners are carefully controlled to prevent them from committing suicide. Indeed, the prisoners of Guántanamo are force fed and even given mandatory health checks so as to insure they are kept, barely, alive. Unlike the homo sacer who may be killed but not sacrificed, the prisoners in Guantánamo may not be killed or sacrificed. In fact, extensive efforts are spent to keep the prisoners at Guantánamo alive, such as the creation of operating rooms for major health emergencies as well as facilities for dentistry. The prisoners are given health treatment similar to that provided to the troops at the base.60 No doubt the display of such "health benefits" could be read as window dressing conducted by the camp administrators. However, it is important to note that there are indeed serious efforts to keep the prisoners (often barely, but nevertheless) alive. Furthermore, punishment and interro- gation are orchestrated so that the use of violence does not result in death. Extensive efforts are made to prevent the prisoners from com- mitting suicide. In other cases, hunger-striking inmates have met with brutal forced feeding.61 Thus, in a striking unclassified army document that outlines procedures in Guántanamo Bay, guards are ordered to "defend detainees as you would yourself against a hostile act or intent, death, or serious bodily harm."62 Therefore it is correct to say that what goes in Guantánamo Bay is neither "letting live" nor "taking life," but instead "making live," or even "forcing to live."¶ Agamben argues that camps are places where sovereign "power confronts nothing but pure life."63 Guantánamo Bay, declared as being beyond the reach of law, is, in fact, regulated by many petty regulations that are characteristic of disciplinary power. Reading the re- ports of the Joint Task Force and prisoner testimonies, one comes to the conclusion that there is a plethora of rules and procedures that govern the treatment of Guántanamo prisoners.64 Whereas Agamben's statement on "zones of indistinction" would lead us to think that any- thing goes in the camp, this is far from the reality of Guántanamo. Every minuscule element of the lives of Guántanamo prisoners been planned and is, for the most part, regulated by a written a code of conduct. Many foreseeable and probable occurrences that would be expected in a prison population have been forethought and written into a manual. Titled Standard Operating Procedures this 250-page manual outlines the rules, regulations, and procedures for treatment of prisoners in many probable circumstances.65 The manual outlines, for example, what to do if there is a petty riot, when and how to spray pepper spray on rioters, religious burials rituals for prisoners, and so on.66 This clearly hints that it is not just an exceptional sovereign power at work in Guántanamo, as exemplified in Rumsfeldian rhetorical salvos on "exceptional times requiring exceptional measures." In- stead, there are multiple technologies of power that are at work in the day-to-day administration of this space.67

#### Their Scheper-Hughes impact ev is wrong---everyday violence doesn’t cause war and genocide because of significant differences in the degree of intentionality

Bradby & Hundt 10 – Hannah Bradby, Co-Director of the Institute of Health at the University of Warwick, Lecturer in Sociology at Warwick Medical School, and Gillian Lewando Hundt, Professor of Social Sciences in Health at the University of Warwick, 2010, “Introduction,” in Global perspectives on war, gender and health: the sociology and anthropology of suffering, p. 5-6

Far from being a uniquely horrific activity Scheper-Hughes (2002) views genocide as an extension of the dehumanising processes identifiable in many daily interactions. Drawing on analysis of the holocaust as the outcome of the general features of modernity, Scheper-Hughes posits a ‘genocidal continuum’ that connects daily, routine suffering and concomitant insults to a person’s humanity with genocide (Scheper-Hughes 2002: 371). The institutional ‘destruction of personhood’, as seen in the withdrawal of humane empathy from the poor or the elderly, creates the conditions which eventually make genocide possible.

The argument that conditions of modernity including western rational legal metaphysics facilitate genocide has been criticised as too unifying and as conferring ‘super-eminence’ on the holocaust (Rose 1996: 11). The holocaust has become a crucial emblem through which we have sought to understand subsequent violence, wars and genocides. But the centrality of the holocaust in developing European thinking around conflict and suffering has made the resultant theoretical perspectives difficult to apply in non-European settings and in instances where conflict is less focussed around a clash of ideology. While the scale of the death toll of the holocaust should continue to shock, as should the organised nature of the attempted destruction of Jews, Roma, Gays and the disabled, there is very little to be gained in comparing scales or forms of suffering. It should be possible to use the study of the holocaust to inform understanding of other genocides in the context of other wars, to interrogate the link between war and suffering and to think through gendered perspectives without essentialising gender or making it the only explanatory variable.

This collection does not primarily seek to add to the discussion of the role of the holocaust in theories of human suffering. Our chapters are, however, an unfortunate witness to the fact that despite contemporary hopes and the scale of combatant and non-combatants deaths, the two World Wars were not the wars to end all wars. Rather wars, and their associated suffering, have been ongoing ever since, both in Europe and beyond.

War and Medicine

While structural approaches can problematise a division between intentional and unintentional suffering, intentionality is nonetheless crucial to the contradictory relationship that war and medicine have with suffering. War is an organised conflict between two military groups and armed conflict is bound to be accompanied by suffering. Although ‘rules of engagement’ and the rhetoric of ‘targeted interventions’ deploying ‘surgical strikes’ suggest that ‘unnecessary’ blood shed can be avoided, war entails suffering, even if this is restricted to combatants. A limited, or targeted war is an oxymoron since war tends to be found in company with the other horsemen of the apocalypse, that is, pestilence, famine and death. Moreover, while the effect of war on soldiers is closely monitored by both sides, the disproportionate way in which the apocalyptic horsemen affect non-combatants and particularly those who are already disempowered such as women, the old and the young, has been less subject to scrutiny.

#### Patriarchy isn’t the root cause of war

Goldstein, IR prof, 1—Professor of International Relations at American University, 2001 (Joshua S., War and Gender: How Gender Shapes the War System and Vice Versa, pp.411-412)

I began this book hoping to contribute in some way to a deeper understanding of war – an understanding that would improve the chances of someday achieving real peace, by deleting war from our human repertoire. In following the thread of gender running through war, I found the deeper understanding I had hoped for – a multidisciplinary and multilevel engagement with the subject. Yet I became somewhat more pessimistic about how quickly or easily war may end. The war system emerges, from the evidence in this book, as relatively ubiquitous and robust. Efforts to change this system must overcome several dilemmas mentioned in this book. First, peace activists face a dilemma in thinking about causes of war and working for peace. Many peace scholars and activists support the approach, “if you want peace, work for justice.” Then, if one believes that sexism contributes to war, one can work for gender justice specifically (perhaps among others) in order to pursue peace. This approach brings strategic allies to the peace movement (women, labor, minorities), but rests on the assumption that injustices cause war. The evidence in this book suggests that causality runs at least as strongly the other way. War is not a product of capitalism, imperialism, gender, innate aggression, or any other single cause, although all of these influence wars’ outbreaks and outcomes. Rather, war has in part fueled and sustained these and other injustices. So, “if you want peace, work for peace.” Indeed, if you want justice (gender and others), work for peace. Causality does not run just upward through the levels of analysis, from types of individuals, societies, and governments up to war. It runs downward too. Enloe suggests that changes in attitudes towards war and the military may be the most important way to “reverse women’s oppression.” The dilemma is that peace work focused on justice brings to the peace movement energy, allies, and moral grounding, yet, in light of this book’s evidence, the emphasis on injustice as the main cause of war seems to be empirically inadequate.

