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## Schmitt K

#### Restrictions on executive war powers DO NOTHING for the state of political legal exception we live in and only gives further justification for violent intervention on the basis of legality

Dyzenhaus 05

(David, is a professor of Law and Philosophy at the University of Toronto, and a Fellow of the Royal Society of Canada, “Schmitt v. Dicey: Are States of Emergency Inside or Outside the Legal Order?” Cardozo Law Review 27)

Rossiter had in mind Lincoln's actions during the Civil War, including the proclamation by which Lincoln, without the prior authority of Congress, suspended habeas corpus. n35 Lincoln, he said, subscribed to a theory that in a time of emergency, the President could assume whatever legislative, executive, and judicial powers he thought necessary to preserve the nation, and could in the process break the "fundamental laws of the nation, if such a step were unavoidable." n36 This power included one ratified by the Supreme Court: "an almost unrestrained power to act toward insurrectionary citizens as if they were enemies of the United States, and thus place them outside the protection of the Constitution." Rossiter's difficulties here illustrate rather than solve the tensions inherent in the idea of constitutional dictatorship. On the one hand, he wants to assert that emergency rule in a liberal democracy can be constitutional in nature. "Constitutional" implies restraints and limits in accordance not only with law, but with fundamental laws. These laws are not the constitution that is in place for ordinary times; rather, they are the laws that govern the management of exceptional times - the eleven criteria that he developed for constitutional dictatorship. The criteria are either put within the discretion of the dictator - they are judgments about necessity - or are couched as limits that should be enshrined either in the constitution or in legislation. However, Rossiter does not properly address the fact that judgments about necessity are for the dictator to make, which means that these criteria are not limits or constraints but merely factors about which the dictator will have to decide. Other criteria look more like genuine limits. Moreover, they are limits that could be constitutionally enshrined - for example, the second criterion, which requires that the person who makes the decision that there is an emergency should not be the person who assumes dictatorial powers. Yet, as we have seen, Rossiter's foremost example of the modern constitutional dictator, Lincoln, not only gave himself dictatorial powers but, Rossiter supposes, had no choice but to do this. Moreover, if these criteria are constitutionally enshrined, so that part of the constitution is devoted to the rules that govern the time when the rest of the constitution might be suspended, they still form part of the constitution. So, no less than the ordinary constitution, what we can think of as the exceptional or emergency constitution - the constitution that governs the state of emergency - is subject to suspension should the dictator deem this necessary. This explains why, on the other hand, Rossiter equated emergency rule with potentially unlimited dictatorship, with Locke's idea of prerogative. And Rossiter said, "whatever the theory, in moments of extreme national emergency the facts have always been with ... John Locke." So Rossiter at one and the same time sees constitutional dictatorship as unconstrained in nature and as constrainable by principles - his eleven criteria. The upshot is that "constitutional" turns out not to mean what we usually take it to mean; rather, it is a misleading name for the hope that the person who assumes dictatorial powers does so because of a good faith evaluation that this is really necessary and with the honest and steadfast intention to return to the ordinary way of doing things as soon as possible. Giorgio Agamben is thus right to remark that the bid by modern theorists of constitutional dictatorship to rely on the tradition of Roman dictatorship is misleading. n39 They rely on that tradition in an effort to show that dictatorship is constitutional or law-governed. But in fact they show that dictatorship is in principle absolute - the dictator is subject to whatever limits he deems necessary, which means to no limits at all. As H.L.A. Hart described the sovereign within the tradition of legal positivism, the dictator is an uncommanded commander. n40 He [\*2015] operates within a black hole, in Agamben's words, "an emptiness of law." n41 Agamben thus suggests that the real analogue to the contemporary state of emergency is not the Roman dictatorship but the institution of iustitium, in which the law is used to produce a "juridical void" - a total suspension of law. n42 And in coming to this conclusion, Agamben sides with Carl Schmitt, his principal interlocutor in his book. However, it is important to see that Schmitt's understanding of the state of exception is not quite a legal black hole, a juridically produced void. Rather, it is a space beyond law, a space which is revealed when law recedes, leaving the state, represented by the sovereign, to act. In substance, there might seem to be little difference between a legal black hole and space beyond law since neither is controlled by the rule of law. But there is a difference in that nearly all liberal legal theorists find the idea of a space beyond law antithetical, even if they suppose that law can be used to produce a legal void. This is so especially if such theorists want to claim for the sake of legitimacy that law is playing a role, even if it is the case that the role law plays is to suspend the rule of law. Schmitt would have regarded such claims as an attempt to cling to the wreckage of liberal conceptions of the rule of law brought about by any attempt to respond to emergencies through the law. They represent a vain effort to banish the exception from legal order. Because liberals cannot countenance the idea of politics uncontrolled by law, they place a veneer of legality on the political, which allows the executive to do what it wants while claiming the legitimacy of the rule of law. We have seen that Rossiter presents a prominent example which supports Schmitt's view, and as I will now show, it is a depressing fact that much recent post 9/11 work on emergencies is also supportive of Schmitt's view. II. Responding to 9/11 For example, Bruce Ackerman in his essay, The Emergency Constitution, n43 starts by claiming that we need "new constitutional concepts" in order to avoid the downward spiral in protection of civil liberties that occurs when politicians enact laws that become increasingly repressive with each new terrorist attack. n44 We need, he says, to rescue the concept of "emergency powers ... from fascist thinkers like Carl Schmitt, who used it as a battering ram against liberal [\*2016] democracy." n45 Because Ackerman does not think that judges are likely to do, or can do, better than they have in the past at containing the executive during an emergency, he proposes mainly the creative design of constitutional checks and balances to ensure, as did the Roman dictatorship, against the normalization of the state of emergency. Judges should not be regarded as "miraculous saviors of our threatened heritage of freedom." n46 Hence, it is better to rely on a system of political incentives and disincentives, a "political economy" that will prevent abuse of emergency powers. He calls his first device the "supramajoritarian escalator" n48 - basically the requirement that a declaration of a state of emergency requires legislative endorsement within a very short time, and thereafter has to be renewed at short intervals, with each renewal requiring the approval of a larger majority of legislators. The idea is that it will become increasingly easy with time for even a small minority of legislators to bring the emergency to an end, thus decreasing the opportunities for executive abuse of power. n49 The second device requires the executive to share security intelligence with legislative committees and that a majority of the seats on these committees belong to the opposition party. Ackerman does see some role for courts. They will have a macro role should the executive flout the constitutional devices. While he recognizes both that the executive might simply assert the necessity to suspend the emergency constitution and that this assertion might enjoy popular support, he supposes that if the courts declare that the executive is violating the constitution, this will give the public pause and thus will decrease incentives on the executive to evade the constitution. n51 In addition, the courts will have a micro role in supervising what he regards as the inevitable process of detaining suspects without trial for the period of the emergency. Suspects should be brought to court and some explanation should be given of the grounds of their detention, not so that they can contest it - a matter which Ackerman does not regard as practicable - but in order both to give the suspects a public identity so that they do not disappear and to provide a basis for compensation once the emergency is over in case the executive turns out to have fabricated [\*2017] its reasons. He also wishes to maintain a constitutional prohibition on torture, which he thinks can be enforced by requiring regular visits by lawyers. Not only is the judicial role limited, but it is clear that Ackerman does not see the courts as having much to do with preventing a period of "sheer lawlessness." n53 Even within the section on the judiciary, he says that the real restraint on the executive will be the knowledge that the supramajoritarian escalator might bring the emergency to an end, whereupon the detainees will be released if there is no hard evidence to justify detaining them. In sum, according to Ackerman, judges have at best a minimal role to play during a state of emergency. We cannot really escape from the fact that a state of emergency is a legally created black hole, a lawless void. It is subject to external constraints, controls on the executive located at the constitutional level and policed by the legislature. But internally, the rule of law does next to no work; all that we can reasonably hope for is decency. But once one has conceded that internally a state of emergency is more or less a legal black hole because the rule of law, as policed by judges, has no or little purchase, it becomes difficult to understand how external legal constraints, the constitutionally entrenched devices, can play the role Ackerman sets out. Recall that Ackerman accepts that the reason we should not give judges more than a minimal role is the history of judicial failure to uphold the rule of law during emergencies in the face of executive assertions of a necessity to operate outside of law's rule. For that reason, he constructs a political economy to constrain emergency powers. But that political economy still has to be located in law in order to be enforceable, which means that Ackerman cannot help but rely on judges. But why should we accept his claim that we can rely on judges when the executive asserts the necessity of suspending the exceptional constitution, the constitution for the state of emergency, when one of his premises is that we cannot so rely? Far from rescuing the concept of emergency powers from Schmitt, Ackerman's devices for an emergency constitution, an attempt to update Rossiter's model of constitutional dictatorship, fails for the same reasons that Rossiter's model fails. Even as they attempt to respond to Schmitt's challenge, they seem to prove the claim that Schmitt made in late Weimar that law cannot effectively enshrine a distinction between constitutional dictatorship and dictatorship. They appear to be vain attempts to find a role for law while at the same time conceding that law has no role. Of course, this last claim trades on an ambiguity in the idea of the rule of law between, on the one hand, the rule of law, understood as the rule of substantive principles, and, on the other, rule by law, where as long as there is a legal warrant for what government does, government will be considered to be in compliance with the rule of law. Only if one holds to a fairly substantive or thick conception of the rule of law will one think that there is a point on a continuum of legality where rule by law ceases to be in accordance with the rule of law. Ackerman's argument for rule by law, by the law of the emergency constitution, might not answer Schmitt's challenge. But at least it attempts to avoid dignifying the legal void with the title of rule of law, even as it tries to use law to govern what it deems ungovernable by law. The same cannot be said of those responses to 9/11 that seem to suggest that legal black holes are not in tension with the rule of law, as long as they are properly created. While it is relatively rare to find a position that articulates so stark a view, it is quite common to find positions that are comfortable with grey holes, as long as these are properly created. A grey hole is a legal space in which there are some legal constraints on executive action - it is not a lawless void - but the constraints are so insubstantial that they pretty well permit government to do as it pleases. And since such grey holes permit government to have its cake and eat it too, to seem to be governing not only by law but in accordance with the rule of law, they and their endorsement by judges and academics might be even more dangerous from the perspective of the substantive conception of the rule of law than true black holes.

#### Our alternative is to recognize the necessity of the opposition. Sovereignty necessarily functions in exception to the law. This exception is necessary to avoid the universal violence of the Law and the affirmative.

Rasch 2k

(William. "Conflict as a Vocation: Carl Schmitt and the Possibility of Politics." Theory Culture Society 17.1)

It is not difficult to see that the polemical elevation of sovereignty over the rule of law replicates a lively historical opposition, one that can be perhaps best evoked by that happy pair, Hobbes and Locke. Within the liberal tradition, the rule of law invokes reason and calculability in its battles against the arbitrary and potentially despotic whim of an unrestrained sovereign. The legitimacy of the sovereign is thus replaced by a legality that claims to provide its own immanent and unforced legitimacy. Predictable and universally accessible reason - the normative validity of an "uncorked consensus", to use the words of a prominent modern exponent - gently usurps, so it is claimed, the place that would otherwise be occupied by a cynical, pragmatic utilitarianism and the tyranny of a dark, incalculable will. The rule of law brings all the comforts of an uncontroversial, rule-based, normative security as if legality preceded by way of simple logical derivation, abolishing above all the necessity of decisions. Schmitt clearly will have none of this and in various writings attempts to expose what he considers to be the two-fold fallacy of the liberal position. As we have seen, if taken at its word, legality, or the rule of law, is seen by Schmitt to be impotent; it can neither legitimize nor effectively defend itself against determined enemies in times of crisis. Were law truly the opposite of force, it would cease to exist. But this self-description is deceptive, for if judged by its deeds, the same liberal regime that enunciates the self-evidence validity of universal norms strives to enact a universal consensus that is, indeed, far from uncorked. The rule of law inevitably reveals itself, precisely during moments of crisis, as the force of law, perhaps, not every bit as violent and "irrational" as the arbitrary tyrant, but nonetheless compelling and irresistible - indeed, necessarily so. Thus, Schmitt would argue the distinction between "decision", "force" and sovereignty", on the one hand, and the "rule of law", on the other, is based on a blithe and simple illusion. What agitates Schmitt is not the force, but the deception. More precisely, what agitates Schmitt is what he perceives to be the elimination of politics in the name of a higher legal or moral order. In its claim to a universal, normative, rule-bound validity, the liberal sleight-of-hand reveals itself to be not the opposite of force, but a force that outlaws opposition. In resurrecting the notion of sovereignty, therefore, Schmitt sees himself as one who rescues a legitimate notion of politics. Of course, this rescue attempt is itself political, a battle over the correct definition of politics. That is, we are not merely dealing with a logical problem, and not merely dealing with a desire to provide constitutional mechanisms that would prevent the self-dissolution of the constitution. Rather, we are dealing with a contest between a particularist notion of politics, in which individual conflicts can be resolved, but in which antagonism as a structure and reservoir of possible future conflicts is never destroyed, versus politics as the historical unfolding and pacific expansion of the universal morality. To evoke the long shadows of an ongoing contemporary debate, we are dealing with the difference between a politics of dissensus and a politics of consensus. Whereas the latter ideology entails an explicit or implicit belief in the "highest good" that can be rationally discerned and achieved, a "right regime", to use Leo Strauss's term, or the "just society" that hopes to actualize aspects of the City of God here on earth, the former stresses the necessity of determining a workable order where no single order bears the mantle of necessity, in fact, where all order is contingent, hence imperfect, and thus seeks to make the best of an inherently contradictory world by erecting structures that minimize self-inflicted damage. In Schmitt's eyes, the elements of such a structure must be the manifold of sovereign states. The liberal says there can only be one world-wide sovereign, the sovereignty of a universal moral and legal order. Schmitt counters with a plurality of equal sovereigns, for only in this way, he believes, can the economic and moral extinction of politics be prevented. Politics, on this view, is not the means by which the universally acknowledged good is actualized, but the mechanism that negotiates and limits disputes in the absence of any universally acknowledged good. Politics exists, in other words, because the just society does not.

