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### First Off

#### Increase means they must make that number greater

Merriam-Webster 12, http://www.merriam-webster.com/dictionary/increase?show=0&t=1348112715

Increase:

in·crease verb \in-ˈkrēs, ˈin-ˌ\

intransitive verb

1: to become progressively greater (as in size, amount, number, or intensity)

2: to multiply by the production of young

**Restriction is a limit**

Schackleford, justice – Supreme Court of Florida, 3/12/1917

(J., “ATLANTIC COAST LINE RAILROAD COMPANY, A CORPORATION, *et al., Plaintiff in Error,* v. THE STATE OF FLORIDA, *Defendant in Error,”* 73 Fla. 609; 74 So. 595; 1917 Fla. LEXIS 487)

There would seem to be no occasion to discuss whether or not the Railroad Commissioners had the power and authority to make the order, requiring the three specified railroads running into the City of Tampa to erect a union passenger station in such city, which is set out in the declaration in the instant case and which we have copied above. [\*\*\*29] It is sufficient to say that under the reasoning and the authorities cited in State v. Atlantic Coast Line R. Co., 67 Fla. 441, 458, 63 South. Rep. 729, 65 South. Rep. 654, and State v. Jacksonville Terminal [\*631] Co., supra, it would seem that HN14the Commissioners had power and authority. The point which we are required to determine is whether or not the Commissioners were given the authority to impose the fine or penalty upon the three railroads for the recovery of which this action is brought. In order to decide this question we must examine Section 2908 of the General Statutes of 1906, which we have copied above, in the light of the authorities which we have cited and from some of which we have quoted. It will be observed that the declaration alleges that the penalty imposed upon the three railroads was for the violation of what is designated as "Order No. 282," which is set out and which required such railroads to erect and complete a union depot at Tampa within a certain specified time. If the Commissioners had the authority to make such order, it necessarily follows that they could enforce a compliance with the same by appropriate proceedings in the courts, but [\*\*\*30] it does not necessarily follow that they had the power and authority to penalize the roads for a failure to comply therewith. That is a different matter. HN15Section 2908 of the General Statutes of 1906, which originally formed Section 12 of Chapter 4700 of the Laws of Florida, (Acts of 1899, p. 86), expressly authorizes the imposition of a penalty by the Commissioners upon "any railroad, railroad company or other common carrier doing business in this State," for "a violation or disregard of any rate, schedule, rule or regulation, provided or prescribed by said commission," or for failure "to make any report required to be made under the provisions of this Chapter," or for the violation of "any provision of this Chapter." It will be observed that the word "Order" is not mentioned in such section. Are the other words used therein sufficiently comprehensive to embrace an order made by the Commissioners, such as the one now under consideration? [\*632] It could not successfully be contended, nor is such contention attempted, that this order is covered by or embraced within the words "rate," "schedule" or "any report,' therefore we may dismiss these terms from our consideration and [\*\*\*31] direct our attention to the words "rule or regulation." As is frankly stated in the brief filed by the defendant in error: "It is admitted that an order for the erection of a depot is not a 'rate' or 'schedule' and if it is not a 'rule' or 'regulation' then there is no power in the Commissioners to enforce it by the imposition of a penalty." It is earnestly insisted that the words "rule or regulation" are sufficiently comprehensive to embrace such an order and to authorize the penalty imposed, and in support of this contention the following authorities are cited: Black's Law Dictionary, defining regulation and order; Rapalje & Lawrence's Law Dictionary, defining rule; Abbott's Law Dictionary, defining rule; Bouvier's Law Dictionary, defining order and rule [\*\*602] of court; Webster's New International Dictionary, defining regulation; Curry v. Marvin, 2 Fla. 411, text 515; In re Leasing of State Lands, 18 Colo. 359, 32 Pac. Rep. 986; Betts v. Commissioners of the Land Office, 27 Okl. 64, 110 Pac. Rep. 766; Carter V. Louisiana Purchase Exposition Co., 124 Mo. App. 530, 102 S.W. Rep. 6, text 9; 34 Cyc. 1031. We have examined all of these authorities, as well as those cited by the [\*\*\*32] plaintiffs in error and a number of others, but shall not undertake an analysis and discussion of all of them. While it is undoubtedly true that the words, rule, regulation and order are frequently used as synonyms, as the dictionaries, both English and law, and the dictionaries of synonyms, such as Soule's show, it does not follow that these words always mean the same thing or are interchangeable at will. It is well known that the same word used in different contexts may mean a different thing by virtue of the coloring which the word [\*633] takes on both from what precedes it in the context and what follows after. Thus in discussing the proper constructions to be placed upon the words "restrictions and regulations" as used in the Constitution of this State, then in force, Chap. 4, Sec. 2, No. 1, of Thompson's Digest, page 50, this court in Curry v. Marvin, 2 Fla. 411, text 415, which case is cited to us and relied upon by both the parties litigant, makes the following statement: "The word restriction is defined by the best lexicographers to mean limitation, confinement within bounds, and would seem, as used in the constitution, to apply to the amount and to the time [\*\*\*33] within which an appeal might to be taken, or a writ of error sued out. The word regulation has a different signification -- it means method, and is defined by Webster in his Dictionary, folio 31, page 929, to be 'a rule or order prescribed by a superior for the management of some business, or for the government of a company or society.' This more properly perhaps applies to the mode and form of proceeding in taking and prosecuting appeals and writs of error. By the use of both of those terms, we think that something more was intended than merely regulating the mode and form of proceedings in such cases." Thus, in Carter v. Louisiana Purchase Exposition Co., 124 Mo. App. 530, text 538, 102 S.W. Rep. 6, text 9, it is said, "The definition of a rule or order, which are synonymous terms, include commands to lower courts or court officials to do ministerial acts." In support of this proposition is cited 24 Amer. & Eng. Ency. of Law 1016, which is evidently an erroneous citation, whether the first or second edition is meant. See the definition of regulate and rule, 24 amer. & Eng. Ency. of Law (2nd Ed.) pages 243 to 246 and 1010, and it will be seen that the two words are not always [\*\*\*34] synonymous, much necessarily depending upon the context and the sense in which the words are used. Also see the discussion [\*634] of the word regulation in 34 Cyc. 1031. We would call especial attention to Morris v. Board of Pilot Commissioners, 7 Del. chan. 136, 30 Atl. Rep. 667, text 669, wherein the following statement is made by the court: "These words 'rule' and the 'order,' when used in a statute, have a definite signification. They are different in their nature and extent. A rule, to be valid, must be general in its scope, and undiscriminating in its application; an order is specific and not limited in its application. The function of an order relates more particularly to the execution or enforcement of a rule previously made." Also see 7 Words & Phrases 6271 and 6272, and 4 Words & Phrases (2nd Ser.) 419, 420. As we held in City of Los Angeles v. Gager, 10 Cal. App. 378, 102 Pac. Rep. 17, "The meaning of the word 'rules' is of wide and varied significance, depending upon the context; in a legal sense it is synonymous with 'laws.'" If Section 2908 had contained the word order, or had authorized the Commissioners to impose a penalty for the violation of any order [\*\*\*35] made by them, there would be no room for construction. The Georgia statute, Acts of 1905, p. 120, generally known as the "Steed Bill," entitled "An act to further extend the powers of the Railroad Commission of this State, and to confer upon the commission the power to regulate the time and manner within which the several railroads in this State shall receive, receipt for, forward and deliver to its destination all freight of every character, which may be tendered or received by them for transportation; to provide a penalty for non-compliance with any and all reasonable rules, regulations and orders prescribed by the said commission in the execution of these powers, and for other purposes," expressly authorized the Railroad Commissioners "to provide a penalty for non-compliance with any and all reasonable rules, regulations and orders prescribed by the said Commision." [\*635] See Pennington v. Douglas, A. & G. Ry. Co., 3 Ga. App. 665, 60 S.E. Rep. 485, which we cited with approval in State v. Atlantic Coast Line R. Co., 56 fla. 617, text 651, 47 South. Rep. 969, 32 L.R.A. (N.S.) 639. Under the reasoning in the cited authorities, especially State v. Atlantic Coast Line R. Co., [\*\*\*36] supra, and Morris v. Board of Pilot Commissioners, we are constrained to hold that the fourth and eighth grounds of the demurrer are well founded and that HN16the Railroad Commissioners were not empowered or authorized to impose a penalty upon the three railroads for failure to comply with the order for the erection of a union depot.

