### Off

#### Interpretation: Restrict means to limit

Supreme Court of Delaware 83 (THE MAYOR AND COUNCIL OF NEW CASTLE, a municipal corporation of the State of Delaware, Plaintiff Below, Appellant, v. ROLLINS OUTDOOR ADVERTISING, INC., Defendant Below, Appellee, No. 155, 1983, 475 A.2d 355; 1984 Del. LEXIS 324, November 21, 1983, Submitted, April 2, 1984, Decided)

The term "restrict" is defined as: To restrain within bounds; to limit; [\*\*9] to confine. Id. at 1182. The Supreme Court of the United States has recognized that HN5the term "regulate" necessarily entails a possible prohibition of some kind. That Court has stated: "It is an oft-repeated truism that every regulation necessarily speaks as a prohibition." Goldblatt v. Hempstead, 369 U.S. 590, 592, 8 L. Ed. 2d 130, 82 S. Ct. 987 (1962). The Supreme Court of Massachusetts in reviewing a statute containing language similar to that found in 22 Del.C. § 301 (which empowered municipalities to "regulate and restrict" outdoor advertising on public ways, in public places, and on private property within public view) held that the statute in question authorized a town to provide, through amortization, for the elimination of nonconforming off-site signs five years from the time the ordinance was enacted. The court held that the Massachusetts enabling act: Conferred on the Legislature plenary power to regulate and restrict outdoor advertising . . . . Although the word "prohibit" was omitted from [the enabling act], it was recognized that the unlimited and unqualified power to regulate and restrict can be, for practical purposes, the power to prohibit [\*\*10] "because under such power the thing may be so far restricted that there is nothing left of of it." (Citations omitted.) The court continued its discussions of the two terms by stating: The distinction between regulation and outright prohibition is often considered to be a narrow one: "that regulation may take the character of prohibition, in proper cases, is well established by the decisions of this court" . . . quoting from United States v. Hill, 248 U.S. 420, 425, 63 L. Ed. 337, 39 S. Ct. 143 (1919). John Donnelly and Sons, Inc. v. Outdoor Advertising Board, Mass. Supr., 369 Mass. 206, 339 N.E.2d 709 (1975). We hold that, through Article II, Section 25 of the Delaware Constitution and 22 Del.C. § 301, the General Assembly has authorized New Castle to terminate nonconforming off-site signs upon reasonable notice, that is, by what has come to be known as amortization. We hold that the power to "regulate and restrict" as such term applies to zoning matters includes the power, upon reasonable notice, to prohibit some of those uses already in existence.

#### Violation: The affirmative doesn’t create a limit on the authority of the president because that limit already exists - The Al-Bihani decision did not affect the AUTHORITY of the presidents war powers which is a static and independent concept separate from lower court determinations

#### The part of Al-Bihani dealing with Charming Betsy was dicta, which means it has no binding effect, Supreme Court precedent is controlling which means the aff does literally nothing – here’s their Paust card re-underlined

Paust 12 (Jordan J. Paust Mike 26 Teresa Baker Law Center Professor, University of Houston. Spring, 2012, Still Unlawful: The Obama Military Commissions, Supreme Court Holdings, and Deviant Dicta in the D.C. Circuit Cornell International Law Journal 45 Cornell Int’l L.J. 367)

Rarely has a circuit court judge been defiant of well-known Supreme Court precedent and the rule of law. Unfortunately, this sort of defiance is evident in an opinion addressing claims arising out of Guantanamo with respect to habeas review of the propriety of detention as well as in two \*388 subsequent opinions concerning the denial of a rehearing en banc in the same case. As noted in another article, surprising misinformation appears in imprudent dicta in a 2010 circuit court opinion that is manifestly erroneous and unavoidably contrary to venerable Supreme Court law.97 In Al-Bihani v. Obama,98 Judge Janice Brown, writing for the majority, offered dicta that is loaded with a number of errors. As she opined,¶ [T]he premise that the war powers granted by the AUMF and other statutes are limited by the international laws of war . . . is mistaken. There is no indication in the AUMF, the Detainee Treatment Act of 2005, . . . or the MCA of 2006 or 2009, that Congress intended the international laws of war to act as extra-textual limiting principles for the President's war powers under the AUMF. The international laws of war as a whole have not been implemented domestically by Congress and are therefore not a source of authority for U.S. courts. . . . Even assuming Congress had at some earlier point implemented the laws of war as domestic law through appropriate legislation, Congress had the power to authorize the President in the AUMF and other later statutes to exceed those bounds. . . . Therefore, while the international laws of war are helpful to courts when identifying the general set of war powers to which the AUMF speaks, . . . their lack of controlling legal force and firm definition render their use both inapposite and inadvisable when courts seek to determine the limits of the President's war powers.99¶ The first error that Judge Brown committed was to ignore the well-known and controlling Supreme Court precedent that has been followed since the early days of the Constitution with respect to interpretation of Acts of Congress when international law is at stake. This precedent, known as the Charming Betsy rule, holds that “an Act of Congress ought never to be construed to violate the law of nations if any other possible \*389 construction remains, and consequently can never be construed to violate . . . rights . . . further than is warranted by the law of nations.”100 Importantly, Chief Justice Marshall's famous ruling in Charming Betsy occurred during time of war and was a law of war ruling that also expressed the fundamental rule regarding the primacy of rights when he declared that federal statutes “can never be construed to violate” rights under international law.101 Additionally, as the Supreme Court has long recognized, federal statutes must be interpreted consistently with international law (not the other way around) and international law is a necessary background for interpretive purposes, whether or not the federal statute at first appears to be unambiguous.102 Contrary to Judge Brown's claim, \*390 Congress used the word “appropriate” in the AUMF as an express and unavoidable textual limitation that clearly conditions what forms of conduct the President can authorize. Under long-standing Supreme Court case law, it is obvious that the word “appropriate” must be interpreted consistently with relevant international law, such as the customary and treaty-based laws of war.103¶ \*391 A second, otherwise well-known rule based in Supreme Court case law that Judge Brown seemingly ignored is the Cook rule. Under the Cook rule, if, after attempting to construe a federal statute consistently with an earlier treaty, there still appears to be a clash, an unavoidable clash with a subsequent federal statute that might allow application of the last in time rule will not even arise unless there is a clear and unequivocal expression of congressional intent to override a particular treaty in the statute.104 If not, the prior treaty has primacy in our domestic legal process. As noted in another writing, it is obvious that there was no clear and unequivocal expression of congressional intent to override any relevant treaty in either \*392 the AUMF or the 2005 DTA.105 Therefore, under venerable Supreme Court case law, all relevant treaties necessarily have primacy over each of these forms of legislation.¶ With respect to the 2006 and 2009 MCAs, it is noted above that there was merely an intent to limit certain rights under the Geneva Conventions, and there was no clear and unequivocal expression of congressional intent to override any other relevant treaty or customary international law.106 Provisions of the MCA that are inconsistent with the Geneva Conventions still will not prevail in any event. Even if a statute is unavoidably inconsistent with a prior treaty and Congress has expressed a clear and unequivocal intent to override the treaty in the statute such that the last in time rule might apply, portions of the treaty may still control under exceptions documented in Supreme Court and other federal court decisions.107 As noted above, one of these exceptions assures the primacy of “rights under” treaties.108 The other exception assures the primacy of the laws of war,109 of which the Geneva Conventions are a part. Contrary to Judge Brown's unsupportable dicta, even if one could ignore the Supreme Court's Charming Betsy and Cook rules, under either of these exceptions to the last in time rule, Congress could not rightly authorize the President to violate rights under treaties or the laws of war. Therefore, rights under the Geneva Conventions as treaties and laws of war must prevail.¶ Furthermore, it is well-known from an overwhelming number of cases and other patterns of legal expectation since the beginning of the United States that treaty-based and customary laws of war are binding on the President and the entire Executive branch. Therefore, they have controlling legal force, must be faithfully executed, and necessarily limit the President's war powers.110 The Founders, Framers, and early judicial opinions \*394 also uniformly affirmed that Congress is bound by the customary laws of war and cannot authorize their infraction.111 It is also clear that they understood that the people are bound by international law and possessed no power to violate international law or to delegate such a power to any branch of the federal government.112

#### Reason to reject the team for negative ground: allowing affirmatives to reverse lower court decisions that have not been established as holding law makes it impossible to generate uniqueness for our disadvantages because it is not a substantial increase in restriction on the presidents war powers authority. Proves topicality is a voting issue for fairness and precise education.

#### Independently, vote negative on presumption – the affirmative is functionally Plan: The Status Quo – it does not have a unique advantage. You should be strict on presumption – there is not going to be a card that says its not holding because no one thinks that it actually is any more which means that if we win a serious chance that its not holding you should err on protecting the negative.

### Off

#### Text:  The Executive Branch of the United States should publicly declare that treaties ratified by the United States are restrictions on the war power authority of the president and the President of the United States should adhere to this policy.

#### Pres can self-bind

Posner and Vermeule 2010 [Eric A. , Professor of Law at the University of Chicago Law School and Editor of The Journal of Legal Studies; Adrian , Harvard Law Professor, The Executive Unbound: After the Madisonian Republic, Oxford Press, p. 138-139//wyo-sc]

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.59 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.60 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 selfbinding: 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.61 However, there may be 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.

### Off

#### Judicial deference to executive war powers high now

McCormack 13, Professor of Law at Utah

(8/20, Wayne, U.S. Judicial Independence: Victim in the “War on Terror”, today.law.utah.edu/projects/u-s-judicial-independence-victim-in-the-war-on-terror/

One of the principal victims in the U.S. so-called “war on terror” has been the independence of the U.S. Judiciary. Time and again, challenges to assertedly illegal conduct on the part of government officials have been turned aside, either because of overt deference to the Government or because of special doctrines such as state secrets and standing requirements. The judiciary has virtually relinquished its valuable role in the U.S. system of judicial review. In the face of governmental claims of crisis and national security needs, the courts have refused to examine, or have examined with undue deference, the actions of government officials.

#### Courts defer to political branches on questions of international law applicability to preserve separation of powers

Posner, 10

[Steve C. Posner on the Military Commissions Act since Boumediene v. Bush, “GHALEB NASSAR AL-BIHANI, APPELLANT v. BARACK OBAMA, PRESIDENT OF THE UNITED STATES, ET AL., APPELLEES No. 09-5051 UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT 619 F.3d 1; 393 U.S. App. D.C. 57; 2010 U.S. App. LEXIS 18169” August 31, 2010, LexisNexis, uwyo-baj]

The Constitution entrusts the President--not the Judiciary--with the conduct of war. "The Framers . . . did not make the judiciary the overseer of our government," Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 594, 72 S. Ct. 863, 96 L. Ed. 1153, 62 Ohio Law Abs. 417 (1952) (Frankfurter, J., concurring), so Boumediene cannot be read--as Judge Williams suggests--to override that basic notion and hand courts authority to deem international norms as binding commands on the Commander-in-Chief. Such a reading would be in tension with the Supreme Court's recognition that courts are "hardly . . . competent" in the realm of foreign affairs, Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 410, 84 S. Ct. 923, 11 L. Ed. 2d 804 (1964), and with the constitutional principle that prohibits even Congress, let alone the Judiciary, from "interfer[ing] with the [Executive's] command of forces and the conduct of campaigns," Ex Parte Milligan, 71 U.S. (4 Wall.) 2, 139, 18 L. Ed. 281 (1866) (Chase, C.J., concurring). Further, Judge Williams' proposed role for the Judiciary goes far beyond the role the Supreme Court envisioned in Hamdi v. Rumsfeld and Boumediene. The Hamdi plurality forecast a restrained process that "meddles little, if at all, [\*\*\*14] in the strategy or conduct of war, inquiring only into the appropriateness of continuing to detain an individual claimed to have taken up arms against the United States." 542 U.S. 507, 535, 124 S. Ct. 2633, 159 L. Ed. 2d 578 (2004). It seems farfetched that "inquiring only into the appropriateness" of detention should be freighted with the awesome power of deciding which international constraints to enforce against the President. In a similar vein, the Court in Boumediene was circumspect about crafting any substantive rules to control the President's war powers, repeating that it was not addressing the "content of the law that governs petitioners' detention," leaving it to the political branches first to engage in a "debate about how best to preserve Constitutional values while protecting the Nation from terrorism." 128 S. Ct. at 2277. Boumediene's holding concerned the jurisdiction of U.S. courts over Guantanamo habeas petitions, and it strains the jurisdictional nature of that holding to draw from it a substantive judicial power to spin international discourse into binding domestic law. It is no wonder then that Judge Williams does not offer any language from Boumediene to support his theory of an expanded judicial [\*\*\*15] role in military affairs. This sprint into judicial immodesty cannot be redeemed by Judge Williams' argument that international law parallels traditional tools of statutory interpretation, and that by turning to it for substantive meaning courts are only divining the intent of Congress. I am unaware of any federal judicial opinion--and Judge Williams cites none--that has ever before characterized [\*6] [\*\*62] international discourse as a traditional tool of statutory interpretation on § Marked 18:54 § par with legislative history, usage in other domestic statutes and cases, or dictionary definitions. The varied process by which international law is made--through treaty, tribunal decision, and the constant churn of state practice and opinio juris--shares few, if any, of the qualities that give the traditional sources of interpretation their authority. Courts turn to legislative history because it comes from the mouths of legislators and therefore arguably sheds light on their intentions and understandings. Courts examine the usage of terms in other statutes and judicial decisions because our law is a closed and coherent system that strives for internal consistency. And courts consult dictionaries for the same reason [\*\*\*16] most people do: our law, like the rest of our society, is dependent on language's technical meaning among American English speakers. On none of these grounds can the use of international law be justified. As Judge Kavanaugh explains in his detailed concurrence, international norms outside of those explicitly incorporated into our domestic law by the political branches are not part of the fabric of the law enforceable by federal courts after Erie. See infra, at 15-21 (Kavanaugh, J., concurring in denial of en banc rehearing). They therefore do not help courts to determine congressional intent or to recognize the wider coherence of the law. And international discourse, unlike a dictionary, is anything but a source of specific, technical, and shared linguistic meaning. Judge Williams concedes this point, characterizing international law as often "vague and deficient," consisting of "gauzy notions" that are prone to "misuse" by nations for "political purpose[s]," and subject to official criticism by our elected representatives. Infra, at 7 (opinion of Williams, J.). How can sifting through such an unstable and unreliable trove of meaning be likened to opening a dictionary? How is it advisable [\*\*\*17] or legitimate for courts to take on such a treacherous task, especially when the political branches possess the competency and traditional duty to do the sifting themselves by domestically incorporating international law through statute or rendering treaties self-executing?