#### This requires the unchecked authority of the executive to respond to the exception.

Nagan and Haddad 12

(Winston and Aitza, "Sovereignty in Theory and Practice." San Diego International Law Journal 13)

Although Schmitt was German, his ideas about sovereignty, and the political exception have had influence on the American theory and practice of sovereignty. Carl Schmitt was a philosophic theorist of sovereignty during the Third Reich. n375 His ideas about sovereignty and its above the law placement in the political culture of the State have important parallels in the developing discourse in the United States about the scope of presidential authority and power. His views have attracted the attention of American theorists. Schmitt developed his view of sovereignty on the concept described as "the exception". n376 This idea suggests that the sovereign or executive may invoke the idea of exceptional powers which are distinct from the general theory of the State. In Schmitt's view, the normal condition of the functions of the theory of a State, rides with the existence of the idea of the "exception." The exception is in effect intrinsic to the idea of a normal State. In his view, [\*487] the normal legal order of a State depends on the existence of an exception. n377 The exception is based on the continuing existence of an existential threat to the State and it is the sovereign that must decide on the exception. n378 In short, the political life of a State comprises allies and enemies. For the purpose of Statecraft, "an enemy exists only when at least potentially, one fighting collectivity of people confronts another similar collectivity." n379 In this sense, the political reality of the State always confronts the issue of the survival of the group. This reality is explained as follows. The political is the most intense and extreme antagonism, and every concrete antagonism becomes that much more political the closer it approaches the most extreme point, that of the friend-enemy grouping. \*\*\* As an ever present possibility [war] is the leading presupposition which determines in a characteristic way human action and thinking and hereby creates a specifically political behavior.\*\*\* A world in which the possibility of war is utterly eliminated, a completely pacified globe, would be a world without the distinction between friend and enemy and hence a world without politics. n380 Schmitt's view bases the supremacy of the exception on the supremacy of politics and power. n381 Thus, the exception, as rooted in the competence of the executive, is not dependent on law for its authority but on the conditions of power and conflict, which are implicitly pre-legal. n382 The central idea is that in an emergency, the power to decide based on the exception accepts its normal superiority over law on the basis that the suspension of the law is justified by the pre-legal right to self-preservation. n383 Schmitt's view is a powerful justification for the exercise of extraordinary powers, which he regards as ordinary, by executive authority. This is a tempting view for executive officers but it may not be an adequate explanation of the interplay of power, legitimacy, and the constitutional foundations of a rule of law State. In a later section, we draw on insights from the New Haven School, which deals empirically with the problem of power and the problem of constituting authority using the methods of contextual mapping. Nonetheless, Schmitt's view provides support for theorists who seek to enlarge executive power on the unitary presidency theory.

## Warfighting DA

#### Executive flexibility on detention powers now

Tomatz 13

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

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

#### Judicial review of foreign policy decks the executive flexibility necessary to solve prolif, terror, and the rise of hostile powers---link threshold is low

Blomquist 10

Robert Blomquist 10, Professor of Law, Valparaiso University School of Law, THE JURISPRUDENCE OF AMERICAN NATIONAL SECURITY PRESIPRUDENCE, 44 Val. U.L. Rev. 881

Supreme Court Justices--along with legal advocates--need to conceptualize and prioritize big theoretical matters of institutional design and form and function in the American national security tripartite constitutional system. By way of an excellent introduction to these vital issues of legal theory, the Justices should pull down from the library shelf of the sumptuous Supreme Court Library in Washington, D.C. (or more likely have a clerk do this chore) the old chestnut, The Legal Process: Basic Problems in the Making and Application of Law by the late Harvard University law professors Henry M. Hart and Albert M. Sacks. n7 Among the rich insights on institutional design coupled with form and function in the American legal system that are germane to the Court's interpretation of national security law-making and decision-making by the President are several pertinent points. First, "Hart and Sacks' intellectual starting point was the interconnectedness of human beings, and the usefulness of law in helping us coexist peacefully together." n8 By implication, therefore, the Court should be mindful of the unique [\*883] constitutional role played by the POTUS in preserving peace and should prevent imprudent judicial actions that would undermine American national security. Second, Hart and Sacks, continuing their broad insights of social theory, noted that legal communities establish "institutionalized[] procedures for the settlement of questions of group concern" n9 and regularize "different procedures and personnel of different qualifications . . . appropriate for deciding different kinds of questions" n10 because "every modern society differentiates among social questions, accepting one mode of decision for one kind and other modes for others-e.g., courts for 'judicial' decisions and legislatures for 'legislative' decisions" n11 and, extending their conceptualization, an executive for "executive" decisions. n12 Third, Professors Hart and Sacks made seminal theoretical distinctions between rules, standards, principles, and policies. n13 While all four are part of "legal arrangements [\*884] in an organized society," n14 and all four of these arrangements are potentially relevant in judicial review of presidential national security decisions, principles and policies n15 are of special concern because of the sprawling, inchoate, and rapidly changing nature of national security threats and the imperative of hyper-energy in the Executive branch in responding to these threats. n16¶ The Justices should also consult Professor Robert S. Summers's masterful elaboration and amplification of the Hart and Sacks project on enhancing a flourishing legal system: the 2006 opus, Form and Function in a Legal System: A General Study. n17 The most important points that [\*885] Summers makes that are relevant to judicial review of American national security presiprudence are three key considerations. First, a "conception of the overall form of the whole of a functional [legal] unit is needed to serve the founding purpose of defining, specifying, and organizing the makeup of such a unit so that it can be brought into being and can fulfill its own distinctive role" n18 in synergy with other legal units to serve overarching sovereign purposes for a polity. The American constitutional system of national security law and policy should be appreciated for its genius in making the POTUS the national security sentinel with vast, but not unlimited, powers to protect the Nation from hostile, potentially catastrophic, threats. Second, "a conception of the overall form of the whole is needed for the purpose of organizing the internal unity of relations between various formal features of a functional [legal] unit and between each formal feature and the complementary components of the whole unit." n19 Thus, Supreme Court Justices should have a thick understanding of the form of national security decision-making conceived by the Founders to center in the POTUS; the ways the POTUS and Congress historically organized the processing of national security through institutions like the National Security Council and the House and Senate intelligence committees; and the ways the POTUS has structured national security process through such specific legal forms as Presidential Directives, National Security Decision Directives, National Security Presidential Decision Directives, Presidential Decision Directives, and National Security Policy Directives in classified, secret documents along with typically public Executive Orders. n20 Third, according to Summers, "a conception of the overall form of the whole functional [legal] unit is needed to organize further the mode of operation and the instrumental capacity of the [legal] unit." n21 So, the Supreme Court should be aware that tinkering with national security decisions of the POTUS--unless clearly necessary to counterbalance an indubitable violation of the text of the Constitution--may lead to unforeseen negative second-order consequences in the ability of the POTUS (with or without the help of Congress) to preserve, protect, and defend the Nation. n22¶ [\*886] B. Geopolitical Strategic Considerations Bearing on Judicial Interpretation¶ Before the United States Supreme Court Justices form an opinion on the legality of national security decisions by the POTUS, they should immerse themselves in judicially-noticeable facts concerning what national security expert, Bruce Berkowitz, in the subtitle of his recent book, calls the "challengers, competitors, and threats to America's future." n23 Not that the Justices need to become experts in national security affairs, n24 but every Supreme Court Justice should be aware of the following five basic national security facts and conceptions before sitting in judgment on presiprudential national security determinations.¶ (1) "National security policy . . . is harder today because the issues that are involved are more numerous and varied. The problem of the day can change at a moment's notice." n25 While "[y]esterday, it might have been proliferation; today, terrorism; tomorrow, hostile regional powers" n26, the twenty-first century reality is that "[t]hreats are also more likely to be intertwined--proliferators use the same networks as narco-traffickers, narco-traffickers support terrorists, and terrorists align themselves with regional powers." n27¶ (2) "Yet, as worrisome as these immediate concerns may be, the long-term challenges are even harder to deal with, and the stakes are higher. Whereas the main Cold War threat--the Soviet Union--was brittle, most of the potential adversaries and challengers America now faces are resilient." n28¶ (3) "The most important task for U.S. national security today is simply to retain the strategic advantage. This term, from the world of military doctrine, refers to the overall ability of a nation to control, or at least influence, the course of events." n29 Importantly, "[w]hen you hold [\*887] the strategic advantage, situations unfold in your favor, and each round ends so that you are in an advantageous position for the next. When you do not hold the strategic advantage, they do not." n30¶ (4) While "keeping the strategic advantage may not have the idealistic ring of making the world safe for democracy and does not sound as decisively macho as maintaining American hegemony," n31 maintaining the American "strategic advantage is critical, because it is essential for just about everything else America hopes to achieve--promoting freedom, protecting the homeland, defending its values, preserving peace, and so on." n32¶ (5) The United States requires national security "agility." n33 It not only needs "to refocus its resources repeatedly; it needs to do this faster than an adversary can focus its own resources." n34¶ [\*888] As further serious preparation for engaging in the jurisprudence of American national security presiprudence in hotly contested cases and controversies that may end up on their docket, our Supreme Court Justices should understand that, as Walter Russell Mead pointed out in an important essay a few years ago, n35 the average American can be understood as a Jacksonian pragmatist on national security issues. n36 "Americans are determined to keep the world at a distance, while not isolating ourselves from it completely. If we need to take action abroad, we want to do it on our terms." n37 Thus, recent social science survey data paints "a picture of a country whose practical people take a practical approach to knowledge about national security. Americans do not bother with the details most of the time because, for most Americans, the details do not matter most the time." n38 Indeed, since the American people "do know the outlines of the big picture and what we need to worry about [in national security affairs] so we know when we need to pay greater attention and what is at stake. This is the kind of knowledge suited to a Jacksonian." n39¶ Turning to how the Supreme Court should view and interpret American presidential measures to oversee national security law and policy, our Justices should consider a number of important points. First, given the robust text, tradition, intellectual history, and evolution of the institution of the POTUS as the American national security sentinel, n40 and the unprecedented dangers to the United States national security after 9/11, n41 national security presiprudence should be accorded wide latitude by the Court in the adjustment (and tradeoffs) of trading liberty and security. n42 Second, Justices should be aware that different presidents [\*889] institute changes in national security presiprudence given their unique perspective and knowledge of threats to the Nation. n43 Third, Justices should be restrained in second-guessing the POTUS and his subordinate national security experts concerning both the existence and duration of national security emergencies and necessary measures to rectify them. "During emergencies, the institutional advantages of the executive are enhanced", n44 moreover, "[b]ecause of the importance of secrecy, speed, and flexibility, courts, which are slow, open, and rigid, have less to contribute to the formulation of national policy than they do during normal times." n45 Fourth, Supreme Court Justices, of course, should not give the POTUS a blank check--even during times of claimed national emergency; but, how much deference to be accorded by the Court is "always a hard question" and should be a function of "the scale and type of the emergency." n46 Fifth, the Court should be extraordinarily deferential to the POTUS and his executive subordinates regarding questions of executive determinations of the international laws of war and military tactics. As cogently explained by Professors Eric Posner and Adrian Vermeule, n47 "the United States should comply with the laws of war in its battle against Al Qaeda"--and I would argue, other lawless terrorist groups like the Taliban--"only to the extent these laws are beneficial to the United States, taking into account the likely response of [\*890] other states and of al Qaeda and other terrorist organizations," n48 as determined by the POTUS and his national security executive subordinates.