### Second Off

#### Immigration reform will pass --- political capital is key

Matthews, 10/16 (Laura, 10/16/2013, “2013 Immigration Reform Bill: 'I'm Going To Push To Call A Vote,' Says Obama,” <http://www.ibtimes.com/2013-immigration-reform-bill-im-going-push-call-vote-says-obama-1429220)>)

When Congress finally passes a bipartisan bill that kicks the fiscal battles over to early next year, the spotlight could return to comprehensive immigration reform before 2013 ends.¶ At least that’s the hope of President Barack Obama and his fellow Chicagoan Rep. Luis Gutierrez, D-Ill., chairman of the Immigration Task Force of the Congressional Hispanic Caucus and one of the most vocal advocates for immigration reform in the House of Representatives.¶ “When we emerge from this crazy partisan eruption from the Republicans, there will be a huge incentive for sensible Republicans who want to repair some of the damage they have done to themselves,” Gutierrez said in a statement. “Immigration reform remains the one issue popular with both Democratic and Republican voters on which the two parties can work together to deliver real, substantive solutions in the Congress this year.”¶ Reforming the status quo has consistently been favored by a majority of Americans. Earlier this year, at least two-thirds of Americans supported several major steps to make the system work better, according to a Gallup poll. Those steps include implementing an E-verify system for employers to check electronically the immigration status of would-be employees (85 percent), a path to citizenship for undocumented immigrants, (72 percent), an entry-exit check system to make sure people who enter the country then leave it (71 percent), more high-skilled visas (71 percent) and increased border security (68 percent).¶ The Senate passed its version of a 2013 immigration reform bill in June that includes, but is not limited to, a pathway to citizenship for immigrants without documentation and doubling security on the southern border. But that measure has stalled in the House, where Republicans are adamant they will take a piecemeal approach.¶ The momentum that lawmakers showed for reform has been sapped by the stalemate that that has shut down the government for 16 days and brought the U.S. to the brink of default. The Senate has agreed on Wednesday to a bipartisan solution to break the gridlock.¶ When the shutdown and default threat is resolved (for a time), that’s when Obama will renew his push to get Congress to move on immigration reform. On Tuesday the president said reform will become his top priority.¶“Once that’s done, you know, the day after, I’m going to be pushing to say, call a vote on immigration reform,” Obama told Univision affiliate KMEX-TV in Los Angeles. “And if I have to join with other advocates and continue to speak out on that, and keep pushing, I’m going to do so because I think it’s really important for the country. And now is the time to do it.”¶ The president pointed the finger at House Speaker John Boehner, R-Ohio, for not allowing the bill to be brought to the floor for a vote. Boehner had promised that the Senate’s bill would not be voted on unless a majority of the majority in the House supports it -- the same principle he was holding out for on the government shutdown before he gave in.¶ “We had a very strong Democratic and Republican vote in the Senate,” Obama said. “The only thing right now that’s holding it back is, again, Speaker Boehner not willing to call the bill on the floor of the House of Representatives. So we’re going to have to get through this crisis that was unnecessary, that was created because of the obsession of a small faction of the Republican Party on the Affordable Care Act.”¶ Republicans are opposing the Democratic view of immigration reform because of its inclusion of a 13-year path to citizenship for undocumented immigrants. They said this amounted to “amnesty.” Some Republicans prefer to give them legal resident status instead.¶ Immigration advocates have also been urging Obama to use his executive authority to halt the more than 1,000 deportations taking place daily. Like the activists, Gutierrez said the government shutdown didn’t do anything to slow the number of daily deportations.¶ Some Republicans who welcomed Sen. Ted Cruz’s filibuster over Obamacare because it shifted the focus from immigration.¶ “If Ted [didn’t] spin the filibuster, if we don’t make this the focus, we had already heard what was coming,” Rep. Louie Gohmert, R-Texas, told Fox News on Tuesday. “As soon as we got beyond this summer, we were going to have an amnesty bill come to the floor. That’s what we would have been talking about. And that’s where the pivot would have been if we had not focused America on Obamacare.”¶ Still, pro-immigration advocates are hopeful they can attain their goal soon. “With more prodding from the president and the American people,” Gutierrez said, “we can get immigration reform legislation passed in the House and signed into law.”

#### The plan will ignite a huge political fight and tradeoff with other administration priorities

Hansen, 13 --- associate editor at *America* (was first published in Italian in the January 2013 issue of Popoli magazine, Luke, “A Permanent Prison? Why Guantánamo might outlast the Obama presidency,” <http://americamagazine.org/issue/article/permanent-prison)>)

In January 2009 the newly elected president, Barack Obama, sought to change course. As a first step to shuttering the prison, Greg Craig, the top White House lawyer, drew up a plan to release a few Uighur detainees, long cleared of wrongdoing, onto U.S. soil. Mr. Craig announced the plan at a national security meeting on April 17, 2009. Defense Secretary Robert Gates and Secretary of State Hillary Rodham Clinton were on board. “It was a matter of days, not weeks,” until the transfer would take place, a top Defense official told Time magazine. When the move proved successful, the administration hoped that other countries would be more willing to help resettle Guantánamo detainees.¶ Within a month the plan collapsed.¶ Four years later, Guantánamo remains open for business, indefinite detention continues and detainees are prosecuted in military commissions, not federal courts. Now it is not clear whether the prison will ever close—at least until the last prisoner grows old and dies. What caused such a dramatic reversal?¶ Growing Opposition¶ In “The Fall of Greg Craig, Obama’s Top Lawyer” (11/19/2009), Time magazine provides an account of what unfolded inside the White House during those first weeks of the Obama administration as they grappled with closing Guantánamo.¶ Just one day before Mr. Craig pitched his plan to the national security team, President Obama publicly released a series of memos from the U.S. Central Intelligence Agency that detailed the “enhanced interrogation” techniques used by the Bush administration. Michael Hayden, former C.I.A. director, had organized internal opposition to releasing the memos, but Mr. Obama did it anyway—consistent with his promise of greater transparency as well as taking the moral high road in the fight against terrorism.¶ Meanwhile Mr. Craig’s plan of releasing the Uighurs onto U.S. soil became public, and Republican leaders unleashed three weeks of relentless attacks against President Obama’s early foreign policy decisions. They claimed that Mr. Obama had emboldened America’s enemies by releasing the memos, and now he would endanger Americans by transferring prisoners into the United States—for release, further detention or trial.¶ Suddenly it was becoming too costly, politically, to take the moral high road. Time reported that, in late April, “Democratic pollsters charted a disturbing trend: a drop in Obama’s support among independents, driven in part by national-security issues.” Inside the White House, the early optimism and momentum faded. The administration was also concerned that the fight to close Guantánamo might distract from domestic priorities like health care and strengthening the economy.¶In early May, Mr. Obama decided against releasing the Uighur detainees into the United States. “It was a political decision, to put it bluntly,” an aide told Time. Two weeks later, President Obama sought to address growing public discontent with a major speech on national security. In the speech, he not only announced that he would work with Congress to revamp the Bush-era military commissions, but he also embraced the use of indefinite detention without charges or trials for a group of detainees “who cannot be prosecuted yet who pose a clear danger to the American people.”¶ America’s Prison Problem¶ There are many plausible explanations for why President Obama failed to close the prison in his first term. He did not push hard enough. Conservative leaders successfully played on Americans’ fears. The administration was not prepared—or willing—to respond to the political attacks. Then the Congress, in bipartisan fashion, refused to allocate funds for closing the prison (and still continues to place restrictions on transferring detainees out of Guantánamo). Americans, collectively, are also responsible. If it had been politically popular for Mr. Obama to follow through on his promise to close Guantánamo, he would have.

#### Reform key to the economy – immigrants are key to several critical sectors

West, ‘09 – Director of Governance Studies at the Brookings Institution (7/22/09, Darrell M., “The Path to a New Immigration Reform,” http://www.brookings.edu/opinions/2009/0721\_immigration\_reform\_west.aspx)

Skeptics need to understand how important a new immigration policy is to American competitiveness and long-term economic development. High-skill businesses require a sufficient number of scientists and engineers. Many industries such as construction, landscaping, health care and hospitality services are reliant on immigrant labor. Farmers need seasonal workers for agricultural productivity. Critics who worry about resource drains must understand that immigrants spend money on goods and services, pay taxes and perform jobs and start businesses vital to our economy. Beyond the economy, immigration reform prospects improve considerably across a fresh political landscape that features a popular Democratic president armed with substantial Democratic majorities in the House and Senate, many who appear receptive to comprehensive reform. Obama has called repeatedly for big ideas and bold policy actions. The country needs new policies that emphasize the importance of immigrant workers \_ across the skills spectrum \_ to our country's long-term financial future. Our universities invest millions in training foreign students but then send them home without any U.S. job opportunities that would take advantage of their new skills. And investing in the children of middle- and lower-skilled immigrants is wise as we recognize their majority role in our workforce as the next generation rises.

#### Extinction

Harris and Burrows, ‘09 [Mathew, PhD European History at Cambridge, counselor in the National Intelligence Council (NIC) and Jennifer, member of the NIC’s Long Range Analysis Unit “Revisiting the Future: Geopolitical Effects of the Financial Crisis” <http://www.ciaonet.org/journals/twq/v32i2/f_0016178_13952.pdf>]

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

### Third Off

#### The United States federal judiciary should rule that individuals in military detention who have won their habeas corpus hearing cannot be detained. The United States federal judiciary should clarify that “substantial support” cannot be an independent basis for detention, that “substantial support” should be defined as “core membership,” and “associated forces” should be defined as organizations who have “actual association in the current conflict with al Qaeda or the Taliban.”