#### **Judicial restriction of Presidential War Powers makes warfighting impossible**

Knott 13, Professor of National Security Affairs at the United States Naval War College

(8/22, Stephen F., War by Lawyer, www.libertylawsite.org/2013/08/22/war-by-lawyer/)

It is important to keep this in mind in light of the recent National Security Agency surveillance “scandal” which has led to calls for increased judicial oversight of the nation’s intelligence community. These calls, unfortunately, are not coming solely from the usual liberal suspects, but from conservatives who proclaim their devotion to the Constitution. This is an unfortunate turn of events, for if legislating from the bench is inappropriate in the domestic arena, it is completely unwarranted, and altogether dangerous, in the national security arena. This newfound appreciation for judicial activism from normally sober-minded conservatives can be seen in Senator Rand Paul’s (R-KY) and Representative Justin Amash’s (R-MI) proposal that class action lawsuits be filed against the National Security Agency in order to alter its practices. Paul recently announced that he would challenge “this [NSA surveillance] at the Supreme Court level. I’m going to be asking all the Internet providers and all of the phone companies, ask your customers to join me in a class-action lawsuit. If we get 10 million Americans saying ‘We don’t want our phone records looked at,’ then somebody will wake up and say things will change in Washington.” A program authorized by Congress, managed by the executive, and sanctioned by the FISA court will now be challenged by a class action lawsuit, mimicking the traditional liberal tactic of going to court when you cannot prevail in the political process. Additionally, Senator Patrick Leahy (D-VT), a longtime critic of the American intelligence community, has sponsored legislation with Senator Mike Lee (R-Utah) to “increase judicial review” of terrorist related surveillance requests. The FISA Accountability and Privacy Protection Act of 2013 would, as its sponsors put it, add more “meaningful judicial review” of requests by the government to intercept suspected terrorist communications. On top of this, President Obama has proposed that a “special advocate” be appointed to serve as an adversary to the government in FISA court proceedings. In other words, government officials will have to joust in front of a judge with a lawyer concerned about the civil rights of a suspected Al Qaeda sympathizer living in the United States. While it is not surprising that President Obama and Patrick Leahy would adopt these positions, it is surprising to see prominent Republicans, including potential 2016 GOP nominees, jumping on Pat Leahy’s bandwagon. Terrorist attacks directed from abroad are acts of war against the United States, requiring a response by the nation’s armed forces under the direction of the commander-in-chief. Unity in the executive is critical to the conduct of war, as Alexander Hamilton noted in The Federalist, and war by committee, especially a committee of lawyers, brings to armed conflict the very qualities that are the antithesis of Publius’s “decision, activity, secrecy, and dispatch.” The American military, with the assistance of the American intelligence community, fulfill the constitutional mandate to provide for the common defense. The nation’s defense establishment is not the Internal Revenue Service or the Department of Health and Human Services; if one dislikes the social welfare policies of the Obama administration or disagrees with President Obama for whatever reason, that is all well and good, but true conservatives should reject the principle that judicial review is applicable to the conduct of national defense. The founders understood that the decision to use force, the most important decision any government can make, were non-judicial in nature and were to be made by the elected representatives of the people. Nonetheless, for those weaned during an era when “privacy” was elevated to the be-all and end-all of the American experiment, the war power and related national security powers granted by the Constitution to the elected branches are trumped by modern notions of a limitless “right to privacy.” The civil liberties violations of the War on Terror are considered so egregious as to require the intervention of an appointed judiciary lacking any Constitutional mandate, and lacking the wherewithal, including information and staff, to handle sensitive national security matters. This is judicial activism at its worst and further evidence that the “political questions doctrine,” the idea of deferring to the elected branches of government on matters falling under their constitutional purview, is, for all practical purposes, dead (See the case of Totten vs. U.S., 1875, for an example of judicial deference to the elected branches on intelligence matters. This deference persisted until the late 20th century). Simply put, according to the Constitution and to almost 220 years of tradition, Congress and the President are constitutionally empowered, among other things, to set the rules regarding the measures deemed necessary to gather intelligence and conduct a war. One of the latest demands from advocates of increased judicial oversight is for a “targeted killing court.” In a similar vein, Senator Marco Rubio has called for the creation of a “Red Team” review of any executive targeting of American citizens, which would include a 15 day review process – “decision, activity, secrecy, and dispatch” be damned. A 15 day review process of targeting decisions would horrify Alexander Hamilton and all the framers of the Constitution. No doubt our 16th President would be horrified as well – imagine Abraham Lincoln applying for targeting permits on American citizens suspected of assisting the Confederacy. (“Today, we begin a 15 day review of case #633,721, that of Beauregard Birdwell of Paducah, Kentucky.”) War by lawyer might in the not too distant future include these types of targeting decisions, followed by endless appeals to unelected judges. All of this is a prescription for defeat. We are, sadly, almost at this point, for a new conception about war and national security has taken root in our increasingly legalistic society. We saw this during the Bush years when the Supreme Court for the first time in its history instructed the executive and legislative branches on the appropriate manner of treating captured enemy combatants. The Courts are now micromanaging the treatment of detainees at Guantanamo, to the point of reviewing standards for groin searches of captured Al Qaeda members. True conservatives understand the pitfalls of this legalism, especially of the ill-defined international variety. Conservatives should be especially alert to the dangers arising from elevating international law over the national interest as the standard by which to measure American conduct. The legalistic approach to the war on terror now being endorsed by prominent conservatives would cede presidential authority to executive branch lawyers and to their brethren in the judiciary who are playing a role they were never intended to play. Michael Scheuer, the former head of the CIA’s unit charged with tracking down Osama bin Laden, observed that “at the end of the day, the U.S. intelligence community is palsied by lawyers, and everything still depends on whether the lawyers approve it or not.” This is as far removed from conducting war, as Hamilton described it, with decision and dispatch, and with the “exercise of power by a single hand,” as one can get. War conducted by the courts is not only unconstitutional, it is, to borrow a phrase from author Philip K. Howard, part of the ongoing drift toward the death of common sense.

#### Loss of warfighting effectiveness ensures nuclear war in every hotspot

Kagan and O’Hanlon 07, resident scholar at AEI and senior fellow in foreign policy at Brookings

(Frederick and Michael, The Case for Larger Ground Forces, April, http://www.aei.org/files/2007/04/24/20070424\_Kagan20070424.pdf)

We live at a time when **wars not only rage in nearly every region but threaten to erupt in many places where the current relative calm is** tenuous. To view this as **a strategic military challenge for the U**nited **S**tates **is not to espouse a specific theory of America’s role in the world** or a certain political philosophy. Such an assessment flows directly from the basic bipartisan view of American foreign policy makers since World War II that **overseas threats must be countered before they can directly threaten this country’s shores**, that the **basic stability of the international system is essential to American peace** and prosperity, **and that no country besides the U**nited **S**tates **is in a position to lead the way in countering major challenges to the global order**. Let us highlight the **threats and their consequences** with a few concrete examples, emphasizing those **that involve key strategic regions of the world such as the Persian Gulf and East Asia, or** key potential **threats to American security, such as the spread of nuclear weapons and** the strengthening of the global **Al Qaeda**/jihadist movement. The Iranian government has rejected a series of international demands to halt its efforts at enriching uranium and submit to international inspections. What will happen if the US—or Israeli—government becomes convinced that Tehran is on the verge of fielding a nuclear weapon? North **Korea**, of course, has already done so, and the ripple effects are beginning to spread. Japan’s recent election to supreme power of a leader who has promised to rewrite that country’s constitution to support increased armed forces—and, possibly, even nuclear weapons— may well alter the delicate balance of fear in Northeast Asia fundamentally and rapidly. Also, in the background, at least for now, Sino Taiwanese tensions continue to flare, as do tensions between India and Pakistan, Pakistan and Afghanistan, Venezuela and the United States, and so on. Meanwhile, the world’s nonintervention in Darfur troubles consciences from Europe to America’s Bible Belt to its bastions of liberalism, yet with no serious international forces on offer, the bloodletting will probably, tragically, continue unabated. And as bad as things are in Iraq today, they could get worse. What would happen if the key Shiite figure, Ali al Sistani, were to die? If another major attack on the scale of the Golden Mosque bombing hit either side (or, perhaps, both sides at the same time)? Such deterioration might convince many Americans that the war there truly was lost—but the costs of reaching such a conclusion would be enormous. Afghanistan is somewhat more stable for the moment, although a major Taliban offensive appears to be in the offing. Sound US grand strategy must proceed from the recognition that, over the next few years and decades, the world is going to be a very unsettled and quite dangerous place, with Al Qaeda and its associated groups as a subset of a much larger set of worries. The only serious response to this international environment is to develop armed forces capable of protecting America’s vital interests throughout this dangerous time**.** Doing so requires a military capable of a wide range of missions—including not only deterrence of great power conflict in dealing with potential hotspots in Korea, the Taiwan Strait, and the Persian Gulf but also associated with a variety of Special Forces activities and stabilization operations. For today’s US military, which already excels at high technology and is increasingly focused on re-learning the lost art of counterinsurgency, this is first and foremost a question of finding the resources to field a large-enough standing Army and Marine Corps to handle personnel intensive missions such as the ones now under way in Iraq and Afghanistan.

### Off

#### Immigration will pass now; Obama and Boehner on board, but Obama’s PC key

Kuhnhenn, 1-7

[JIM KUHNHENN, Associated Press, “For Obama, Congress, a Last Grasp at Immigration,” abcnews.com, January 7, 2014, <http://abcnews.go.com/Politics/wireStory/obama-congress-grasp-immigration-21444316> //uwyo-baj]

His agenda tattered by last year's confrontations and missteps, President Barack Obama begins 2014 clinging to the hope of winning a lasting legislative achievement: an overhaul of immigration laws. It will require a deft and careful use of his powers, combining a public campaign in the face of protests over his administration's record number of deportations with quiet, behind-the-scenes outreach to Congress, something seen by lawmakers and immigration advocates as a major White House weakness. In recent weeks, both Obama and House Speaker John Boehner, R-Ohio, have sent signals that raised expectations among overhaul supporters that 2014 could still yield the first comprehensive change in immigration laws in nearly three decades. If successful, it would fulfill an Obama promise many Latinos say is overdue. The Senate last year passed a bipartisan bill that was comprehensive in scope that addressed border security, provided enforcement measures and offered a path to citizenship for 11 million immigrants in the United States illegally. House leaders, pressed by tea party conservatives, demanded a more limited and piecemeal approach. Indicating a possible opening, Obama has stopped insisting the House pass the Senate version. And two days after calling Boehner to wish him happy birthday in November, Obama made it clear he could accept the House's bill-by-bill approach, with one caveat: In the end, "we're going to have to do it all." Boehner, for his part, in December hired Rebecca Tallent, a former top aide to Sen. John McCain and most recently the director of a bipartisan think tank's immigration task force. Even opponents of a broad immigration overhaul saw Tallent's selection as a sign legislation had suddenly become more likely. Boehner also fed speculation he would ignore tea party pressure, bluntly brushing back their criticism of December's modest budget agreement.

#### Fighting to defend his war power will sap Obama’s capital, trading off with rest of agenda

**Kriner, 10** --- assistant professor of political science at Boston University

(Douglas L. Kriner, “After the Rubicon: Congress, Presidents, and the Politics of Waging War”, University of Chicago Press, Dec 1, 2010, page 68-69)

**While congressional support leaves the president’s reserve of political capital intact, congressional criticism saps energy from other initiatives on the home front by forcing the president to expend energy and effort defending his international agenda. Political capital spent shoring up support for a president’s foreign policies is capital that is unavailable for his future policy initiatives**. Moreover, any weakening in the president’s political clout may have immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races.59 Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest casualty rates in the Iraq War. 60 **In addition to boding ill for the president’s perceived political capital and reputation, such partisan losses in Congress only further imperil his programmatic agenda, both international and domestic.** Scholars have long noted that President Lyndon **Johnson’s dream of a Great Society also perished in the rice paddies of Vietnam. Lacking** the requisite funds in a war-depleted treasury and **the political capital needed to sustain his legislative vision, Johnson gradually let his domestic goals slip away** as he hunkered down in an effort first to win and then to end the Vietnam War. In the same way, **many of** President **Bush’s highest second-term domestic proprieties, such as Social Security and immigration reform, failed perhaps in large part because the administration had to expend so much energy and effort waging a rear-guard action against congressional critics of the war in Iraq.**61 **When making their cost-benefit calculations, presidents surely consider these wider political costs of congressional opposition to their military policies.** If congressional opposition in the military arena stands to derail other elements of his agenda, all else being equal, the president will be more likely to judge the benefits of military action insufficient to its costs than if Congress stood behind him in the international arena.

#### Immigration reform is key to econ

Johnson 13

(Simon Johnson, former chief economist of the International Monetary Fund, is the Ronald A. Kurtz Professor of Entrepreneurship at the M.I.T. Sloan School of Management and co-author of “White House Burning: The Founding Fathers, Our National Debt, and Why It Matters to You.” “How Immigration Reform Would Help the Economy” 6-20-13 http://economix.blogs.nytimes.com/2013/06/20/how-immigration-reform-would-help-the-economy//wyoccd)