#### Prolif causes extinction

Horowitz 9

Professor of Political Science @ University of Pennsylvania [Michael Horowitz (Former Emory debater and NDT Champion), “The Spread of Nuclear Weapons and International Conflict: Does Experience Matter?,” Journal of Conflict Resolution, Volume 53 Number 2, April 2009 pg. 234-257]

Learning as states gain experience with nuclear weapons is complicated. While to some extent, **nuclear acquisition** might provide information about resolve or capabilities, it also **generates uncertainty about the way an actual conflict would go**—**given the new risk of nuclear escalation—and uncertainty about relative capabilities**. **Rapid proliferation** **may especially heighten uncertainty** given the potential for reasonable states to disagree at times about the quality of the capabilities each possesses. 2 What follows is an attempt to describe the implications of inexperience and incomplete information on the behavior of nuclear states and their potential opponents over time. Since it is impossible to detail all possible lines of argumentation and possible responses, the following discussion is necessarily incomplete. This is a first step. **The acquisition of nuclear weapons increases the confidence of adopters in their ability to impose costs in the case of a conflict and the expectations of likely costs if war occurs by potential opponents**. The key questions are whether nuclear states learn over time about how to leverage nuclear weapons and the implications of that learning, along with whether actions by nuclear states, over time, convey information that leads to changes in the expectations of their behavior—shifts in uncertainty— on the part of potential adversaries. Learning to Leverage? When a new state acquires nuclear weapons, how does it influence the way the state behaves and how might that change over time? Although **nuclear acquisition** might be orthogonal to a particular dispute, it **might be related to a particular security challenge, might signal revisionist aims with regard to an enduring dispute, or might signal the desire to reinforce the status quo**. This section focuses on how acquiring nuclear weapons influences both the new nuclear state and potential adversaries. In theory, systemwide perceptions of nuclear danger could allow new nuclear states to partially skip the early Cold War learning process concerning the risks of nuclear war and enter a proliferated world more cognizant of nuclear brinksmanship and bargaining than their predecessors. However, **each new nuclear state has to resolve its own particular civil–military issues surrounding operational control and plan its national strategy in light of its new capabilities**. Empirical research by Sagan (1993), Feaver (1992), and Blair (1993) suggests that viewing the behavior of other states does not create the necessary tacit knowledge; there is no substitute for experience **when it comes to handling a nuclear arsenal, even if experience itself cannot totally prevent accidents**. Sagan contends that civil–military **instability in many likely new proliferators and pressures generated by the requirements to handle the responsibility of dealing with nuclear weapons will skew decision making toward more offensive strategies** (Sagan 1995). The questions surrounding Pakistan’s nuclear command and control suggest there is no magic bullet when it comes to new nuclear powers’ making control and delegation decisions (Bowen and Wolvén 1999). Sagan and others focus on inexperience on the part of new nuclear states as a key behavioral driver. **Inexperienced operators and the bureaucratic desire to “justify” the costs spent developing nuclear weapons**, combined with organizational biases that may favor escalation to avoid decapitation—**the “use it or lose it” mind-set— may cause new nuclear states to adopt riskier launch postures, such as launch on warning, or at least be perceived that way by other states** (Blair 1993; Feaver 1992; Sagan 1995). 3 **Acquiring nuclear weapons** **could** alter state preferences **and make states more likely to escalate disputes once they start**, given their new capabilities. 4 But their general lack of experience at leveraging their nuclear arsenal and effectively communicating nuclear threats could mean **new nuclear states will be more likely to select adversaries poorly and to find themselves in disputes with resolved adversaries that will reciprocate militarized challenges**.

## Uighurs DA

#### The aff releases Uighurs – they’ll be forced to return to China

Talmadge ‘13

Eric Talmadge. “In China’s Shadow, Guantanamo’s former Uighur captives languish on Palau.” Miami Herald. 3/17/13. < http://www.miamiherald.com/2013/03/17/3291352/in-chinas-shadow-guantanamos-former.html>.

Both the men and Palau’s president say pressure from China, which says they are terrorists despite their release, is making it impossible for them to find refuge anywhere else. And having met a U.S. federal court order to release them from Guantánamo, U.S. government interest in finding them a permanent home appears to have dried up – though officials say they are doing all they can.¶ “It’s no secret China is very angry with Palau because of the resettlement,” President Tommy Remengesau said in a recent interview with The Associated Press, one of his first since taking office in January. “It doesn’t take a blind man not to notice that nobody wanted to take these men. The pressure was there from the beginning and the pressure continues to be there. ¶ Nobody will be open enough to say that they welcome the Uighurs because of that pressure.” China’s Foreign Ministry and national police ministry did not respond to faxed requests for comment about Beijing pressuring other governments not to accept the Uighurs.¶ The Uighurs come from Xinjiang, an isolated region of western China that borders Afghanistan, Pakistan and six Central Asian nations. They are Turkic-speaking Muslims who say they have long been repressed by the Chinese government. Many want Xinjiang to become independent, and in recent years, some have staged bombings and other attacks, mostly against police, government and military targets.¶ China considers Uighurs held in Guantánamo to be terrorists and has demanded they be repatriated. But since they would almost certainly face imprisonment or even torture if sent back to China, other countries had to be found. The U.S. refused to grant them asylum. Nearly a dozen now live in Albania, Bermuda, El Salvador and Switzerland. Three remain in custody at the U.S. Navy prison in Cuba.

#### That destroys international support throughout central Asia – makes checking Chinese expansion impossible

Poucher ‘13

Julie Poucher Harbin (Editor ISLAMiCommentary). “Rebiya Kadeer: American Grand Strategy Should Care about the Uyghurs.” ISLAMiCommentary. March 12, 2013. < http://islamicommentary.org/2013/03/rebiya-kadeer-american-grand-strategy-should-care-about-the-uyghurs/>.

The United States, in both the former Bush Administration and current Obama Administration, has been a leader among democratic states in raising the Uyghur issue with China. The Bush Administration was particularly supportive of Uyghur aspirations towards human rights, freedom and democracy. State Department officials and reports have consistently highlighted alarm over the suppression of freedom of speech, deprivation of religious freedom and discriminatory economic practices that target Uyghurs, by the Chinese government. The United States is also host to an active Uyghur Diaspora that has the opportunity to educate the world about the plight of the Uyghur people. Uyghurs deeply appreciate this support, but the time also has come for the U.S. administration to step up its commitment on human rights. The United States should do this not only to continue its moral leadership of the international community of nations, but also because it is strongly in its own long-term interest to do so – to promote Uyghur rights.¶ From the outset of his administration, President Obama took a stance toward foreign relations that has promoted the U.S. as a multi-lateral interlocutor in seeking solutions to global issues. After years of mistrust, the U.S. made a bold rapprochement with Muslims in President Obama’s Cairo speech delivered in June 2009. The speech gave hope to millions of oppressed peoples, especially Muslims, across the globe that the United States would stand firm against the repression of Muslims by authoritarian regimes. In his speech, President Obama referred to the silence over the slaughter of Muslims in Bosnia and Darfur as “a stain on our collective consciences.”¶ President Obama’s rapprochement with Muslims could take on no better form than to speak out and act on behalf of the Uyghur people. The non-refoulement of Uyghurs in Guantánamo to China enhanced U.S. credibility among not only Uyghurs, but also Turkic peoples and the wider Muslim world. The saying goes that actions speak louder than words, and in this case the demonstrated protection of Uyghurs from China by the U.S. government was a shining example of American concern for all religious and ethnic groups in the world. Uyghur refugees across Asia, including countries where U.S. influence can be leveraged, have been forcibly returned to China to uncertain fates, under the pressure of the Chinese government. This has happened mostly notably in Cambodia, Malaysia and Kazakhstan and given the right diplomatic pressure should never occur again.¶ Stability in China and the Central Asian region are principal goals of the United States. The resolution of Uyghur issues in East Turkestan (Xinjiang Uyghur Autonomous Region) and the establishment of a democratic China are key in realizing these aims.¶ China gave our people promises, such as self-determination; however, in the sixty years since 1949, we have lost the right to speak freely, the rights to preserve our culture, and the right to practice our religion. We have lost the right to prosper as a people, the right to gain an education in our own language. The Chinese government demolished our ancient cities, in particular the ancient city of Kashgar, which was a hub of Uyghur culture and cradle of Uyghur civilization. In fact, one massacre after another defines the Chinese communists’ rule in East Turkestan. In 1990 in Baren, in 1997 in Ghulja and in 2009 in Urumchi, Chinese security forces gunned down Uyghurs who showed the slightest dissent against their hard line policies.¶ China experiences thousands of instances of unrest annually that shows no sign of diminishing as the Chinese Communist Party (CCP) continues to economically marginalize the rural population and especially Uyghurs and other non-Han Chinese populations with whose welfare it is charged. Simply put, the marginalized of China do not have a voice in the CCP’s vision for China. In East Turkestan a top down and non-negotiable process ,from central government to local government, determines the direction of economic development. The Uyghur people are not consulted on the future direction of their communities and their region, and they are not benefiting from these economic policies of China. Consequentially, policies do not reflect a balance of interests and lead to disenfranchisement of the Uyghur people. These are not the kind of conditions that engender a stable China, as the Chinese government often claims, that guarantees a long-term future for U.S. economic interests.¶ The United States has made great sacrifices in its work toward the stability in Central Asia, and the U.S. provides a positive and democratic role model not only for China but alsofor Central Asian nations grappling with political stability. Uyghurs are highly pro-American and modern Muslims. They are natural allies of America in a region where anti-Americanism is strong, such as in Pakistan and Afghanistan, and to some extent in China. China has made known its interest in Central Asia through its establishment and dominance of the Shanghai Cooperation Organization (SCO). China specifically spearheaded the creation of the SCO to contain the Uyghurs not only in East Turkestan, but also in the entire Central Asia region, where there are an estimated 2 million Uyghur people living.¶ China’s policies in Central Asia are an outward projection of its fears regarding internal security, because its strategic and energy objectives are based on stability in East Turkestan. Since the founding of Kazakhstan, Kyrgyzstan and Uzbekistan, Chinese leaders have feared that these states, whose people are culturally and linguistically related to Uyghurs, would sympathize with the Uyghur situation and support their cause. The Chinese government views the more than 2 million Uyghurs living in those countries as a threat, worrying that this population might aid Uyghurs in East Turkestan who resist Chinese control of what they consider their traditional homeland.¶ China has also used the SCO to promote an anti-American agenda and encouraged non-democratic solutions to regional problems. China’s undemocratic political system and repression of Uyghurs and other peoples in China provides a negative role model for the maturing Central Asian states. China has launched several joint military exercises with SCO member states over the past years, including in East Turkestan in order to intimidate the Uyghur population. Although the stated purposes of those exercises have been improving cooperation among member states primarily in fight against terrorism, the real objective has been to intimidate the Uyghur population in East Turkestan and to warn the democratic forces in Central Asia not to challenge the authoritarian regimes of the region. The legitimacy of the Chinese government’s approach to governance should rest further than its role today as the world’s creditor.¶ Indeed, China may be stepping up its engagement in the Central Asian region through a pivot to its west, today, as the Obama Administration pivots American foreign policy to the Asia-Pacific region. Policy analysts in China have proposed a change of focus in China’s strategic and economic interests, called “Marching West.” This is a very new policy recommended by some of the Chinese policymakers. “Marching West” is basically toward Afghanistan and the ex-Soviet Central Asian states. While the suggested pivot has not yet been elevated to an established government strategy, a pivot to China’s west would be able to exploit the vacuum of the United States’ disengagement from Afghanistan and up inflows of much needed natural resources to eastern China, as well as offer strategic possibilities.¶ China is already using the natural resources of East Turkestan and its strategic location as a gateway to Central Asia, South Asia, Middle East and even Eurasia to build an infrastructure to direct Central Asian natural resources to its ever demanding markets on the eastern seaboard. The CCP is attempting to connect China with the Eurasian landmass, using East Turkestan as a conduit, with pipelines, as well as highways and railroads. Much of this roadmap for Chinese expansion has been built on the regional stability established by the U.S., that the United States has worked hard to achieve and it also undermines America’s regional objectives to build a prosperous relationship with states in Central Asia, South Asia and the Middle East.¶ By prioritizing and including the Uyghur issue as part of the American Grand Strategy, the U.S. will increase its reputation in the Turkic world and in Central Asia where Kazakhs, Kyrgyzs, Uzbeks and Turkmen and Azerbaijanis have close ethnic affinity with the Uyghurs. With firm support for Uyghurs and the establishment of solidarity with Turkic peoples, the U.S. will be able to limit, to some extent, the Chinese penetration into Central Asia and beyond through its influence over the SCO. Importantly, by championing the Uyghur cause, the United States offers an alternative vision of regional politics to the Chinese model, which is based on repression and opportunity for only the well connected.

#### Unchecked Chinese expansion triggers multiple conflicts

Colby 11

 Elbridge Colby, research analyst at the Center for Naval Analyses, served as policy advisor to the Secretary of Defense’s Representative to the New START talks, expert advisor to the Congressional Strategic Posture Commission, August 10, 2011, "Why the U.S. Needs its Liberal Empire," The Diplomat, online: <http://the-diplomat.com/2011/08/10/why-us-needs-its-liberal-empire/2/?print=yes>

But the pendulum shouldn’t be allowed to swing too far toward an incautious retrenchment. For our problem hasn’t been overseas commitments and interventions as such, but the kinds of interventions. The US alliance and partnership structure, what the late William Odom called the United States’ ‘liberal empire’ that includes a substantial military presence and a willingness to use it in the defence of US and allied interests, remains a vital component of US security and global stability and prosperity. This system of voluntary and consensual cooperation under US leadership, particularly in the security realm, constitutes a formidable bloc defending the liberal international order.¶ But, in part due to poor decision-making in Washington, this system is under strain, particularly in East Asia, where the security situation has become tenser even as the region continues to become the centre of the global economy.¶ A nuclear North Korea’s violent behaviour threatens South Korea and Japan, as well as US forces on the peninsula; Pyongyang’s development of a road mobile Intercontinental Ballistic Missile, moreover, brings into sight the day when North Korea could threaten the United States itself with nuclear attack, a prospect that will further imperil stability in the region.¶ More broadly, the rise of China – and especially its rapid and opaque military build-up – combined with its increasing assertiveness in regional disputes is troubling to the United States and its allies and partners across the region. Particularly relevant to the US military presence in the western Pacific is the development of Beijing’s anti-access and area denial capabilities, including the DF-21D anti-ship ballistic missile, more capable anti-ship cruise missiles, attack submarines, attack aircraft, smart mines, torpedoes, and other assets.¶ While Beijing remains a constructive contributor on a range of matters, these capabilities will give China the growing power to deny the United States the ability to operate effectively in the western Pacific, and thus the potential to undermine the US-guaranteed security substructure that has defined littoral East Asia since World War II. Even if China says today it won’t exploit this growing capability, who can tell what tomorrow or the next day will bring?¶ Naturally, US efforts to build up forces in the western Pacific in response to future Chinese force improvements must be coupled with efforts to engage Beijing as a responsible stakeholder; indeed, a strengthened but appropriately restrained military posture will enable rather than detract from such engagement.