#### Kiyemba decisions which say that we can’t release people who won their habeas trials, has undermined legitimacy of our commitment to the rule of law

Vaughn and Williams, Professors of Law, 13 [2013, Katherine L. Vaughns B.A. (Political Science), J.D., University of California at Berkeley. Professor of Law, University of Maryland Francis King Carey School of Law, and Heather L. Williams, B.A. (French), B.A. (Political Science), University of Rochester, J.D., cum laude, University of Maryland Francis King Carey School of Law, “OF CIVIL WRONGS AND RIGHTS: 1 KIYEMBA V. OBAMA AND THE MEANING OF FREEDOM, SEPARATION OF POWERS, AND THE RULE OF LAW TEN YEARS AFTER 9/11”, Asian American Law Journal, Vol. 20, 2013, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2148404]

In 2007, Ninth Circuit Judge A. Wallace Tashima observed that the rule of law—touted by the United States throughout the world since the end of World War II— has been “steadily undermined . . . since we began the so-called ‘War on Terror.’”185 “The American legal messenger,” Tashima notes, “has been regarded throughout the world as a trusted figure of goodwill, mainly by virtue of close identification with the message borne”—“that the rule of law is fundamental to a free, open, and pluralistic society,” that the United States represents “a government of laws and not of persons,” where “no one—not even the President—is above the law.”186 But, according to Tashima, the actions that the United States has “taken in the War on Terror, especially [in] our detention policies, have belied our commitment to the rule of law” and caused a “dramatic shift in world opinion,” so that the War on Terror has been greeted internationally with “increasing skepticism and even hostility.”187 Put differently, the United States has shot the messenger—and with it, goes the message, the commitment to the rule of law, and our international credibility.188 The primary assassin in this “assault on the role of law” is the argument “that the President is not bound by law—that he can flout the Constitution, treaties, and statutes of the United States as Commander-in-Chief during times of war.”189 Also wreaking havoc on the rule of law is the notion, described above, that the President’s actions in times of war are unreviewable, that the judiciary has no role to play in checking wartime policies. What is the likely reason for the executive to take such an approach as their legal defense, despite swearing, upon inauguration, to “preserve, protect[,] and defend the Constitution of the United States,”190 and despite constitutional directive that he “take Care that the Laws be faithfully executed”?191 Significantly, as Charles Fried and Gregory Fried observe, the oath of office does not mention defending national security.192 Rather, “the President’s duty is explicitly to the law, not [to] some vague goal beyond the law.”193 According to these authors, “the law is our defense against tyranny, the arbitrary imposition of one person’s will over all others, and against anarchy, the ungoverned conduct of many people’s wills.”194 If, as the executive has done since 9/11, “we cut down the laws to lay hold of our enemies,” where are we to “hide when the Devil turns round on us, armed with the power of the state?”195 As the Supreme Court so eloquently noted in Ex Parte Milligan,196 the Constitution “is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances.”197 Central to this protection are the separation of powers, by which one branch of government is not permitted to go unchecked. Indeed, as Justice O’Connor stated in the Hamdi case, “[w]hatever power the United States Constitution envisions for the Executive in its exchanges with other nations or with enemy organizations in times of conflict, it most assuredly envisions a role for all three branches when individual liberties are at stake.”198 And even the executive’s war power “does not remove constitutional limitations,” including the separation of powers, “safeguarding essential liberties.”199 Perhaps the most likely reason, then, for the position taken by the Bush administration has its roots in an old adage from the Nixon administration. As history will recall, in May 1977, former President Richard M. Nixon famously told British interviewer David Frost that “when the President does it, that means that it is not illegal.”200 The Bush administration, taking a page out of Nixon’s book, used various tactics to effectively “dismantle constitutional checks and balances and to circumvent the rule of law.”201 In so doing, the administration took advantage of 9/11 to assert “the most staggering view of unlimited presidential power since Nixon’s assertion of imperial prerogatives.”202 The D.C. Circuit’s reinstated opinion in Kiyemba III is, as we have noted, governing. That opinion, adopting a view that the government had argued all along, recharacterizes the law pertaining to detainees at Guantanamo Bay as a matter of immigration—an area of law in which the sovereign prerogative on which is admitted and excluded from entry into the United States is virtually immune from judicial review.203 This is not, as we explain below, a matter of immigration; instead, it is a matter of the executive’s power to imprison and detain, as the Supreme Court stated in Boumediene.204 The Bush administration long adopted the position that judicial review of its detention policies would frustrate its war efforts and its Commander-in-Chief authority. However, as the Boumediene Court explained, “the exercise of [the executive’s Commander-in-Chief powers] is vindicated, not eroded, when [or, if] confirmed” by the judiciary.205 As the Milligan Court stated, the founding fathers “knew—the history of the world told them—the nation they were founding, be its existence short of long, would be involved in war.”206 How frequently or of what length, “human foresight could not tell.”207 But, the founders knew that “unlimited power, wherever lodged at such a time, was especially hazardous to freemen.”208 For this reason, “they secured the inheritance they had fought to maintain, by incorporating in a written constitution the safeguards which time had proved were essential to its preservation.”209 These safeguards cannot be disturbed by any one branch, unless the Constitution so provides—and with the checks authorized therein.210 Indeed, “[t]o hold [that] the political branches have the power to switch the Constitution on or off at will . . . would permit a striking anomaly in our tripartite system of government, leading to a regime in which Congress and the President, not [the courts] say ‘what the law is.’”211 “Our basic charter cannot be contracted away like this.”212 To the extent that it has been—through executive action, paired with judicial inaction—the rule of law is undermined. We can and we must do better—the Constitution, and those who drafted it, demand so.

#### **Sufficiently limited standards means that the habeas trials are legit**

Horowitz 13, J.D. Candidate, 2014, Fordham University School of Law

(Colby P., Captain, U.S. Army, participating in the Funded Legal Education Program, “SYMPOSIUM: THE GOALS OF ANTITRUST: NOTE: CREATING A MORE MEANINGFUL DETENTION STATUTE: LESSONS LEARNED FROM HEDGES V. OBAMA” April, 2013 Fordham Law Review 81 Fordham L. Rev. 2853, Lexis)

"Substantial Support" As a Basis for Detention Section 1021(b)(2) of the NDAA states that a "covered person" (who is subject to detention) includes not only those who were "part of" Al Qaeda, the Taliban, or associated forces but also those who "substantially [\*2879] supported" these groups. n210 Although most courts agree that an individual who is "part of" Al Qaeda or the Taliban can be lawfully detained, n211 courts disagree over whether providing "substantial support" to these organizations is a valid basis for detention. Thus, the "substantial support" category raises two issues that often intersect: first, is substantial support a valid basis for detention and, if so, what does it mean to provide substantial support? These questions are discussed in turn below. 1. Is Substantial Support a Valid Predicate for Detention? In 2009, two D.C. District Court opinions conflicted over whether substantial support could serve as an independent basis for detention. In Gherebi v. Obama, n212 the court held that substantial support was a valid basis for detention. n213 The court limited its holding, however, to individuals who provide substantial support as members of the enemy's armed forces and, therefore, mere "sympathizers, propagandists, and financiers" could not be detained. n214 The court also appeared to equate substantial support with the command structure test n215 - a test that the D.C. Circuit later rejected. n216 In contrast, in Hamlily v. Obama, n217 the court rejected the concept of support as an independent basis for detention. n218 The court decided that evidence of support could be used to demonstrate that an individual was "part of" Al Qaeda or the Taliban, but support was not its own distinct detention category. n219 This view was endorsed by another D.C. District Court opinion in 2009. n220 Although this court also held that detention based on substantial support "is simply not authorized by the AUMF itself or by the law of war," the court specifically stated that "future domestic legislation" might authorize detention based solely on substantial support. n221 Thus, the NDAA may have provided this legislative [\*2880] authorization when it specifically enumerated "substantial support" as an independent detention category. In 2010, the D.C. Circuit partially resolved this lower court split by holding that the Military Commissions Act of 2009 n222 provided congressional authority to detain those who "purposefully and materially supported hostilities." n223 Although this decision affirmed a separate detention category based on support, it did not specifically authorize detention based on "substantial support," n224 and no D.C. court has yet evaluated the meaning of "substantial support" under the NDAA. The D.C. Circuit had the opportunity to evaluate the meaning of "substantial support" in 2011. However, because the court found that the detainee was clearly "part of" Al Qaeda or the Taliban, it never reached the substantial support issue. n225 Additionally, lawyers in the Obama Administration appear divided over whether to use support as an independent legal justification for detention when defending against habeas petitions. The government lawyers try to avoid the issue, if possible, by first arguing that the detainee was "part of" Al Qaeda or the Taliban. n226 2. What Does It Mean To Provide Substantial Support? Even among courts that agree that support is a valid independent category for detention, there is little consensus about the meaning of support or what activities qualify as "substantial support." n227 The D.C. Circuit, while affirming detention based on material support, noted that it was a "standard whose outer bounds are not readily identifiable." n228 The meaning of "substantial support" is particularly unclear. n229 Absent a congressional definition of the term (which is lacking in the NDAA), courts are forced to evaluate "substantial support" on a case-by-case, ad hoc basis. n230 One judge noted that this is problematic because the term is [\*2881] "highly elastic" and could potentially cover everything from "core membership and support to vague affiliation and cheerleading." n231 C. What Is an "Associated Force"? The NDAA authorizes detention not only for persons who were a "part of" or "substantially supported" Al Qaeda or the Taliban, but also for those who were members of or substantially supported "associated forces" of these two organizations. Although there are some easy cases, determining whether a particular group (even an admitted terrorist organization) is an "associated force" of Al Qaeda or the Taliban can be difficult. This is especially true for Al Qaeda, a loosely organized group that has many affiliates and splinter groups. n232 In 2009, the D.C. District Court in Hamlily affirmed the government's power to detain members of associated forces and defined the concept of an associated force as a "co-belligerent," or a group that has become a "fully fledged belligerent fighting in association with one or more belligerent powers." n233 The court recognized that it was applying the term "co-belligerent" by analogy, because the concept came from the law of war and was usually applied in international armed conflicts involving nation-states. n234 The court also limited the definition of an associated force to those organizations that have an "actual association in the current conflict with al Qaeda or the Taliban," and excluded groups that only "share an abstract philosophy or even a common purpose with al Qaeda." n235 The Hamlily decision addressed threshold legal questions for a number of different detainees, and thus no specific organizations were identified as "associated forces." n236 Courts seem to faithfully apply the definition of "associated forces" established in Hamlily, limiting it those groups that actually fought alongside Al Qaeda or the Taliban. The 55th Arab Brigade n237 and the Hezb-i-Islami Gulbuddin, n238 for example, were found to be associated forces, and both organizations were actively involved in the conflict in Afghanistan. n239 Parhat v. Gates n240 is one of the only cases where the court [\*2882] determined that an organization was not an associated force. n241 In Parhat, the court held that the government failed to show that the East Turkistan Islamic Movement (ETIM) had any connection to Al Qaeda or the Taliban or that the ETIM was planning "terrorist activities against U.S. interests." n242 Thus, courts have limited the definition of an "associated force" to those groups that actually engage in joint activities with Al Qaeda and the Taliban.