The assessment is positive. This precise immigration proposal would improve the budget picture (see this helpful chart) and stimulate economic growth. The immediate effects are good and the more lasting effects even better. If anything, the long-run positive effects are likely to be even larger than the C.B.O. is willing to predict, in my assessment. (I’m a member of the office’s Panel of Economic Advisers but I was not involved in any way in this work.)¶ The debate over immigration is emotionally charged and, judging from recent blog posts, the Heritage Foundation in particular seems primed to dispute every detail in the C.B.O. approach – and to assert that it is underestimating some costs (including what happens when illegal immigrants receive an amnesty and subsequently claim government-provided benefits, a point Heritage has emphasized in its own report).¶ There is good reason for the C.B.O.’s careful wording in its analysis; it operates within narrow guidelines set by Congress, and its staff is wise to stick to very well-documented points. Still, as the legislation gains potential traction, it is worth keeping in mind why there could be an even larger upside for the American economy.¶ In 1776, the population of the United States was around 2.5 million; it is now more than 316 million (you can check the real-time Census Bureau population clock, but of course that is only an estimate).¶ Think about this: What if the original inhabitants had not allowed immigration or imposed very tight restrictions – for example, insisting that immigrants already have a great deal of education? It’s hard to imagine that the United States would have risen as an economy and as a country. How many United States citizens reading this column would be here today? (I’m proud to be an immigrant and a United States citizen.)¶ The long-term strength of the United States economy lies in its ability to create jobs. For more than 200 years as a republic (and 400 years in total) immigrants have not crowded together on a fixed amount of existing resources – land (in the early days) or factories (from the early 1800s) or the service sector (where most modern jobs arise). Rather the availability of resources essential for labor productivity has increased sharply. Land is improved, infrastructure is built and companies develop.¶ Most economic analysis about immigration looks at wages and asks whether natives win or lose when more immigrants show up in particular place or with certain skills. At the low end of wage distribution, there is reason to fear adverse consequences for particular groups because of increased competition for jobs. In fact, the C.B.O. does find that income per capita would decline slightly over the next 10 years before increasing in the subsequent 10 years: “Relative to what would occur under current law, S. 744 would lower per capita G.N.P. by 0.7 percent in 2023 and raise it by 0.2 percent in 2033, according to C.B.O.’s central estimates.”¶ And it is reasonable to ask who will pay how much into our tax system – and who will receive what kind of benefits. This is the terrain that the C.B.O. and the Heritage Foundation are contesting. (See, too, a letter to Senator Marco Rubio, Republican of Florida, from Stephen Gross, the chief actuary of the Social Security Administration. Mr. Gross said immigration reform would be a net positive; of the current 11.5 million illegal immigrants, “many of these individuals already work in the country in the underground economy, not paying taxes, and will begin paying taxes” if the immigration legislation are adopted. New illegal immigration would decline but not be eliminated.)¶ But the longer-run picture is most obviously quite different. The process of creating businesses and investing – what economists like to call capital formation – is much more dynamic than allowed for in many economic models.¶ People will save and they will invest. Companies will be created. The crucial question is who will have the ideas that shape the 21st century. (See, for example, the work of Charles I. Jones of Stanford University on this point and a paper he and Paul Romer wrote for a broader audience.)¶ This is partly about education – and the proposed legislation would tilt new visas more toward skilled workers, particularly those in science, technology, engineering, and math (often referred to as STEM).¶ But it would be a mistake to limited those admitted – or those allowed legal status and eventual citizenship – to people who already have or are in the process of getting a university-level education. To be clear, under the new system there may well be more low-wage immigrants than high-wage immigrants, but the transition to a point system for allocating green cards is designed to increase the share of people with more education and more scientific education, relative to the situation today and relative to what would otherwise occur.¶ Many people have good ideas. The Internet has opened up the process of innovation. I don’t know anyone who can predict where the next big technologies will come from. I also don’t know who will figure out how to organize production – including the provision of services – in a more effective manner.¶ We are competing in a world economy based on human capital, and people’s skills and abilities are the basis for our productivity. What we need more than anything, from an economic point of view, is more people (of any age or background) who want to acquire and apply new skills.¶ Increasing the size of our domestic market over the last 400 years has served us well. Allowing in immigrants in a fiscally responsible manner makes a great deal of sense — and the reports from the Joint Committee on Taxation and C.B.O. are very clear that this is now what is on the table. If the children of immigrants want to get more education, we should welcome the opportunity that this presents. When you cut off the path to higher education, you are depriving people of opportunity – and you are also hurting the economy.¶ The deeper political irony, of course, is that if the Heritage Foundation and its allies succeed in defeating immigration legislation, there are strong indications that this will hurt the Republican Party at the polls over the next decade and beyond. Yet, even so, House Republicans seem inclined to oppose immigration reform. That would be a mistake on both economic and political grounds.¶ We are 316 million people in a world of more than 7 billion – on its way to 10 billion or more (read this United Nations report if you like to worry about the future).¶ We should reform immigration along the lines currently suggested and increase the supply of skilled labor in the world. This will both improve our economy and, at least potentially, help ensure the world stays more prosperous and more stable.

**Nuclear war**

**Harris and Burrows ‘9**

**(**Mathew, PhD European History at Cambridge, counselor in the National Intelligence Council (NIC) and Jennifer, member of the NIC’s Long Range Analysis Unit “Revisiting the Future: Geopolitical Effects of the Financial Crisis” <http://www.ciaonet.org/journals/twq/v32i2/f_0016178_13952.pdf>, AM)

Of course, the report encompasses more than economics and indeed believes the future is likely to be the result of a number of intersecting and interlocking forces. With so many possible permutations of outcomes, each with ample Revisiting the Future opportunity for unintended consequences, there is a growing sense of insecurity. Even so, **history may be more instructive than ever**. While we continue to believe that **the Great Depression** is not likely to be repeated, the **lessons** to be drawn from that period **include the harmful effects on fledgling democracies and multiethnic societies** (think Central Europe in 1920s and 1930s) **and** on the **sustainability of multilateral institutions** (think League of Nations in the same period). **There is no reason to think that this would not be true in the twenty-first as much as in the twentieth century.** For that reason, the ways in which **the potential for greater conflict could grow** would seem to be even more apt **in a constantly volatile economic environment** as they would be if change would be steadier. In surveying those risks, the report stressed the likelihood that terrorism and nonproliferation will remain priorities even as resource issues move up on the international agenda. **Terrorism’s appeal will decline if economic growth continues in the Middle East and youth unemployment is reduced.** For those terrorist groups that remain active in 2025, however, the diffusion of technologies and scientific knowledge will place some of the world’s most dangerous capabilities within their reach. **Terrorist groups** in 2025 **will** likely be a combination of descendants of long established groups\_inheriting organizational structures, command and control processes, and training procedures necessary to conduct sophisticated attacks\_and newly emergent collections of the angry and disenfranchised that **become self-radicalized, particularly in the absence of economic outlets that would become narrower in an economic downturn. The most dangerous casualty of any economically-induced drawdown of U.S. military presence would** almost certainly **be the Middle East**. Although Iran’s acquisition of nuclear weapons is not inevitable, **worries** about a nuclear-armed Iran **could lead states in the region to develop new security arrangements with external powers, acquire additional weapons, and consider pursuing their own nuclear ambitions**. It is not clear that the type of stable deterrent relationship that existed between the great powers for most of the Cold War would emerge naturally in the Middle East with a nuclear Iran. Episodes of low intensity **conflict** and terrorism taking place under a nuclear umbrella **could lead to an** unintended escalation **and broader conflict** if clear red lines between those states involved are not well established. **The close proximity of potential nuclear rivals** combined with underdeveloped surveillance capabilities and mobile dual-capable Iranian missile systems also **will produce inherent difficulties** in achieving reliable indications and warning of an impending nuclear attack. The lack of strategic depth in neighboring states like Israel, **short warning and missile flight times, and uncertainty** of Iranian intentions **may place more focus on preemption** rather than defense, potentially **leading to** escalatingcrises**.** 36 Types of **conflict** that the world continues to experience, such as **over resources, could reemerge**, particularly if **protectionism grows and there is a resort to neo-mercantilist practices. Perceptions** of renewed energy scarcity will drive countries to take actions to assure their future access to energy supplies. In the worst case, this **could result in interstate conflicts if government leaders deem assured access to energy resources,** for example, to be **essential for** maintaining domestic stability and the **survival of their regime**. Even actions short of war, however, will have important geopolitical implications. Maritime security concerns are providing a rationale for naval buildups and modernization efforts, such as China’s and India’s development of blue water naval capabilities. **If** the **fiscal stimulus focus for** these **countries indeed turns inward, one of the most obvious funding targets may be military. Buildup of regional** naval **capabilities could lead to increased tensions, rivalries, and counterbalancing moves**, but it also will create opportunities for multinational cooperation in protecting critical sea lanes. **With water** also **becoming scarcer in Asia and the Middle East, cooperation to manage changing water resources is likely to be increasingly difficult both within and between states in a more dog-eat-dog world.**

### Off

#### Text: The United States should amend the Constitution of the United States to state “a statute ought never to be construed to violate the law of nations, if any other possible constriction remains.”Solves 100% of the aff – it makes the Charming Betsy principle part of the Constitution. Courts would have no wiggle room to not apply international law. Its theoretically justified – tests the germaneness of the advantages to the judicial restriction, makes sure that courts affs are about actual legal disputes and not broad princples of law, doesn’t hurt aff ground because they get to read disadvantages to the ratification process and can read judicial leadership/independence add-ons and advantages as solvency deficits.

### Off

#### Egalitarian politics is not possible in confines of the nation state- the state demands that woman give up her sexual difference to become a citizen andincorporated into the masculine universal- women can’t participate in the law or judicial circuits because they have no language

Fermon 98

[Nicole Ferman, 1998, Women on the Global Market: Irigaray and the Democratic State, Diacritics, Vol. 28, No. 1, Irigaray and the Political Future of Sexual Difference¶ (Spring, 1998), pp. 120-137¶ uwyo//amp]

Best known for her subtle interrogation of philosophy and psychoanalysis, Luce Irigaray ¶ clearly also conducts a dialogue with the political, proposing that women's erasure from ¶ culture and society invalidates all economies, sexual or political. Because woman has ¶ disappeared both figuratively and literally from society [see Sen, "More Than 100 Million ¶ Women Are Missing"], Irigaray conceives the contemporary ethical project as a recall to ¶ difference rather than equality, to difference between women and men-that is, sexual ¶ difference. She characterizes relations between men and women as market relations in ¶ which women are commodities, objects, but never subjects of exchange, objects to men ¶ but not to themselves: women do not belong to themselves but exist "to keep relationships ¶ among men running smoothly" [TS 192]. Women under these conditions require imagi- ¶ native ways to reconfigure the self, to subvert the melancholy and regression of ¶ masculinist economies and envisage a future in which women would not be ashamed of ¶ the feminine, would experience it as a positivity worth emulating. ¶ Irigaray contends that after the gains of egalitarian politics are carefully examined, ¶ the inclusion of women in the political arena has failed to take into account women's ¶ distinct and different position from men, and from each other, as well as perpetuating the ¶ fiction of the "neutral" citizen, the ahistorical individual citizen of the nation-state. It is ¶ that fiction Irigaray dispels in her critique of liberal democratic politics and its creation, ¶ "citizens who are neuter in regard to familial singularity, its laws, and necessary sexual ¶ difference" [SG 112] in order to benefit the State and its laws. The subject is male; the ¶ citizen is neuter. Who is the female citizen in contemporary society? What is the ethical ¶ elaboration of the contractual relations between women and men, and between sexed ¶ individuals and the community? How do women imagine a distinct set of rights and ¶ responsibilities based on self-definition and autonomy, given the particular strictures of ¶ contemporary politics-that is, the market-driven, antidemocratic nature of the current ¶ economic national and global forces? Irigaray suggests that "the return of women to ¶ collective work, to public places, to social relations, demands linguistic mutations" and ¶ profound transformations, an embodied imagination with force and agency in civil life ¶ [TD 65]. ¶ Irigaray warns that if civil and political participation is construed in overly narrow ¶ terms, if focus is on economic or judicial "circuits" alone, we overlook the symbolic ¶ organization of power-women risk losing "everything without even being acknowl- ¶ edged" [TD 56]. Instead an interval of recognition can expand the political to include the ¶ concerns and activities of real women, lest silence imply consent to sexual neutrality, or ¶ more likely, to women's obliteration under men's interests and concerns. Women's ¶ insistence on self-definition and wage labor, on love and justly remunerated work, ¶ testifies to the obduracy of women's difference, one that is not likely to disappear. The ¶ patriarchal family is still the legal norm, even when certain exceptions are made, while ¶ enduring questions regarding women's health and children's physical welfare as priori- ¶ ties beyond market considerations are consigned to legislative obfuscation, still a political ¶ afterthought. Instead, in the US the liberal state removes the slender welfare net specific ¶ to women and children, Aid to Families with Dependent Children, and fails to provide ¶ medical coverage to those who are among the most vulnerable of its citizens. Women ¶ without access to the legal protection of sex-neutral citizenship, poor working women ¶ without language (the money for an effective "mouthpiece" to represent their distress in ¶ a court of law), are further disempowered by liberal politics' insistence on sexual ¶ neutrality-that is, on repression or amnesia regarding the lived experiences of women. ¶ Sexual difference is key to any project of self-definition by women. Irigaray insists ¶ on the sexual nature of this self-definition, not solely for its obvious procreative necessity, ¶ but because the natural world is a source of renewal and fecundity which requires attentive ¶ interrogation and respect [SG 15]. This rebirth seems alien to the structure of male politics, ¶ which instead seem to provoke disasters (Bhopal, Chernobyl, or the current runaway ¶ jungle fires of Indonesia, courtesy of commercial logging, spreading thick pollution to ¶ neighboring countries) and untimely death.' We talk about social justice and forget its ¶ origins in nature and not merely as an engagement between men in abstraction. Irigaray ¶ believes that recognition and respect of difference between the sexes is prior to productive ¶ and generative relations between women, between men, and between men and women. ¶ Sexual difference is universal and allows us to participate in "an immediate natural given, ¶ and it is a real and irreducible component of the universal" [ILTY 47]. It is this prior ¶ recognition of two, rather than the One that has dominated world politics and thought, ¶ which must be acknowledged, along with the possibility of a political economy of ¶ abundance, not only that of man-made scarcity then attributed to nature. This melancholic ¶ (male) script pays romantic tribute to motherhood in the abstract without due recognition ¶ of the relations between real mothers and children, thus failing to properly acknowledge ¶ and protect mother or child. Our ability to address the specifics of race, ethnicity, and ¶ religious and other differences with respect hinges on our ability to acknowledge and ¶ respect the feminine, to see it as a source of invention and possibilities. To do so would ¶ of course affect relations between the sexes, "men and women perhaps... communicat[ing] ¶ for the first time if two different genders are affirmed," it would allow a new configuration ¶ rather than continuing the present regime: "the globalization and universalization of ¶ culture ... ungovernable and beyond our control" [SG 120; ILTY 129].

#### Splitting of the atom is a symptom of man’s persistence in his refusal to reunite with and affirm his body and the female body-only through this affirmation does the destruction of humynkind become unthinkable

Irigaray 85

[Luce Irigaray, 1985, “An Ethics of Sexual Difference”, uwyo//amp]

To forget being is to forget the air, this first fluid given us gratis and free of interest in the mother's blood, given us again when we are born, like a natural profusion that raises a cry of pain: the pain of a being who comes into the world and is abandoned, forced henceforth to live without the immediate assistance of another body. Unmitigated mourning for the intrauterine nest, elemental homesickness that man will seek to assuage through his work as builder of worlds, and notably of the dwelling which seems to form the essence of his maleness: language. In all his creations, all his works, man always seems to neglect thinking of himself as flesh, as one who has received his body as that primary home (that Gestell, as Heidegger would say, when, in "Logos," the seminar on Heraclitus, he recognizes that what metaphysics has not begun to address is the issue of the body) which determines the possibility of his coming into the world and the potential opening of a horizon of thought, of poetry, of celebration, that also includes the god or gods. The fundamental dereliction in our time may be interpreted as our failure to remember or prize the element that is indispensable to life in all its manifestations: from the lowliest plant and animal forms to the highest. Science and technology are reminding men of their careless neglect by forcing them to consider the most frightening question possible, the question of a radical polemic: the destruction of the universe and of the human race through the splitting of the atom and its exploitation to achieve goals that are beyond our capacities as mortals.

#### The alternative is to reject the affirmative’s masculine, universal silence and instead affirm a radical ethics of sexual difference that comes to grips with the sexual violence of the 1AC.