**Those conflicts go nuclear**

**Landy 2k**

 National Security Expert @ Knight Ridder, 3/10 ¶ (Jonathan, Knight Ridder, lexis)

Few if any experts think China and Taiwan, North Korea and South Korea, or India and Pakistan are spoiling to fight. But **even a minor miscalculation** by any of them **could destabilize Asia**, jolt the global economy **and** even **start** a **nuclear war. India, Pakistan and** **China all have nuclear weapons, and North Korea** may have a few, **too. Asia lacks the** kinds of organizations, negotiations and diplomatic **relationships that helped keep** an uneasy **peace** for five decades **in Cold War Europe. “Nowhere else** on Earth **are the stakes as high and relationships so fragile,”** said Bates Gill, director of northeast Asian policy studies at the Brookings Institution, a Washington think tank. “We see the convergence of great power interest overlaid with lingering confrontations with no institutionalized security mechanism in place. There are elements for potential disaster.” In an effort to cool the region’s tempers, President Clinton, Defense Secretary William S. Cohen and National Security Adviser Samuel R. Berger all will hopscotch Asia’s capitals this month. For America, the stakes could hardly be higher. **There are 100,000 U.S. troops in Asia** committed to defending Taiwan, Japan and South Korea, and **the U**nited **St**ates **would instantly** **become embroiled** if Beijing moved against Taiwan or North Korea attacked South Korea. While Washington has no defense commitments to either **India or Pakistan**, a conflict between the two **could end the** global **taboo against using nuclear weapons** and demolish the already shaky international nonproliferation regime. In addition, globalization has made a stable Asia \_ with its massive markets, cheap labor, exports and resources \_ indispensable to the U.S. economy. Numerous U.S. firms and millions of American jobs depend on trade with Asia that totaled $600 billion last year, according to the Commerce Department.

## Legitimacy Advantage

#### MULTIPLE ALT CAUSES

#### Torture

Hilde 9

Thomas Hilde 09, professor at the University of Maryland School of Public Policy, “Beyond Guantanamo. Restoring U.S. Credibility on Human Rights,” Heinrich Böll Foundation, [http://www.boell.org/downloads/hbf\_Beyond\_Guantanamo\_Thomas\_Hilde(2).pdf](http://www.boell.org/downloads/hbf_Beyond_Guantanamo_Thomas_Hilde%282%29.pdf)

Beginning at least in 2002, the United States created and developed a policy instituting torture — what it calls “enhanced interrogation” — of its detainees in the “global war on terror”2 under the general framework of a state of necessity. Many of these torture techniques have already been used and refined by the Western powers during the 20th century.3 They are also built partially into U.S. “survival, evasion, resistance, escape” (sere) training program techniques, which reportedly also adapt techniques previously used by China.4 The logic of torture used as an information-seeking instrument in the current conflict, however, has entailed the creation of a large-scale institution of torture, spread among several countries, and implicating hundreds and perhaps thousands of people.5¶ This institution strikes at the heart of the very idea of human rights and core principles of liberal democratic society. It raises important and uncomfortable questions about the nature of human rights in the wake of the torture at Guantánamo and other sites, the policy and practice of extraordinary rendition, indefinite detentions and the suspension of due process and habeas corpus, the violation of domestic and international laws, and perhaps other features and goals of the program yet to come into the public light. The claim is a claim to exception or necessity to the suspension of laws and civil liberties in a moment of national emergency. This is not unusual, unfortunately. Most states have similar national emergency procedures, even if only implicit. The law will always be suspended in the name of survival and the global war on terror was framed as a matter of the survival of civilization. With self-defense being the moral justification of violence par excellence, extraordinary acts may be viewed as entirely legitimate in the defense of civilization. What should also concern us, however, is the suspension of rights in the name of political expediency. In other words, this is not only a moment for lawyers to rise to the occasion. The problem is political and philosophical. There is more at stake than the legally appropriate punishment of terrorists and credibility of certain public officials and agencies.¶ The prohibition of torture has been formal international law since the UN Declaration on Human Rights (1948) and the Geneva Conventions (1949). It is also generally assumed to be an international peremptory norm (jus cogens), a norm accepted universally by the international community that cannot be derogated, such as the norm of state sovereignty. The UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984/1987) and the non-binding Istanbul Protocol (1999), among other international legal instruments, further codified the norm into international law. Torture violates international law, usually domestic law (as, for example, in the 8th Amendment to the United States constitution banning “cruel and unusual punishment”), basic morality, and one of the fundamental shared norms of international society. Violation of the law entails criminality by definition. Violation of a basic shared norm entails a loss of moral and political standing, of credibility, trust, and legitimacy in international society.

#### Drones---our evidences is comparative

Holmes 13

Stephen Holmes 13, the Walter E. Meyer Professor of Law, New York University School of Law, July 2013, “What’s in it for Obama?,” The London Review of Books, <http://www.lrb.co.uk/v35/n14/stephen-holmes/whats-in-it-for-obama>

On the basis of undisclosed evidence, evaluated in unspecified procedures by rotating personnel with heterogeneous backgrounds, the US is continuing to kill those it classifies as suspected terrorists in Somalia, Yemen and Pakistan. It has certainly been eliminating militants who had nothing to do with 9/11, including local insurgents fighting local battles who, while posing no realistic threat to America, had allied themselves opportunistically with international anti-American jihadists. By following the latter wherever they go, the US is allowing ragtag militants to impose ever new fronts in its secret aerial war. Mistakes are made and can’t be hidden, at least not from local populations. Nor can the resentment of surrounding communities be easily assuaged. This is because, even when it finds its target, the US is killing not those who are demonstrably guilty of widely acknowledged crimes but rather those who, it is predicted, will commit crimes in the future. Of course, the civilian populations in the countries where these strikes take place will never accept the hunches of CIA or Pentagon futurologists. And so they will never accept American claims about the justice of Obama’s slimmed-down war on terror, but instead claim the right of self-defence, and this would be true even if drone operators could become as error-free as Brennan once claimed they already are. But of course collateral damage and mistaken-identity strikes will continue. They are inevitable accompaniments of all warfare. And they, too, along with intentional killings that are never publicly justified, will communicate resoundingly to the world that the arbitrary and unpredictable killing of innocent Muslims falls within America’s commodious concept of a just war.

The rage such strikes incite will be all the greater if onlookers believe, as seems likely, that the killing they observe makes relatively little contribution to the safety of Americans. Indeed, this is already happening, which is the reason that the drone, whatever its moral superiority to land armies and heavy weaponry, has replaced Guantánamo as the incendiary symbol of America’s indecent callousness towards the world’s Muslims. As Bush was the Guantánamo president, so Obama is the drone president. This switch, whatever Obama hoped, represents a worsening not an improvement of America’s image in the world.

#### Legitimacy’s inevitable and not key to heg

Brooks and Wohlforth, 9

(Stephen Brooks and William Wohlforth, both are professors of Government at Dartmouth, “Reshaping the world order: how Washington should reform international institutions,” Foreign Affairs, March-April)

FOR ANALYSTS such as Zbigniew Brzezinski and Henry Kissinger, the key reason for skepticism about the United States' ability to spearhead global institutional change is not a lack of power but a lack of legitimacy. Other states may simply refuse to follow a leader whose legitimacy has been squandered under the Bush administration; in this view, the legitimacy to lead is a fixed resource that can be obtained only under special circumstances. The political scientist G.John Ikenberry argues in After Victory that states have been well positioned to reshape the institutional order only after emerging victorious from some titanic struggle, such as the French Revolution, the Napoleonic Wars, or World War I or II. For the neoconservative Robert Kagan, the legitimacy to lead came naturally to the United States during the Cold War, when it was providing the signal service of balancing the Soviet Union. The implication is that today, in the absence of such salient sources of legitimacy, the wellsprings of support for U.S. leadership have dried up for good. But this view is mistaken. For one thing, it overstates how accepted U.S. leadership was during the Cold War: anyone who recalls the Euromissile crisis of the 1980s, for example, will recognize that mass opposition to U.S. policy (in that case, over stationing intermediaterange nuclear missiles in Europe) is not a recent phenomenon. For another, it understates how dynamic and malleable legitimacy is. Legitimacy is based on the belief that an action, an actor, or a political order is proper, acceptable, or natural. An action - such as the Vietnam War or the invasion of Iraq - may come to be seen as illegitimate without sparking an irreversible crisis of legitimacy for the actor or the order. When the actor concerned has disproportionately more material resources than other states, the sources of its legitimacy can be refreshed repeatedly. After all, this is hardly the first time Americans have worried about a crisis of legitimacy. Tides of skepticism concerning U.S. leadership arguably rose as high or higher after the fall of Saigon in 1975 and during Ronald Reagan's first term, when he called the Soviet Union an "evil empire." Even George W. Bush, a globally unpopular U.S. president with deeply controversial policies,oversaw a marked improvement in relations with France, Germany, and India in recent years - even before the elections of Chancellor Angela Merkel in Germany and President Nicolas Sarkozy in France. Of course, the ability of the United States to weather such crises of legitimacy in the past hardly guarantees that it can lead the system in the future. But there are reasons for optimism. Some of the apparent damage to U.S. legitimacy might merely be the result of the Bush administration's approach to diplomacy and international institutions. Key underlying conditions remain particularly favorable for sustaining and even enhancing U.S. legitimacy in the years ahead. The United States continues to have a far larger share of the human and material resources for shaping global perceptions than any other state, as well as the unrivaled wherewithal to produce public goods that reinforce the benefits of its global role. No other state has any claim to leadership commensurate with Washington's. And largely because of the power position the United States still occupies, there is no prospect of a counterbalancing coalition emerging anytime soon to challenge it. In the end, the legitimacy of a system's leader hinges on whether the system's members see the leader as acceptable or at least preferable to realistic alternatives. Legitimacy is not necessarily about normative approval: one may dislike the United States but think its leadership is natural under the circumstances or the best that can be expected. Moreover, history provides abundant evidence that past leading states - such as Spain, France, and the United Kingdom - were able to revise the international institutions of their day without the special circumstances Ikenberry and Kagan cite. Spainfashioned both normative and positive laws to legitimize its conquest of indigenous Americans in the early seventeenth century; France instituted modern concepts of state borders to meet its needs as Europe's preeminent land power in the eighteenth century; and the United Kingdom fostered rules on piracy, neutral shipping, and colonialism to suit its interests as a developing maritime empire in the nineteenth century. As Wilhelm Grewe documents in his magisterial The Epochs of International Law, these states accomplished such feats partly through the unsubtle use of power: bribes, coercion, and the allure oflucrative long-term cooperation. Less obvious but often more important, the bargaining hands of the leading states were often strengthened by the general perception that they could pursue their interests in even less palatable ways - notably, through the naked use of force. Invariably, too, leading states have had the power to set the international agenda, indirectly affecting the development of new rules by defining the problems they were developed to address. Given its naval primacy and global trading interests, the United Kingdom was able to propel the slave trade to the forefront of the world's agenda for several decades after it had itself abolished slavery at home, in 1833. The bottom line is that the UnitedStates today has the necessary legitimacy to shepherd reform of the international system.

#### No climate multilateralism — nationalism ensures gridlock

Held 13

David Held 13, Professor of Politics and International Relations, at the University of Durham AND Thomas Hale, Postdoctoral Research Fellow at the Blavatnik School of Government, Oxford University AND Kevin Young, Assistant Professor in the Department of Political Science at the University of Massachusetts Amherst, 5/24/13, “Gridlock: the growing breakdown of global cooperation,” <http://www.opendemocracy.net/thomas-hale-david-held-kevin-young/gridlock-growing-breakdown-of-global-cooperation>

Gridlock exists across a range of different areas in global governance today, from security arrangements to trade and finance. This dynamic is, arguably, most evident in the realm of climate change. The diffusion of industrial production across the world—a process enabled by economic globalization—has created a situation in which the basic consumption of each individual directly affects the life chances of every other individual on the planet, as well as the life chances of future generations.¶ This is a powerful and entirely new form of global interdependence. Bluntly put, the future of our civilization depends on our ability to cooperate across borders. And yet, despite twenty years of multilateral negotiations under the UN, a global deal on climate change mitigation or adaptation remains elusive, with differences between developed countries, which have caused the problem, and developing countries, which will drive future emissions, forming the core barrier to progress. Unless we overcome gridlock in climate negotiations, as in other issue areas, we will be unable to continue to enjoy the peace and prosperity we have inherited from the postwar order.¶ There are, of course, several forces that might work against gridlock. These include the potential of social movements to uproot existing political constraints, catalysed by IT innovation and the use of associated technology for coordination across borders; the capacity of existing institutions to adapt and accommodate factors such as emerging multipolarity (the shift from the G-5/7 to the G-20 is one example); and efforts at institutional reform which seek to alter the organizational structure of global governance (for example, proposals to reform the Security Council or to establish a financial transaction tax). ¶ Whether there is the political will or leadership to move beyond gridlock remains a pressing question. Social movements find it difficult to convert protests into consolidated institutional change. At the same time, the political leadership of the great power blocs appears dogged by national concerns: Washington is sharply divided, Europe is preoccupied with the future of the Euro and China is absorbed by the challenge of sustaining economic growth as the prime vehicle of domestic legitimacy. Against this background, the further deepening of gridlock and the continuing failure to address global collective action problems appears likely.