#### No risk of endless warfare

Gray 7—Director of the Centre for Strategic Studies and Professor of International Relations and Strategic Studies at the University of Reading, graduate of the Universities of Manchester and Oxford, Founder and Senior Associate to the National Institute for Public Policy, formerly with the International Institute for Strategic Studies and the Hudson Institute (Colin, July, “The Implications of Preemptive and Preventive War Doctrines: A Reconsideration”, <http://www.ciaonet.org/wps/ssi10561/ssi10561.pdf>)

7. A policy that favors preventive warfare expresses a futile quest for absolute security. It could do so. Most controversial policies contain within them the possibility of misuse. In the hands of a paranoid or boundlessly ambitious political leader, prevention could be a policy for endless warfare. However, the American political system, with its checks and balances, was designed explicitly for the purpose of constraining the executive from excessive folly. Both the Vietnam and the contemporary Iraqi experiences reveal clearly that although the conduct of war is an executive prerogative, in practice that authority is disciplined by public attitudes. Clausewitz made this point superbly with his designation of the passion, the sentiments, of the people as a vital component of his trinitarian theory of war. 51 It is true to claim that power can be, and indeed is often, abused, both personally and nationally. It is possible that a state could acquire a taste for the apparent swift decisiveness of preventive warfare and overuse the option. One might argue that the easy success achieved against Taliban Afghanistan in 2001, provided fuel for the urge to seek a similarly rapid success against Saddam Hussein’s Iraq. In other words, the delights of military success can be habit forming. On balance, claim seven is not persuasive, though it certainly contains a germ of truth. A country with unmatched wealth and power, unused to physical insecurity at home—notwithstanding 42 years of nuclear danger, and a high level of gun crime—is vulnerable to demands for policies that supposedly can restore security. But we ought not to endorse the argument that the United States should eschew the preventive war option because it could lead to a futile, endless search for absolute security. One might as well argue that the United States should adopt a defense policy and develop capabilities shaped strictly for homeland security approached in a narrowly geographical sense. Since a president might misuse a military instrument that had a global reach, why not deny the White House even the possibility of such misuse? In other words, constrain policy ends by limiting policy’s military means. This argument has circulated for many decades and, it must be admitted, it does have a certain elementary logic. It is the opinion of this enquiry, however, that the claim that a policy which includes the preventive option might lead to a search for total security is **not at all convincing**. Of course, folly in high places is always possible, which is one of the many reasons why popular democracy is the superior form of government. It would be absurd to permit the fear of a futile and dangerous quest for absolute security to preclude prevention as a policy option. Despite its absurdity, this rhetorical charge against prevention is a stock favorite among prevention’s critics. It should be recognized and dismissed for what it is, a debating point with little pragmatic merit. And strategy, though not always policy, **must be nothing if not pragmatic**.

## 2NC

Presidents have defacto power to shape the landscape for the future, commit himself to future choices and generating new coalitions that will defend new rules

Formal means to bind himself

Rollback would be seen as a breach of faith

As along as the policies are deliberately chosen to generate credibility it does not matter if the constraint is formal or informal

Gain credibility by committing to commission authority or excresizing de facto veto power- comply to transparency, well-motivated exexutive would promise transparency which leads to crediblility-

Doenst get rolled back because the president increases the political cost on reversing decisions- public

 Solves signaling-

a) formally = commissions created,

b) informally= public statement announcement made that the pres is willing to build cred by recognizing constraints

 2 mechanisms solves formal mech pres can engage in commissions by actively constraining himself- the announcement is perceived by multiple actors that recognized

 Create formal mechanisms include commissions, internal reviews, OLC formal mech

#### 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 CP ensures political constraint

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)

In addition to an Executive Branch lawyer’s or other official’s own internalization of legal norms, law could constrain the President if there are “external” sanctions for violating it. The core idea here is a familiar one, often associated, as noted in Section II.B, with Holmes’s “bad man”: 131

One who obeys the law only because he concludes that the cost of noncompliance exceeds the benefits is still subject to legal constraint, to the extent that the cost of noncompliance is affected by the legal status of the norm. This is true even though the law is likely to impose less of a constraint on such “bad men” than on those who have internalized legal norms, and even though it is likely to be difficult in practice to disentangle internal and external constraints.

Importantly, external sanctions for noncompliance need not be formal. If the existence or intensity of an informal sanction is affected by the legal status of the norm in question, compliance with the norm in order to avoid the sanction should be understood as an instance of law having a constraining effect. In the context of presidential compliance with the law, we can plausibly posit a number of such informal sanctions. One operates on the level of professional reputation, and may be especially salient for lawyers in the Executive Branch. If a lawyer’s own internalization of the relevant set of legal norms is insufficient to prevent him from defending as lawful actions that he knows are obviously beyond the pale, he might respond differently if he believed his legal analysis would or could be disclosed to the broader legal community in a way that would threaten his reputation and professional prospects after he leaves government. 132 (This concern might help further explain the OLC and other Justice Department officials’ resistance to the White House in the warrantless surveillance example discussed above.)

A related sanction could operate on government leaders, including the President. If being perceived to act lawlessly is politically costly, a President’s political rivals have an incentive to invoke the law to oppose his actions with which they disagree. Put another way, legal argumentation might have a salience with the media, the public at large, and influential elites that could provide presidential opponents in Congress and elsewhere with an incentive to criticize executive actions in legal terms. If the threat of such a sanction is credible, law will impose a constraint whether or not the President himself has internalized the law as a normative matter. This might help explain, for example, why modern presidents do not seem to seriously contemplate disregarding Supreme Court decisions. And if presidents are constrained to follow the practice-based norm of judicial supremacy, they may be constrained to follow other normative practices that do not involve the courts.

Work by political scientists concerning the use of military force is at least suggestive of how a connection between public sanctions and law compliance might work. As this work shows, the opposition party in Congress, especially during times of divided government, will have both an incentive and the means to use the media to criticize unsuccessful presidential uses of force. The additional political costs that the opposition party is able to impose in this way will in turn make it less likely that presidents will engage in large-scale military operations. 133 It is at least conceivable, as the legal theorist Fred Schauer has suggested, that the political cost of pursuing an ultimately unsuccessful policy initiative (such as engaging in a war) goes up with the perceived illegality of the initiative. 134 If that is correct, then actors will require more assurance of policy success before potentially violating the law. We think that should count as a legal constraint on policymaking even if the relevant actors themselves do not see any normative significance in the legal rule in question.

#### Civilian trials allow Obama flexibility to charge detainees however he wants- overwhelming conviction rate

**Wheeler ’10** [Marcy, PhD, political commentator, “The 390 Terrorists Convicted in Civilian Courts,” <http://emptywheel.firedoglake.com/2010/03/26/the-390-terrorists-convicted-in-civilian-courts/>]

The Department of Justice has just sent a letter to the Senate Judiciary Committee answering early questions about how many terrorists have been convicted or plead guilty in civilian courts. Between those convicted of terrorism-related crimes (150) and individuals with ties to international terrorism convicted of other crimes (like obstruction or perjury–the total here is 240), 390 people have been sent to prison using our civilian courts.¶ As you might recall, there has been some debate over what the “real” number of terrorists convicted in civilian courts is. After the Obama Administration used the same number the Bush Administration had–a number which combines terrorist charges with non-terrorist charges–Republicans squawked.¶ But as DOJ points out, having other charges available is one of the advantages to the civilian courts:¶ The second category includes a variety of other statutes (like fraud, firearms offenses, false statements, or obstruction of justice) where the investigation involved an identified link to international terrorism. There have been more than 240 individuals charged in such cases since September 11, 2001. Examples of the international terrorism nexus identified in some of these cases have also been provided for your review.Prosecuting terror-related targets using these latter offenses is often an effective method—and sometimes the only available method—of deterring and disrupting potential terrorist planning and support activities. Indeed, one of the great strengths of the criminal justice system is the broad range of offenses that are available to arrest and convict individuals believed to be linked to terrorism, even if a terrorism offense cannot be established. Of course, an aggressive and wide-ranging terrorism investigation will net individuals with varying degrees of culpability and involvement in terrorist activity, as the NSD chart reflects. Arresting and convicting both major and minor operatives, supporters, and facilitators can have crippling effects on terrorists’ ability to carry out their plans. [my emphasis]¶ This is a point David Kris made in Congressional testimony last year–there are actually charges you can’t use in a military commission but which you can use in a civilian court (though the Obama Administration appears prepared to press the limits of MCs anyway).

#### Obama will circumvent Congress and the courts

**Kumar 3-19**-13 [Anita, White House correspondent for McClatchy Newspapers, former writer for The Washington Post, covering Virginia politics and government, and spent a decade at the St. Petersburg Times, writing about local, state and federal government both in Florida and Washington, “Obama turning to executive power to get what he wants,” <http://www.mcclatchydc.com/2013/03/19/186309/obama-turning-to-executive-power.html#.Ue18CdK1FSE>]