### Fourth Off

#### **Modeling of US legal norms is a vague, empty concept – instead of guaranteeing global peace, it rhetorically provides political cover for violent western interventionism that produces mass structural violence – must be rejected.**

Mattei 9 – prof of law @ Hastings

(Ugo, written with Marco de Morpurgo, M.Sc. Candidate, International University College of Turin, BOCCONI SCHOOL OF LAW, GLOBAL LAW & PLUNDER: THE DARK SIDE OF THE RULE OF LAW)

What we can identify as ‘global law’ is not a single and coherent system of law drawing legitimacy from a well-defined legal and political process. Rather, a mixture of international and transnational instruments and processes—non-democratic institutional settings, power/force relationships and ethnocentric intellectual attitudes—stand behind the legal rules that are adopted by public and private actors at the global and (consequently) at the local level. This is not a new phenomenon, although its magnitude has recently been increasing.¶ Within this framework, Western law has constantly enjoyed a dominant position during the past centuries and today, thus being in the position to shape and bend the evolution of other legal systems worldwide. During the colonial era, continental-European powers have systematically exported their own legal systems to the colonized lands. During the past decades and today, the United States have been dominating the international arena as the most powerful economic power, exporting their own legal system to the ‘periphery’, both by itself and through a set of international institutions, behaving as a neo-colonialist within the ideology known as neo- liberalism.¶ Western countries identify themselves as law-abiding and civilized no matter what their actual history reveals. Such identification is acquired by false knowledge and false comparison with other peoples, those who were said to ‘lack’ the rule of law, such as China, Japan, India, and the Islamic world more generally. In a similar fashion today, according to some leading economists, Third World developing countries ‘lack’ the minimal institutional systems necessary for the unfolding of a market economy.¶ The theory of ‘lack’ and the rhetoric of the rule of law have justified aggressive interventions from Western countries into non-Western ones. The policy of corporatization and open markets, supported today globally by the so-called Washington consensus, was used by Western bankers and the business community in Latin America as the main vehicle to ‘open the veins’ of the continent—to borrow Eduardo Galeano’s metaphor4—with no solution of continuity between colonial and post-colonial times. Similar policy was used in Africa to facilitate the forced transfer of slaves to America, and today to facilitate the extraction of agricultural products, oil, minerals, ideas and cultural artefacts in the same countries. The policy of opening markets for free trade, used today in Afghanistan and Iraq, was used in China during the nineteenth century Opium War, in which free trade was interpreted as an obligation to buy drugs from British dealers. The policy of forcing local industries to compete on open markets was used by the British empire in Bengal, as it is today by the WTO in Asia, Africa, and Latin America.¶ Foreign-imposed privatization laws that facilitate unconscionable bargains at the expense of the people have been vehicles of plunder, not of legality. In all these settings the tragic human suffering produced by such plunder is simply ignored. In this context law played a major role in legalizing such practices of powerful actors against the powerless. Yet, this use of power is scarcely explored in the study of Western law.¶ The exportation of Western legal institutions from the West to the ‘rest’ has systematically been justified through the ideological use of the extremely politically strong and technically weak concept of ‘rule of law’. The notion of ‘rule of law’ is an extremely ambiguous one. Notwithstanding, within any public discussion its positive connotations have always been taken for granted. The dominant image of the rule of law is false both historically and in the present, because it does not fully acknowledge its dark side. The false representation starts from the idea that good law (which others ‘lack’) is autonomous, separate from society and its institutions, technical, non-political, non-distributive and reactive rather than proactive: more succinctly, a technological framework for an ‘efficient’ market.¶ The rule of law has a bright and a dark side, with the latter progressively conquering new ground whenever the former is not empowered by a political soul. In the absence of such political life, the rule of law becomes a cold technology. Moreover, when large corporate actors dominate states (affected by a declining regulatory role), law becomes a product of the economy, and economy governs the law rather than being governed by it.¶ Contemporary mass cultures operate within a short time-span. Most intellectuals do not acknowledge that it is exactly because of plunder of gold, silver, bioresources and so on that development accelerated in the West, so that underdevelopment is a historically produced victimization of weaker and more enclosed communities and not the disease of lesser people.¶ Prevailing short-term and short-sighted opportunism must be overcome. An analysis of the imperial adventure rendered in legal terms opens up a possibility for a radical rethinking of a model of development defined by Western ideas of progress, development and economic efficiency. A reconfiguration would mean, first and foremost, a clear rejection of an ideology of inherent superiority of Western culture that does not recognize that the West is itself part of something much larger.

#### The impact is extinction – interventionism is unsustainable in the long-term and breeds asymmetric warfare and power balancing that escalates.

Foster 3 (John, Prof. Sociology - U of Oregon, Poli Sci at York U - Toronto, “The new Age of Imperialism,” Monthly Review 55.3)

At the same time, it is clear that in the present period of global hegemonic imperialism the United States is geared above all to expanding its imperial power to whatever extent possible and subordinating the rest of the capitalist world to its interests. The Persian Gulf and the Caspian Sea Basin represent not only the bulk of world petroleum reserves, but also a rapidly increasing proportion of total reserves, as high production rates diminish reserves elsewhere. This has provided much of the stimulus for the United States to gain greater control of these resources—at the expense of its present and potential rivals. But U.S. imperial ambitions do not end there, since they are driven by economic ambitions that know no bounds. As Harry Magdoff noted in the closing pages of The Age of Imperialism in 1969, "it is the professed goal" of U.S. multinational corporations "to control as large a share of the world market as they do of the United States market," and this hunger for foreign markets persists today. Florida-based Wackenhut Corrections Corporation has won prison privatization contracts in Australia, the United Kingdom, South Africa, Canada, New Zealand, and the Netherlands Antilles ("Prison Industry Goes Global," www.futurenet.org, fall 2000). Promotion of U.S. corporate interests abroad is one of the primary responsibilities of the U.S. state. Consider the cases of Monsanto and genetically modified food, Microsoft and intellectual property, Bechtel and the war on Iraq. It would be impossible to exaggerate how dangerous this dual expansionism of U.S. corporations and the U.S. state is to the world at large. As Istvan Meszaros observed in 2001 in Socialism or Barbarism, the U.S. attempt to seize global control, which is inherent in the workings of capitalism and imperialism, is now threatening humanity with the "extreme violent rule of the whole world by one hegemonic imperialist country on a permanent basis...an absurd and unsustainable way of running the world order."\* This new age of U.S. imperialism will generate its own contradictions, amongst them attempts by other major powers to assert their influence, resorting to similar belligerent means, and all sorts of strategies by weaker states and non-state actors to engage in "asymmetric" forms of warfare. Given the unprecedented destructiveness of contemporary weapons, which are diffused ever more widely, the consequences for the population of the world could well be devastating beyond anything ever before witnessed. Rather than generating a new "Pax Americana" the United States may be paving the way to new global holocausts. The greatest hope in these dire circumstances lies in a rising tide of revolt from below, both in the United States and globally. The growth of the anti-globalization movement, which dominated the world stage for nearly two years following the events in Seattle in November 1999, was succeeded in February 2003 by the largest global wave of antiwar protests in human history. Never before has the world's population risen up so quickly and in such massive numbers in the attempt to stop an imperialist war. The new age of imperialism is also a new age of revolt. The Vietnam Syndrome, which has so worried the strategic planners of the imperial order for decades, now seems not only to have left a deep legacy within the United States but also to have been coupled this time around with an Empire Syndrome on a much more global scale--something that no one really expected. This more than anything else makes it clear that the strategy of the American ruling class to expand the American Empire cannot possibly succeed in the long run, and will prove to be its own--we hope not the world's—undoing.

#### **The affirmative model of top-down Western legal development sacralizes the rule of law, which directly ensures military interventions and a fundamentally unequal world order. Our alternative is to rethink democratic development from the bottom-up. Cast your ballot in solidarity with a rising tide of global resistance to against the universalizing, falsely apolitical ‘norms’ of the 1AC.**

Mattei 9 – prof of law @ Hastings

(Ugo, written with Marco de Morpurgo, M.Sc. Candidate, International University College of Turin, BOCCONI SCHOOL OF LAW, GLOBAL LAW & PLUNDER: THE DARK SIDE OF THE RULE OF LAW)