Irigaray 85

[Luce Irigaray, 1985, “An Ethics of Sexual Difference”, uwyo//amp]

Sexual difference is one of the major philosophical issues, if not the issue, of our age. According to Heidegger, each age has one issue to think through, and one only. Sexual difference is prQbably the issue in our time which could be our "salvation" if we thought it through. But, whether I turn to philosophy, to science, or to religion, I find this underlying issue still cries out in vain for our attention. Think of it as an approach that would allow us to check the many forms that destruction takes in our world, to counteract a nihilism that merely affirms the reversal or the repetitive proliferation of status quo values-whether you call them the consumer society, the circularity of discourse, the more or less cancerous diseases of our age, the unreliability of words, the end of philosophy, religious despair or regression to religiosity, scientis tic or technical imperialism that fails to consider the living subject. Sexual difference would constitute the horizon of worlds more fecund than any known to date-at least in the West-and without reducing fecundity to the reproduction of bodies and flesh. For loving partners this would be a fecundity of birth and regeneration, but also the production of a new age of thought, art, poetry, and language: the creation of a new poetics. Both in theory and in practice, everything resists the discovery and affirmation of such an advent or event. In theory, philosophy wants to be literature or rhetoric, wishing either to break with ontology or to regress to the ontological. Using the same ground and the same framework as "first philosophy," working toward its disintegration but without proposing any other goals that might assure new foundations and new works. In politics, some overtures have been made to the world of women. But these overtures remain partial and local: some concessions have been made by those in power, but no new values have been established. Rarely have these measures been thought through and affirmed by women themselves, who consequently remain at the level of critical demands. Has a worldwide erosion of the gains won in women's struggles occurred because of the failure to lay foundations different from those on which the world of men is constructed? Psychoanalytic theory and therapy, the scenes of sexuality as such, are a long way from having effected their revolution. And with a few exceptions, sexual practice today is often divided between two parallel worlds: the world of men and the world of women. A nontraditional, fecund encounter between the sexes barely exists. It does not voice its demands publicly, except through certain kinds of silence and polemics. A revolution in thought and ethics is needed if the work of sexual difference is to take place. We need to reinterpret everything concerning the relations between the subject and discourse, the subject and the world, the subject and the cosmic,' the microcosmic and the macrocosmic. Everything, beginning with the way in which the subject has always been written in the masculine form, as man, even when it claimed to be universal or neutral. Despite the fact that man-at least in French-rather than being neutral, is sexed.

### Solvency

#### Presidents circumvent courts

#### [1.] Obama invokes state secrets privilege on war powers and cases are dismissed

Deveraux 2010

[Ryan Devereaux is a freelance journalist and a Fall 2010 intern at The Nation., September 29th, 2010, Is Obama's Use of State Secrets Privilege the New Normal?, http://www.thenation.com/article/155080/obamas-use-state-secrets-privilege-new-normal#, uwyo//amp]

This is not the first time the Obama administration has invoked the state secrets privilege. On September 8, the United States Court of Appeals for the 9th Circuit dismissed another lawsuit filed by the ACLU in a narrow 6-to-5 decision. The defendant in the case was Jeppesen Dataplan, Inc. The ACLU claimed that Jeppesen, a subsidiary of Boeing Company, had knowingly provided flight services to the CIA to carry out its unlawful extraordinary rendition program. The plaintiffs in the case, Binyam Mohamed, Abou Elkassim Britel and Ahmed Agiza claim that they were flown to secret overseas locations and tortured at the behest of US intelligence agencies. Binyam Mohamed, in particular, told a story of brutal and degrading torture at the hands of Moroccan integrators working in conjunction with the US. Mohamed claims that he was regularly beaten unconscious, was cut 20 to 30 times on his genitals and on one occasion had hot stinging liquid poured into open wounds on his penis as he was being cut.

####  [2.] Bush ignored counterterrorism rulings

Posner and Vermeule 2010 [Eric A. , Professor of Law at the University of Chicago Law School and Editor of The Journal of Legal Studies; Adrian , Harvard Law Professor, The Executive Unbound: After the Madisonian Republic, Oxford Press, p. 204//wyo-sc]

In general, judicial opposition to the Bush administration's counterterrorism policies took the form of incremental rulings handed down at a glacial pace, none of which actually stopped any of the major counterterrorism tactics of that administration, including the application of military power against Al Qaeda, the indefinite detention of members of Al Qaeda, targeted assassinations, the immigration sweeps, even coercive interrogation. The (limited) modifications of those tactics that have occurred resulted not from legal interventions but from policy adjustments driven by changed circumstances and public opinion, and by electoral victory of the Obama administration. However, the Obama administration has mostly confirmed and in some areas even expanded the counterterrorism policies of the Bush administration. Strong executive government is bipartisan.

#### [3.] Warrantless surveillance proves

Congressional Record 2007

[Congressional Record, November 15th, 2007, House Debate on the RESTORE Act to Amend the FISA, <https://www.fas.org/irp/congress/2007_cr/h111507.html>, uwyo//amp]

The American people know all too well that this administration is now considered the most secretive in the history of our country. It has operated with unchecked power and without judicial or congressional oversight. We now know that the President went around the courts to conduct a program of warrantless surveillance of calls to Americans. We now know that the FBI abused the authorities granted under the PATRIOT Act improperly using National Security Letters to American businesses, including medical, financial and library records, instead of seeking a warrant from the court. In hundreds of signing statements, the President has quietly claimed he had the authority to set aside statutes passed by Congress.

### 1nc

#### No ozone impact

Ridley 12 [Matt Ridley, columnist for The Wall Street Journal and author of *The Rational Optimist: How Prosperity Evolves,* 8/17, “Apocalypse Not: Here’s Why You Shouldn’t Worry About End Times”, http://www.wired.com/wiredscience/2012/08/ff\_apocalypsenot/all/]

The threat to the ozone layer came next. In the 1970s scientists discovered a decline in the concentration of ozone over Antarctica during several springs, and the Armageddon megaphone was dusted off yet again. The blame was pinned on chlorofluorocarbons, used in refrigerators and aerosol cans, reacting with sunlight. The disappearance of frogs and an alleged rise of melanoma in people were both attributed to ozone depletion. So too was a supposed rash of blindness in animals: Al Gore wrote in 1992 about blind salmon and rabbits, while The New York Times reported “an increase in Twilight Zone-type reports of sheep and rabbits with cataracts” in Patagonia. But all these accounts proved incorrect. The frogs were dying of a fungal disease spread by people; the sheep had viral pinkeye; the mortality rate from melanoma actually leveled off during the growth of the ozone hole; and as for the blind salmon and rabbits, they were never heard of again.¶ There was an international agreement to cease using CFCs by 1996. But the predicted recovery of the ozone layer never happened: The hole stopped growing before the ban took effect, then failed to shrink afterward. The ozone hole still grows every Antarctic spring, to roughly the same extent each year. Nobody quite knows why. Some scientists think it is simply taking longer than expected for the chemicals to disintegrate; a few believe that the cause of the hole was misdiagnosed in the first place. Either way, the ozone hole cannot yet be claimed as a looming catastrophe, let alone one averted by political action.

#### Mulltilatiralism fails; Europe’s weak economy and politics; US want for unilateralism; Russo-Chinese block in UN

Grant, 12

[Charles, is director of the Center for European Reform and the author of the C.E.R. report “Russia, China and global governance.” “Multilateralism à la Carte,” The NYT, April 16, 2012, <http://www.nytimes.com/2012/04/17/opinion/multilateralism-a-la-carte.html?_r=0> //uwyo-baj]

Many problems cannot be solved without international cooperation, yet “multilateralism” — the system of international institutions and rules intended to promote the common good — appears to be weakening. The G-20 has become a talk shop; the Doha round of trade liberalization is moribund; the U.N. climate change talks have achieved very little. We seem to be moving toward a world of balance-of-power politics, competing alliances and unilateral actions.¶ One reason for these trends is that Europe, always the biggest supporter of international institutions, is economically, diplomatically and militarily weak; another is that the United States has over the past 20 years become relatively weaker and more prone to unilateralism.¶ A third reason is that the emerging and re-emerging powers — Russia and China in particular — tend to be cynical about international institutions: They see them as Western creations that promote Western interests, though they use them when it suits their purposes.¶ Both implacably opposed to American hegemony, Russia and China are willing to deploy their vetoes on the Security Council to thwart U.S. objectives. Their strong attachment to state sovereignty makes them allergic to humanitarian intervention, as they made clear when vetoing Security Council resolutions that would have criticized the Syrian regime for killing protesters.

#### Current multilateral institutions can’t keep up with international problems

Holmes, 10

[Kim R. Holmes, Ph.D., Vice President for Foreign and Defense Policy Studies and Director of the Kathryn and Shelby Cullom Davis Institute for International Studies at The Heritage Foundation, “Smart Multilateralism and the United Nations,” The Heritage Foundation, September 21, 2010, <http://www.heritage.org/research/reports/2010/09/smart-multilateralism-when-and-when-not-to-rely-on-the-united-nations> //uwyo-baj]

With the growing threat that a rogue regime or terrorists will obtain weapons of mass destruction, Washington simply cannot afford to rely on the U.N. for the security of the free world. America must strengthen its alliances and pursue alternative arrangements with new allies that better enable it to respond to today’s challenges. Topping the list should be developing a new, more flexible security arrangement, a truly global alliance that would include only those states deeply committed to liberty. Free nations have far more in common than what divides them politically, militarily, or geographically. NATO is simply too slow, too divided, and too parochial to become that institution.

#### Treaties are a shoddy patchwork system with no enforcement.

Stark 02, Visiting Professor of Law at Hofstra Law School, 2002 [Barbara, Violations of Human Dignity' and Postmodern International Law, 27 Yale J. Int'l L. 315, Summer]

Unlike domestic law, international law remains fragmentary: there is no Supreme Court to reconcile warring districts, no legislature to fill in doctrinal gaps. Indeed, international "law -making" is often so contentious that no law is made at all; in many areas there are more gaps than law. International law is unapologetically "discontinuous"; the decisions of the International Court of Justice have no precedential value, and those of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) are similarly ad hoc. Treaty law applies only to the specific subject the particular treaty addresses and is binding only on the parties to the treaty. While customary international law ("CIL") applies more broadly, states may persistently dissent from CIL and exempt themselves from its coverage. Many of the broad general principals that comprise CIL, moreover, such as the duty to avoid harm to neighboring states, prove difficult to apply in specific cases.

#### No uniqueness for backing down from treaties – their author

Crootoff  11
Rebecca Crootof, J.D. Yale Law School
Judicious Influence: Non-Self-Executing Treaties and the Charming Betsy Canon (April 5, 2011). Yale Law Journal. Available at SSRN: [http://ssrn.com/abstract=1803380](http://ssrn.com/abstract%3D1803380)
 The Charming Betsy Canon Encourages Domestic Courts’ Engagement with International Agreements and International Adoption

Much of domestic law already accords with international law, in large part because the United States actively influences the development of treaties. The United States often plays a pivotal role in drafting international treaties, and U.S. ratifications of multilateral treaties often are accompanied by declarations that U.S. obligations under the treaty are already fulfilled by domestic law. Therefore, aside from the fact that the Charming Betsy canon does not obligate or encourage courts to override domestic law, its proper application will likely favor interpretations that harmonize with provisions previously endorsed by the United States.

#### Charming Betsy canon meaningless; does not require federal statute compliance

McGrail, 10

[Deputy Clerk, United States Court of Appeals FOR THE DISTRICT OF COLUMBIA CIRCUIT No. 09-5051 GHALEB NASSAR AL-BIHANI, APPELLANT v. BARACK OBAMA,PRESIDENT OF THE UNITED STATES, ET AL., APPELLEES Appeal from the United States District Court for the District of Columbia (No. 1:05-cv-01312) On Petition for Rehearing En Banc, Filed: August 31, 2010, [http://www.cadc.uscourts.gov/internet/opinions.nsf/7D993FB6907397468525780700715176/$file/09-5051-1263353.pdf](http://www.cadc.uscourts.gov/internet/opinions.nsf/7D993FB6907397468525780700715176/%24file/09-5051-1263353.pdf) //uwyo-baj]

But putting aside the preceding discussion (and the odd conceptual loop it creates), I reiterate that consulting international sources in that manner is not something judges have in their interpretive toolbox. The only generally applicable role for international law in statutory interpretation 11 is the modest one afforded by the Charming Betsy canon, which counsels courts, where fairly possible, to construe ambiguous statutes so as not to conflict with international law. See RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 114 (1987); see also Sampson v. Fed. Repub. of Germany, 250 F.3d 1145, 1152 (7th Cir. 2001).6 However, Judge Williams does not appear to confine international law to such a narrow space. By including international discourse among the traditional tools available to courts when interpreting statutes, Judge Williams is not limiting the application of international law to ambiguous statutory text. Generally, a statute’s text is only ambiguous if, after “employing traditional tools of statutory construction,” a court determines that Congress did not have a precise intention on the question at issue. Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 843 n.9 (1984). It is at this point—analogous to Chevron Step Two— that the Charming Betsy canon has had any application in federal courts. But Judge Williams implies that international law should be consulted in the first instance to influence interpretation at the same level as traditional interpretive tools, making its use predicate to a finding of ambiguity. This implication has the secondary effect of eviscerating the limiting principle of the Charming Betsy canon that it only exerts a negative force on the meaning of statutes, pushing them away from meanings that would conflict with international law. Courts do not apply Charming Betsy as an affirmative indicator of statutory meaning. See, e.g., Sampson, 250 F.3d at 1152–53 (holding the Charming Betsy canon does not require “federal statutes [to be] read to reflect norms of international law”); Princz v. Fed. Repub. of Germany, 26 F.3d 1166, 1174 & n.1 (D.C. Cir. 1994) (rejecting dissent’s argument that statutes must be read “consistently with international law” and must be presumed to “incorporate[] standards recognized under international law,” Princz, 26 F.3d at 1183 (Wald, J., dissenting)). However, under Judge Williams’ method, I see no reason why courts would be bound by this rule, since traditional interpretive sources are normally viewed as indicative of affirmative meaning. These inconsistencies with the Charming Betsy canon make clear that Judge Williams’ proposal cannot possibly be correct. If it were, it would be a mystery why American jurisprudence would even bother to enunciate an interpretive canon like the Charming Betsy. Judge Williams’ approach would make that canon vestigial, foolish even—akin to a canon limiting the use of dictionaries.