“The expectation is that they all do this,” said Ken Mayer, a political science professor at the University of Wisconsin-Madison who wrote “With the Stroke of a Pen: Executive Orders and Presidential Power.” “That is the typical way of doing things.”¶ But, experts say, Obama’s actions are more noticeable because as a candidate he was critical of Bush’s use of power. In particular, he singled out his predecessor’s use of signing statements, documents issued when a president signs a bill that clarifies his understanding of the law.¶ “These last few years we’ve seen an unacceptable abuse of power at home,” Obama said in an October 2007 speech.. “We’ve paid a heavy price for having a president whose priority is expanding his own power.”¶ Yet Obama’s use of power echoes that of his predecessors. For example, he signed 145 executive orders in his first term, putting him on track to issue as many as the 291 that Bush did in two terms.¶ John Yoo, who wrote the legal opinions that supported an expansion of presidential power after the 2001 terrorist attacks, including harsh interrogation methods that some called torture, said he thought that executive orders were sometimes appropriate – when conducting internal management and implementing power given to the president by Congress or the Constitution – but he thinks that Obama has gone too far.¶ “I think President Obama has been as equally aggressive as President Bush, and in fact he has sometimes used the very same language to suggest that he would not obey congressional laws that intrude on his commander-in-chief power,” said Yoo, who’s now a law professor at the University of California at Berkeley. “This is utterly hypocritical, both when compared to his campaign stances and the position of his supporters in Congress, who have suddenly discovered the virtues of silence.”¶ Most of Obama’s actions are written statements aimed at federal agencies that are published everywhere from the White House website to the Federal Register. Some are classified and hidden from public view.¶ “It seems to be more calculated to prod Congress,” said Phillip J. Cooper, the author of “By Order of the President: The Use and Abuse of Executive Direct Action.” “I can’t remember a president being that consistent, direct and public.”¶ Bush was criticized for many of his actions on surveillance and interrogation techniques, but attention has focused on Obama’s use of actions mostly about domestic issues.¶ In his first two years in the White House, when fellow Democrats controlled Capitol Hill, Obama largely worked through the regular legislative process to try to achieve his domestic agenda. His biggest achievements – including a federal health care overhaul and a stimulus package designed to boost the economy –came about with little or no Republican support.¶ But Republicans took control of the House of Representatives in 2010, making the task of passing legislation all the more difficult for a man with a detached personality who doesn’t relish schmoozing with lawmakers. By the next year, Obama wasn’t shy about his reasons for flexing his presidential power.¶ In fall 2011, he launched the “We Can’t Wait” campaign, unveiling dozens of policies through executive orders – creating jobs for veterans, adopting fuel efficiency standards and stopping drug shortages – that came straight from his jobs bills that faltered in Congress.¶ “We’re not waiting for Congress,” Obama said in Denver that year when he announced a plan to reduce college costs. “I intend to do everything in my power right now to act on behalf of the American people, with or without Congress. We can’t wait for Congress to do its job. So where they won’t act, I will.”¶ When Congress killed legislation aimed at curbing the emissions that cause global warming, Obama directed the Environmental Protection Agency to write regulations on its own incorporating some parts of the bill.¶ When Congress defeated pro-union legislation, he had the National Labor Relations Board and the Labor Department issue rules incorporating some parts of the bill.¶ “The president looks more and more like a king that the Constitution was designed to replace,” Sen. Charles Grassley, R-Iowa, said on the Senate floor last year.¶ While Republicans complain that Obama’s actions cross a line, experts say some of them are less aggressive than they appear.¶ After the mass shooting in Newtown, Conn., in December, the White House boasted of implementing 23 executive actions to curb gun control. In reality, Obama issued a trio of modest directives that instructed federal agencies to trace guns and send information for background checks to a database.¶ In his State of the Union address last month, Obama instructed businesses to improve the security of computers to help prevent hacking. But he doesn’t have the legal authority to force private companies to act.¶ “The executive order can be a useful tool but there are only certain things he can do,” said Melanie Teplinsky, an American University law professor who’s spoken extensively on cyber-law.¶ Executive actions often are fleeting. They generally don’t settle a political debate, and the next president, Congress or a court may overturn them.¶ Consider the so-called Mexico City policy. With it, Reagan banned federal money from going to international family-planning groups that provide abortions. Clinton rescinded the policy. George W. Bush reinstated it, and Obama reversed course again.¶ But congressional and legal action are rare. In 1952, the Supreme Court threw out Harry Truman’s order authorizing the seizure of steel mills during a series of strikes. In 1996, the District of Columbia Court of Appeals dismissed an order by Clinton that banned the government from contracting with companies that hire workers despite an ongoing strike.¶ Obama has seen some pushback.¶ Congress prohibited him from spending money to move inmates from the Guantanamo Bay U.S. naval base in Cuba after he signed an order that said it would close. A Chinese company sued Obama for killing its wind farm projects by executive order after he said they were too close to a military training site. A federal appeals court recently ruled that he’d exceeded his constitutional powers when he named several people to the National Labor Relations Board while the Senate was in recess.¶ But Obama appears to be undaunted.¶ “If Congress won’t act soon to protect future generations,” he told Congress last month, “I will.”

#### Placing representations and discourse first trades off with concrete political change and makes no difference to those engaged in political struggles

Taft-Kaufman, 95 Jill Speech prof @ CMU, Southern Comm. Journal, Spring, v. 60, Iss. 3, “Other Ways”, p pq

The postmodern passwords of "polyvocality," "Otherness," and "difference," unsupported by substantial analysis of the concrete contexts of subjects, creates a solipsistic quagmire. The political sympathies of the new cultural critics, with their ostensible concern for the lack of power experienced by marginalized people, aligns them with the political left. Yet, despite their adversarial posture and talk of opposition, their discourses on intertextuality and inter-referentiality isolate them from and ignore the conditions that have produced leftist politics--conflict, racism, poverty, and injustice. In short, as Clarke (1991) asserts, postmodern emphasis on new subjects conceals the old subjects, those who have limited access to good jobs, food, housing, health care, and transportation, as well as to the media that depict them. Merod (1987) decries this situation as one which leaves no vision, will, or commitment to activism. He notes that academic lip service to the oppositional is underscored by the absence of focused collective or politically active intellectual communities. Provoked by the academic manifestations of this problem Di Leonardo (1990) echoes Merod and laments: Has there ever been a historical era characterized by as little radical analysis or activism and as much radical-chic writing as ours? Maundering on about Otherness: phallocentrism or Eurocentric tropes has become a lazy academic substitute for actual engagement with the detailed histories and contemporary realities of Western racial minorities, white women, or any Third World population. (p. 530) Clarke's assessment of the postmodern elevation of language to the "sine qua non" of critical discussion is an even stronger indictment against the trend. Clarke examines Lyotard's (1984) The Postmodern Condition in which Lyotard maintains that virtually all social relations are linguistic, and, therefore, it is through the coercion that threatens speech that we enter the "realm of terror" and society falls apart. To this assertion, Clarke replies: I can think of few more striking indicators of the political and intellectual impoverishment of a view of society that can only recognize the discursive. If the worst terror we can envisage is the threat not to be allowed to speak, we are appallingly ignorant of terror in its elaborate contemporary forms. It may be the intellectual's conception of terror (what else do we do but speak?), but its projection onto the rest of the world would be calamitous....(pp. 2-27) The realm of the discursive is derived from the requisites for human life, which are in the physical world, rather than in a world of ideas or symbols.(4) Nutrition, shelter, and protection are basic human needs that require collective activity for their fulfillment. Postmodern emphasis on the discursive without an accompanying analysis of how the discursive emerges from material circumstances hides the complex task of envisioning and working towards concrete social goals (Merod, 1987). Although the material conditions that create the situation of marginality escape the purview of the postmodernist, the situation and its consequences are not overlooked by scholars from marginalized groups. Robinson (1990) for example, argues that "the justice that working people deserve is economic, not just textual" (p. 571). Lopez (1992) states that "the starting point for organizing the program content of education or political action must be the present existential, concrete situation" (p. 299). West (1988) asserts that borrowing French post-structuralist discourses about "Otherness" blinds us to realities of American difference going on in front of us (p. 170). Unlike postmodern "textual radicals" who Rabinow (1986) acknowledges are "fuzzy about power and the realities of socioeconomic constraints" (p. 255), most writers from marginalized groups are clear about how discourse interweaves with the concrete circumstances that create lived experience.People whose lives form the material for postmodern counter-hegemonic discourse do not share the optimism over the new recognition of their discursive subjectivities, because such an acknowledgment does not address sufficiently their collective historical and current struggles against racism, sexism, homophobia, and economic injustice. They do not appreciate being told they are living in a world in which there are no more real subjects. Ideas have consequences. Emphasizing the discursive self when a person is hungry and homeless represents both a cultural and humane failure.