In the complex spectrum of global law, both throughout the era of colonialism and neo-liberal US-led Western imperialism within a pattern of continuity, the rule of law, together with the theory of ‘lack’ and other powerful rhetorical arguments, has been used in order to legitimize political interventions and plunder in the ‘emerging’ economies. The sacred concept of rule of law, whose positive connotations are ‘naturally’ assumed, has been portrayed as the embodiment of a professional and neutral technology, thus being capable of substituting the lack of democratic legitimacy of the institutions that are protagonist in the creation of global law. But its dark side has never been shown or discussed. An imperial rule of law is now a dominant layer for the worldwide legal systems. It is produced, in the interest of international capital, by a variety of institutions, both public and private, all sharing a gap in political legitimacy sometimes referred to as ‘democratic deficit’.31 At the same time, law has been constructively turned into a technology and a mere component of an economic system of capitalism, thus hiding its intrinsic political nature, and annulling the relevance of local political systems, now impotent in front of the dynamics of global law. The ‘dry technology’ of the rule of law penetrates worldwide legal systems without any political discussion at the local level, attempting to create the conditions for the development of market economies, often without success, and causing serious consequences for the less powerful.¶ Under the technology of the rule of law, in its imperial version capable of producing plunder, the essence of the United States’ law hides. In the aftermath of World War II, there was a dramatic change in the pattern of Western legal development. Leading legal ideas once produced in continental Europe and exported through the colonized world are now, for the first time, produced in a common law jurisdiction: the United States. Clearly, the present world dominance of the United States has been economic, military and political first, and only recently legal, so that a ready explanation of legal hegemony can be found within a simple conception of law as a product of the economy.32 Furthermore, US law has been capable of expanding worldwide thanks to its prestige, the high level of professionalization of its attorneys and a series of procedural institutions, that benefit plaintiffs, that allow US courts to have a certain capacity to attract jurisdiction, while showing themselves as courts for universal justice.33¶ The general attitude of the United States has been a very ethnocentric one, and precisely that of showing itself as the guardian of a universal legality, which it is legitimized to export through its courts of law, scholarly production, military and political intervention, and through a set of US-centric international institutions. In recent times, in particular after September 11th 2001 and the declaration of the ‘war on terror’, the US rule of law has come under attack, so that once admiring crowds of lawyers and intellectuals worldwide are now beginning to look upon the United States as an uncivilized old West from the perspective of legal culture, despite the professional prestige still enjoyed by the giant New York law firms and by the US academy.¶ Notwithstanding, there has been no decline in the rhetoric of the rule of law when it comes to foreign relations. Bringing democracy and the rule of law is still used as a justification to keep intruding in foreign affairs. The same can be said for the international financial institutions and their innumerable ‘development’ projects that come packaged with the prestigious wrapping of the rule of law.¶ A rethinking of the very idea of global law is necessary and it must derive from a revaluation of the local dimension, which is currently ignored by the neo-liberal model of development. The production of global law should change its direction, and follow a bottom-up approach, rather than a top-down one, thus being sensitive to the local particularities and complexities.¶ Western spectacular ideas of democracy and the rule of law should be rethought. On this planet, resources are scarce, but there would be more than enough for all to live well. Nobody would admire and respect someone who, at a lunch buffet for seven, ate 90 percent of the food, leaving the other guests to share an amount insufficient for one. In a world history of capitalism in which the rule of law has reproduced this precise ‘buffet’ arrangement on the large scale, admiring the instruments used to secure such an unfair arrangement seems indeed paradoxical. People have to be free to build their own economies.¶ There is nothing inevitable about the present arrangements and their dominant and taken-for- granted certainties. Indeed, it may be that the present legal and political hegemonies suffer from lack: the lack of world culture and of global political realism.

## Case

### Leadership

#### NSC’s relaxed procedural and evidentiary rules undermine commitment to the rule of law – turns the aff

Cole 08, Professor of Law at Georgetown

(David, A CRITIQUE OF “NATIONAL SECURITY COURTS, www.constitutionproject.org/pdf/Critique\_of\_the\_National\_Security\_Courts.pdf)

Most importantly, there is the intrinsic and inescapable problem of definition. Whereas the argument for specialized courts for tax and patent law is that expert judges are particularly necessary given the complex subject-matter, proposals for specialized courts for terrorism trials are based on the asserted need for relaxed procedural and evidentiary rules and are justified on the ground that terrorists do not deserve full constitutional protections. This creates two fundamental constitutional problems. First, justifying departures from constitutional protections on the basis that the trials are for terrorists undermines the presumption of innocence for these individuals. Second, if a conviction were obtained in a national security court using procedural and evidentiary rules that imposed a lesser burden on the government, then the defendant would be subjected to trial before a national security court based upon less of a showing than would be required in a traditional criminal proceeding. The result would be to apply less due process to the question of guilt or innocence, which, by definition, would increase the risk of error. And, if the government must make a preliminary showing that meets traditional rules of procedure and evidence in order to trigger the jurisdiction of a national security court, such a showing would also enable it to proceed via the traditional criminal process.

#### NSC due process deprivations spillover to the rest of the judicial system – magnifies rule of law degradation

Cole 08, Professor of Law at Georgetown

(David, A CRITIQUE OF “NATIONAL SECURITY COURTS, www.constitutionproject.org/pdf/Critique\_of\_the\_National\_Security\_Courts.pdf)

National security courts for criminal prosecutions are not just unnecessary; they are also dangerous. They run the risk of creating a separate and unequal criminal justice system for a particular class of suspects, who will be brought before such specialized courts based on the very allegations they are contesting. Such a system undermines the presumption of innocence for these defendants, and risks a broader erosion of defendants’ rights that could spread to traditional Article III trials. It was Justice Frankfurter who wrote that “It is a fair summary of history to say that the safeguards of liberty have frequently been forged in controversies involving not very nice people.” Committee members strongly believe that the shadow of terrorism must not be the basis for abandoning these fundamental tenets of justice and fairness.

#### NSC’s discriminatory policy undermines international perception of legal legitimacy and devastates soft power

Shulman 09, Law Prof at Pace

(Mark, NATIONAL SECURITY COURTS: STAR CHAMBER OR SPECIALIZED JUSTICE?, ssrn.com/abstract=1328427)

National security or terrorist courts in other countries offer troubling lessons, mostly because of their implications for the respect for civil liberties generally—not only of the accused, but of the wider population. Existing proposals to create such a court in the United States inadequately account for this risk, or explain how it would be minimized or mitigated. Emergency systems in other countries have invariably reduced civil liberties for the general population. It is understandable that governments wish to be seen to be responding to the urgent threats posed by those who use violence to affect policy. However, it is important to recognize that these emergency systems in such diverse jurisdictions as Great Britain, Malaysia, and South Africa have diminished freedoms for society as a whole. This principle lesson derived of foreign experiences is not particularly surprising. Examples abound of domestic emergency measures taken to promote national security that have undermined the base norm presumption of innocence that lies at the center of America’s constitutional order. The largescale internment of Japanese-Americans during the Second World War provides a notorious example. In that case, the federal courts deferred to the Executive’s misguided policy and thereby created a new and heinous rule allowing for internment, displacement, and forced sales of property based on no more than the notion that citizens of a given race might seek to harm the United States. Although the United States has officially apologized for this shameful episode, Korematsu has not been overruled in the two generations since the Supreme Court handed down its 6-3 decision. The Korematsu precedent may have given some legal cover for the large scale detention of Americans of Moslem, Arab, or Middle-Eastern background in the months following September 11.62 These discriminatory policies undermine the soft power America otherwise derives from its role as a leader in promoting respect for human rights. In other countries, emergency powers have had a similarly deleterious effect on civil liberties. In the United Kingdom, in order to address violence originating in troubled Northern Ireland, the government revoked the right to trial by jury for criminal offenses; denied access to legal counsel; held prisoners without charge; and allowed coercive interrogation techniques and admitted confessions elicited because of them, among other measures. In Malaysia, the government transferred judges from their positions to avoid judicial review of its decisions or release of suspects arrested without even probable cause—in violation of well-established constitutional law. In apartheid South Africa, judicial review was revoked for interrogation purposes. These extra-judicial detentions lasted weeks. In addition to radical nationalists, they swept up completely harmless nuns and pastors urging more widespread equality and access to education. Three cases, of course, do not constitute a comprehensive survey or prove the point. Even the Akin Gump survey of 123 domestic cases can lead only to limited conclusions. However, these three examples do offer insights into the threats to liberty posed by special purpose terrorism courts. IV. QUO VADIS? Would a system of national security courts offer the kind of specialized justice necessary for addressing the threat posed by radical Islamists or others who seek to use terrorist means? Or, in a tragic parallel to the Stuart kings’ infamous Star Chamber, would these courts ultimately undermine the nation’s security by degrading both its legal system and the soft power derived from its cherished reputation as a model for justice? On the eve of the inauguration of Barack Obama, these critical questions remain unresolved in the court of “public opinion which alone can here protect the values of democratic government.”

#### NATO cohesion is impossible- too many members and failures in Afghanistan

Alexander Melikishvili- research associate with the James Martin Center for Nonproliferation Studies- 1/26/09, YaleGlobal, NATO’s Double Standards Make for a Hollow Alliance, http://yaleglobal.yale.edu/content/nato%E2%80%99s-double-standards-make-hollow-alliance