#### 1ac card concedes single decisions don’t implicate Charming Betsy – no spillover

Crootoff  11
Rebecca Crootof, J.D. Yale Law School
Judicious Influence: Non-Self-Executing Treaties and the Charming Betsy Canon (April 5, 2011). Yale Law Journal. Available at SSRN: [http://ssrn.com/abstract=1803380](http://ssrn.com/abstract%3D1803380)
 The Charming Betsy Canon Encourages Domestic Courts’ Engagement with International Agreements and International Adoption

Conclusion There are legitimate reasons to celebrate and criticize Medellin’s reasoning. The case clarifies murky areas of domestic law, but it does so at the expense of the United States fulfilling its international commitments. However, those who rejoice in or bemoan Medellin’s seeming presumption in favor of non-selfexecution mistake the case’s import. While high-profile decisions like Medellin will draw fire, treaties’ influence in domestic jurisprudence remains largely unaffected.Treaties, eve self-executing treaties, are rarely used directly. Instead, in concert with the Charming Betsy canon, both self- and non-self-executing treaties serve as useful tools in statutory construction. Existing court practice reflects this understanding, and normative arguments support it. The limited application of the Charming Betsy canon results in relatively costless compliance with international law, accords with separation-of-powers principles by avoiding unintended and possibly undesirable breaches of international obligations, and allows domestic courts to engage with and influence developing norms. In giving meaning to U.S. international obligations while respecting the limits of international law in domestic jurisprudence, judicious application of the Charming Betsy canon in conjunction with non-self-executing treaties reconciles often-opposing interests.

#### Treaties can’t solve warming-mildest requirements and singular government approaches are better

Bakalar 05

(Nicholas, National Geographic News. “Global Treaties Ineffective Against Warming, Experts Say” 9-15-05 http://news.nationalgeographic.com/news/2005/09/0915\_050915\_warming.html//wyoccd)

Wide-ranging international treaties like the Kyoto Protocol may not be the best ways to battle global warming, according to three California scientists. Arguing that global treaties are only as effective as their least willing signatories, the team says that climate change is better fought from the bottom up.¶ Countries, regional partnerships, U.S. states, and even individual private firms, the scientists believe, can establish various controls to limit climate-changing activities—and many already have. There are hundreds of independent policies at work now contributing to the effort to limit carbon dioxide emissions, the main cause of climate change.¶ The European Union, for example, limits emissions from about 12,000 industrial plants. And the United Kingdom and World Bank have established emissions-credit trading systems. Under these plans plants that exceed emissions limits may buy emissions "credits" from plants that emit relatively little greenhouse gas.¶ The United States government famously rejects greenhouse gas limitations. The U.S. nevertheless has at least two dozen firms that have imposed their own limits. And the rejection of binding limitations at the federal level has not stopped nine northeastern U.S. states from collaborating on their own plan to cap carbon dioxide emissions from power plants.¶ Lowest Common Denominator¶ The authors of the new article, which will be published tomorrow in the journal Science, point out that international treaties tend toward the mildest binding measures, since such measures are always the easiest for everyone to agree upon.¶ The more countries that sign on to a treaty, the less stringent the terms become, because everyone has to be accommodated, the authors say. "A system that originates from the top," they write, "takes the speed of its least ambitious nation."¶ The authors see a different, and more effective, approach, one that is already underway: Make nonbinding agreements on goals at the international level and let each nation create its own climate-enhancing projects to meet them.¶ These projects can take various forms: commitments to control emissions, funding for scientific research into cleaner energy sources, or policies that make populations more resistant to climate change, for example.¶ Not all experts agree that this is the most effective approach.¶ A. Denny Ellerman is a senior lecturer with the Center for Energy and Environmental Policy Research at the Massachusetts Institute of Technology in Cambridge. Invoking Mao Zedong's motto encouraging many ideas from many sources, Ellerman calls the bottom-up tactic the "let a thousand flowers bloom" method, and he remains skeptical. It sounds appealing to say that everyone will do positive things," he said. "But are they really doing them or just claiming they are? Acting together is fine, but what are we agreeing to do? That's the problem.¶ "How do you develop some sort of standard and structure beyond just voluntarism?" Ellerman said. International Treaties: Symbolism Over Substance?¶ David G. Victor is the lead author on the new paper and director of the Program on Energy and Sustainable Development at Stanford University in Palo Alto, California. He says that the grassroots approach is less a recommendation than a description of what is in fact happening.¶ "The real heavy lifting," he said, "gets done by national governments and markets, not international treaties." These treaties are not irrelevant, but they don't push nations into changing their behavior. Instead, he said, they "codify what is already happening at the ground level."¶

#### Ilaw fails --- states will either inevitably cooperate, or ilaw can’t convince them to

Eric A. Posner 9, Kirkland and Ellis Professor of Law at the University of Chicago Law School. The Perils of Global Legalism, 34-6

34 ¶ Most global legalists acknowledge that international law is created and enforced by states. They believe that states are willing to expand international law along legalistic lines because states’ long-term interests lie in solving global collective action problems. In the absence of a world govern- ment or other forms of integration, international law seems like the only way for states to solve these problems. The great difﬁculty for the global legalist is explaining why, if states create and maintain international law, they will also not break it when they prefer to free ride. In the absence of an enforcement mechanism, what ensures that states § Marked 19:00 § that create law and legal institutions that are supposed to solve global collective action prob- lems will not ignore them? ¶ For the rational choice theorist, the answer is plain: states cannot solve global collective action problems by creating institutions that themselves depend on global collective action. This is not to say that international law is not possible at all. Certainly, states can cooperate by threatening to retaliate against cheaters, and where international problems are matters of coordination rather than conﬂ ict, international law can go far, indeed.7 But if states (or the individuals who control states) cannot create a global government or q uasi-g overnment institutions, then it seems unlikely that they can solve, in spontaneous fashion, the types of problems that, at the national level, require the action of governments. ¶ Global legalists are not enthusiasts for rational choice theory and have ¶ 35¶ grappled with this problem in other ways.8 I will criticize their attempts in chapter 3. Here I want to focus on one approach, which is to insist that just as individuals can be loyal to government, so too can individuals (and their governments) be loyal to international law and be willing to defer to its requirements even when self-i nterest does not strictly demand that they do so. International law has force because (or to the extent that) it is legitimate.9 ¶ What makes governance or law legitimate? This is a complicated ques- tion best left to philosophers, but a simple and adequate point for present purposes is that no system of law will be perceived as legitimate unless those governed by that law believe that the law does good — serves their interests or respects and enforces their values. Perhaps more is required than this — such as political participation, for example — but we can treat the ﬁ rst condition as necessary if not sufﬁ cient. If individuals believe that a system of law does not advance their interests and respect their values, that instead it advances the interests of others or is dysfunctional and helps no one at all, they will not believe that the law is legitimate and will not voluntarily submit to its authority. ¶ Unfortunately, international law does not satisfy this condition, mainly because of its institutional weaknesses; but of course, its institutional weaknesses stem from the state system — states are not willing to tolerate powerful international agencies. In classic international law, states enjoy sovereign equality, which means that international law cannot be created unless all agree, and that international law binds all states equally. What this means is that if nearly everyone in the world agrees that some global legal instrument would be beneﬁ cial (a climate treaty, the UN charter), it can be blocked by a tiny country like Iceland (population 300,000) or a dictatorship like North Korea. What is the attraction of a system that puts a tiny country like Iceland on equal footing with China? When then at- torney general Robert Jackson tried to justify American aid for Britain at the onset of World War II on the grounds that the Nazi Germany was the aggressor, international lawyers complained that the United States could not claim neutrality while providing aid to a belligerent — there was no such thing as an aggressor in international law.10 Nazi Germany had not agreed to such a rule of international law; therefore, such a rule could not exist. Only through the destruction of Nazi Germany could international law be changed; East and West Germany could reenter international so-¶ 36¶ ciety only on other people’s terms. How could such a system be perceived to be legitimate? ¶ There is, of course, a reason why international law works in this fash- ion. Because no world government can compel states to comply with inter- national law, states will comply with international law only when doing so is in their interest. In this way, international law always depends on state consent. So international law must take states as they are, which means that little states, big states, good states, and bad states, all exist on a plane of equality. ¶

#### No unification; Russian distrust of multilateral institutions proves

 Nuechterlein, 9-5

[Donald E., UVA Professor and Cold War historian, “Nuechterlein: Idealism versus realism in Syria’s crisis,” Times Dispatch, September 5, 2013, <http://www.timesdispatch.com/opinion/their-opinion/columnists-blogs/guest-columnists/nuechterlein-idealism-versus-realism-in-syria-s-crisis/article_9abe80ce-40ab-566b-9ae0-ddd144093aa6.html> //uwyo-baj]

On Syria, however, the U.N. seems powerless because Russia opposes military intervention. Why does Moscow resist the Security Council’s use of force to stop a civil war that has caused 100,000 deaths and the use of chemical weapons? The main reason is President Vladimir Putin’s unwillingness to trust the U.S. and NATO. He thinks Russia was misled by Britain, France and the U.S. when it agreed last year to a U.N. resolution on Libya to use force to protect citizens of Benghazi endangered by the murderous Gadhafi regime. Putin argues that Russia did not agree to a bombing campaign to bring down Libya’s government.

#### Al-Bihani didn’t overrule the Charming Betsy doctrine---the decision that denied his appeal clarified that Charming Betsy didn’t apply to the case

J. Taylor Benson 11, J.D., Creighton University School of Law, June 2011, “INTERNATIONAL LAWS-OF-WAR, WHAT ARE THEY GOOD FOR? THE DISTRICT OF COLUMBIA CIRCUIT IN AL-BIHANI V. OBAMA CORRECTLY CLARIFIED THAT INTERNATIONAL LAWS-OF-WAR DO NOT LIMIT THE PRESIDENT'S AUTHORITY TO DETAIN ENEMY COMBATANTS,” Creighton Law Review, 44 Creighton L. Rev. 1277

Al-Bihani then petitioned the United States Court of Appeals for the District of Columbia for a rehearing en banc. n71 Al-Bihani claimed in part that the circuit panel erred in declaring that international law-of-war principles have no effect on the President's detention authority. n72 The court unanimously voted to deny the petition to hear the case en banc. n73 The seven District of Columbia Circuit Court judges who did not sit on the original panel submitted a brief statement in support of denial. n74 The statement declared, without further explanation, that a determination of the role of international law-of-war principles was unnecessary to the disposition on the merits. n75

 [\*1284] The three original panel judges each filed statements concurring in the denial of rehearing en banc. n76 Judge Janice Rogers Brown wrote a concurring statement in which she sought to clarify what he referred to as the concurring judges' cryptic and confusing statements that she believed served to muddy the clear holding of Al-Bihani I. n77 First, Judge Brown noted that the holding in Al-Bihani I regarding international law could not be dismissed as dicta, as the rehearing panel's statement suggested. n78 Judge Brown reasoned that the discussion of international law in Al-Bihani I was one of two alternative holdings, each holding precedential effect. n79

Addressing what she believed to be a countervailing motivation behind the en banc panel's short concurrence, Judge Brown refuted the scholarly intuition that domestic statutes are not supported by their own authority, but must rely on international common law norms. n80 Judge Brown reasoned that the idea that courts should incorporate international legal norms into domestic statutes, without a clear statement to the contrary, was alien to United States case law. n81 Conversely, Judge Brown stated that nothing in the Constitution compelled Congress to clearly enunciate the inapplicability of international common law principles. n82 Citing Murray v. Schooner Charming Betsy n83 ("Charming Betsy"), Judge Brown admitted that the only role international law played in statutory interpretation was that of construing ambiguous statutes so they do not contradict international law. n84 Stating that the AUMF was not ambiguous, Judge Brown concluded that Charming Betsy did not apply. n85

#### No impact to Warming- Mitigation and adaptation will solve

Robert O. Mendelsohn 9, the Edwin Weyerhaeuser Davis Professor, Yale School of Forestry and Environmental Studies, Yale University, June 2009, “Climate Change and Economic Growth,” online: http://www.growthcommission.org/storage/cgdev/documents/gcwp060web.pdf

These statements are largely alarmist and misleading. Although climate change is a serious problem that deserves attention, society’s immediate behavior has an extremely low probability of leading to catastrophic consequences. The science and economics of climate change is quite clear that emissions over the next few decades will lead to only mild consequences. The severe impacts predicted by alarmists require a century (or two in the case of Stern 2006) of no mitigation. Many of the predicted impacts assume there will be no or little adaptation. The net economic impacts from climate change over the next 50 years will be small regardless. Most of the more severe impacts will take more than a century or even a millennium to unfold and many of these “potential” impacts will never occur because people will adapt. It is not at all apparent that immediate and dramatic policies need to be developed to thwart long‐range climate risks. What is needed are long‐run balanced responses.

These statements are largely alarmist and misleading. Although climate change is a serious problem that deserves attention, society’s immediate behavior has an extremely low probability of leading to catastrophic consequences. The science and economics of climate change is quite clear that emissions over the next few decades will lead to only mild consequences. The severe impacts predicted by alarmists require a century (or two in the case of Stern 2006) of no mitigation. Many of the predicted impacts assume there will be no or little adaptation. The net economic impacts from climate change over the next 50 years will be small regardless. Most of the more severe impacts will take more than a century or even a millennium to unfold and many of these “potential” impacts will never occur because people will adapt. It is not at all apparent that immediate and dramatic policies need to be developed to thwart long‐range climate risks. What is needed are long‐run balanced responses.

## 2NC

### AT: Int’l Don’t Believe Prez

#### 1st- Presidential commitments are the gold standard-congress isn’t believed internationally because perceived as a circus

Marvin Kalb 13, Nonresident Senior Fellow at Foreign Policy, James Clark Welling Presidential Fellow, The George Washington University Edward R. Murrow Professor of Practice (Emeritus), Kennedy School of Government, Harvard University, 2013, "The Road to War," book,pg. 7-8, www.brookings.edu/~/media/press/books/2013/theroadtowar/theroadtowar\_samplechapter.pdf

As we learned in Vietnam and in the broader Middle East, a presidential commitment could lead to war, based on miscalculation, misjudgment, or mistrust. It could also lead to reconciliation. We live in a world of uncertainty, where even the word of a president is now questioned in wider circles of critical commentary. On domestic policy, Washington often resembles a political circus detached from reason and responsibility. But on foreign policy, when an international crisis erupts and some degree of global leadership is required, the word or commitment of an American president still represents the gold standard, even if the gold does not glitter as once it did.

2nd- **Plan allows Congress to vocally oppose crisis intervention --- or they literally don’t solve anything--- that destroys international perception of U.S. resolve**

**Waxman 8/25**/13 Matthew Waxman, Professor of Law @ Columbia and Adjunct Senior Fellow for Law and Foreign Policy @ CFR, citing William Howell, Sydney Stein Professor in American Politics @ U-Chicago, and Jon Pevehouse, Professor of Political Science @ U-Wisconsin-Madison, “The Constitutional Power to Threaten War,” Forthcoming in Yale Law Journal, vol. 123, August 25, 2013, SSRN

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

#### 3rd International community is swayed by president as the “voice of america” even in the face of congressional opposition

Zbigniew Brzezinski, national security advisor under U.S. President Jimmy Carter, 12/3/12, Obama's Moment, www.foreignpolicy.com/articles/2012/12/03/obamas\_moment

In foreign affairs, the central challenge now facing President Barack Obama is how to regain some of the ground lost in recent years in shaping U.S. national security policy. Historically and politically, in America's system of separation of powers, it is the president who has the greatest leeway for decisive action in foreign affairs. He is viewed by the country as responsible for Americans' safety in an increasingly turbulent world. He is seen as the ultimate definer of the goals that the United States should pursue through its diplomacy, economic leverage, and, if need be, military compulsion. And the world at large sees him -- for better or for worse -- as the authentic voice of America.