#### Changing representational practices hinders understanding of policy by overlooking questions of agency and material structures

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While theoretical debates at academic conferences are important to academics, the discourse and concerns of foreign-policy decision-makers are quite different, so different that they constitute a distinctive problem-solving, theory-averse, policy-making subculture. There is a danger that academics assume that the discourses they engage are more significant in the practice of foreign policy and the exercise of power than they really are. This is not, however, to minimize the obvious importance of academia as a general institutional structure among many that sustain certain epistemic communities in particular states. In general, I do not disagree with Dalby’s fourth point about politics and discourse except to note that his statement-‘Precisely because reality could be represented in particular ways political decisions could be taken, troops and material moved and war fought’-evades the important question of agency that I noted in my review essay. The assumption that it is representations that make action possible is inadequate by itself. Political, military and economic structures, institutions, discursive networks and leadership are all crucial in explaining social action and should be theorized together with representational practices. Both here and earlier, Dalby’s reasoning inclines towards a form of idealism. In response to Dalby’s fifth point (with its three subpoints), it is worth noting, first, that his book is about the CPD, not the Reagan administration. He analyzes certain CPD discourses, root the geographical reasoning practices of the Reagan administration nor its public-policy reasoning on national security. Dalby’s book is narrowly textual; the general contextuality of the Reagan administration is not dealt with. Second, let me simply note that I find that the distinction between critical theorists and post-structuralists is a little too rigidly and heroically drawn by Dalby and others. Third, Dalby’s interpretation of the reconceptualization of national security in Moscow as heavily influenced by dissident peace researchers in Europe is highly idealist, an interpretation that ignores the structural and ideological crises facing the Soviet elite at that time. Gorbachev’s reforms and his new security discourse were also strongly self-interested, an ultimately futile attempt to save the Communist Party and a discredited regime of power from disintegration. The issues raised by Simon Dalby in his comment are important ones for all those interested in the practice of critical geopolitics. While I agree with Dalby that questions of discourse are extremely important ones for political geographers to engage, there is a danger of fetishizing this concern with discourse so that we neglect the institutional and the sociological, the materialist and the cultural, the political and the geographical contexts within which particular discursive strategies become significant. Critical geopolitics, in other words, should not be a prisoner of the sweeping ahistorical cant that sometimes accompanies ‘poststructuralism nor convenient reading strategies like the identity politics narrative; it needs to always be open to the patterned mess that is human history.

#### Systemic threats do not outweigh extinction—the availability heuristic causes us to underestimate both magnitude and probability

YUDKOWSKY 2006 (Eliezer, Singularity Institute for Artificial Intelligence, “Cognitive biases potentially affecting judgment of global risks,” forthcoming in *Global Catastrophic Risks*, August 31)

A general principle underlying the heuristics-and-biases program is that human beings use methods of thought - heuristics - which quickly return good approximate answers in many cases; but which also give rise to systematic errors called biases. An example of a heuristic is to judge the frequency or probability of an event by its availability, the ease with which examples of the event come to mind. R appears in the third-letter position of more English words than in the first-letter position, yet it is much easier to recall words that begin with "R" than words whose third letter is "R". Thus, a majority of respondents guess that words beginning with "R" are more frequent, when the reverse is the case. (Tversky and Kahneman 1973.) Biases implicit in the availability heuristic affect estimates of risk. A pioneering study by Lichtenstein et. al. (1978) examined absolute and relative probability judgments of risk. People know in general terms which risks cause large numbers of deaths and which cause few deaths. However, asked to quantify risks more precisely, people severely overestimate the frequency of rare causes of death, and severely underestimate the frequency of common causes of death. Other repeated errors were also apparent: Accidents were judged to cause as many deaths as disease. (Diseases cause about 16 times as many deaths as accidents.) Homicide was incorrectly judged a more frequent cause of death than diabetes, or stomach cancer. A followup study by Combs and Slovic (1979) tallied reporting of deaths in two newspapers, and found that errors in probability judgments correlated strongly (.85 and .89) with selective reporting in newspapers. People refuse to buy flood insurance even when it is heavily subsidized and priced far below an actuarially fair value. Kunreuther et. al. (1993) suggests underreaction to threats of flooding may arise from "the inability of individuals to conceptualize floods that have never occurred... Men on flood plains appear to be very much prisoners of their experience... Recently experienced floods appear to set an upward bound to the size of loss with which managers believe they ought to be concerned." Burton et. al. (1978) report that when dams and levees are built, they reduce the frequency of floods, and thus apparently create a false sense of security, leading to reduced precautions. While building dams decreases the frequency of floods, damage per flood is so much greater afterward that the average yearly damage increases. It seems that people do not extrapolate from experienced small hazards to a possibility of large risks; rather, the past experience of small hazards sets a perceived upper bound on risks. A society well-protected against minor hazards will take no action against major risks (building on flood plains once the regular minor floods are eliminated). A society subject to regular minor hazards will treat those minor hazards as an upper bound on the size of the risks (guarding against regular minor floods but not occasional major floods). Risks of human extinction may tend to be underestimated since, obviously, humanity has never yet encountered an extinction event.2

#### Nuke war threat is real and o/w structural and invisible violence---their expansion of structural violence to an all-pervasive omnipresence makes preventing war impossible

Ken Boulding 78 is professor of economics and director, Center for Research on Conflict Resolution, University of Michigan, “Future Directions in Conflict and Peace Studies,” The Journal of Conflict Resolution, Vol. 22, No. 2 (Jun., 1978), pp. 342-354

Galtung is very legitimately interested in problems of world poverty and the failure of development of the really poor. He tried to amalga- mate this interest with the peace research interest in the more narrow sense. Unfortunately, he did this by downgrading the study of inter- national peace, labeling it "negative peace" (it should really have been labeled "negative war") and then developing the concept of "structural violence," which initially meant all those social structures and histories which produced an expectation of life less than that of the richest and longest-lived societies. He argued by analogy that if people died before the age, say, of 70 from avoidable causes, that this was a death in "war"' which could only be remedied by something called "positive peace." Unfortunately, the concept of structural violence was broadened, in the word of one slightly unfriendly critic, to include anything that Galtung did not like. Another factor in this situation was the feeling,

 certainly in the 1960s and early 1970s, that nuclear deterrence was actually succeeding as deterrence and that the problem of nuclear war had receded into the background. This it seems to me is a most danger- ous illusion and diverted conflict and peace research for ten years or more away from problems of disarmament and stable peace toward a grand, vague study of world developments, for which most of the peace researchers are not particularly well qualified. To my mind, at least, the quality of the research has suffered severely as a result.' The complex nature of the split within the peace research community is reflected in two international peace research organizations. The official one, the International Peace Research Association (IPRA), tends to be dominated by Europeans somewhat to the political left, is rather, hostile to the United States and to the multinational cor- porations, sympathetic to the New International Economic Order and thinks of itself as being interested in justice rather than in peace. The Peace Science Society (International), which used to be called the Peace Research Society (International), is mainly the creation of Walter Isard of the University of Pennsylvania. It conducts meetings all around the world and represents a more peace-oriented, quantitative, science- based enterprise, without much interest in ideology. COPRED, while officially the North American representative of IPRA, has very little active connection with it and contains within itself the same ideological split which, divides the peace research community in general. It has, however, been able to hold together and at least promote a certain amount of interaction between the two points of view. Again representing the "scientific" rather than the "ideological" point of view, we have SIPRI, the Stockholm International Peace Research Institute, very generously (by the usual peace research stand- ards) financed by the Swedish government, which has performed an enormously useful service in the collection and publishing of data on such things as the war industry, technological developments, arma- ments, and the arms trade. The Institute is very largely the creation of Alva Myrdal. In spite of the remarkable work which it has done, how- ever, her last book on disarmament (1976) is almost a cry of despair over the folly and hypocrisy of international policies, the overwhelming power of the military, and the inability of mere information, however good, go change the course of events as we head toward ultimate ca- tastrophe. I do not wholly share her pessimism, but it is hard not to be a little disappointed with the results of this first generation of the peace research movement. Myrdal called attention very dramatically to the appalling danger in which Europe stands, as the major battleground between Europe, the United States, and the Soviet Union if war ever should break out. It may perhaps be a subconscious recognition-and psychological denial-of the sword of Damocles hanging over Europe that has made the European peace research movement retreat from the realities of the international system into what I must unkindly describe as fantasies of justice. But the American peace research community, likewise, has retreated into a somewhat niggling scientism, with sophisticated meth- odologies and not very many new ideas. I must confess that when I first became involved with the peace research enterprise 25 years ago I had hopes that it might produce some- thing like the Keynesian revolution in economics, which was the result of some rather simple ideas that had never really been thought out clearly before (though they had been anticipated by Malthus and others), coupled with a substantial improvement in the information system with the development of national income statistics which rein- forced this new theoretical framework. As a result, we have had in a single generation a very massive change in what might be called the "conventional wisdom" of economic policy, and even though this conventional wisdom is not wholly wise, there is a world of difference between Herbert Hoover and his total failure to deal with the Great Depression, simply because of everybody's ignorance, and the moder- ately skillful handling of the depression which followed the change in oil prices in 1-974, which, compared with the period 1929 to 1932, was little more than a bad cold compared with a galloping pneumonia. In the international system, however, there has been only glacial change in the conventional wisdom. There has been some improvement. Kissinger was an improvement on John Foster Dulles. We have had the beginnings of detente, and at least the possibility on the horizon of stable peace between the United States and the Soviet Union, indeed in the whole temperate zone-even though the tropics still remain uneasy and beset with arms races, wars, and revolutions which we cannot really afford. Nor can we pretend that peace around the temper- ate zone is stable enough so that we do not have to worry about it. The qualitative arms race goes on and could easily take us over the cliff. The record of peace research in the last generation, therefore, is one of very partial success. It has created a discipline and that is something of long-run consequence, most certainly for the good. It has made very little dent on the conventional wisdom of the policy makers anywhere in the world. It has not been able to prevent an arms race, any more, I suppose we might say, than the Keynesian economics has been able to prevent inflation. But whereas inflation is an inconvenience, the arms race may well be another catastrophe. Where, then, do we go from here? Can we see new horizons for peace and conflict research to get it out of the doldrums in which it has been now for almost ten years? The challenge is surely great enough. It still remains true that war, the breakdown of Galtung's "negative peace," remains the greatest clear and present danger to the human race, a danger to human survival far greater than poverty, or injustice, or oppression, desirable and necessary as it is to eliminate these things. Up to the present generation, war has been a cost and an inconven- ience to the human race, but it has rarely been fatal to the process of evolutionary development as a whole. It has probably not absorbed more than 5% of human time, effort, and resources. Even in the twenti- eth century, with its two world wars and innumerable smaller ones, it has probably not acounted for more than 5% of deaths, though of course a larger proportion of premature deaths. Now, however, ad- vancing technology is creating a situation where in the first place we are developing a single world system that does not have the redundancy of the many isolated systems of the past and in which therefore if any- thing goes wrong everything goes wrong. The Mayan civilization could collapse in 900 A.D., and collapse almost irretrievably without Europe or China even being aware of the fact. When we had a number of iso- lated systems, the catastrophe in one was ultimately recoverable by migration from the surviving systems. The one-world system, therefore, which science, transportation, and communication are rapidly giving us, is inherently more precarious than the many-world system of the past. It is all the more important, therefore, to make it internally robust and capable only of recoverable catastrophes. The necessity for stable peace, therefore, increases with every improvement in technology, either of war or of peacex