As events of the past year demonstrate, NATO faces an existential crisis, reflected in the three aspects underpinning its operations – an inconsistent enlargement policy, diminished internal cohesion and inadequate military planning. Unless NATO can overcome these weaknesses, excitement in Europe about a new era of cooperation with an Obama-led United States may turn out to be premature and groundless. Lost among diplomatic platitudes is the real question of what actually constitutes the set of criteria by which Brussels deems one country to be eligible for NATO membership while another is not. A comparison of Albania and Georgia highlights NATO’s dysfunctional enlargement process of late, raising serious questions about NATO prioritization in membership considerations. At the last NATO summit in April 2008, alliance members unanimously decided to extend membership to Albania. The “Solomonic” wisdom behind admitting Albania, widely recognized as the epicenter of organized crime and corruption in Europe, defies common sense and logic, pointing towards NATO’s double standards with regard to arbitrarily adjusting membership criteria on a case-by-case basis. 1 The unstable character of the Albanian state was highlighted on the eve of the summit: In mid-March a massive explosion at the munitions decommissioning facility just 15 kilometers west of the Albanian capital, Tirana, killed dozens, wounded hundreds and displaced thousands of people. This tragic incident led to the resignation of Albanian Defense Minister Fatmir Mediu, also implicated in an illegal arms-trafficking case. According to details of an ongoing federal investigation, in 2007 Florida-based defense contractor AEY Inc. illegally supplied malfunctioning Chinese-made weapons and munitions from Albanian stockpiles, to the Afghan Army, under terms of a multimillion-dollar Pentagon military-to-military assistance contract. 2 The hypocrisy was on display during a two-day visit by a NATO delegation to Georgia in September. Addressing Tbilisi State University students, NATO Secretary General Jaap de Hoop Scheffer emphasized that Georgia’s progress towards receiving the coveted Membership Action Plan (MAP) – a roadmap intended to facilitate an applicant country’s eventual incorporation into NATO – was contingent on implementation of further democratic reforms by the Georgian government. In response, speaking at the UN General Assembly in New York, Georgian President Mikheil Saakashvili unveiled new reforms aimed at ensuring independence of judiciary, increasing media freedoms and supporting political opposition. Indeed, if judged by the most commonly accepted standards of democratic governance, rule of law and economic development, Albania lags behind Georgia. The Transparency International’s Corruption Perceptions Index 2008 ranks Albania at the 85th position, whereas Georgia ranks 67th. It’s truly mind-boggling that Secretary Scheffer demands greater democratic reforms from Tbilisi while apparently giving a free pass to Tirana’s dismal performance. There’s only one explanation for this discrepancy, and it’s rooted in the combination of guilt of NATO bureaucrats over Albania’s wait in the membership-action antechamber – since 1999 – and US insistence, an unusual byproduct of American involvement in the Balkans in the aftermath of Yugoslavia’s bloody dissolution. Inconsistencies reflected in the selective membership dispensation undermine the founding principles and credibility of the NATO alliance as a whole. Moreover, the relentless pace of enlargement over the past decade and a half has had an adverse impact on NATO’s cohesion. This is particularly evident in the emergence of factions within NATO that led former US Secretary of Defense Donald Rumsfeld to draw distinctions between the “Old” and “New” Europe. His successor, Robert Gates, was more diplomatic in his remarks, but frustrated by an inability to elicit adequate troop commitments from European allies for the Afghanistan stabilization campaign, he too warned of the “two-tiered alliance” in which some members are more willing to fight than others. Several cycles of enlargement clearly had a debilitating effect on NATO’s collective decision making mechanism because the sheer number of voting members grew to the current 26 (or 28, with Albania and Croatia expected to formally join the alliance by April), which invariably complicated policy formulation. Furthermore, deep resentment felt by a number of Western European governments towards the Bush administration in the aftermath of the Iraqi invasion further exacerbated tensions with former Warsaw Pact countries vying for Washington’s attention. Nowhere have the growing cleavages within the alliance been as evident as in Afghanistan, where NATO maintains 50,000-strong contingent under the aegis of the UN-sanctioned International Security Assistance Force. Since August 2003, when NATO took command of the ISAF, this out-of-area operation has repeatedly tested the limits of allied military cooperation in addressing the security challenges in Afghanistan. The US increasingly faces difficulty in forging NATO consensus on the most pressing issues concerning security in Afghanistan. What else can explain that it took close to five years for the allies to reach an accord authorizing military attacks on the country’s burgeoning underground opium-heroin industry? For years, regional experts issued dire warnings that profits from poppy cultivation, which according to UN estimates now account for at least half of Afghanistan’s gross domestic product, support the Taliban comeback. At the October meeting of NATO defense ministers in Budapest, the allies finally hammered out an agreement to authorize military force against Afghan drug lords. However, the NATO members that customarily favor restrictive caveats regarding deployment of their forces, including Germany and Italy, insisted on including a provision that effectively cuts the agreement at its knees. The provision states that attacks on the Afghan narcotics industry will occur only with explicit approval of the respective national governments. In effect, the agreement allows some NATO members to basically opt out of the operations that put their troops in harm’s way. What’s striking is the apparent lack of realization on the part of some European allies that NATO’s failure in Afghanistan will deal a deadly blow to the alliance and may even spell its demise.

#### Terrorists can’t steal, build, or buy a bomb- experts agree

Peter Bergen- fellow @ the New America Foundation and NYU’s Center on Law and Security- Sept 2010, Reevaluating Al-Qa`ida’s Weapons of Mass Destruction Capabilities, Combating Terrorism Center @ West Point, CTC Sentinel, Vol 3 Issue 9, http://www.isn.ethz.ch/isn/Digital-Library/Publications/Detail/?ots591=0c54e3b3-1e9c-be1e-2c24-a6a8c7060233&lng=en&id=122242

Bin Ladin’s and al-Zawahiri’s portrayal of al-Qa`ida’s nuclear and chemical weapons capabilities in their post-9/11 statements to Hamid Mir was not based in any reality, and it was instead meant to serve as psychological warfare against the West. There is no evidence that al-Qa`ida’s quest for nuclear weapons ever went beyond the talking stage. Moreover, al-Zawahiri’s comment about “missing” Russian nuclear suitcase bombs floating around for sale on the black market is a Hollywood construct that is greeted with great skepticism by nuclear proliferation experts. This article reviews al-Qa`ida’s WMD efforts, and then explains why it is unlikely the group will ever acquire a nuclear weapon. Al-Qa`ida’s WMD Efforts In 2002, former UN weapons inspector David Albright examined all the available evidence about al-Qa`ida’s nuclear weapons research program and concluded that it was virtually impossible for al-Qa`ida to have acquired any type of nuclear weapon.8 U.S. government analysts reached the same conclusion in 2002.9 There is evidence, however, that al-Qa`ida experimented with crude chemical weapons, explored the use of biological weapons such as botulinum, salmonella and anthrax, and also made multiple attempts to acquire radioactive materials suitable for a dirty bomb.10 After the group moved from Sudan to Afghanistan in 1996, al-Qa`ida members escalated their chemical and biological weapons program, innocuously code-naming it the “Yogurt Project,” but only earmarking a meager $2,000-4,000 for its budget.11 An al-Qa`ida videotape from this period, for example, shows a small white dog tied up inside a glass cage as a milky gas slowly filters in. An Arabic-speaking man with an Egyptian accent says: “Start counting the time.” Nervous, the dog barks and then moans. After struggling and flailing for a few minutes, it succumbs to the poisonous gas and stops moving. This experiment almost certainly occurred at the Darunta training camp near the eastern Afghan city of Jalalabad, conducted by the Egyptian Abu Khabab.12 Not only has al-Qa`ida’s research into WMD been strictly an amateur affair, but plots to use these types of weapons have been ineffective. One example is the 2003 “ricin” case in the United Kingdom. It was widely advertised as a serious WMD plot, yet the subsequent investigation showed otherwise. The case appeared in the months before the U.S.-led invasion of Iraq, when media in the United States and the United Kingdom were awash in stories about a group of men arrested in London who possessed highly toxic ricin to be used in future terrorist attacks. Two years later, however, at the trial of the men accused of the ricin plot, a government scientist testified that the men never had ricin in their possession, a charge that had been first triggered by a false positive on a test. The men were cleared of the poison conspiracy except for an Algerian named Kamal Bourgass, who was convicted of conspiring to commit a public nuisance by using poisons or explosives.13 It is still not clear whether al-Qa`ida had any connection to the plot.14 In fact, the only post-9/11 cases where al-Qa`ida or any of its affiliates actually used a type of WMD was in Iraq, where al-Qa`ida’s Iraqi affiliate, al-Qa`ida in Iraq (AQI), laced more than a dozen of its bombs with the chemical chlorine in 2007. Those attacks sickened hundreds of Iraqis, but the victims who died in these assaults did so largely from the blast of the bombs, not because of inhaling chlorine. AQI stopped using chlorine in its bombs in Iraq in mid-2007, partly because the insurgents never understood how to make the chlorine attacks especially deadly and also because the Central Intelligence Agency and U.S. military hunted down the bomb makers responsible for the campaign, while simultaneously clamping down on the availability of chlorine.15 Indeed, a survey of the 172 individuals indicted or convicted in Islamist terrorism cases in the United States since 9/11 compiled by the Maxwell School at Syracuse University and the New America Foundation found that none of the cases involved the use of WMD of any kind. In the one case where a radiological plot was initially alleged—that of the Hispanic-American al-Qa`ida recruit Jose Padilla—that allegation was dropped when the case went to trial.16 Unlikely Al-Qa`ida Will Acquire a Nuclear Weapon Despite the difficulties associated with terrorist groups acquiring or deploying WMD and al-Qa`ida’s poor record in the matter, there was a great deal of hysterical discussion about this issue after 9/11. Clouding the discussion was the semantic problem of the ominous term “weapons of mass destruction,” which is really a misnomer as it suggests that chemical, biological, and nuclear devices are all equally lethal. In fact, there is only one realistic weapon of mass destruction that can kill tens or hundreds of thousands of people in a single attack: a nuclear bomb.17 The congressionally authorized Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism issued a report in 2008 that typified the muddled thinking about WMD when it concluded: “It is more likely than not that a weapon of mass destruction will be used in a terrorist attack somewhere in the world by the end of 2013.”18 The report’s conclusion that WMD terrorism was likely to happen somewhere in the world in the next five years was simultaneously true but also somewhat trivial because terrorist groups and cults have already engaged in crude chemical and biological weapons attacks.19 Yet the prospects of al-Qa`ida or indeed any other group having access to a true WMD—a nuclear device—is near zero for the foreseeable future. If any organization should have developed a serious WMD capability it was the bizarre Japanese terrorist cult Aum Shinrikyo, which not only recruited 300 scientists—including chemists and molecular biologists—but also had hundreds of millions of dollars at its disposal.20 Aum embarked on a large-scale WMD research program in the early 1990s because members of the cult believed that Armageddon was fast-approaching and that they would need powerful weapons to survive. Aum acolytes experimented with anthrax and botulinum toxin and even hoped to mine uranium in Australia. Aum researchers also hacked into classified networks to find information about nuclear facilities in Russia, South Korea and Taiwan.21 Sensing an opportunity following the collapse of the Soviet Union, Aum recruited thousands of followers in Russia and sent multiple delegations to meet with leading Russian politicians and scientists in the early 1990s. The cult even tried to recruit staff from inside the Kurchatov Institute, a leading nuclear research center in Moscow. One of Aum’s leaders, Hayakawa Kiyohide, made eight trips to Russia in 1994, and in his diary he made a notation that Aum was willing to pay up to $15 million for a nuclear device.22 Despite its open checkbook, Aum was never able to acquire nuclear material or technology from Russia even in the chaotic circumstances following the implosion of the communist regime.23 In the end, Aum abandoned its investigations of nuclear and biological weapons after finding them too difficult to acquire and settled instead on a chemical weapons operation, which climaxed in the group releasing sarin gas in the Tokyo subway in 1995. It is hard to imagine an environment better suited to killing large numbers of people than the Tokyo subway, yet only a dozen died in the attack.24 Although Aum’s WMD program was much further advanced than anything al-Qa`ida developed, even they could not acquire a true WMD. It is also worth recalling that Iran, which has had an aggressive and well-funded nuclear program for almost two decades, is still some way from developing a functioning nuclear bomb. Terrorist groups simply do not have the resources of states. Even with access to nuclear technology, it is next to impossible for terrorist groups to acquire sufficient amounts of highly enriched uranium (HEU) to make a nuclear bomb. The total of all the known thefts of HEU around the world tracked by the International Atomic Energy Agency between 1993 and 2006 was just less than eight kilograms, well short of the 25 kilograms needed for the simplest bomb;25 moreover, none of the HEU thieves during this period were linked to al-Qa`ida. Therefore, even building, let alone detonating, the simple, gun-type nuclear device of the kind that was dropped on Hiroshima during World War II would be extraordinarily difficult for a terrorist group because of the problem of accumulating sufficient quantities of HEU. Building a radiological device, or “dirty bomb,” is far more plausible for a terrorist group because acquiring radioactive materials suitable for such a weapon is not as difficult, while the construction of such a device is orders of magnitude less complex than building a nuclear bomb. Detonating a radiological device, however, would likely result in a relatively small number of casualties and should not be considered a true WMD. There is also the concern that a state may covertly provide a nuclear device to a terrorist group. This was one of the underlying rationales to topple Saddam Hussein’s government in Iraq in 2003. Yet governments are not willing to give their “crown jewels” to organizations that they do not control, and giving a terrorist group a nuclear weapon would expose the state sponsor to large-scale retaliation.26 The United States destroyed Saddam’s regime on the mere suspicion that he might have an active nuclear weapons program and that he might give some kind of WMD capacity to terrorists. Also, nuclear states are well-aware that their nuclear devices leave distinctive signatures after they are detonated, which means that even in the unlikely event that a government gave a nuclear weapon to terrorists, their role in the plot would likely be discovered.27 Just as states will not give nuclear weapons to terrorists, they are unlikely to sell them either. This leaves the option of stealing one, but nuclear-armed states, including Pakistan, are quite careful about the security measures they place around the most strategic components of their arsenals. After 9/11, the United States gave Pakistan approximately $100 million in aid to help secure its nuclear weapons.28 The U.S. Department of Defense has assessed that “Islamabad’s nuclear weapons are probably stored in component form,”29 meaning that the weapons are stored unassembled with the fissile core separated from the non-nuclear explosive.30 Such disassembling is just one layer of protection against potential theft by jihadists.31 A further layer of protection is Permissive Action Links (PAL), essentially electronic locks and keys designed to prevent unauthorized access to nuclear weapons; Pakistan asserts that it has the “functional equivalent” of these.32 As a result of these measures, Michael Maples, the head of the U.S. Defense Intelligence Agency at the time, told the Senate Armed Services Committee in March 2009 that “Pakistan has taken important steps to safeguard its nuclear weapons.”33