#### Multilateralism can’t stop conflict—4 reasons

Bordachev 6/30

(Timofei, Doctor of Political Science, is the Director of the Center for Comprehensive International and European Studies at the Higher School of Economics, “Political Tsunami Hits Hard,” 2013, http://eng.globalaffairs.ru/number/Political-Tsunami-Hits-Hard-16054)

The financial crisis in the United States, which in 2008 went global, and the continuing efforts by countries around the world to fight its effects have highlighted four most important tendencies in international affairs.¶ First, pretty obvious is the conflict between the growing economic unity of the world and its worsening political fragmentation. The rise of sovereign ambitions and attempts to address all problems at the national level has come into conflict with financial and economic globalization and exacerbates crisis trends.¶ Second, democratization in international politics and greater independence of individual states play an ever greater role. This “in-depth unfreezing” for the first time manifested itself in China’s soaring global ambitions and in the national interests and requests of other Asian countries. Turkey, a stable ally of the West in NATO and a EU aspirant waiting patiently in the antechamber, is trying on the guise of a regional power ever more often. In the meantime, the need for taking into account the ever larger range of opinions quickly erodes the international institutions that emerged in the Cold War era. This is seen not just in the sphere of security: the United Nations efficiency has largely fallen victim to the first phase of the global geopolitical catastrophe of the 1990s.¶ Third, the growing international weight of the new countries and attempts by the old-timers, who won the Cold War, to preserve the hard-won status quo bring back the conservative interpretations of such terms as “sovereignty” and “sovereign rights.” Not only the leaders of new-comers to world politics, or the United States, traditionally concerned about its sovereignty, but quite respectable heads of European states, too, start talking about the protection of national interests.¶ Finally, military power is ever more frequently employed by major powers as a tool to address foreign policy issues. EU countries and the United States used force and threats to use force back at the time when they were getting their hands on the assets of the former USSR. However, they were faced with a very limited set of tasks then. It never occurred to anyone in the West to say in 1999 that the purpose of NATO’s operation against Yugoslavia was to force Slobodan Milosevic to resign or, still worse, to put him to death by some untraditional way of hanging. The need for using military force with or without reason merely confirms that the international community has no other means to prevent the emergence or escalation of conflicts.

## Terrorism Advantage

#### Terrorism is no longer a threat

Merica et al. 7/19

(Dan, reporter for CNN, and Elise Labott and Shirley Henry, from the Aspen Security Forum, 7/19/2013, CNN, “Is terrorism still a threat to American Families?” <http://security.blogs.cnn.com/2013/07/19/is-terrorism-still-a-threat-to-american-families/>, accessed 8/24/2013, BS)

After the September 11, 2001, terrorist attacks on the United States, a majority of Americans were worried about terrorism directly impacting their lives, according to a number of polls.¶ More than a decade later, is that still the case?¶ That was the primary question John Ashcroft, former attorney general under President George W. Bush, and Phillip Mudd, a former senior official at the CIA and FBI, debated at a Friday panel at the Aspen Security Forum.¶ “I think we are still at war,” Ashcroft said bluntly. “I don’t know if I will be able to be sure to say when we will be able to say we are not at war. But as long as they are continuing to hit us and allege that they are at war, I think we can.”¶ In response, Mudd directly challenged Ashcroft.¶ “I don't agree, by the way, that we are at war,” the author said.¶ Instead, Mudd argued, that we have a dynamic and ever-changing face of terrorism that may prove to be difficult to squash completely.¶ But because of two wars in Iraq and Afghanistan, he said the threat of terrorism is not nearly what it used to be.¶ “In 2001, we would have said terrorism is a potential threat to American families,” Mudd said. “And I would say today, that is not true."¶ Mudd added that he believed it was a false distinction.¶ “I have 10 nieces and nephews, I don't think I have ever talked to them about terrorism. … The gang problems in the city that I live in, Memphis, Tennessee, are outrageous. People in this country, partly because there is a racial divide in this country, don’t care. But four people die in an attack and this is a national disaster, I don’t get it,” he said.

#### Moving terrorist proceedings to civilian courts gives away intel that enables attacks

Mukasey 2009

(Michael B. Mukasey, attorney general of the United States from 2007 to 2009, October 19, 2009, “Civilian Courts Are No Place to Try Terrorists,” WSJ, <http://online.wsj.com/article/SB10001424052748704107204574475300052267212.html>)

Moreover, the rules for conducting criminal trials in federal courts have been fashioned to prosecute conventional crimes by conventional criminals. Defendants are granted access to information relating to their case that might be useful in meeting the charges and shaping a defense, without regard to the wider impact such information might have. That can provide a cornucopia of valuable information to terrorists, both those in custody and those at large.¶ Thus, in the multidefendant terrorism prosecution of Sheik Omar Abdel Rahman and others that I presided over in 1995 in federal district court in Manhattan, the government was required to disclose, as it is routinely in conspiracy cases, the identity of all known co-conspirators, regardless of whether they are charged as defendants. One of those co-conspirators, relatively obscure in 1995, was Osama bin Laden. It was later learned that soon after the government's disclosure the list of unindicted co-conspirators had made its way to bin Laden in Khartoum, Sudan, where he then resided. He was able to learn not only that the government was aware of him, but also who else the government was aware of. It is not simply the disclosure of information under discovery rules that can be useful to terrorists. The testimony in a public trial, particularly under the probing of appropriately diligent defense counsel, can elicit evidence about means and methods of evidence collection that have nothing to do with the underlying issues in the case, but which can be used to press government witnesses to either disclose information they would prefer to keep confidential or make it appear that they are concealing facts. The alternative is to lengthen criminal trials beyond what is tolerable by vetting topics in closed sessions before they can be presented in open ones.

#### Detention is key to solve terror—can’t successfully prosecute them

Walen 2011

(Alec, Professor of Law at Rutgers School of Law, June 22, "A Unified Theory of Detention, With Application to Preventitive Detention for Suspected Terrorists", Maryland Law Review, No. 4, V 70, http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=3466&context=mlr, NOTE: ST=Suspected Terrorist, LTPD=long-term preventive detention)

A more legitimate concern is that it may be particularly difficult to bring a successful prosecution against an ST. Matthew Waxman wrote: [I]nformation used to identify terrorists and their plots includes extremely sensitive intelligence sources and methods, the disclosure of which during trial would undermine or even negate counterterrorism operations; [and] the conditions under which some suspected terrorists are captured, especially in faraway combat zones or ungoverned regions, make it impossible to prove criminal cases using normal evidentiary rules . . . . 74 The first reason—that the relevant information is highly sensitive—presumably applies primarily to prosecutions based on foreign detentions in which the activities of the CIA or the cooperation of foreign states is at issue. 75 The Guantanamo Review Task Force, however, concluded: [T]he principal obstacles to prosecution in the cases deemed infeasible . . . typically did not stem from concerns over protecting sensitive sources or methods from disclosure, or concerns that the evidence against the detainee was tainted. While such concerns were present in some cases, most detainees were deemed infeasible for prosecution based on more fundamental evidentiary and jurisdictional limitations tied to the demands of a criminal forum . . . . 76 In other words, the problems with prosecuting detainees at Guant ́ anamo were primarily based on Waxman’s second concern and jurisdictional limitations, such as that the federal material support laws, 18 U.S.C. §§ 2339A and 2339B, “were not amended to expressly apply extraterritorially to non-U.S. persons until October 2001 and December 2004, respectively.” 77

#### Guantanamo doesn’t increase recruitment – they’re more concerned with climate change and anti-Muslim conspiracies

Joscelyn 2010

(Thomas, The Weekly Standard, December 27, "Gitmo Is Not Al Qaeda's 'Number One Recruitment Tool'", http://www.weeklystandard.com/blogs/gitmo-not-al-qaedas-number-one-recruitment-tool\_524997.html?page=2)

THE WEEKLY STANDARD has reviewed translations of 34 messages and interviews delivered by top al Qaeda leaders operating in Pakistan and Afghanistan (“Al Qaeda Central”), including Osama bin Laden and Ayman al Zawahiri, since January 2009. The translations were [published online](http://nefafoundation.org/index.cfm?pageID=44) by the NEFA Foundation. Guantanamo is mentioned in only 3 of the 34 messages. The other 31 messages contain no reference to Guantanamo. And even in the three messages in which al Qaeda mentions the detention facility it is not a prominent theme.¶ Instead, al Qaeda’s leaders repeatedly focus on a narrative that has dominated their propaganda for the better part of two decades. According to bin Laden, Zawahiri, and other al Qaeda chieftains, there is a Zionist-Crusader conspiracy against Muslims. Relying on this deeply paranoid and conspiratorial worldview, al Qaeda routinely calls upon Muslims to take up arms against Jews and Christians, as well as any Muslims rulers who refuse to fight this imaginary coalition. ¶ This theme forms the backbone of al Qaeda’s messaging – not Guantanamo. ¶ To illustrate this point, consider the results of some basic keyword searches. Guantanamo is mentioned a mere 7 times in the 34 messages we reviewed. (Again, all 7 of those references appear in just 3 of the 34 messages.) ¶ By way of comparison, all of the following keywords are mentioned far more frequently: Israel/Israeli/Israelis (98 mentions), Jew/Jews (129), Zionist(s) (94), Palestine/Palestinian (200), Gaza (131), and Crusader(s) (322). (Note: Zionist is often paired with Crusader in al Qaeda’s rhetoric.)¶ Naturally, al Qaeda’s leaders also focus on the wars in Afghanistan (333 mentions) and Iraq (157). Pakistan (331), which is home to the jihadist hydra, is featured prominently, too. Al Qaeda has designs on each of these three nations and implores willing recruits to fight America and her allies there. Keywords related to other jihadist hotspots also feature more prominently than Gitmo, including Somalia (67 mentions), Yemen (18) and Chechnya (15). ¶ Simply put, there is no evidence in the 34 messages we reviewed that al Qaeda’s leaders are using Guantanamo as a recruiting tool. Undoubtedly, “Al Qaeda Central” has released other messages during the past two years that are not included in our sample. Some of those messages may refer to Guantanamo. And some of the al Qaeda messages provided by NEFA, which does a remarkable job collecting and translating al Qaeda’s statements and interviews, may be only partial translations of longer texts. ¶ However, the messages we reviewed also surely include most of what al Qaeda’s honchos have said publicly since January 2009. These messages do not support the president’s claim. A closer look at the 3 out of 34 messages in which “Al Qaeda Central” actually referred to Guantanamo reveals just how weak the president’s argument is. Even in these messages al Qaeda is far more interested in other themes.¶ In a February 17, 2010 message entitled, “[The Way to Save the Earth](http://nefafoundation.org/file/nefa_ublwaytosaveearth0210.pdf),” Osama bin Laden made an offhand reference to Guantanamo. But it is hardly a prominent feature of the terror master’s message. As bin Laden makes clear in the opening lines, his main concern is climate change.¶ “This is a message to the whole world about those who cause climate change and its dangers – intentionally or unintentionally – and what we must do,” bin Laden said. Bin Laden blames the “greedy heads of major corporations” and “senior capitalists” who are “characterized by wickedness and hardheartedness” for the supposed deleterious effects of global warming.¶ Bin Laden does refer to Guantanamo, but it is brief and in the context of a rambling passage. In the surrounding sentences, bin Laden criticizes America for waging war in Iraq for oil, incorrectly claims that America and her allies have “killed, wounded, orphaned, widowed and displaced more than 10 million Iraqis,” and calls President Obama’s acceptance of the Nobel Peace Prize “an extreme example of the deception and humiliation of humanity.” ¶ If bin Laden’s February 17th message is evidence that al Qaeda is using Guantanamo as a recruiting tool, then it is also evidence that al Qaeda is using climate change and President Obama’s Nobel to earn new recruits.¶ The other two messages in our sample that refer to Guantanamo do not fare much better when any amount of scrutiny is applied.

## Solvency

#### Renditions

#### Plan causes extraordinary rendition shift

Anderson 9

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

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

#### Means they solve nothing

McGill 12

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

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

#### Restricting detention policies means we kill and extradite prisoners

Goldsmith 9

Jack Goldsmith 09, a professor at Harvard Law School and a member of the Hoover Institution Task Force on National Security and Law, assistant attorney general in the Bush administration, 5/31/09, “The Shell Game on Detainees and Interrogation,” <http://www.washingtonpost.com/wp-dyn/content/article/2009/05/29/AR2009052902989.html>

The cat-and-mouse game does not end there. As detentions at Bagram and traditional renditions have come under increasing legal and political scrutiny, the Bush and Obama administrations have relied more on other tactics. They have secured foreign intelligence services to do all the work -- capture,

 incarceration and interrogation -- for all but the highest-level detainees. And they have increasingly employed targeted killings, a tactic that eliminates the need to interrogate or incarcerate terrorists but at the cost of killing or maiming suspected terrorists and innocent civilians alike without notice or due process.¶ There are at least two problems with this general approach to incapacitating terrorists. First, it is not ideal for security. Sometimes it would be more useful for the United States to capture and interrogate a terrorist (if possible) than to kill him with a Predator drone. Often the United States could get better information if it, rather than another country, detained and interrogated a terrorist suspect. Detentions at Guantanamo are more secure than detentions in Bagram or in third countries.¶ The second problem is that terrorist suspects often end up in less favorable places. Detainees in Bagram have fewer rights than prisoners at Guantanamo, and many in Middle East and South Asian prisons have fewer yet. Likewise, most detainees would rather be in one of these detention facilities than be killed by a Predator drone. We congratulate ourselves when we raise legal standards for detainees, but in many respects all we are really doing is driving the terrorist incapacitation problem out of sight, to a place where terrorist suspects are treated worse.¶ It is tempting to say that we should end this pattern and raise standards everywhere. Perhaps we should extend habeas corpus globally, eliminate targeted killing and cease cooperating with intelligence services from countries that have poor human rights records. This sentiment, however, is unrealistic. The imperative to stop the terrorists is not going away. The government will find and exploit legal loopholes to ensure it can keep up our defenses.¶ This approach to detention policy reflects a sharp disjunction between the public's view of the terrorist threat and the government's. After nearly eight years without a follow-up attack, the public (or at least an influential sliver) is growing doubtful about the threat of terrorism and skeptical about using the lower-than-normal standards of wartime justice.¶ The government, however, sees the terrorist threat every day and is under enormous pressure to keep the country safe. When one of its approaches to terrorist incapacitation becomes too costly legally or politically, it shifts to others that raise fewer legal and political problems. This doesn't increase our safety or help the terrorists. But it does make us feel better about ourselves.