The status quo is structurally improving

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The world is getting better, faster, than we could ever have imagined. For those of us who are fortunate enough to live in wealthy communities or countries, we have a common set of reference points we use to describe the world's most intractable, upsetting, unimaginable injustices. Often, we only mention these horrible realities in minimizing our own woes: "Well, that's annoying, but it's hardly as bad as children starving in Africa." Or "Yeah, this is important, but it's not like it's the cure for AIDS." Or the omnipresent description of any issue as a "First World Problem". But let's, for once, look at the actual data around developing world problems. Not our condescending, world-away displays of emotion, or our slacktivist tendencies to see a retweet as meaningful action, but the actual numbers and metrics about how progress is happening for the world's poorest people. Though metrics and measurements are always fraught and flawed, Gates' single biggest emphasis was the idea that measurable progress and metrics are necessary for any meaningful improvements to happen in the lives of the world's poor. So how are we doing? THE WORLD HAS CHANGED The results are astounding. Even if we caveat that every measurement is imprecise, that billionaire philanthropists are going to favor data that strengthens their points, and that some of the most significant problems are difficult to attach metrics to, it's inarguable that the past two decades have seen the greatest leap forward in the lives of the global poor in the history of humanity. Some highlights: Children are 1/3 less likely to die before age five than they were in 1990. The global childhood mortality rate for kids under 5 has dropped from 88 in 1000 in 1990 to 57 in 1000 in 2010. The global infant mortality rate for kids dying before age one has plunged from 61 in 1000 to 40 in 1000. Now, any child dying is of course one child too many, but this is astounding progress to have made in just twenty years. In the past 30 years, the percentage of children who receive key immunizations such as the DTP vaccine has quadrupled. The percentage of people in the world living on less than $1.25 per day has been cut in half since 1990, ahead of the schedule of the Millennium Development Goals which hoped to reach this target by 2015. The number of deaths to tuberculosis has been cut 40% in the past twenty years. The consumption of ozone-depleting substances has been cut 85% globally in the last thirty years. The percentage of urban dwellers living in slums globally has been cut from 46.2% to 32.7% in the last twenty years. And there's more progress in hunger and contraception, in sustainability and education, against AIDS and illiteracy. After reading the Gates annual letter and following up by reviewing the UN's ugly-but-data-rich Millennium Development Goals statistics site, I was surprised by how much progress has been made in the years since I've been an adult, and just how little I've heard about the big picture despite the fact that I'd like to keep informed about such things. I'm not a pollyanna — there's a lot of work to be done. But I can personally attest to the profound effect that basic improvements like clean drinking water can have in people's lives. Today, we often use the world's biggest problems as metaphors for impossibility. But the evidence shows that, actually, we're really good at solving even the most intimidating challenges in the world. What we're lacking is the ability to communicate effectively about how we make progress, so that we can galvanize even more investment of resources, time and effort to tackling the problems we have left.

## 1NR

#### Sanctions do violence against the people of Iran – it effects all aspects of life

Ajam Media Collective October 3 (15 Ways Sanctions Hurt Ordinary Iranians¶ POSTED BY [AJAM MEDIA COLLECTIVE](http://ajammc.com/author/ajammc/) ⋅ OCTOBER 3, 2013¶ http://ajammc.com/2013/10/03/15-ways-sanctions-hurt-ordinary-iranians/)