To be sure, he is not a dictator. Congress has a voice. So does the public. And so do vested interests and foreign-policy lobbies. The congressional role in declaring war is especially important not when the United States is the victim of an attack, but when the United States is planning to wage war abroad. Because America is a democracy, public support for presidential foreign-policy decisions is essential. But no one in the government or outside it can match the president's authoritative voice when he speaks and then decisively acts for America.

This is true even in the face of determined opposition. Even when some lobbies succeed in gaining congressional support for their particular foreign clients in defiance of the president, for instance, many congressional signatories still quietly convey to the White House their readiness to support the president if he stands firm for "the national interest." And a president who is willing to do so publicly, while skillfully cultivating friends and allies on Capitol Hill, can then establish such intimidating credibility that it is politically unwise to confront him. This is exactly what Obama needs to do now.

#### 4th-Self-restraint creates a credible signal-creates institutional mechanisms of accountability

Eric Posner, Professor of Law, The University of Chicago Law School, and Adrian Vermeule, Professor of Law, Harvard Law School, 2007, The Credible Executive, 74 U. Chi. L. Rev. 865

Our aim in this Article is to identify this dilemma of credibility that afflicts the well-motivated executive and to propose mechanisms for ameliorating it. We focus on emergencies and national security but cast the analysis within a broader framework. Our basic claim is that the credibility dilemma can be addressed by executive signaling. Without any new constitutional amendments, statutes, or legislative action, law and executive practice already contain resources to allow a well-motivated executive to send a credible signal of his motivations, committing to use increased discretion in public-spirited ways. By tying policies to institutional mechanisms that impose heavier costs on ill-motivated actors than on well-motivated ones, the well-motivated executive can credibly signal his good intentions and thus persuade voters that his policies are those that voters would want if fully informed. We focus particularly on mechanisms of executive self-binding that send a signal of credibility by committing presidents to actions or policies that only a well-motivated president would adopt.

### AT: Need Statutes

#### No need for formal restrictions – CP’s signal is just as good

Eric Posner, Professor of Law, The University of Chicago Law School, and Adrian Vermeule, Professor of Law, Harvard Law School, 2007, The Credible Executive, 74 U. Chi. L. Rev. 865

For presidents, credibility is power. With credibility, the formal rules of the separation of powers system can be bargained around or even defied, as Lincoln and FDR demonstrated. Without credibility, a nominally all-powerful president is a helpless giant. Even if legal and institutional constraints are loose and give the president broad powers, those powers cannot effectively be exercised if the public believes that the president lies or has nefarious motives.

But presidential credibility can benefit all relevant actors, not just presidents. The decline of congressional and judicial oversight has not merely increased the power of ill-motivated executives, the typical worry of civil libertarians. It also threatens to diminish the power of well-motivated presidents, with indirect harms to the public. Such presidents would, if credibly identified, receive even broader legal delegations and greater informal trust -from legislators, judges, and the public -than presidents as a class actually have. Absent other credibility-generating mechanisms, such as effective congressional oversight, presidents must bootstrap themselves into credibility through the use of signaling mechanisms. In this Article, we suggest a range of such mechanisms, and suggest that under the conditions we have tried to identify, those mechanisms can make all concerned better off.

#### Outweighs legal restrictions

Bradley, professor of law at Duke, and Morrison, professor of law at Columbia, May 2013

(Curtis A. and Trevor W., PRESIDENTIAL POWER, HISTORICAL PRACTICE, AND LEGAL CONSTRAINT, 113 Colum. L. Rev. 1097, Lexis)

To be sure, some executive branch actors involved in assessing the law of presidential power might themselves claim to focus on some version of legal correctness. As noted above and discussed in greater detail below, OLC is an example. n77 But OLC is not a typical executive legal office, and only a small fraction of all the legal questions arising within the executive branch go to OLC. Moreover, whatever the orientation of the executive actor in question, **relevant audiences** (whether **in Congress**, **the press**, or **the informed public more generally**) **might be more attuned to whether the President operates within the bounds of legal reasonableness** or plausibility than to whether he adheres to a single **"**correct**"** view of the law. If nothing else, it seems likely that the negative consequences to a President of appearing to exceed the boundaries of what is plausible would be more severe than the negative consequences of asserting a plausible but not ultimately persuasive view of the law.

### AT: PDCP

**the affirmative uses the executive branch to increase constraints on presidential war powers – executive branch actions are discretionary judgments that are within the boundaries of delegated authority. Restricting it requires action from another branch**

**Luna, 2k** (Erik, professor of law at the University of Utah, 85 Iowa L. Rev. 1107, May, lexis)

For present purposes, a modest definition will suffice--discretion is the power to choose between two or more courses of conduct. **An official**, therefore, **has discretion when the boundaries of** his **authority leave** him with **the freedom to choose how to act--or not to act.** n88 This discretionary power is a "residual" n89 concept, the latitude remaining after the authority and decisions of other actors have been tallied. Dworkin employed a colorful simile for discretion to capture its relative, contextual nature: "Discretion, like the hole of a doughnut, does not exist except as an area left open by a surrounding belt of restriction." n90 Using this pastry-based metaphor, imagine a box containing a single doughnut. If the box's total area represents all potential courses of conduct for a particular actor, and the doughnut symbolizes the restrictions on the actor's discretion, the region within the doughnut--the doughnut hole--delineates the totality of his discretionary power. Outside of this area, the actor has no freedom of choice; he must either act in a prescribed manner or not act at all. In other words, the actor is without discretion. Greater specificity is possible by delineating discretion within American constitutionalism. Discretion inheres in each of the three branches of government--the legislative, the executive, and the judicial. n91 The term "ex  [\*1134]  ecutive discretion," therefore, refers to the authority of executive officers to choose how to act or not to act. A variety of officials enforce federal or state laws and are appropriately deemed **executive officers**--the President, the Secretary of Defense, a state governor, a city mayor, the local dog catcher, and so on. Each of these officials **exercise**s **a degree of executive discretion to choose a particular course of conduct without violating the dictates of the other branches**. For example, a state legislature might mandate that restaurants cook food in a "safe environment"; a state court might then interpret "safe" as referring to bacterial and viral hazards to the customers rather than the risks of the work environment to the employees. But **once the legislative branch has enacted the law and the judiciary has interpreted the law** (or squared it with the relevant constitutional provisions), **the executive official generally has the discretion to enforce the law as seen fit**. The relevant executive officer might, for instance, establish a grading system or minimum standards for the sanitary condition of restaurants. It is this residual power, the freedom to choose a particular course of conduct after the other branches have exercised their authority, that can be referred to as executive discretion. B. Criminal Justice Discretion in the Abstract Discretion can be further specified by placing it within the context of penal law. American constitutionalism has adopted a number of strategies to strike a balance between individual liberty and societal order in the criminal justice system. n92 Most notably, the federal Constitution enumerates individual rights protected from "the vicissitudes of political controversy," n93 thereby removing certain subjects as fodder for order maintenance. But American constitutionalism also secures order and liberty through the structural design of government, dividing official power between the three coordinate branches. n94 Specifically, the legislature determines what acts are criminal and subject to coercive sanction. The judiciary interprets the criminal law where necessary, nullifies those penal statutes that are deemed inconsistent with relevant constitutional provisions, and precludes certain modes of enforcement of otherwise valid criminal laws. Finally, the executive enforces those criminal laws that have been duly enacted by the  [\*1135]  legislature and approved by the judiciary, pursuant to procedures prescribed by the legislature or (more likely) found by the courts to pass constitutional muster. A couple of caveats should be mentioned. Not all laws are backed by penal sanctions, and not all executive officials are empowered to enforce criminal law. In general, only two groups--police and prosecutors--have the authority to implement the relevant penal code. The term "police" refers to those actors officially licensed to uncover and investigate crime and arrest suspected offenders: FBI agents, city police officers, county sheriffs, and so on. Similarly, the term "prosecutors" refers to the officials authorized to bring criminal charges against an alleged offender and to represent the government in a subsequent criminal case against the accused: the U.S. Attorney General, a U.S. Attorney, a state attorney general, a county district attorney, and their subordinates. Moreover, the passage, judicial approval, and execution of a penal statute do not necessarily follow a linear progression in practice. A given criminal law might be enacted and administered, but its constitutionality might never be questioned in the courts. Or the statute might be judicially approved in an initial proceeding but subsequently unenforced by executive officials. In turn, the courts might strike down a criminal law prior to enforcement, or the statute might not be reviewed until some official attempts to apply its strictures to a particular individual. Moreover, the ostensibly clean division among the three branches is the subject of ongoing academic and professional debate, including the battle between "formalism" and "functionalism" in the separation of powers. n95 Finally, various checks and balances are intended to ensure an interrelationship and interdependency among the branches of government. For example, a proposed federal criminal statute only becomes law if the President signs the bill or if Congress overrides his veto by a two-thirds majority. With these admonitions, it can be said that the legislature enacts criminal laws, the judiciary reviews the constitutionality of the laws and relevant enforcement procedures, and the executive administers the laws consistent with the mandates of the other branches. n96 **An executive officer is without authority to suppress conduct that the legislature has not deemed criminal**. Likewise, the officer has no power to enforce penal statutes that have been judicially invalidated or to use enforcement techniques disapproved by the courts.  [\*1136]  Building upon Dworkin's doughnut metaphor, Figure 1 schematically depicts American criminal justice. n97 The total area of the figure represents all potential combinations of criminal law and enforcement procedures. The area within the exterior circle ("the legislative act") depicts all conduct that has been criminalized by the legislature and the methods of enforcement that have been expressly or implicitly approved by the legislature. n98 The first band within the circle (B) represents those laws that the judiciary deems substantively invalid and therefore unenforceable under any procedure. The second band (C) represents those criminal statutes that pass constitutional muster but are being administered in an unconstitutional fashion. Finally, the internal core (D) depicts **the combination of criminal laws and enforcement procedures that have been enacted by the legislature** and are deemed unobjectionable by the courts. This area **represents executive discretion in criminal justice--the freedom to enforce or not enforce particular criminal laws** pursuant to particular procedures **without interference from the other branches**.  [\*1137]  To test this structure, imagine a hypothetical law "making it a crime for any person to remove another person's gall bladder." n99 Prior to the statute's enactment, assume that it was perfectly legal to remove gall bladders for any reason; graphically, this conduct exists outside of the exterior circle (A) and therefore well beyond any type of executive discretion to administer coercive sanctions. Once duly enacted by the legislature, the courts might review the statute's content under the substantive constitutional provisions: First Amendment freedom of speech and conscience, Fifth Amendment substantive due process, Eighth Amendment prohibition of cruel and unusual punishment, Fourteenth Amendment equal protection, and so on. If the gall bladder statute was found to be constitutionally obnoxious as a matter of substance--lying in area B of the graph--the executive branch would be precluded from enforcing this statute under any policing methodology. Now assume that the courts determine that there is nothing objectionable about the law's content but find that the mode of enforcing its provisions violates the procedural aspects of the Constitution. For example, maybe the police burst into a doctor's office without a warrant or probable cause and discover her performing the prohibited operation; or maybe law enforcement agents beat the physician into confessing her crimes. This time the problem is not the substance of the statute but the executive officer's impermissible enforcement. The police conduct--represented in area C--is lawless and therefore, outside the area of executive discretion. Once again, in area A the executive has not been authorized to act by the legislature; in area B the judiciary has invalidated the relevant criminal  [\*1138]  statute as substantively unconstitutional; and in area C the courts have precluded a particular enforcement methodology of an otherwise valid law. What if the legislature enacts the gall bladder statute and the courts approve both the substantive content of the law and the subsequent method of enforcement? This combination of criminal law and police procedure lies in area D, the totality of executive discretion in criminal justice. In this area, executive officials exercise complete freedom in the administration of the criminal law. In the abstract, **the legislative and judicial branches might** make every **attempt to narrow the scope of unchecked executive discretion. For example, lawmakers might** enact only a few criminal statutes and **repeal** ineffective or counterproductive **laws, thereby limiting the grounds for** coercive **enforcement**. Statutory drafters might also be very specific in the coverage of a particular provision, making clear the situations in which the law applies. **In turn, the judicial branch might exercise substantial oversight in all facets of the criminal process, including decisions not to enforce the law**. Courts might strike down or narrowly interpret vague criminal statutes and refuse to allow the application of penal provisions suffering from desuetude. Judicial review might freely entertain claims of selective enforcement or prosecutorial overreaching in the plea bargaining process. Graphically, the circumference of legislatively proscribed conduct ("the legislative act") would be relatively constricted, the band of judicial review and invalidation (B and C) would be broad, and the residual area of executive discretion (D) would be quite small.

**[C.] Prefer our interpretation**

**1. Ground and limits – internal executive reforms and actions can take an incredibly wide array of mechanisms to act and crush the core negative ground which assesses the importance of external branch check on the executive – leaving executive counterplan ground and bypass arguments is key to level the playing field for the negative.**

**2. Education – the topic paper explicitly was written with a core controversy of separations of powers debates with war powers in mind – allowing the aff to fiat executive reform crowds out competitive strategies that test that core controversy.**

**[D.] Topicality is a voting issue – rule of game, fairness, and education**

#### First, CP is executive action—obviously avoids Congressional fights

Fine 12

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We also should expect presidents to prioritize and be strategic in the types of executive orders that they create to maneuver around a hostile Congress. There are a variety of reasons that can drive a president’s decision. For example, presidents can use an executive order to move the status quo of a policy issue to a position that is closer to their ideal point. By doing so, presidents are able to pressure Congress to respond, perhaps by passing a new law that represents a compromise between the preferences of the president and Congress. Forcing Congress’s hand to enact legislation might be a preferred option for the president, if he perceives Congress to be unable or unwilling to pass meaningful legislation in the ﬁrst place. While it is possible that such unilateral actions might spur Congress to pass a law to modify or reverse a president’s order, such responses by Congress are rare (Howell 2003, 113-117; Warber 2006, 119). Enacting a major policy executive order allows the president to move the equilibrium toward his preferred outcome without having to spend time lining up votes or forming coalitions with legislators. As a result, and since reversal from Congress is unlikely, presidents have a greater incentive to issue major policy orders to overcome legislative hurdles.

#### Second, unilateral executive action shifts incentives for opposition to sway to the President’s will—diffuses tensions in congress, avoiding a fight and lowering PC cost.