# 2NC

## Solvency

#### Shift to rendition empirically proven

Ofek ’10 [Hillel Ofek, assistant editor of National Affairs, Spring 2010, The New Atlantis, “The Tortured Logic of Obama’s Drone War,” Number 27, pp. 35-44, accessed 8/9/13, JTF]

In a sense, the drone program fits into the broader trend of pushing ugly and uncomfortable national security measures out of sight only to unleash even uglier unintended consequences. Consider interrogation: President Obama signed an executive order banning enhanced interrogation techniques, but his administration reaffirmed the U.S. extraordinary rendition program, which sends suspects to countries with dubious human rights records for interrogation. As a sop to his supporters, the president threw in a morsel of “monitoring mechanisms,” but many observers continue to consider the CIA’s rendition program, which was first approved by the Clinton administration, to be little more than a tacit torture policy. “Extremely disappointing,” was how the ACLU greeted the news of Obama’s rendition policy. With U.S. personnel disallowed from conducting enhanced interrogations, who can doubt that future suspects will undergo treatment more brutal at the hands of, say, Egypt’s interrogators?

Something similar has happened with detention policy. “A little-noticed consequence of elevating standards at Guantánamo is that the government has sent very few terrorist suspects there in recent years,” wrote Jack Goldsmith, an assistant attorney general in the Bush administration, in a May 2009 Washington Post op-ed. “Instead, it holds more terrorists — without charge or trial, without habeas rights, and with less public scrutiny — at Bagram Air Base in Afghanistan. Or it renders them to countries where interrogation and incarceration standards are often even lower.” There are about eight hundred prisoners at Bagram, and the Obama administration is apparently now considering whether to expand the detention facility, which exists outside the jurisdiction of U.S. courts — a proposal that would seem to conflict with President Obama’s stated desire to reform American anti-terrorism institutions “with an abiding confidence in the rule of law and due process; in checks and balances and accountability.” As the Los Angeles Times has reported, the proposal is meeting resistance from Army General Stanley McChrystal, the top U.S. commander in Afghanistan, who worries that detaining more suspects in the facility would compromise military efforts in the country by serving the propaganda purposes of militants.

Turns the entire aff

Nash ’13 [William L. Nash, retired U.S. major general, 2/5/13, The Hill, “Come clean on rendition, detention and torture,” http://thehill.com/blogs/congress-blog/homeland-security/281221-come-clean-on-rendition-detention-and-torture)

The shame hidden behind the cloak of secrecy that still surrounds the use of extraordinary rendition, secret detention, and torture should be lifted by making a full disclosure. Openness lends credibility to pledges not to act in such a manner again and can help the United States regain some of the respect it has lost at home and abroad as a result of these activities. A new report by the Open Society Justice Initiative has collected what is known to date about the use of extraordinary rendition, secret detention, and torture. It lists the 54 countries that joined the United States in abducting and handing over suspects to the custody of regimes like Assad’s Syria and Gadhafi’s Libya. It provides an annotated list of 136 men and women who were caught in the rendition and secret detention operations, including innocent people snatched up mistakenly, transported thousands of miles across multiple international borders, and confined for years in wretched secret prisons with no way to contact their families, home governments, or defense attorneys. It also names the people who died of ill treatment. It names dozens of individuals who were tortured in ways that the United States considered illegal when they were committed by Japanese perpetrators on American prisoners during World War II. How can the United States promote democracy, the rule of law, an independent judiciary, and respect for human and civil rights in places like Libya, Egypt, and Syria, when our government worked with their dictators in secret detention and torture efforts without the respect for law and human rights? The United States and its partner governments have yet to take meaningful steps to acknowledge their roles in the use of extraordinary rendition, secret detention, and torture or to compensate the victims. **The Obama administration has still not sworn off the practice of extraordinary rendition**. More bad news from the “dark side” will emerge. The revelations will arguably do more and more lasting damage to our country’s image and thwart its diplomatic and military efforts to defeat al Qaeda and similar threats.

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## Legitimacy Advantage

#### Drones are worse than detention for international perception

Rohde 13

(Stephen, Constitutional lawyer and Chair of the ACLU Foundation of Southern California, “Bush Detained Alleged Terrorists Without Due Process - Obama Is Killing Them With Drones”, 3/13/13, <http://www.truth-out.org/opinion/item/15086-bush-detained-terrorists-without-due-process-obama-is-killing-them-with-drones>)

In the context of the serious constitutional issues surrounding Obama's drone policy, there is much to learn from these Supreme Court decisions. Before and after 9/11, the US military has been fully capable of capturing and detaining alleged terrorists. Even in the war on terror, the court has consistently held that before alleged terrorists, Americans and noncitizens alike, can be denied "life, liberty or property," they are entitled to due process. The court has consistently rejected the presidential claim to unilateral authority to detain suspected terrorists, without charges, without lawyers and without trial. Since alleged terrorists - Americans and noncitizens alike - cannot be denied "liberty" without due process, surely they cannot be denied "life" without due process. The men whom Bush detained in Guantanamo Bay, like the men whom Obama killed by targeted drones, were all accused of being dangerous terrorists who posed a grave threat to America. Yet once Rasul, Iqbal, Hicks, Hamdi, Hamdan and Boumediene were afforded due process, they were eventually released and are alive today. When Padilla and al-Marri were afforded due process, represented by legal counsel, they were duly tried and convicted in a court of law and are serving their sentences. But al-Awlaki, his 16-year-old son, Khan and the others were NOT afforded due process. Instead, they were placed on Obama's "kill list" and were systematically targeted and summarily killed by drones. Summary execution is illegal, as it violates the right of the accused to a fair trial before a punishment of death. Almost all constitutions or legal systems based on common law have prohibited execution without the decision and sentence of a competent judge. The UN's International Covenant on Civil and Political Rights declares that "Every human being has the inherent right to life. This right shall be protected by law. No man shall be deprived of his life arbitrarily." "[The death] penalty can only be carried out pursuant to a final judgment rendered by a competent court." (ICCPR Articles 6.1 and 6.2) Major treaties such as the Geneva Convention and Hague Convention protect the rights of captured regular and irregular members of an enemy's military, along with civilians from enemy states. Prisoners of war must be treated in carefully defined ways which ban summary execution. "No sentence shall be passed and no penalty shall be executed on a person found guilty of an offence except pursuant to a conviction pronounced by a court offering the essential guarantees of independence and impartiality." (Second Protocol of the Geneva Conventions (1977) Article 6.2) Obama's use of a "kill list" and the systematic targeting and summary killing of individuals by drones is an unspeakable violation of the constitution, international law and human rights. President Obama's legacy will forever be tarnished, and our constitutional system forever diminished, unless he immediately suspends his illegal policy of targeted drone killings and subjects the entire program to open, transparent and independent review.

#### Increased killing turns legitimacy

Roberts 13

Dan Roberts 13, the Guardian's Washington Bureau chief, 5/2/13, “US drone strikes being used as alternative to Guantánamo, lawyer says,” <http://www.theguardian.com/world/2013/may/02/us-drone-strikes-guantanamo>

The lawyer who first drew up White House policy on lethal drone strikes has accused the Obama administration of overusing them because of its reluctance to capture prisoners that would otherwise have to be sent to Guantánamo Bay.¶ John Bellinger, who was responsible for drafting the legal framework for targeted drone killings while working for George W Bush after 9/11, said he believed their use had increased since because President Obama was unwilling to deal with the consequences of jailing suspected al-Qaida members.¶ "This government has decided that instead of detaining members of al-Qaida [at Guantánamo] they are going to kill them," he told a conference at the Bipartisan Policy Center.¶ Obama this week pledged to renew efforts to shut down the jail but has previously struggled to overcome congressional opposition, in part due to US disagreements over how to handle suspected terrorists and insurgents captured abroad.¶ An estimated 4,700 people have now been killed by some 300 US drone attacks in four countries, and the question of the programme's status under international and domestic law remains highly controversial.¶ Bellinger, a former legal adviser to the State Department and the National Security Council, insisted that the current administration was justified under international law in pursuing its targeted killing strategy in countries such as Pakistan and Yemen because the US remained at war.¶ "We are about the only country in the world that thinks we are in an armed conflict with al-Qaida," Bellinger said. "We really need to get on top of this and explain to our allies why it is legal and why it is permissible under international law," he added.¶ "These drone strikes are causing us great damage in the world, but on the other hand if you are the president and you do nothing to stop another 9/11 then you also have a problem," Bellinger said.¶ Nevertheless, the legal justification for drone strikes has become so stretched that critics fear it could now encourage other countries to claim they were acting within international law if they deployed similar technology.¶ A senior lawyer now advising Barack Obama on the use of drone strikes conceded that the administration's definition of legality could even apply in the hypothetical case of an al-Qaida drone attack against military targets on US soil.¶ Philip Zelikow, a member of the White House Intelligence Advisory Board, said the government was relying on two arguments to justify its drone policy under international law: that the US remained in a state of war with al-Qaida and its affiliates, or that those individuals targeted in countries such as Pakistan were planning imminent attacks against US interests.¶ When asked by the Guardian whether such arguments would apply in reverse in the unlikely event that al-Qaida deployed drone technology against military targets in the US, Zelikow accepted they would.¶ "Yes. But it would be an act of war, and they would suffer the consequences," he said during the debate at the Bipartisan Policy Center in Washington. "Countries under attack are the ones that get to decide whether they are at war or not," added Zelikow.¶ Hina Shamsi, a director at the American Civil Liberties Union, warned that the issue of legal reciprocity was not just a hypothetical concern: "The use of this technology is spreading and we have to think about what we would say if other countries used drones for targeted killing programmes."¶ "Few thing are more likely to undermine our legitimacy than the perception that we are not abiding by the rule of law or are indifferent to civilian casualties," she added.

## Terrorism Advantage

#### Terrorist attacks are on the decline – this answers their argument about attacks in foreign countries

Bump 4/16

(Philip, writer, 4/16/2013, The Atlantic Wire, “In Fact, the U.S. Has Been Winning the War on Terror,” <http://news.yahoo.com/fact-u-winning-war-terror-200054845.html>)

The University of Maryland is home to a project called START, the National Consortium for the Study of Terrorism and Responses to Terrorism. The project has tracked every terror attack around the world from 1970 to the end of 2011 and provides a database of their research at their website. (START defines a terror attack as "the threatened or actual use of illegal force and violence by a non-state actor to attain a political, economic, religious, or social goal through fear, coercion, or intimidation.") After seeing the Washington Post cite its data, we took a look at what the full database shows about terror attacks.¶ RELATED: Pressure Cookers, Nails, BBs, and Bags: What We Know About the Boston Bombs¶ Relative to the rest of the world, the United States has had a high number of terror attacks since 1970.¶ The countries that have experienced the most terror attacks over the past four decades are those you might suspect: Iraq, Colombia, India, and Pakistan. Others may be less expected for all but experienced foreign policy buffs: Spain, Peru, Turkey. The United States is 14th on the list — ahead of Chile, Guatemala, and Lebanon.¶ RELATED: A Reminder to Be Good to Each Other¶ RELATED: Saying Something About Boston¶ But there used to be far more attacks in the United States than there are now.¶ The number of attacks has plummeted since the early 1970s, when radical groups attacked police and businesses. There was a slight resurgence during the mid-1990s, when anti-abortion activists began attacking clinics and supporters. The spike in May of 2002 was the result of a series of 18 pipe bombs placed in mailboxes in the Midwest.¶ RELATED: Boston Updates: Second Bombing Victim Identified, No Link to Al-Qaeda¶ Most attacks in the United States have been in New York, California, and Florida.¶ California, New York, and Florida have, combined, seen as many terror attacks since 1970 as all of the rest of the states (and D.C.) combined. Massachusetts is eighth on the list, but it has seen fewer than 1/11th the attacks that California has.¶ The number of people killed and injured varies widely — but most attacks have zero fatalities.¶ In only 11 percent of attacks was anyone killed. Excluding one attack, all of the terror attacks since 1970 have averaged .19 deaths per attack, making any event with a fatality an aberration. The one exception that skews that number was 9/11. Including that attack raises that figure to 1.46 fatalities per attack. 9/11 comprises 86.6 percent of all terror-attack deaths in the U.S. since 1970. (It also necessitates that the scale used for deaths and injuries be logarithmic.)¶ People are slightly more likely to be wounded in attacks. An average of just over one person is wounded in each attack. The increase in fatalities visible in 2009 is almost entirely due to the shooting at Fort Hood.¶ Businesses are the most common target of attacks.¶ The target of attacks changes over time, but since 1970, more attacks have targeted businesses than anything else. Attacks on private citizens, which one would assume includes the attack in Boston, are third-most common.¶ Bombs are used in attacks most frequently.¶ Almost half of all terror attacks in the United States since 1970 have used bombs. Relatively few attacks have employed firearms as a primary strategy.¶ These trends are not static, but more recent attacks don't stray too far from the pattern. In a report released last December, START articulates data about attacks since 2001.¶ There were a total of 207 terrorist attacks in the United States between 2001 and 2011.¶ Total attacks declined from a high of 40 in 2001 to nine in 2011.¶ Between 2001 and 2011, we recorded a total of 21 fatal terrorist attacks in the United States.¶ The highest proportion of unsuccessful attacks since 1970 occurred in 2011, when four out of nine recorded attacks were unsuccessful. …¶ The most common weapons used in terrorist attacks in the United States from 2001 to 2011 were incendiary devices (53 percent of all weapons used) and explosives (20 percent of all weapons used).¶ Successful attacks are more and more rare; attacks that result in fatalities, rarer still. The attack in Boston did enormous physical and psychological damage. We can be somewhat consoled that it is an aberration.