Sanctions have an especially tragic history in the Middle East. Their devastating humanitarian impact upon Iraqi society caused proponents of sanctions to begin advocating for a supposedly “smart” variety intended to “target” only governments; in this case, the Islamic Republic of Iran. Yet their increasingly widespread effects upon Iranian society today show this rhetoric to have been disingenuous, as ordinary Iranians bear the brunt of these sanctions. We are once again reminded of the inhumanity of collective punishment; of the fact that sanctions ultimately don’t “target,” they spread and ensnare instead.¶ These sanctions have significantly affected the lives of Iranians living in Iran as well as in the diaspora. Life essentials, such as the capacity for travel, education, the sending of remittances, and even access to medicine are increasingly limited for average Iranians.¶ Yet it can sometimes be hard to appreciate the impact of these sanctions in everyday terms. We’ve compiled a list of 15 photographs to help illustrate these impacts.¶ 1. Sanctions have sent the Iranian economy into a series of shocks, causing massive inflation.¶ This has lead to a serious devaluation of the rial that has wreaked havoc on the purchasing power of ordinary Iranians.¶ 2. Sanctions have created medicine shortages in Iran, leaving hundreds of thousands without access to vital medications.¶ Those medicines still available, meanwhile, are often prohibitively expensive due to the currency collapse. The result has been many easily preventable deaths.¶ Manouchehr Esmaili-Liousi is one of them. He didn’t have access to his hemophilia medicine and was reported as the first death directly caused by sanctions. He was fifteen. Many medicines for hemophilia and thalassemia, and other serious diseases have become extremely rare and highly expensive because of sanctions.¶ 3. Due to sanctions, birth control pills – once available, accessible, and affordable – have become virtually non-existent.¶ Instead, cheaply made and sometimes dangerous substitutes have flooded the markets.¶ These include brands like Yaz and Yasmine, the same pills that are facing multiple major lawsuits in the US because their use has been linked to heart attacks, strokes, pulmonary embolism, deep vein thrombosis, and blood clots in women.¶ 4. Iranian veterans of the Iran-Iraq war and survivors of chemical weapons attack increasingly don’t have access to vital treatments needed for their survival.¶ Iran is home to 100,000+ victims of chemical warfare, more than any other country in the world. While thousands of Iranians died instantly following the chemical weapons attacks, Iran’s tens of thousands of survivors face a wide range of long-term effects, including extremely high rates of respiratory ailments, skin and eye problems, fertility and reproductive disorders, and cancer.¶ 5. Basic medicines such as Advil and Tylenol are increasingly out of reach and difficult to find in Iran.¶ So instead of taking gifts, in many cases Iranians abroad have resorted to filling their luggage with over-the-counter meds to take their families in Iran.¶ 6. Because of sanctions, Tehran has been experiencing the worst pollution it’s ever had.¶ In 2010, US sanctions were implemented against Iranian imports of refined gasoline. This meant that the country had to immediately come up with a way to refine its own. The ad hoc replacement is of a dramatically lower quality, and as a result levels of air pollution (and deaths from respiratory diseases) have skyrocketed in cities across the country. In Tehran, there were less than 150 days of “healthy air” in 2011, down from 300 in 2009.¶ The pollution has gotten so bad that Tehran’s governor has even at times shut down the city for people’s safety and health. This dramatic decline follows years after which air quality in Iranian cities was getting better, due to a combination of increased government investment in public transit, cleaner fuels, and better industrial technology.¶ In major cities, smog has gotten so bad that people often resort to wearing face masks in public to protect themselves.¶ 7. Some ideas in Iran are literally not worth the paper that they are printed on! ¶ Many can’t afford simple things, like the cost of paper. What is more, the cost of imported paper has risen sharply due to the devalued rial and led to what Iranian media have termed a “paper crisis.”¶ This has been linked to the bankruptcy of an estimated 100 independent publishers. The government continues to subsidize many publishers, but the widespread shutdown of independent publishers means that that the variety of ideas being published is increasingly restricted.¶ Never thought paper would be such a precious commodity, did you?¶ 8. Want to be an Iranian AND have your money in a bank account? Some banks say no. Many bank accounts belonging to Iranians in the US have been closed due to sanctions.¶ Iranian students studying in the US have been especially targeted by banks over-enforcing sanctions. Often, banks will go far overboard in their enforcement for fear of being targeted by the United States government for non-compliance.¶ This is an especially sensitive issue because Iran’s banks have been completely cut off from the global banking system, forcing Iranians to rely on foreign banks if they travel or live abroad. Even a minor procedure like buying a plane ticket or shopping online is an arduous process, as Iranian credit cards and bank accounts are blocked from making international transactions.¶ 9. Bank accounts belonging to Iranian-Canadians have also faced random closures due to sanctions.¶ In mid 2012, for example, TD Canada Trust began to close the accounts of numerous Iranian-Canadians and Iranian residents of Canada, apparently without allowing them an opportunity to contest their cases. These closures were widespread; in a single fact-finding meeting held by the Iranian Canadian Congress, about 100 Iranian-Canadians who had been affected showed up to voice their concerns. The episode even prompted the Canadian Civil Liberties Association to suggest that the closures may be violation of Canada’s Charter of Rights and Freedoms. More recently, Canada’s Royal Bank seems to be following suit.¶ 10. Iranians have been denied university entrance to European universities, especially in the fields of mathematics, science and technology (STEM), but also in social sciences and humanities.¶ Czech Technical University, for example, outright rejected a student based on her Iranian citizenship.¶ 11. Even if Iranian students are admitted to American universities they may be barred from obtaining the financial services, such as student loans, necessary to afford it.¶ As Discover Student Loans, put it in a rejection letter: “Unfortunately, we cannot approve your application for the following reason(s): the country of residence you provided on your application is on the OFAC sanctioned country list.”¶ 12. Despite changes to visa laws for Iranian students studying in the US, many students still face the problem of the single-entry visas, which means that they cannot visit home without having to go through the burdensome and costly process of re-applying for their student visa.¶ This is especially true for students in fields of science, engineering, and technology who cannot obtain multiple-entry visas.¶ 13. Airbnb is reportedly denying service to Iranians seeking to sign up.¶ Photo credit: Ehsan Norouzi (@Ehsanism on Twitter)¶ 14. Want to go to Iran?¶ You can’t if you want to book it through Trip Advisor, Kayak.com or many other US-based travel companies, who ban any bookings involving Iran.¶ 15. Even if you manage to find a travel agent who will book a flight, some airlines have boycotted the country altogether.¶ KLM and Austrian airlines, among others, have stopped flying to Iran since the latest rounds of sanctions came into effects. Malaysia’s Air Asia, which previously offered cheap flights from Tehran to Kuala Lumpur and vice versa for hundreds of thousands of Iranian students and immigrants every year, has also canceled all flights to and from Iran since October 14, 2012 to remain compliant with sanctions. Recently, President Rouhani has suggested the possibility of having direct flights from New York to Tehran, but sanctions would have to be lifted before this can be a legal reality.¶ These are just a few examples of the effects of sanctions. The consequences of these sanctions have seeped into every aspect of life in Iran and have negatively impacted the social, cultural, and economic fabric of society, and are felt by Iranians in some very real ways. By no means an exhaustive list, this was merely an attempt to recognize and remember those affected by sanctions.¶ The sanctions are playing their purpose and that is the sign the the US and the West should harden their pressure on the Ayatullahs in order to succeed in mission of totally cleat Iran from nuclear materials and centrifuges.¶ Absolutely scandalous. The outside world has NO RIGHT to make life miserable for ordinary Iranians simply for having the misfortune of living under a government the US dislikes.¶ Lift the sanctions NOW, I say.

#### The sanctions regime is justified upon an orientalist lens – our impact framing is one that calls out the way that Eurocentric American thinking operates upon the Iranian people

Raju 12 (<http://www.thehindu.com/opinion/op-ed/the-disingenuous-debate-on-iran/article3446670.ece>, The Hindu)

Neither Israel — the most belligerent state in the region — with hundreds of nuclear weapons, nor the U.S. with thousands can expect to be taken seriously when they claim that Iran threatens their security. However, Iran does threaten their hegemony in West Asia. So, Iran's nuclear programme has become a pretext to pressurise a recalcitrant regime. The concomitant demonisation of Iran in the popular media, including an Orientalist debate on whether Iran is a “rational actor,” is part of a push towards an ultimate objective of “regime-change.”

Emphasis on “male” deaths ignores the inordinate number of female victims of war- reveals patriarchy of war

Chew 5 [Huibin Amee, Joint Degree in Social Studies and Women from Harvard University, “Why the War is Sexist (And Why We Can’t Ignore Gender Anymore)”http://www.insurgentamerican.net/analysis/why-the-war-is-sexist/ ]

In the 20th century, 90 percent of all war deaths have been of unarmed women, children, and men. 1 As the occupation wears on, more and more Iraqi women and girls are killed – reported as “collateral damage.” Bombs and modern war weapons murder and maim noncombatant women in approximately equal numbers to noncombatant men – even if from the U.S. perspective, men make up the vast majority of our war dead. Soldiers are not those primarily losing their lives in this occupation. At the same time, note that U.S. imperialism benefits from certain strategies that maximize “collateral damage” (such as using long-distance, high tech weapons rather than infantry), because these also minimize our own soldiers’ deaths and the potential public relations blowup. The tendency to devalue the enemies’ lives is reinforced by not only racist but also sexist ideologies – history is made by “our boys,” and enemy females’ deaths are not even acknowledged. Putting U.S. soldiers’ deaths abroad in the context of other wartime deaths occurring at home causes another shift in perspective. For example, during World War II, U.S. industrial workers were more likely than U.S. soldiers to die or be injured. Historian Catherine Lutz observes, “The female civilians who worked on bases or in war industries can be seen as no less guardians or risk-takers than people in uniform.” 2 This is not to downplay the amount of suffering and exploitation soldiers are forced to endure, but to widen our scope of who we recognize as affected in war.

**War amplifies female suffering- economically**

Chew 5 [Huibin Amee, Joint Degree in Social Studies and Women from Harvard University, “Why the War is Sexist (And Why We Can’t Ignore Gender Anymore)”http://www.insurgentamerican.net/analysis/why-the-war-is-sexist/ ]

With the destruction of Iraq’s economy, women and girls have suffered especially from deprivations. In the article, “Occupation is Not (Women’s) Liberation: Confronting ‘Imperial Feminism’ and Building a Feminist Anti-War Movement,” I discuss in detail some gendered ways Iraqi women and girls disproportionately bear effects of the country’s economic collapse – from unemployment to the dramatic drop in female literacy. In the U.S., poor women bear the brunt of public service cuts. In Massachusetts, for example, most Medicaid recipients, graduates of state and community colleges, welfare and subsidized childcare recipients, are women – and all these programs have faced budget slashes. Most families living in poverty are headed by single mothers.

#### Obama pressure prevents passage of sanctions legislation now

RFE (Radio Free Europe) January 31, 2014 “Congress Backs Off Iran Sanctions After Veto Threat” http://www.rferl.org/content/iran-nuclear-sanctions-congress-obama-veto-threat/25247292.html

U.S. President Barack Obama appears to have prevailed, for now, in his campaign to stop Congress from imposing new sanctions against Iran while a diplomatic initiative on Tehran’s nuclear program is under way.¶ Obama announced in his State of the Union address on January 28 that he would veto any legislation imposing fresh sanctions against Iran while negotiations on a permanent nuclear agreement are given a chance.¶ Obama also said he would lead a campaign for sanctions if a permanent nuclear agreement is not reached soon.¶ Since Obama’s speech, several Democratic senators who had backed a bipartisan sanctions bill have publicly stepped back from the legislation, saying that now is not the time for fresh sanctions.