Bernstein 2013

[Jonathan Bernstein is a political scientist who writes about American politics, especially the presidency, Congress, parties and elections., January 17th, 2013, In the Three Branches, Sharing is Caring, http://prospect.org/article/three-branches-sharing-caring, uwyo//amp]

Given all that, both sides really can have incentives to cut a deal in many cases. It takes a president who is willing to use all the tools of his office…but also one who is good at negotiating. It also, and this might be the biggest problem for Obama, requires an opposition which is willing to cut a deal for incremental gains, even if it allows the president to walk away a winner (albeit less of an immediate policy winner than he might have been acting alone). It’s not clear that House Republicans are willing to do that. Congressional Republicans might not look right now as if they could be real bargaining partners, but we don’t really know how it will play out. Presidents can never force Congress to act – they can’t even always force the bureaucracy to act. And there’s little that they can do to affect public opinion; in this case, it’s especially unlikely that Barack Obama can affect the views of those constituents House Republicans are most responsive to. What presidents can do is to act where they have the authority to do so, and there’s plenty that entails in gun safety, for climate, for immigration, and on many other issues. And by threatening to act, they can at least try to change the incentives for opposition Members of Congress, pushing them to see that legislative gridlock might not be their best option. Obama hasn’t done nearly as much as he could do so far, but perhaps his efforts on gun violence are a sign of things to come in his second term. If so, it might be a lot more productive than a lot of people expect. All in all, however, whether it’s gun violence, immigration, or even health care, the combination of executive orders and negotiation with Congress can be a potent tool for any president. Barack Obama hasn’t used it much, yet; he didn’t need it too often in his first two years, and he didn’t turn to it much once Republicans took the House. But I suspect it’s going to be a major weapon for him during his second term. At least, it certainly should be.

#### **Third,** congress will fall in line behind the president’s unilateral action for fear of appearing soft, unsupportive, and unpatriotic—they only have luxury of defecting on their home turf.

Noone 2012

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Security and Intelligence Program and an Assistant Professor of

Political Science and Law.,The War Powers Resolution and

Public Opinion, CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW·VOL. 45·2012, uwyo//amp]

In June 2011, a poll taken to assess the public’s confidence in institutions the U.S. military received the highest rating at 78% (11% above its historic average of 67%).21 The presidency received a confidence rating of 35% (10% below its historic average), and Congress received a confidence rating of 12% (14% below its historic average).22 This poll has been conducted thirty-five times since 1973 and indicates that the military has been number one since 1989 (with the exception of 1997 when small business was added to the survey). An analysis of this annual survey indicates that the public’s confidence level in the military is higher when it is engaged in military operations. In fact, the public overwhelmingly supports the military especially during conflict. Given Congress’ low ratings it is clear why members of Congress do not want to appear to be anything other than supportive of the military. “Opposing the use of force is no less risky domestically than it was before the [WPR’s] passage.”23 There are “electoral disincentives for confronting the president over foreign policy.”24 There is a particular price to pay if members of congress attempt to constrain the executive by cutting off funding. Allegations of being unpatriotic or abandoning U.S. forces in the field will hurt re-election bids.25 congressional votes for funding the use of force are usually overwhelming and decisive.

# Case

### Circ

### 2NC: Exec Circumvents Courts

#### [1.] will invoke states secret privilege to block oversight- that’s CCR

#### [2.] The court attempted to fetter presidential counterterrorism policies- Bush ignored them- that’s Posner ‘10

#### [3.] Warrantless surveillance of the Bush era proves presidents go around the courts-invokes war powers authority- that’s Congressional Record 07

#### AND-The President will circumvent-

#### [1.] Prez will get hawks to pass legislation that overwhelms court rulings

Mahler 2008

[Johnathan Mahler, writer for the NYT, June 15th, 2008, Why This Court Keeps Rebuking This President, <http://www.nytimes.com/2008/06/15/weekinreview/15mahler.html?pagewanted=all>, uwyo//amp]

The 2006 Hamdan case concerned the military commissions that President Bush established at Guantánamo Bay to try some detainees in the aftermath of 9/11. Here the court’s majority went further. It found that by creating the commissions without asking Congress to agree, the president had overstepped his authority under the Constitution’s separation of powers. Moreover, it held that the president was obligated to honor America’s commitments under the Geneva Conventions. In response, the administration succeeded in getting Congress to authorize the military commissions and stripping the Guantánamo detainees of the right to habeas corpus. Which brings us to last week’s ruling in Boumediene — and the 5-4 decision to restore that ancient right.

#### [2.] Outweighs durability of fiat-Prez will comply where it suits his/her policies and ignore the court when it doesn’t

Risen & Lichtblau 2005

[JAMES RISEN and ERIC LICHTBLAU, December 16th, 2005, Bush Lets U.S. Spy on Callers Without Courts, <http://www.nytimes.com/2005/12/16/politics/16program.html?pagewanted=all&_r=0>, uwyo//amp]

WASHINGTON, Dec. 15 - Months after the Sept. 11 attacks, President Bush secretly authorized the National Security Agency to eavesdrop on Americans and others inside the United States to search for evidence of terrorist activity without the court-approved warrants ordinarily required for domestic spying, according to government officials. Under a presidential order signed in 2002, the intelligence agency has monitored the international telephone calls and international e-mail messages of hundreds, perhaps thousands, of people inside the United States without warrants over the past three years in an effort to track possible "dirty numbers" linked to Al Qaeda, the officials said. The agency, they said, still seeks warrants to monitor entirely domestic communications.

## 1NR

Turns climate-

Tribe, the Carl M. Loeb University Professor, Harvard Law School, ‘10

[Laurence H., Joshua D. Branson, J.D., Harvard Law School and NDT Champion, Northwestern University; and Tristan L. Duncan, Partner, Shook, Hardy & Bacon L.L.P., January 2010, “TOOHOTFORCOURTSTO HANDLE: FUEL TEMPERATURES, GLOBAL WARMING, AND THE POLITICAL QUESTION DOCTRINE,” <http://www.wlf.org/Upload/legalstudies/workingpaper/012910Tribe_WP.pdf>]

Two sets of problems, one manifested at a microcosmic level and the other about as macrocosmic as imaginable, powerfully illustrate these propositions. Not coincidentally, both stem from concerns about temperature and its chemical and climactic effects, concerns playing an increasingly central role in the American policy process. As those concerns have come to the fore, courts have correspondingly warmed to the idea of judicial intervention, drawn by the siren song of making the world a better place and fueled by the incentives for lawyers to convert public concern into private profit. In both the fuel temperature and global warming cases, litigants, at times justifying their circumvention of representative democracy by pointing to the slow pace of policy reform, have turned to the courts. By donning the cloak of adjudication, they have found judges for whom the common law doctrines of unjust enrichment, consumer fraud, and nuisance appear to furnish constitutionally acceptable and pragmatically useful tools with which to manage temperature’s effects. Like the proverbial carpenter armed with a hammer to whom everything looks like a nail, those judges are wrong. For both retail gasoline and global climate, the judicial application of common law principles provides a constitutionally deficient—and structurally unsound—mechanism for remedying temperature’s unwanted effects. ¶ It has been axiomatic throughout our constitutional history that there exist some questions beyond the proper reach of the judiciary. In fact, the political question doctrine originates in no less august a case than Marbury v. Madison, where Chief Justice Marshall stated that “[q]uestions in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in this court.”1 Well over a century after that landmark ruling, the Supreme Court, in Baker v. Carr, famously announced six identifying characteristics of such nonjusticiable political questions, which, primarily as a “function of the separation of powers,” courts may not adjudicate.2 Of these six characteristics, the Court recently made clear that two are particularly important: (1) the presence of “a textually demonstrable constitutional commitment of the issue to a coordinate political department;” and (2) “a lack of judicially discoverable and manageable standards for resolving it.”3 ¶ The spectrum of nonjusticiable political questions in a sense spans the poles formed by these two principles. At one pole, the Constitution’s specific textual commitments shield issues expressly reserved to the political branches from judicial interference. At the other pole lie matters not necessarily reserved in so many words to one of the political branches but nonetheless institutionally incapable of coherent and principled resolution by courts acting in a truly judicial capacity; such matters are protected from judicial meddling by the requirement that “judicial action must be governed by standard, by rule” and by the correlative axiom that “law pronounced by the courts must be principled, rational, and based upon reasoned distinctions.”4¶ At a deeper level, however, the two poles collapse into one. The reason emerges if one considers issues that courts are asked to address involving novel problems the Constitution’s framers, farsighted though they were, could not have anticipated with sufficient specificity to entrust their resolution to Congress or to the Executive in haec verba. A perfect exemplar of such problems is the nest of puzzles posed by humaninduced climate change. When matters of that character are taken to court for resolution by judges, what marks them as “political” for purposes of the “political question doctrine” is not some problem-specific language but, rather, the demonstrable intractability of those matters to principled resolution through lawsuits. And one way to understand that intractability is to view it as itself marking the Constitution’s textual, albeit broadly couched, commitment of the questions presented to the processes we denominate “legislative” or “executive”—that is, to the pluralistic processes of legislation and treaty-making rather than to the principle-bound process of judicially resolving what Article III denominates “cases” and “controversies.” In other words, the judicial unmanageability of an issue serves as powerful evidence that the Constitution’s text reserves that issue, even if broadly and implicitly, to the political branches.5¶ It has become commonplace that confusion and controversy have long distinguished the doctrine that determines, as a basic matter of the Constitution’s separation of powers, which questions are “political” in the specific sense of falling outside the constitutional competence of courts and which are properly justiciable despite the “political” issues they may touch. But that the principles in play have yet to be reduced to any generally accepted and readily applied formula cannot mean that courts are simply free to toss the separation of powers to the winds and plunge ahead in blissful disregard of the profoundly important principles that the political question doctrine embodies. Unfortunately, that appears to be just what some courts have done in the two temperature-related cases—one involving hot fuels, the other a hot earth— that inspired this publication. In the first, a court allowed a claim about measuring fuels to proceed despite a constitutional provision specifically reserving the issue to Congress. In the second—a case in which the specific issue could not have been anticipated, much less expressly reserved, but in which the only imaginable solutions clearly lie beyond judicial competence—a court, rather than dismissing the case as it ought to have done, instead summarily dismissed the intractable obstacles to judicial management presented by climate change merely because it was familiar with the underlying cause of action. As this pair of bookend cases demonstrates, the political question doctrine is feeling heat from both directions.

#### That crushes global coordination necessary to solve climate change.

Tribe, the Carl M. Loeb University Professor, Harvard Law School, ‘10

[Laurence H., Joshua D. Branson, J.D., Harvard Law School and NDT Champion, Northwestern University; and Tristan L. Duncan, Partner, Shook, Hardy & Bacon L.L.P., January 2010, “TOOHOTFORCOURTSTO HANDLE: FUEL TEMPERATURES, GLOBAL WARMING, AND THE POLITICAL QUESTION DOCTRINE,” <http://www.wlf.org/Upload/legalstudies/workingpaper/012910Tribe_WP.pdf>]

But that being said, if the Second Circuit was implying that such claims are justiciable in part because they are relatively costless, it was wrong again. In the wake of the recent Copenhagen climate negotiations, America is at a crossroads regarding its energy policy. At Copenhagen, the world—for the first time including both the United States and China—took a tremulous first step towards a comprehensive and truly global solution to climate change.44 By securing a modicum of international consensus—albeit not yet with binding commitments—President Obama laid the foundation for what could eventually be a groundbreaking congressional overhaul of American energy policy, an effort that will undoubtedly be shaped by considerations as obviously political as our energy independence from hostile and unreliable foreign regimes and that will both influence and be influenced by the delicate state of international climate negotiations.45¶ Against this backdrop, courts would be wise to heed the conclusion of one report that what “makes climate change such a difficult policy problem is that decisions made today can have significant, uncertain, and difficult to reverse consequences extending many years into the future."46 This observation is even more salient given that America—and the world—stand at the precipice of major systemic climate reform, if not in the coming year then in the coming decade. It would be disastrous for climate policy if, as at least one commentator has predicted,47 courts were to “beat Congress to the punch” and begin to concoct common law “solutions” to climate change problems before the emergence of a legislative resolution. Not only does judicial action in this field require costly and irreversible technological change on the part of defendants, but the prior existence of an ad hoc mishmash of common law regimes will frustrate legislators’ attempts to design coherent and systematic marketbased solutions.48 Indeed, both emissions trading regimes and carbon taxes seek to harness the fungibility of GHG emissions by creating incentives for reductions to take place where they are most efficient. But if courts were to require reductions of randomly chosen defendants—with no regard for whether they are efficient reducers— they would inhibit the effective operation of legislatively-created, market-based regimes by prematurely and artificially constricting the size of the market. And as one analyst succinctly put it before Congress, “[a]n insufficient number of participants will doom an emissions trading market.”49¶ There is no doubt that the “Copenhagen Accord only begins the battle” against climate change, as diplomats, bureaucrats, and legislators all now begin the lengthy struggle to turn that Accord’s audacious vision into concrete reality.50 But whatever one’s position in the debate between emissions trading and carbon taxes, or even in the debate over the extent or indeed the reality of anthropogenic climate change, one thing is clear: legislators, armed with the best economic and scientific analysis, and with the capability of binding, or at least strongly incentivizing, all involved parties, are the only ones constitutionally entitled to fight that battle. ¶ CONCLUSION ¶ Some prognosticators opine that the political question doctrine has fallen into disrepute and that it no longer constitutes a viable basis upon which to combat unconstitutional judicial overreaching.51 No doubt the standing doctrine could theoretically suffice to prevent some of the most audacious judicial sallies into the political thicket, as it might in the climate change case, where plaintiffs assert only undifferentiated and generalized causal chains from their chosen defendants to their alleged injuries. But when courts lose sight of the important limitations that the political question doctrine independently imposes upon judicial power–even where standing problems are at low ebb, as with the Motor Fuel case–then constitutional governance, and in turn the protection of individual rights and preservation of legal boundaries, suffer. The specter of two leading circuit courts manifestly losing their way in the equally real thicket of political question doctrine underscores the urgency, perhaps through the intervention of the Supreme Court, of restoring the checks and balances of our constitutional system by reinforcing rather than eroding the doctrine’s bulwark against judicial meddling in disputes either expressly entrusted by the Constitution to the political branches or so plainly immune to coherent judicial management as to be implicitly entrusted to political processes. It is not only the climate of the globe that carries profound implications for our future; it is also the climate of the times and its implications for how we govern ourselves.

**Warfighting key to contain NoKo**

**Nzelibe & Yoo 06**

[Jide Nzelibe and John C. Yoo. , Yoo is a professor of law at the University of California at Berkeley School of Law , ,Rational war and constitutional design.(Symposium on Executive Power).