#### No bioweapon could kill off humanity – natural resistance and technology check.

Easterbrook 3

[Gregg, editor of The New Republic, Wired, "We're All Gonna Die!" 11/7, http://www.wired.com/wired/archive/11.07/doomsday.html]

3. Germ warfare! Like chemical agents, biological weapons have never lived up to their billing in popular culture. Consider the 1995 medical thriller Outbreak, in which a highly contagious virus takes out entire towns. The reality is quite different. Weaponized smallpox escaped from a Soviet laboratory in Aralsk, Kazakhstan, in 1971; three people died, no epidemic followed. In 1979, weapons-grade anthrax got out of a Soviet facility in Sverdlovsk (now called Ekaterinburg); 68 died, no epidemic. The loss of life was tragic, but no greater than could have been caused by a single conventional bomb. In 1989, workers at a US government facility near Washington were accidentally exposed to Ebola virus. They walked around the community and hung out with family and friends for several days before the mistake was discovered. No one died. The fact is, evolution has spent millions of years conditioning mammals to resist germs. Consider the Black Plague. It was the worst known pathogen in history, loose in a Middle Ages society of poor public health, awful sanitation, and no antibiotics. Yet it didn't kill off humanity. Most people who were caught in the epidemic survived. Any superbug introduced into today's Western world would encounter top-notch public health, excellent sanitation, and an array of medicines specifically engineered to kill bioagents. Perhaps one day some aspiring Dr. Evil will invent a bug that bypasses the immune system. Because it is possible some novel superdisease could be invented, or that existing pathogens like smallpox could be genetically altered to make them more virulent (two-thirds of those who contract natural smallpox survive), biological agents are a legitimate concern. They may turn increasingly troublesome as time passes and knowledge of biotechnology becomes harder to control, allowing individuals or small groups to cook up nasty germs as readily as they can buy guns today. But no superplague has ever come close to wiping out humanity before, and it seems unlikely to happen in the future.

### Judicial Activism

#### **No impact to judicial deference – these are the NEXT TWO PARAGRAPHS OF YOUR CARD**

Knowles 9 [Spring, 2009, Robert Knowles is an Acting Assistant Professor, New York University School of Law, “American Hegemony and the Foreign Affairs Constitution”, ARIZONA STATE LAW JOURNAL, 41 Ariz. St. L.J. 87]

But there are limits. Although speed matters a great deal during crises, its importance diminishes over time and other institutional competences assume greater importance. When decisions made in response to emergencies are cemented into policy over the course of years, the courts' institutional capabilities - information-forcing and stabilizing characteristics - serve an important role in evaluating those policies. n394 Once a sufficient amount of time has passed, the amount of deference given to executive branch determinations should be reduced so that it matches domestic deference standards. One of the core realist arguments for deference, the risk of collateral consequences, carries far less weight under a hegemonic model. Court decisions have consequences for third parties in the domestic realm all of the time. Given the hierarchical nature of U.S. hegemony, the response from other nations is likely to be more similar to the response by domestic parties than in the past. A typical example invoked by deferentialists involves a court decision - for example, recognizing the government of Taiwan - that angers the Chinese government. n395 Although such a scenario is not out of the question, there are several reasons why the consequences would not be as dire as often predicted by deferentialists. American military dominance [\*151] makes it highly unlikely that war would result from such an incident. n396 Moreover, China, too, cares about legitimacy and is far more likely to retaliate in some other way, possibly harming the United States' interests, but through means that would capture attention in the U.S. domestic realm, leading to accountability opportunities. Assuming that the decision is non-constitutional, the Chinese government could seek to have its preferred interpretation enacted into law. Indeed, it is entirely possible that other nations would be content with conflicting decisions from different branches of the U.S. government. Suppose that the President roundly condemns the offensive court decision and declares the judge to be an "activist." If the damage done by the court decision was largely dignitary, an angry denouncement from the executive branch may be all that is needed. Past empires relied on multi-vocal signaling to maintain imperial rule. n397 But with the advent of globalization, intra-executive branch multi-vocality is much more difficult because advances in co mmunication permit various parts of the "rim" to communicate with one another. n398 The American separation-of-powers system provides a way around this problem, allowing the U.S. government to "speak in different voices" at once.