#### Obama PC working but he still has to fight

JPost 1/31. US senators newly reluctant on Iran sanctions after Obama pleads for time . By [MICHAEL WILNER](http://www.jpost.com/Authors/AuthorPage.aspx?id=189)

01/31/2014 03:17 Obama made a plea for time to explore diplomacy in his annual State of the Union address on Tuesday night. http://www.jpost.com/Iranian-Threat/News/US-senators-newly-reluctant-on-Iran-sanctions-after-Obama-pleads-for-time-339977

WASHINGTON – Democratic leadership in the US Senate has grown increasingly reluctant to act on a bill that would threaten Tehran with harsh new sanctions should it fail to reach a final agreement on its nuclear program. US President Barack Obama made a plea for time to explore diplomacy in his annual State of the Union address to a joint session of Congress on Tuesday night. The Nuclear Weapon Free Iran Act of 2013 still has 59 co-sponsors, including 19 Democrats, publicly supporting the bill. But Senate Majority Leader Harry Reid has given no indication he has any plans to bring the legislation to a vote, as his party colleagues begin to openly express skepticism on its timing. “I am strongly supporting the bill, but I think a vote is unnecessary right now as long as there’s visible and meaningful progress,” Sen. Richard Blumenthal (D-Connecticut) told Agence France-Presse this week. Blumenthal is a co-sponsor on the legislation. The point of the bill, as intended by its authors, Senate Foreign Relations Committee chairman Robert Menendez (D-New Jersey) and Sen. Mark Kirk (R-Illinois), is to hold the negotiations process to account with the specter of consequential failure: Should six months pass without a comprehensive agreement ending the nuclear impasse, the bill would automatically trigger new sanctions tools on the Islamic Republic, pending presidential approval. Proponents of the bill consider it negative reinforcement for Iran to engage meaningfully in negotiations over its nuclear program with the P5+1— the US, United Kingdom, France, Russia, China and Germany. But critics of the legislation, led by the Obama administration, warn that its passage could undermine the diplomatic process, and perhaps derail it completely. In his fifth State of the Union address, Obama promised to veto the measure should it reach his desk. “If Iran’s leaders do not seize this opportunity, then I will be the first to call for more sanctions, and stand ready to exercise all options to make sure Iran does not build a nuclear weapon,” he said. “But if Iran’s leaders do seize the chance, then Iran could take an important step to rejoin the community of nations, and we will have resolved one of the leading security challenges of our time without the risks of war. “For the sake of our national security, we must give diplomacy a chance to succeed,” the US president said. Under the Menendez-Kirk bill, no new sanctions would be imposed in the six-month interim. But Iran has stated that the bill nevertheless violates the Joint Plan of Action— the short-term deal reached in November between the P5+1 and Iran pausing its nuclear program in exchange for sanctions relief. In that international agreement, the president agreed that “the US administration, acting consistent with the respective roles of the president and the Congress, will refrain from imposing new nuclear-related sanctions.” Sen. Chris Coons (D-Delaware) said this week that “now is not the time for a vote on an Iran sanctions bill,” after the president urged Congress to hold off on the bill in the Tuesday address.

#### Obama PC key to hold off Iran sanctions now – it’s successful

Bowman 1/23

Michael, Voice of America, Support Slipping for Iran Sanctions in US Senate, 1/23/14, http://www.voanews.com/content/support-slipping-for-iran-sanctions-in-senate/1836453.html

More Democratic senators are quietly signaling their opposition to a bill that spells out new sanctions against Iran if negotiations to limit the country’s nuclear program do not yield a final accord. ¶ The bill retains bipartisan support in both houses of Congress, but passage is seen as increasingly unlikely in the Democratic-led Senate amid an intense lobbying effort by the Obama administration to hold off on sanctions while international negotiations proceed. ¶ Senators Patty Murray and Elizabeth Warren are the latest Democrats to announce their opposition to the Iran sanctions bill currently before Congress. ¶ In a letter to constituents in Washington state, Murray said “the administration should be given time to negotiate a strong verifiable comprehensive agreement” on Iran’s nuclear program. At the same time, she pledged to work “to swiftly enact sanctions” if the talks ultimately fail.¶ Similarly, a spokeswoman for Warren says the Massachusetts senator “does not support imposing additional sanctions through new legislation while diplomatic efforts to achieve a long-term agreement are ongoing.”¶ The sanctions bill has 16 Democratic co-sponsors, near-unanimous support among Republicans, and the backing of politically potent pro-Israeli U.S. lobbying groups. But 11 Senate committee chairs, including Murray, currently oppose the bill. ¶ Among Democrats who signed on to the measure late last year, some have grown less vocal in their defense and promotion of the measure in recent weeks. Senate Majority Leader Harry Reid has neither explicitly promised a vote on the bill, nor ruled it out.¶ Congressional expert William Galston of the Brookings Institution says pressure from President Barack Obama appears to be swaying a growing number of Democratic lawmakers.¶ “The White House is determined to prevent this from happening," he said. "The administration believes in the marrow of its bones that the executive branch is the lead negotiator in the matter and that it deserves a chance to conduct its own foreign policy."¶ Iran says any new sanctions would violate last year’s interim nuclear accord and spell the end of negotiations.¶ The White House has promised a presidential veto of any sanctions Congress may pass before negotiations run their course.

#### PC key – 30 Senators up for grabs

Sargent 12/20

Greg, Washington Post, Divide deepens among Democrats on Iran, 12/20/13, http://www.washingtonpost.com/blogs/plum-line/wp/2013/12/20/divide-deepens-among-democrats-on-iran/

At his presser today, President Obama reiterated his opposition to Congress passing any bill now imposing new sanctions on Iran. He repeated that his goal is to prevent Iran from gaining nuclear weapons, and said he would prefer to accomplish this through diplomacy, adding: “I would think that would be the preference on Capitol Hill.”¶ Translation: By imperiling the prospect of a long term diplomatic solution curbing Iran’s nuclear program, Congress would be making war more likely.¶ I’m told that Senator Barbara Boxer, a leading opponent of a new sanctions bill and a senior member of the Foreign Relations Committee, is working behind the scenes to persuade other Senate Democrats to oppose against any such bill if it comes up for a vote.¶ “I’m definitely talking to my colleagues and making the case that a rush to a new sanctions bill could disrupt these sensitive negotiations with Iran,” Boxer says, in a statement emailed my way.¶ That raises an interesting question: What if this bill comes to a vote and goes down in the Senate?¶ Already, Democrats are divided on the push for a new sanctions bill. Senators Robert Menendez and Chuck Schumer are leading the push for the bill, and they have been joined by 11 other Democratic Senators. On the other hand, 10 Dem Senators — all committee chairs — have come out against the sanctions bill, arguing in a letter to Harry Reid that “new sanctions would play into the hands of those in Iran who are most eager to see the negotiations fail.”¶ That leaves at least 30 Dem Senators who may be up for grabs.¶ This means that, in addition to the organizing that Boxer is undertaking, you’re all but certain to see more pressure be brought to bear on Democrats to back off of Congressional action right now. (There is also pressure on them to support the new sanctions bill, but the organizing that’s taking place against it is getting less attention.) As HuffPo reported yesterday, liberal groups like MoveOn and CREDO are already pillorying senators Menendez and Schumer for undermining the negotiations and playing into GOP efforts to fracture Dem unity on Iran. Pressure will probably be brought to bear on undecided Dems, too.¶ Senate aides say they are not ready to predict whether the Iran sanctions bill will or won’t pass. Right now 13 Republicans have signed on to the Menendez-Schumer bill. But you could conceivably see Republican Senators like Rand Paul and Mike Lee, who have been more suspicious of the use of American power abroad than neocons or GOP internationalists have traditionally been, come out against the bill. I’ve asked Senator Paul’s office where he stands and haven’t received an answer. What will he say?¶ There will also be tremendous pressure brought to bear from both sides on Harry Reid, who has yet to say whether he’ll allow it to come to a vote. If more Dems come out against the bill, it will become harder for him to bring it to a vote.¶ It remains very possible that the bill will pass the Senate, and if the White House is right, that could imperil the chances of a long term diplomatic breakthrough. But it’s also possible the bill will fail, which would be a major rebuke to the hawks.