Yale Law Journal 115.9 (July 2006): p2512(30), uwyo//amp]

**The declining value of costly signals is counterbalanced by the benefit of using preemptive force against terrorists and rogue states**. As September 11 showed, terrorist attacks can occur without warning because their unconventional nature allows their preparation to be concealed within the normal activities of civilian life. Terrorists have no territory or regular armed forces from which to detect signs of an impending attack. To defend itself from such an enemy, the United States might need to use force earlier and more often than was the norm during a time when nation-states generated the primary threats to American national security. (63) As with terrorism, **the threat posed by rogue nations may again require the United States to use force earlier and more often** than it would like. (64**) Rogue nations may very well be immune to pressure short of force designed to stop their quest for WMD** or their threat to the United States. **Rogue nations**, for example, **have isolated themselves** from the international system, are less integrated into the international political economy, and repress their own populations. **This makes them less susceptible to** diplomatic or other means of resolving disputes short of force, such as economic **sanctions. Lack of concern for their own civilian populations renders the dictatorships that often govern rogue nations more resistant to deterrence. North Korea,** for example, **appears to have continued its development of nuclear weapons despite** years of diplomatic measures to change its course. (65) These new threats to American national security change the way we think about the relationship between the process and substance of the warmaking system. The international system as it existed at the end of the Cold War allowed the United States to choose a warmaking system that could have placed a premium on deliberation and the approval of multiple institutions, whether for purposes of political consensus (and hence institutional constraints that lower the expected value of war) or for purposes of signaling private information in the interests of reaching a peaceful bargain. If, however, the nature of threats has changed and the level of threats has increased, and military force is the most effective means for responding to those threats, then it may make more sense for the United States to use force preemptively. **Given the threats posed by WMD proliferation, rogue nations, and international terrorism**, at the very least it seems clear **that we should not adopt a warmaking process that contains a built-in presumption against using force abroad or that requires long and deliberate procedures. T**hese developments in the international system may demand that the United States have the ability to use force earlier and more quickly than in the past. In order to forestall a WMD attack, or to take advantage of a window of opportunity to strike at a terrorist cell**, the executive branch needs the flexibility to act quickly, possibly in situations in which congressional consent cannot be obtained in time to act on the intelligence**. These cases suggest that a permanent constitutional rule requiring **congressional permission to use force would be over-inclusive.** In certain situations, particularly when the United States is facing a nation-state with a similar political system or one that can draw on a sophisticated understanding of foreign nations, signaling through congressional participation may prove valuable. But **costly signals may prove ineffective in other situations, particularly when the opponent is a rogue state** or an international terrorist organization. There may be little value in revealing private information through legislative commitments if the opponent does not understand the meaning of congressional participation or does not share a common value system that would allow a bargain to be struck. In other words, the signaling model that underwrites the value of congressional participation breaks down when confronted with these opponents. In such cases, we might conclude that **the benefits of swift, even preemptive military action might outweigh the potential effectiveness of signaling.** These considerations suggest that a two-tier approach to war powers might be desirable, in which conflicts with similar nation-states should involve congressional authorization, which can only assist the executive branch in reaching a bargain with a foreign nation. But **if the opponent is a terrorist organization or a rogue nation, the United States might be better off retaining a system of executive initiative in war**. We should make an important clarification. Our argument does not preclude the possibility that some nondemocractic regimes could understand the informational value of legislative signaling, but it assumes that democratic regimes are more likely to appreciate such signals. In some circumstances, the President might seek legislative authorization for the use of force against nondemocractic states to improve the chances of a peaceful settlement. But it will depend on the circumstances and on whether the benefits of such a signal would be outweighed by the costs of delay. We believe that **the President is best suited, as a structural matter, to determine whether to seek to signal a nondemocractic regime with legislative authorization.**

**An unchecked North Korea causes global catastrophe**

**Hayes and Green, 10**

[\*Victoria University AND Executive Director of the Nautilus Institute (Peter and Michael, “-“The Path Not Taken, the Way Still Open: Denuclearizing the Korean Peninsula and Northeast Asia”, 1/5, http://www.nautilus.org/fora/security/10001HayesHamalGreen.pdf) uwyo//amp]

**The consequences of failing to address the proliferation threat posed by the North Korea developments, and related political and economic issues, are serious, not only for the Northeast Asian region but for the whole international community. At worst, there is the possibility of nuclear attack1, whether by intention, miscalculation, or merely accident, leading to the resumption of Korean War hostilities.** On the Korean Peninsula itself, **key population centres are well within short or medium range missiles.** **The whole of Japan is likely to come within North Korean missile range**. Pyongyang has a population of over 2 million, Seoul (close to the North Korean border) 11 million, and Tokyo over 20 million. **Even a limited nuclear exchange would result in a holocaust of unprecedented proportions. But the catastrophe within the region would not be the only outcome. New research indicates that even a limited nuclear war in the region would rearrange our global climate far more quickly than global warming.** Westberg draws attention to new studies modelling the effects of even a limited nuclear exchange involving approximately 100 Hiroshima-sized 15 kt bombs2 (by comparison it should be noted that the United States currently deploys warheads in the range 100 to 477 kt, that is, individual warheads equivalent in yield to a range of 6 to 32 Hiroshimas).The studies indicate that **the soot from the fires produced would lead to a decrease in global temperature by 1.25 degrees Celsius for a period of 6-8 years**.3 In Westberg’s view: **That is not global winter, but the nuclear darkness will cause a deeper drop in temperature than at any time during the last 1000 years.** The temperature over the continents would decrease substantially more than the global average. **A decrease in rainfall over the continents would also follow…The period of nuclear darkness will cause much greater decrease in grain production than 5% and it will continue for many years...hundreds of millions of people will die from hunger…To make matters even worse, such amounts of smoke injected into the stratosphere would cause a huge reduction in the Earth’s protective ozone.4** These, of course, are not the only consequences. **Reactors might also be targeted, causing further mayhem and downwind radiation effects, superimposed on a smoking, radiating ruin left by nuclear next-use.** Millions of refugees would flee the affected regions. **The direct impacts, and the follow-on impacts on the global economy via ecological and food insecurity, could make the present global financial crisis pale by comparison. How the great powers, especially the nuclear weapons states respond to such a crisis, and in particular, whether nuclear weapons are used in response to nuclear first-use, could make or break the global non proliferation and disarmament regimes. There could be many unanticipated impacts on regional and global security relationships5, with subsequent nuclear breakout and geopolitical turbulence, including possible loss-of-control over fissile material or warheads in the chaos of nuclear war, and aftermath chain-reaction affects involving other potential proliferant states.** The Korean nuclear proliferation issue is not just a regional threat but a global one that warrants priority consideration from the international community.

#### Deference key to successful policies, complete reform, court legitimacy, and reputation – this turns case

Kavanagh 10 (Aileen, Reader in Law, University of Oxford and Fellow of St Edmund Hall, University of Toronto Law Journal, Volume 60, Number 1, Winter 2010, Judicial restraint in the pursuit of justice, Project MUSE, p. 28 – 29)

One can identify at least four institutional reasons for judicial restraint. These are concerns about (1) judicial expertise, (2) the incrementalist nature of judicial law making, (3) institutional legitimacy, and (4) the reputation of the courts. Let us go through these one by one. The constraint of ‘limited expertise’ reflects the epistemic limitations of the courts in evaluating certain issues. In situations where judges do not know (or are unsure about) how a particular issue should be resolved or, indeed, are unsure what consequences will follow from a particular decision, such uncertainty may warrant a degree of judicial restraint.13 The second reason for restraint arises from the incrementalist nature of judicial law making. While legislators are relatively free to initiate legislation on any topic and can engage in radical, root-and-branch reform of a whole area of law, judges are much more constrained. In general, judicial law reform tends to be incremental and piecemeal – filling in gaps in existing legal frameworks, tackling one single legislative provision at a time rather than reforming an entire statute or a whole area of law. This presents what Joseph Raz has called ‘the dilemma of partial reform’14 – a dilemma, because the courts often have to choose between leaving a legislative provision intact (i.e., not interfering with it) or reforming it in a necessarily piecemeal or partial way. Judges are aware that partial reform can be fraught with danger because it carries the risk of being counter-productive or failing to achieve the hoped-for aim.15 This concern may give rise to judicial restraint. The third reason for restraint reflects concerns about relative institutional legitimacy. Sometimes, the courts exercise restraint before interfering with primary legislation out of a concern that a decision that changed the law would not be accepted by the public or indeed by the other branches of government due to the courts’ perceived lack democratic legitimacy and accountability. While this has attracted some controversy in UK public law scholarship,16 judicial dicta to the effect that courts should respect decisions made by the elected legislature due to its¶ superior democratic legitimacy are not hard to come by.17 The fourth reason is grounded in reputational concerns. When handing down their decisions, judges have to do so in a way that preserves the reputation of the courts and inspires public confidence in them as impartial, fair decision makers. The courts must ensure, to the extent¶ that they can, that their decisions are respected – both by the other political organs of government (Parliament and the executive) and by the public at large – and should strive to avoid decisions that would bring the courts into disrepute. This reason for restraint will be discussed in more detail later in the paper.

#### 2014 NDAA decreases regulation on detention

Lennerd 12/27

[Natasha, assistant news editor at Salon “Obama signs NDAA 2014, indefinite detention remains,” <http://www.salon.com/2013/12/27/obama\_signs\_ndaa\_2014\_indefinite\_detention\_remains/>//wyo-hdm]

As a notable improvement, NDAA 2014 includes a provision that Obama called a “welcome step” toward fulfilling his longtime promise to close the Guantanamo Bay prison camp. The bill relaxes regulations that have held up the transfer of detainees out of the detention center.¶ The defense act also includes provisions aimed at intervening in the epidemic of sexual assault in the U.S. military. But, as the Washington Post noted, “it stops short of the broad reforms that Sen. Kirsten Gillibrand (D-N.Y.) and other advocates have been calling for.”¶ While legislative movement on Gitmo’s closure is necessary, it is insufficient. As Amnesty International USA’s director Zeke Johnson commented, “[the president] should move forward with foreign transfers immediately and lobby Congress hard to end the ban on transfers to the U.S. mainland. Guantanamo must be closed by ensuring that each detainee is either fairly tried in U.S. federal court or released to a country that will respect his human rights.”

#### No restrictions-Congress lacks the will

Couch Rozell & Stollenberger Dec. 2013

[Jeffrey Crouch is an assistant professor of American politics at American University.¶ Mark J. Rozell is acting dean and a professor of public policy at George Mason University.¶ Mitchel A. Sollenberger is associate professor of political science at the University of Michigan-Dearborn, Presidential Studies Quarterly, President Obama’s Signing Statements and¶ the Expansion of Executive Power, ProQuest, uwyo//amp]

#### We admit that ﬁnding a solution to presidential abuse of signing statements is not¶ an easy task. Leading scholars who have plowed this ground have not been impressed by¶ either the correctives advocated by the American Bar Association (Fisher 2006) or those¶ initiated by the legislative branch (Fisher 2006; Pﬁffner 2009). We are hopeful that¶ presidents will begin to exercise restraint in the use of this power, and that Congress will¶ be more diligent in using the various traditional powers at its disposal—appropriations,¶ hearings, conﬁrmations, among others—to keep presidents in line. In short, any correc tive against signing statements is only as good as Congress’s willingness to push back¶ against executive encroachments. Lawmakers must regain a sense of their institutional¶ prerogatives.

### Link – Charming Betsy

#### Enforcing Charming betsy in the context of foreign affairs undermines executive deference

Abebe and Posner 11 (Daniel and Eric, \* Assistant Professor and Kirkland & Ellis Professor, University of Chicago Law School, "The Flaws of Foreign Affairs Legalism," Virginia Journal of International Law, Volume 51, Issue 3, www.vjil.org/assets/pdfs/vol51/issue3/Abebe\_\_\_Posner.pdf)

Statutory Interpretation and the Charming Betsy Canon. The Charming Betsy canon holds that courts should not interpret vague or ambiguo¶ ous statutes in a manner inconsistent with international law.64 Foreign ¶ affairs legalists generally support the expansive application of the ¶ Charming Betsy canon, even when it might conflict with traditional foreign affairs deference to executive interpretations of international law,65¶ or require the use of international norms to interpret individual rights66¶ and constitutional protections.67 U.S. courts have been less consistent. ¶ For instance, in the recent case of Al-Bihani v. Obama,¶ 68 the U.S. Court ¶ of Appeals for the District of Columbia refused to interpret the Authorization for Use of Military Force69 in light of international law,70 greatly ¶ disappointing foreign affairs legalists.

### Link – Generic – Warfighting

#### Judicial application of international law for war powers issues undermines executive flexibility and increases transaction costs in warfighting

(no thumpers the Congress stripped the Courts of the authority to do so after Hamdan and the other cases that their thumpers are about didn’t implicate international law)

Ku and Yoo 6 (Julian and John, Associate Professor of Law, Hofstra University School of Law; Visiting Associate Professor of Law, William & Mary Marshall-Wythe School of Law. \*\* Professor of Law, University of California at Berkeley School of Law (Boalt Hall); Visiting Scholar, American Enterprise Institute. We thank Jesse Choper, Neal Devins, Robert Delahunty, Jide Nzelibe, Saikrishna Prakash for their comments, and Patrick Hein for his research assistance., "Hamdan v. Rumsfeld: The Functional Case for Foreign Affairs Deference to the Executive Branch," University of California at Berkeley, Public Law and Legal Theory Research Paper Series, www.pegc.us/archive/Yoo/ku-yoo\_hamdan\_200611.pdf)

The doctrines requiring judicial deference to executive interpretations of laws affecting foreign affairs, especially during wartime, ¶ have a solid and undisputed formal pedigree. But these doctrines also ¶ have a strong functional basis. The executive branch has strong institutional advantages over courts in the interpretation of laws relating to ¶ the conduct of war. Hamdan’s refusal to give deference to the executive branch, if followed in the future, will further disrupt the traditional system of political cooperation between Congress and the ¶ President in wartime. It will raise the transaction costs for policymaking during war without any serious benefit and potentially at large ¶ cost. Congress expressed its displeasure with Hamdan by stripping ¶ federal courts of jurisdiction and reducing their interpretive freedom ¶ over foreign affairs statutes and international law.

### Internal Link

Yes internal link- Posner says involve courts and legal constraints slows down the process of Obama’s ability deploy rapid force

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### Case

### No Impact ext.

#### 1. Ozone depletion has tiny impact on humans – Only 350 in the U.S.

Bjorn Lomborg 01, Associate Professor Political Science, University of Aarhus, 2001, The Skeptical Environmentalist, p. 275

About 95 percent of skin cancers today consist of the highly curable basal and squamous cell cancers, whereas the last 5 percent consist of the much more lethal melanoma skin cancer. In total, the US experiences about 50,000 new melanoma cases each year and about a million new basal and squamous cell cancers, with almost all mortality stemming from the melanomas. Assuming no change in behavior (sun exposure, etc.) and full compliance with the CFC protocols, it is estimated that the current ozone minimum will lead to more cancers in the future, reaching a maximum in 2060 of 27,000 extra annual skin cancers in the US, or an increase in total skin cancer of about 3 percent. Since the vast majority of extra cancers will be the almost entirely curable skin cancers, the maximum extra deaths in 2060 in the US are estimated at about 350 or about 5 percent of all skin cancer deaths. Thus, even at ozone depletion’s greatest impact, it will cause a relatively slight increase in the cancer incidence and death rate.