#### Al Qaeda is weak now but could recover if the US allows them the opportunity

McLaughlin 7/12

(John McLaughlin was a CIA officer for 32 years and served as deputy director and acting director from 2000-2004. He currently teaches at the Johns Hopkins University's School of Advanced International Studies and is a Non-Resident Senior Fellow at the Brookings Institution, 7/12/2013, “Terrorism at a moment of transition,” http://security.blogs.cnn.com/2013/07/12/terrorism-at-a-moment-of-transition/)

A third major trend has to do with the debate underway among terrorists over tactics, targets, and ways to correct past errors.¶ On targets, jihadists are now pulled in many directions. Many experts contend they are less capable of a major attack on the U.S. homeland. But given the steady stream of surprises they’ve sprung – ranging from the 2009 “underwear bomber” to the more recent idea of a surgically implanted explosive – it is hard to believe they’ve given up trying to surprise us with innovations designed to penetrate our defenses.¶ We especially should remain alert that some of the smaller groups could surprise us by pointing an attacker toward the United States, as Pakistan’s Tehrik e Taliban did in preparing Faizal Shazad for his attempted bombing of Times Square in 2010.¶ At the same time, many of the groups are becoming intrigued by the possibility of scoring gains against regional governments that are now struggling to gain or keep their balance – opportunities that did not exist at the time of the 9/11 attacks.¶ Equally important, jihadists are now learning from their mistakes, especially the reasons for their past rejection by populations where they temporarily gained sway.¶ Documents from al Qaeda in the Islamic Maghreb, discovered after French forces chased them from Mali, reveal awareness that they were too harsh on local inhabitants, especially women. They also recognized that they need to move more gradually and provide tangible services to populations – a practice that has contributed to the success of Hezbollah in Lebanon.¶ We are now seeing a similar awareness among jihadists in Syria, Tunisia, Libya, and Yemen. If these “lessons learned” take hold and spread, it will become harder to separate terrorists from populations and root them out.¶ Taken together, these three trends are a cautionary tale for those seeking to gauge the future of the terrorist threat.¶ Al Qaeda today may be weakened, but its wounds are far from fatal. It is at a moment of transition, immersed in circumstances that could sow confusion and division in the movement or, more likely, extend its life and impart new momentum.¶ So if we are ever tempted to lower our guard in debating whether and when this war might end, we should take heed of these trends and of the wisdom J. R. R. Tolkien has Eowyn speak in “Lord of the Rings”: "It needs but one foe to breed a war, not two ..."

#### Also turns legitimacy advantage

Vladimir Z. Dvorkin ‘12 Major General (retired), doctor of technical sciences, professor, and senior fellow at the Center for International Security of the Institute of World Economy and International Relations of the Russian Academy of Sciences. The Center participates in the working group of the U.S.-Russia Initiative to Prevent Nuclear Terrorism, 9/21/12, "What Can Destroy Strategic Stability: Nuclear Terrorism is a Real Threat," belfercenter.ksg.harvard.edu/publication/22333/what\_can\_destroy\_strategic\_stability.html

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

## Warfighting DA

#### 1) Priorities – the plan puts focus on executive compliance at the forefront – that detracts from military missions that are the bedrock of our security

McCarthy 9

Andrew McCarthy 09, Director of the Center for Law & Counterterrorism at the Foundation for the Defense of Democracies. From 1985 through 2003, he was a federal prosecutor at the U.S. Attorney’s Office for the Southern District of New York, and was the lead prosecutor in the seditious conspiracy trial against Sheikh Omar Abdel Rahman and eleven others, described subsequently. AND Alykhan Velshi, a staff attorney at the Center for Law & Counterterrorism, where he focuses on the international law of armed conflict and the use of force, 8/20/09, “Outsourcing American Law,” AEI Working Paper, <http://www.aei.org/files/2009/08/20/20090820-Chapter6.pdf>

Empirically, judicial demands on executive branch procedural compliance, if unchecked, become steadily more demanding over time. The executive naturally responds by being more internally exacting to avoid problems. Progressively, executive compliance, initially framed and understood as a reasonably modest set of burdens to promote the integrity of judicial proceedings, becomes instead a consuming priority and expenditure, which, if permitted in the context of warfare, would inevitably detract from the military mission that is the bedrock of our national security. ¶ In the fore here, plainly, are such matters as discovery and confrontation rights. If the courts were given final authority, while hostilities are ongoing, to second-guess the executive’s decision to detain a combatant by scrutinizing reports that summarize the basis for detention, it is only a short leap to the court’s asking follow-up questions or determining that testimony, perhaps subject to cross-examination, is appropriate. Are we to make combat personnel available for these proceedings? Shall we take them away from the battle we have sent them to fight so they can justify to the satisfaction of a judge the capture of an alien enemy combatant that has already been approved by military commanders? Given the fog and anxiety of war, shall we expect them to render events as we would an FBI agent describing the circumstances of a domestic arrest? ¶ Nor is that the end of the intractable national security problems. What if capture was effected by our allies rather than our own forces (as was the case, for example, with the jihadist who was the subject of the Hamdi case)? Shall we try to compel affidavits or testimony from members of, say, the Northern Alliance? What kinds of strains will be put on our essential wartime alliances if they are freighted with requests to participate in American legal proceedings, and possibly compromise intelligence methods and sources – all for the purpose of providing heightened due process to the very terrorists who were making war on those allies? ¶ These are lines that Congress must draw. Leaving them for the courts themselves to sort out would place us on a path toward full-blown civilian trials for alien enemy combatants – the very outcome the creation of a new system was intended to avoid.

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

Goldsmith 6

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

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

#### 3) Signaling – Weak detention responses emboldens terrorists

McCarthy 9

Andrew McCarthy 09, Director of the Center for Law & Counterterrorism at the Foundation for the Defense of Democracies. From 1985 through 2003, he was a federal prosecutor at the U.S. Attorney’s Office for the Southern District of New York, and was the lead prosecutor in the seditious conspiracy trial against Sheikh Omar Abdel Rahman and eleven others, described subsequently. AND Alykhan Velshi, a staff attorney at the Center for Law & Counterterrorism, where he focuses on the international law of armed conflict and the use of force, 8/20/09, “Outsourcing American Law,” AEI Working Paper, <http://www.aei.org/files/2009/08/20/20090820-Chapter6.pdf>

3. Terrorism prosecutions create the conditions for more terrorism. The treatment of a national security problem as a criminal justice issue has consequences that imperil Americans. To begin with, there are the obvious numerical and motivational results. As noted above, the justice system is simply incapable, given its finite resources, of meaningfully countering the threat posed by international terrorism. Of equal salience, prosecution in the justice system actually increases the threat because of what it conveys to our enemies. Nothing galvanizes an opposition, nothing spurs its recruiting, like the combination of successful attacks and a conceit that the adversary will react weakly. (Hence, bin Laden’s well-known allusion to people’s instinctive attraction to the “strong horse” rather than the “weak horse,” and his frequent citation to the U.S. military pullout from Lebanon after Hezbollah’s 1983 attack on the marine barracks, and from Somalia after the 1993 “Black Hawk Down” incident). For militants willing to immolate themselves in suicide-bombing and hijacking operations, mere prosecution is a provocatively weak response. Put succinctly, where they are the sole or principal response to terrorism, trials in the criminal justice system inevitably cause more terrorism: they leave too many militants in place and they encourage the notion that the nation may be attacked with relative impunity.

#### 6) Time - restrictions delay critical executive action - key to prevent terrorism

Tomatz 13

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

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

#### Regulations on detention require huge military investments that trade-off with effective war-fighting—causes failure in Afghanistan faster than the aff

Ford, 10

(Colonel, U.S. Army Judge Advocate General's Corps, currently serving as the Staff Judge Advocate, Multi-National Security Transition Command-Iraq, Baghdad, Iraq, “Keeping Boumediene off the Battlefield: Examining Potential Implications of the Boumediene v. Bush Decision to the Conduct of United States Military Operations,” 30 Pace L. Rev. 396, Winter, Lexis)

Programmatically and institutionally, extension would require a re-evaluation of the DoD's policies, regulations, training, and organization. Currently, all military personnel are trained to the Geneva standard under the DoD Law of War Program. n38 This program ensures that service members are trained in and abide by the international legal norms of warfare. Would the DoD implement a similar program to ensure compliance with domestic laws during combat operations, including detention operations? And, if so, should it be separate from the Law of War Program or integrated into it? A progressive extension of Boumediene may require service members in combat to abide by constitutional provisions normally applicable to domestic law enforcement personnel. Such an extension would require a massive training and education program to be implemented department-wide. This training might include instruction on the court-directed domestic laws that might now be applicable, essentially a shifting body of criminal law for the battlefield. In [\*405] implementing this new standard, both the DoD and the military might be required to implement several new procedures, including: training packages for new entrants at basic training installations, annual refresher training, formalized procedures for integration into major military training exercises and actual military operations, a reporting procedure for violations, and benchmarks for methods of effectiveness. The International Committee of the Red Cross ("ICRC") might choose to monitor U.S. forces not only for compliance with international law but also for compliance with our applicable domestic laws. The DoD would be interested in the ICRC's new focus area and would need to implement procedures to address these new areas of international scrutiny. As the DoD attempts to operationalize Boumediene, it must consider the new concept of how to support a federal case while concomitantly conducting military operations. Justice Scalia, in his dissent, noted that the Boumediene holding "sets our military commanders the impossible task of proving to a civilian court, under whatever standards this Court devises in the future, that evidence supports the confinement of each and every enemy prisoner." n39 Practically speaking, this is already happening in the U.S. District Court for the District of Columbia as the Guantanamo detainees' habeas cases progress. n40 The Supreme Court is not, as Justice Scalia noted, establishing the rules under which these cases will proceed. That task has fallen on the district court judges, specifically Senior Judge Thomas F. Hogan, who has been charged with establishing general rules for the administration and management of most of these cases. n41 [\*406] These rules and procedures will be vitally important not only for the process, but also for the DoD and combat soldiers whose actions they will dictate. Courts will create, and lawyers argue endlessly about, such important matters as the definition of "enemy combatant," the standard of proof for this yet-to-be defined term, the admissibility of evidence, the scope and breadth of exclusionary rules, presumptions afforded to government evidence, whether the presence of the detainee is required, access to government witnesses, the extent of government disclosures of exculpatory evidence pursuant to Brady v. Maryland, n42 and a host of other procedural and substantive issues. Every issue that may arise in a federal criminal case will have to be addressed, interpreted, decided, and applied to the current and future unique enemy prisoner habeas actions. These procedures create daunting tasks. Enter CSI: Kandahar. Extending the Boumediene holding would require detailed procedures for the collection, preservation, and maintenance of "evidence." Normally, the military treats information regarding enemy captives as battlefield information or intelligence. Military personnel process this information, important to the conduct of military operations, through intelligence channels. Intelligence analysts and commanders use the information to determine enemy strengths, weaknesses, vulnerabilities, and locations important to the commander on the ground. Treating captured enemy information as evidence in a federal case would require an entirely new method of collecting and processing intelligence. More likely, the DoD and the intelligence agencies would choose to establish an entirely separate but parallel system to process and sanitize battlefield intelligence information for transmittal to federal courts because of the significant risk to intelligence sources and methods. The DoD may be forced to address these federal evidence requirements. Standards may have to be established, beginning with procedures to determine what constitutes the [\*407] equivalent of probable cause to detain, and including procedures for, inter alia, the seizure and collection of evidence, chain of custody, evidence storage and maintenance, evidence authentication, and witness availability. n43 This may, in turn, require procedures to formalize investigations, including a requirement of a pseudo-criminal case file for every detained enemy. Certainly, service members do not have the training to make and prove a federal case. Service members on the ground are now familiar with basic evidence collection requirements, and great strides have been taken in Iraq and Afghanistan to formalize information collection resulting from raids. n44 Site exploitation teams and specially trained personnel have assisted in gathering and maintaining site intelligence information, which may later be used as evidence, normally in an Iraqi or Afghani court. But imagine if every military operation required a police-like crime scene analysis, with the [\*408] collection of evidence to be used in a federal court. Soldiers simply cannot conduct such an undertaking, nor should they be required to. Military law enforcement personnel are a limited asset on the battlefield, busily investigating alleged misconduct by military personnel, contract fraud, and the deaths of service members. The DoD would be hard pressed to meet new stringent investigative and evidentiary requirements. The DoD may have to adjust its force structure and dramatically increase the capacity of the services' law enforcement investigative agencies, a precarious undertaking for a military already stretched thin. Or, perhaps the DoD would create a new habeas investigative agency, uniformed and/or civilian, to accompany forces on the battlefield. One solution is to use another federal law enforcement agency, such as the Federal Bureau of Investigation ("F.B.I."), to augment military forces, similar to the manner in which the U.S. Coast Guard augments U.S. Navy operations during law enforcement actions at sea. n45

#### Turns the case – Perception of weak Presidential crisis response collapses heg

Bolton 9

John R. Bolton 9, Senior fellow at the American Enterprise Institute & Former U.S. ambassador to the United Nations, “The danger of Obama's dithering,” Los Angeles Times, October 18, <http://articles.latimes.com/2009/oct/18/opinion/oe-bolton18>

Weakness in American foreign policy in one region often invites challenges elsewhere, because our adversaries carefully follow diminished American resolve. Similarly, presidential indecisiveness, whether because of uncertainty or internal political struggles, signals that the United States may not respond to international challenges in clear and coherent ways. Taken together, weakness and indecisiveness have proved historically to be a toxic **combination for America's global interests**. That is exactly the combination we now see under President Obama. If anything, his receiving the Nobel Peace Prize only underlines the problem. All of Obama's campaign and inaugural talk about "extending an open hand" and "engagement," especially the multilateral variety, isn't exactly unfolding according to plan. Entirely predictably, we see more clearly every day that diplomacy is not a policy but only a technique. **Absent** presidential leadership, **which at a minimum means** clear policy direction and persistence in the face of criticism and adversity**, engagement simply embodies** weakness and indecision.