**Winners win doesn’t apply to the aff—even Ornstein says suddenly forcing a bill through doesn’t boost polcap.** **Our links outweigh because the aff overstretches**

**Ornstein 2009** - resident scholar at AEI, PhD in political science from U Mich (7/8, Norman, "Is Obama Too Weak in Dealing with Congress?", Roll Call)

But even in a wonderfully functional Congress, achieving policy success in an area as difficult as this one would be a tough and uphill battle--no matter how skillful and popular a president may be. The same is true of health policy. Presidents can and must engage, have to step in at crucial moments and shape outcomes, mediate disputes, and use the bully pulpit to push controversial or difficult policy decisions.

But the history of presidents and Congresses shows that trying to do more--to go over the heads of Congressional leaders, to set a series of bottom lines and insist on them from party leaders and committee chairmen who find it easy to resist White House pressure--rarely works unless we are neck deep, not just waist or chest deep, in a crisis. That has always been true, but is even more so today, when majorities have to be largely one-sided and a majority party (especially when it is the Democrats) has limited cohesion or homogeneity.

The approach Obama has taken, cutting Congress a lot of slack and being supportive when necessary, led to a string of early and meaningful successes and enactments. True, the tough ones lie ahead. Finding any majority for any climate change bill in the Senate is even more challenging than it was to get a bill through the House. Finding any compromise between health bills that might make it through the House and Senate, pass fiscal muster, and be enacted into law is a tough slog.

But I believe the approach the White House has used so far has actually been smart and tough-minded, not simply expedient and weak. A successful president looks at the endgame, sees what is possible and maneuvers in the best way to get to that endgame. If you can't get bills through committee, or you can't find a majority on the floor of either chamber, you get nowhere.

#### Capital is key to reform indefinite detention policies – no one will budge without an Obama push

Rogin 5/23/13 (Josh, Senior Correspondent for National Security and Politics for Newsweek and The Daily BEast, "How Obama Bungled The Guantanamo Closing")

“It looks like he’s learned some lessons from the last go-round,” said Ken Gude, chief of staff at the Center for American Progress, the think tank founded by former Clinton chief of staff John Podesta. “Starting by designating a site on a military base to hold commissions is a great first step. What is Congress going to say to the Defense Department? That it doesn’t think it can secure a U.S. military base inside the United States from potential attack by terrorists?”¶ The president’s new plan is only as viable as his willingness to fight for it, according to all those who witnessed its failure the first time around. It remains to be seen if Obama will use his political capital to make sure the job gets done, or if he will leave it to underlings who might not carry it out once more.¶ Congress is not going to move unless the White House is engaged and the president uses his own personal power to force lawmakers to implement a policy they may not like, said Moran.¶ “I believe the president genuinely wants to do this, but he needs to prove it and he needs to be prepared to use his leverage to make it happen,” he said. “If he doesn’t achieve it, it’s going to be one of those things that will bother him for the rest of his days.”

#### It’s empirical – requires a political push

Romero 11/19/11 (Anthony, Executive Director of the American Civil Liberties Union, "Why Hasn't Obama Closed Guantanamo" The Prospect)

The prospects for Guantánamo being closed any time soon appear especially bleak. This January, the president signed an executive order entrenching the legal principle that detainees could be held without charges or trials. In effect, centuries of American jurisprudence had been compromised by presidential fiat. Central tenets of US democracy, such as “beyond a reasonable doubt,” “the right to rebut the evidence against you,” and “the right to confront your accuser in a court of law” had evidently become quaint and obsolete principles for this constitutional law professor-turned-president. The order also laid out anaemic procedures for continuing to review the cases of Guantánamo prisoners remaining in US custody. Most disturbingly, even if President Obama’s new process were to determine that a prisoner posed no threat to the United States, congressional transfer restrictions would likely prevent his release.¶ Congress bears a great deal of blame for the failure to close Guantánamo, but there are several reasons why the president is also heavily responsible. First, he had the full authority to transfer detainees to the United States for prosecution for almost the first two years of his presidency. But rather than expediting its closure, his 2009 executive order contained a one year timeline; the delay allowed opponents to derail the plan.¶ Second, when the first complete ban on detainee transfers was enacted in January 2011, it applied only to Department of Defense funds. At that time, President Obama still had the option to transfer detainees to the US using Department of Justice funds, but he did not exercise that authority. He also could have vetoed the transfer provisions, but did not.¶ Third, he did not stand behind the attorney general’s decision, in November 2009, to prosecute the 9/11 suspects in federal criminal courts. Allowing local and national elected officials to undermine the authority of the attorney general to prosecute was a stunning capitulation in the perennial turf war between the executive and legislative branches. In short, Obama succumbed to political pressure and refused to fight crucial battles.

#### It’s empirical – recent resolutions to limit detention powers prove it’ll be a fight

Mataconis 5/18/12 (Doug, Outside the Beltway, "House Repulicans Back Indefinite Detention on US Soil")

House Republicans yesterday [rejected an effort](http://thehill.com/blogs/defcon-hill/policy-and-strategy/228293-house-backs-indefinite-detention-on-us-soil) to limit the authority of the President, military, and law enforcement to indefinitely detain terror suspects captured on United States soil:¶ In two votes Friday morning, the House backed the president’s powers to indefinitely detain terror suspects captured on U.S. soil.¶ Lawmakers rejected an amendment that would have barred military detention for terror suspects captured in the United States on a 182-231 vote, beating back the proposal from a coalition of liberal Democrats and libertarian-leaning Republicans led by Reps. Adam Smith (D-Wash.) and Justin Amash (R-Mich.).¶ Instead, the House passed, by a vote of 243-173, an amendment to the National Defense Authorization Act (NDAA) sponsored by Reps. Louie Gohmert (R-Texas), Jeff Landry (R-La.) and Scott Rigell (R-Va.) that affirmed U.S. citizens would not be denied habeas corpus rights.¶ Smith and Amash had hoped to attract enough support from libertarian-leaning Republicans to pass their measure, but only 19 Republicans voted for it, while 19 Democrats voted against.¶ The detainee fight is shaping up to be one of the biggest for this year’s $643 billion defense authorization bill. The issue nearly derailed passage of last year’s version.¶ Smith’s amendment would have changed last year’s defense authorization legislation and the 2001 Authorization for Use of Military Force (AUMF) so that terror suspects captured on U.S. soil would be handled by civilian courts, not the military.¶ Smith argued that indefinite detention gave the president an “extraordinary” amount of power, and said the federal courts have successfully prosecuted hundreds of terrorists since the Sept. 11 attacks.¶ Smith and his allies said Gohmert’s amendment was redundant, since it affirms what is already true — that American citizens have habeas corpus rights.¶ Gohmert’s amendment was “offered as a smokescreen,” Smith said.¶ “It doesn’t protect any rights whatsoever,” he said.

#### Err on the side of caution – the probability of conflict has risen

Kearn 1/19/14 (David, Assistant Prof at St. John's University, The Folly of New Iran Sanctions, The Huffington Post)

The timing of the legislation is curious because of the delicate nature of the negotiations and the ongoing diplomacy between the United States and its partners and Iran. Hardliners on all sides are skeptical of any deals, but unlike past negotiations, the stakes this time seem much higher. Well-meaning intentions aside, any legislation that precipitates an Iranian walkout and a collapse of the negotiations will likely be viewed by friends and adversaries alike as a major failure by the United States. However, unlike past instances, the probability of war has significantly increased.

#### We control time frame and magnitude – great power war within months

PressTV 11/13

Global nuclear conflict between US, Russia, China likely if Iran talks fail, 11/13/13, http://www.presstv.ir/detail/2013/11/13/334544/global-nuclear-war-likely-if-iran-talks-fail/

A global conflict between the US, Russia, and China is likely in the coming months should the world powers fail to reach a nuclear deal with Iran, an American analyst says.¶ “If the talks fail, if the agreements being pursued are not successfully carried forward and implemented, then there would be enormous international pressure to drive towards a conflict with Iran before [US President Barack] Obama leaves office and that’s a very great danger that no one can underestimate the importance of,” senior editor at the Executive Intelligence Review Jeff Steinberg told Press TV on Wednesday. ¶ “The United States could find itself on one side and Russia and China on the other and those are the kinds of conditions that can lead to miscalculation and general roar,” Steinberg said. ¶ “So the danger in this situation is that if these talks don’t go forward, we could be facing a global conflict in the coming months and years and that’s got to be avoided at all costs when you’ve got countries like the United States, Russia, and China with” their arsenals of “nuclear weapons,” he warned. ¶ The warning came one day after the White House told Congress not to impose new sanctions against Tehran because failure in talks with Iran could lead to war.