#### Turns terrorism - Any reforms to detention policy kill intel coop

McNeal 8

Gregory McNeal 08, Visiting Assistant Professor of Law, Pennsylvania State University Dickinson School of Law. The author previously served as an academic consultant to the former Chief Prosecutor, Department of Defense Office of Military Commissions, “ARTICLE: BEYOND GUANTANAMO, OBSTACLES AND OPTIONS,” August 08, 103 Nw. U. L. Rev. Colloquy 29

Intelligence agencies seek to control the dissemination of information that they have collected through classification and use procedures. When an intelligence agency shares information with an allied power it often does so by placing requirements on how the recipient will protect and use that information. n102 The most appropriate method that exists for sharing information is the concept of originator controlled information. This method ensures that intelligence labeled as such "cannot be used or disseminated without the consent of the originator." n103¶ This approach requires time consuming negotiations in order to gain the information. n104 For national security courts a problem arises when restricted [\*48] foreign evidence shared by an allied power for use in detention of suspected terrorists or intelligence that was shared for use in military commissions was shared conditionally. Allied nations may refuse to allow U.S. officials to use such evidence in any other forum such as courts-martial, federal courts, or a national security court. This phenomenon of originator controlled information presents a significant yet unaddressed obstacle which may prevent a transition to a system other than military commissions. Unless a reform system has protections at least as robust as military commissions that convinces allies their information is secure, some defendants may be beyond prosecution.

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## Uighurs DA

#### Hegemony isn’t key to peace

Fettweis, 11
Christopher J. Fettweis, Department of Political Science, Tulane University, 9/26/11, Free Riding or Restraint? Examining European Grand Strategy, Comparative Strategy, 30:316–332, EBSCO

It is perhaps worth noting that there is no evidence to support a direct relationship between the relative level of U.S. activism and international stability. In fact, the limited data we do have suggest the opposite may be true. During the 1990s, the United States cut back on its defense spending fairly substantially. By 1998, the United States was spending $100 billion less on defense in real terms than it had in 1990.51 To internationalists, defense hawks and believers in hegemonic stability, this irresponsible “peace dividend” endangered both national and global security. “No serious analyst of American military capabilities,” argued Kristol and Kagan, “doubts that the defense budget has been cut much too far to meet America’s responsibilities to itself and to world peace.”52 On the other hand, if the pacific trends were not based upon U.S. hegemony but a strengthening norm against interstate war, one would not have expected an increase in global instability and violence. The verdict from the past two decades is fairly plain: The world grew more peaceful while the U**nited** S**tates** cut its forces. No state seemed to believe that its security was endangered by a less-capable United States military, or at least none took any action that would suggest such a belief. No militaries were enhanced to address power vacuums, no security dilemmas drove insecurity or arms races, and no regional balancing occurred once the stabilizing presence of the U.S. military was diminished. The rest of the world acted as if the threat of international war was not a pressing concern, despite the reduction in U.S. capabilities. Most of all, the United States and its allies were no less safe. The incidence and magnitude of global conflict declined while the United States cut its military spending under President Clinton, and kept declining as the Bush Administration ramped the spending back up. No complex statistical analysis should be necessary to reach the conclusion that the two are unrelated. Military spending figures by themselves are insufficient to disprove a connection between overall U.S. actions and international stability. Once again, one could presumably argue that spending is not the only or even the best indication of hegemony, and that it is instead U.S. foreign political and security commitments that maintain stability. Since neither was significantly altered during this period, instability should not have been expected. Alternately, advocates of hegemonic stability could believe that relative rather than absolute spending is decisive in bringing peace. Although the United States cut back on its spending during the 1990s, its relative advantage never wavered. However, even if it is true that either U.S. commitments or relative spending account for global pacific trends, then at the very least stability can evidently be maintained at drastically lower levels of both. In other words, even if one can be allowed to argue in the alternative for a moment and suppose that there is in fact a level of engagement below which the United States cannot drop without increasing international disorder, a rational grand strategist would still recommend cutting back on engagement and spending until that level is determined. Grand strategic decisions are never final; continual adjustments can and must be made as time goes on. Basic logic suggests that the United States ought to spend the minimum amount of its blood and treasure while seeking the maximum return on its investment. And if the current era of stability is as stable as many believe it to be, no increase in conflict would ever occur irrespective of U.S. spending, which would save untold trillions for an increasingly debt-ridden nation. It is also perhaps worth noting that if opposite trends had unfolded, if other states had reacted to news of cuts in U.S. defense spending with more aggressive or insecure behavior, then internationalists would surely argue that their expectations had been fulfilled. If increases in conflict would have been interpreted as proof of the wisdom of internationalist strategies, then logical consistency demands that the lack thereof should at least pose a problem. As it stands, the only evidence we have regarding the likely systemic reaction to a more restrained United States suggests that the current peaceful trends are unrelated to U.S. military spending. Evidently the rest of the world can operate quite effectively without the presence of a global policeman. Those who think otherwise base their view on faith alone.

#### Heg is unsustainable

Layne 10

(Christopher Layne, Professor and Robert M. Gates Chair in National Security at Texas A&M's George H.W. Bush School of Government & Public Service. "Graceful decline: the end of Pax Americana". The American Conservative. May 2010. http://findarticles.com/p/articles/mi\_7060/is\_5\_9/ai\_n5422359

China's economy has been growing much more rapidly than the United States' over the last two decades and continues to do so, maintaining audacious 8 percent growth projections in the midst of a global recession. Leading economic forecasters predict that it will overtake the U.S. as the world's largest economy, measured by overall GDP, sometime around 2020. Already in 2008, China passed the U.S. as the world's leading manufacturing nation--a title the United States had enjoyed for over a century--and this year China will displace Japan as the world's second-largest economy. Everything we know about the trajectories of rising great powers tells us that China will use its increasing wealth to build formidable military power and that it will seek to become the dominant power in East Asia. Optimists contend that once the U.S. recovers from what historian Niall Ferguson calls the "Great Repression"--not quite a depression but more than a recession--we'll be able to answer the Chinese challenge. The country, they remind us, faced a larger debt-GDP ratio after World War II yet embarked on an era of sustained growth. They forget that the postwar era was a golden age of U.S. industrial and financial dominance, trade surpluses, and persistent high growth rates. Those days are gone. The United States of 2010 and the world in which it lives are far different from those of 1945. Weaknesses in the fundamentals of the American economy have been accumulating for more than three decades. In the 1980s, these problems were acutely diagnosed by a number of writers--notably David Calleo, Paul Kennedy, Robert Gilpin, Samuel Huntington, and James Chace--who predicted that these structural ills would ultimately erode the economic foundations of America's global preeminence. A spirited late-1980s debate was cut short, when, in quick succession, the Soviet Union collapsed, Japan's economic bubble burst, and the U.S. experienced an apparent economic revival during the Clinton administration. Now the delayed day of reckoning is fast approaching. Even in the best case, the United States will emerge from the current crisis with fundamental handicaps. The Federal Reserve and Treasury have pumped massive amounts of dollars into circulation in hope of reviving the economy. Add to that the $1 trillion-plus budget deficits that the Congressional Budget Office (CBO) predicts the United States will incur for at least a decade. When the projected deficits are bundled with the persistent U.S. current-account deficit, the entitlements overhang (the unfunded future liabilities of Medicare and Social Security), and the cost of the ongoing wars in Iraq and Afghanistan, there is reason to worry about the United States' fiscal stability. As the CBO says, "Even if the recovery occurs as projected and the stimulus bill is allowed to expire, the country will face the highest debt/GDP ratio in 50 years and an increasingly unsustainable and urgent fiscal problem**."** The dollar's vulnerability is the United States' geopolitical Achilles' heel. Its role as the international economy's reserve currency ensures American preeminence, and if it loses that status, hegemony will be literally unaffordable. As Cornell professor Jonathan Kirshner observes, the dollar's vulnerability "presents potentially significant and underappreciated restraints upon contemporary American political and military predominance." Fears for the dollar's long-term health predated the current financial and economic crisis. The meltdown has amplified them and highlighted two new factors that bode ill for continuing reserve-currency status. First, the other big financial players in the international economy are either military rivals (China) or ambiguous allies (Europe) that have their own ambitions and no longer require U.S. protection from the Soviet threat. Second, the dollar faces an uncertain future because of concerns that its value will diminish over time. Indeed, China, which has holdings estimated at nearly $2 trillion, is worried that America will leave it with huge piles of depreciated dollars. China's vote of no confidence is reflected in its recent calls to create a new reserve currency. In coming years, the U.S. will be under increasing pressure to defend the dollar by preventing runaway inflation. This will require it to impose fiscal self-discipline through some combination of budget cuts, tax increases, and interest-rate hikes**.** Given that the last two options could choke off renewed growth, there is likely to be strong pressure to slash the federal budget. But it will be almost impossible to make meaningful cuts in federal spending without deep reductions in defense expenditures. Discretionary non-defense domestic spending accounts for only about 20 percent of annual federal outlays. So the United States will face obvious "guns or butter" choices. As Kirshner puts it, the absolute size of U.S. defense expenditures are "more likely to be decisive in the future when the U.S. is under pressure to make real choices about taxes and spending. When borrowing becomes more difficult, and adjustment more difficult to postpone, choices must be made between raising taxes, cutting non-defense spending, and cutting defense spending." Faced with these hard decisions, Americans will find themselves afflicted with hegemony fatigue.

#### Hegemony in Asia fails- only international support solves

Rachman 11

(Gideon Rachman, Financial Times chief foreign affairs commentator, Zero-Sum Future, 2011, pp 187-188)

Even before the crash of 2008, the military balance between China and the United States was shifting. Aaron Friedberg of Princeton University noted in 2009 that China's sustained military buildup meant that "everyone of the relative handful of bases on which the United States relies to sustain its presence in East Asia will soon be within range of bombardment by repeated salvos of precisely targeted Chinese conventional ballistic and cruise missiles." 21 American aircraft carriers, the key to its Pacific strategy, are particularly vulnerable to new Chinese precision-guided weapons. Friedberg warned that "Washington must find ways to counter China's evolving anti-access capabilities. If it does not, America's longstanding military dominance in East Asia will quickly disappear." 22 He was not along in his concerns. In an article on the "Pentagon's wasting assets" for Foreign Affairs, also in 2009, Andrew Krepinevich worried that "East Asian waters are slowly but surely becoming a potential no-go zone for US ships." Krepinevich pointed out that "the US military's wasting assets are the direct consequence of the unavoidable loss of its near monopoly on guided weapons."23 China has also been working on its ability to knock out the communications satellites on which American hightech warfare depends. When China blasted one of its own satellites out of the sky with a missile test in January 2007, the move was widely interpreted as an implied threat to American satellites.24 This emerging power struggle is being followed closely around the world. In the aftermath of the financial crisis I was told by a senior British policy maker, "Everywhere you go in Asia, you find questions about how long American military dominance can be maintained."25

#### Power projection in Asia fails

Kato ‘8

(Yoichi, bureau chief of the American General Bureau of the Asahi Shimbun, “Return from 9/11 PTSD to Global Leader,” Washington Quarterly, Fall 2008, lexis)

Moreover, the challenges facing the United States do not come only from Islamic extremism or the Middle East. Various challenges in the Asia-Pacific region, especially the rise of China, must also be addressed. The failure of the Iraq war and the war on terrorism has had an enormous impact on U.S. standing in the Asia Pacific. It has reduced U.S. influence among the policy elites and the general publics of nations throughout the region. The United States is now often perceived as a not-so-capable and sometimes insecure country despite its powerful hard-power economic and military assets.