#### **U.S. drone use doesn’t cause prolif – no international precedent.**

Etzioni 13, Professor of International Relations @ George Washington University

(Aimtai Etzioni, adviser to the Carter administration, “The Great Drone Debate”, Military Review, 4/2013, http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview\_20130430\_art004.pdf)

Other critics contend that by the United States ¶ using drones, it leads other countries into making and ¶ using them. For example, Medea Benjamin, the cofounder of the anti-war activist group CODEPINK ¶ and author of a book about drones argues that, “The ¶ proliferation of drones should evoke reﬂection on the ¶ precedent that the United States is setting by killing ¶ anyone it wants, anywhere it wants, on the basis of ¶ secret information. Other nations and non-state entities are watching—and are bound to start acting in ¶ a similar fashion.”60 Indeed scores of countries are ¶ now manufacturing or purchasing drones. There can ¶ be little doubt that the fact that drones have served ¶ the United States well has helped to popularize them. ¶ However, it does not follow that United States ¶ should not have employed drones in the hope that such a show of restraint would deter others. First ¶ of all, this would have meant that either the United ¶ States would have had to allow terrorists in hard-to-reach places, say North Waziristan, to either ¶ roam and rest freely—or it would have had to use ¶ bombs that would have caused much greater collateral damage. ¶ Further, the record shows that even when the ¶ United States did not develop a particular weapon, ¶ others did. Thus, China has taken the lead in the ¶ development of anti-ship missiles and seemingly ¶ cyber weapons as well. One must keep in mind ¶ that the international environment is a hostile ¶ one. Countries—and especially non-state actors—¶ most of the time do not play by some set of selfconstraining rules. Rather, they tend to employ ¶ whatever weapons they can obtain that will further ¶ their interests. The United States correctly does ¶ not assume that it can rely on some non-existent ¶ implicit gentleman’s agreements that call for the ¶ avoidance of new military technology by nation X ¶ or terrorist group Y—if the United States refrains ¶ from employing that technology. I am not arguing that there are no natural norms ¶ that restrain behavior. There are certainly some ¶ that exist, particularly in situations where all parties beneﬁt from the norms (e.g., the granting of ¶ diplomatic immunity) or where particularly horrifying weapons are involved (e.g., weapons of ¶ mass destruction). However drones are but one ¶ step—following bombers and missiles—in the ¶ development of distant battleﬁeld technologies. ¶ (Robotic soldiers—or future ﬁghting machines—¶ are next in line). In such circumstances, the role ¶ of norms is much more limited.

#### China won’t use drones to resolve territorial disputes – fears backlash

**Erickson and Strange 13** [Andrew Erickson, associate professor at the Naval War College and Associate in Research at Harvard University's Fairbank Centre, and Austin Strange, researcher at the Naval War College's China Maritime Studies Institute and graduate student at Zhejiang University, 5-29-13 China has drones. Now how will it use them? Foreign Affairs, McClatchy-Tribune, 29 May 2013, http://www.nationmultimedia.com/opinion/China-has-drones-Now-how-will-it-use-them-30207095.html, da 8-3-13]

Drones, able to dispatch death remotely, without human eyes on their targets or a pilot's life at stake, make people uncomfortable - even when they belong to democratic governments that presumably have some limits on using them for ill. (On May 23, in a major speech, US President Barack Obama laid out what some of those limits are.) An even more alarming prospect is that unmanned aircraft will be acquired and deployed by authoritarian regimes, with fewer checks on their use of lethal force.¶ Those worried about exactly that tend to point their fingers at China. In March, after details emerged that China had considered taking out a drug trafficker in Myanmar with a drone strike, a CNN blog post warned, "Today, it's Myanmar. Tomorrow, it could very well be some other place in Asia or beyond." Around the same time, a National Journal article entitled "When the Whole World Has Drones" teased out some of the consequences of Beijing's drone programme, asking, "What happens if China arms one of its remote-piloted planes and strikes Philippine or Indian trawlers in the South China Sea?"¶ Indeed, the time to fret about when China and other authoritarian countries will acquire drones is over: they have them. The question now is when and how they will use them. But as with its other, less exotic military capabilities, Beijing has cleared only a technological hurdle - and its behaviour will continue to be constrained by politics.¶ China has been developing a drone capacity for over half a century, starting with its reverse engineering of Soviet Lavochkin La-17C target drones that it had received from Moscow in the late 1950s. Today, Beijing's opacity makes it difficult to gauge the exact scale of the programme, but according to Ian Easton, an analyst at the Project 2049 Institute, an American think-tank devoted to Asia-Pacific security matters, by 2011 China's air force alone had over 280 combat drones. In other words, its fleet of unmanned aerial vehicles is already bigger and more sophisticated than all but the United States'; in this relatively new field Beijing is less of a newcomer and more of a fast follower. And the force will only become more effective: the Lijian ("sharp sword" in Chinese), a combat drone in the final stages of development, will make China one of the very few states that have or are building a stealth drone capacity.¶ This impressive arsenal may tempt China to pull the trigger. The fact that a Chinese official acknowledged that Beijing had considered using drones to eliminate the Myanmar drug trafficker, Naw Kham, makes clear that it would not be out of the question for China to launch a drone strike in a security operation against a non-state actor. Meanwhile, as China's territorial disputes with its neighbours have escalated, there is a chance that Beijing would introduce unmanned aircraft, especially since India, the Philippines and Vietnam distantly trail China in drone funding and capacity, and would find it difficult to compete. Beijing is already using drones to photograph the Senkaku/Diaoyu islands it disputes with Japan, as the retired Chinese major-general Peng Guangqian revealed earlier this year, and to keep an eye on movements near the North Korean border.¶ Beijing, however, is unlikely to use its drones lightly. It already faces tremendous criticism from much of the international community for its perceived brazenness in continental and maritime sovereignty disputes. With its leaders attempting to allay notions that China's rise poses a threat to the region, injecting drones conspicuously into these disputes would prove counterproductive. China also fears setting a precedent for the use of drones in East Asian hotspots that the United States could eventually exploit. For now, Beijing is showing that it understands these risks, and to date it has limited its use of drones in these areas to surveillance, according to recent public statements from China's Defence Ministry.

# 2NC

### 2NC Overview

#### **Privilege this form of structural violence in your impact valuations – there is an ethical need to keep it from being invisible – it’s also an exponential form of attritional violence so even if the aff only causes a “small” amount of structural violence, the terminal impact is huge.**

Nixon 11

(Rob, Rachel Carson Professor of English, University of Wisconsin-Madison, Slow Violence and the Environmentalism of the Poor, pgs. 2-3)

Three primary concerns animate this book, chief among them my conviction that we urgently need to rethink-politically, imaginatively, and theoretically-what I call "slow violence." By slow violence I mean a violence that occurs gradually and out of sight, a violence of delayed destruction that is dispersed across time and space, an attritional violence that is typically not viewed as violence at all. Violence is customarily conceived as an event or action that is immediate in time, explosive and spectacular in space, and as erupting into instant sensational visibility. We need, I believe, to engage a different kind of violence, a violence that is neither spectacular nor instantaneous, but rather incremental and accretive, its calamitous repercussions playing out across a range of temporal scales. In so doing, we also need to engage the representational, narrative, and strategic challenges posed by the relative invisibility of slow violence. Climate change, the thawing cryosphere, toxic drift, biomagnification, deforestation, the radioactive aftermaths of wars, acidifying oceans, and a host of other slowly unfolding environmental catastrophes present formidable representational obstacles that can hinder our efforts to mobilize and act decisively. The long dyings-the staggered and staggeringly discounted casualties, both human and ecological that result from war's toxic aftermaths or climate change-are underrepresented in strategic planning as well as in human memory. Had Summers advocated invading Africa with weapons of mass destruction, his proposal would have fallen under conventional definitions of violence and been perceived as a military or even an imperial invasion. Advocating invading countries with mass forms of slow-motion toxicity, however, requires rethinking our accepted assumptions of violence to include slow violence. Such a rethinking requires that we complicate conventional assumptions about violence as a highly visible act that is newsworthy because it is event focused, time bound, and body bound. We need to account for how the temporal dispersion of slow violence affects the way we perceive and respond to a variety of social afflictions-from domestic abuse to posttraumatic stress and, in particular, environmental calamities. A major challenge is representational: how to devise arresting stories, images, and symbols adequate to the pervasive but elusive violence of delayed effects. Crucially, slow violence is often not just attritional but also exponential, operating as a major threat multiplier; it can fuel long-term, proliferating conflicts in situations where the conditions for sustaining life become increasingly but gradually degraded.

#### **If we win that legal modeling produces economic inequality and poverty, there will be backlash to the modeling that guts all aff solvency – turns the case.**

Tamanaha 8 – prof of law @ Hammond

(Brian, The Dark Side of the Relationship Between the Rule of Law and Liberalism, NYU Journal of Law & Liberty)

Despite positioning themselves as defenders of liberty—a claim that is merited on its own terms—this article has shown a consistent pattern of liberals in the classical vein trying to prevent, narrow, invalidate, or discredit democratically produced legislation that seeks to redistribute property or temper market mechanisms to further competing aims. At the turn of the 20th century this was evident in the actions of U.S. courts that struck or narrowed social welfare and labor legislation; at the turn of the 21st century this is evident in the neoliberal package of reforms imposed on developing countries seeking aid.123 For anyone who sees democracy—the exercise of political choice over one’s affairs—as an expression of liberty, this side of liberalism involves persistent attempts to invoke the rule of law to restrict the exercise of political liberty. This is the dark side of the rule of law within liberal theory.¶ Those in the West who find solace in the fact that developing countries have thus far suffered the brunt of the aforementioned anti-democratic imposition of neoliberal reforms are perhaps un- duly optimistic in thinking they have escaped a similar fate. This very same process, with similar anti-democratic tendencies, is taking place writ large around the globe as the imperatives of market capitalism increasingly dictate policies to national governments.124 The “great transformation” Polanyi described involved the market coming to occupy the dominant organizing position within capitalist societies.125 We may well be witnessing the completion of this transformation, not just in the sense that every individual nation comes to be organized in this fashion, but in the further sense that the entire community of nations (the global order) is increasingly organized in the same terms. Liberal mechanisms and institutions functioning at the transnational level (for example, the World Trade Organization) are already coalescing into a de facto kind of “economic constitutionalism” which, through the operation of the rule of law, constrains, overrides, and dictates to domestic law making in connection with liberal economic matters (affecting property rights, tariffs, subsidies, efforts to protect jobs). In the past, natural law, the common law, and constitutional provisions provided the controlling norms that were enforced by the rule of law. In the future, if current developments bear out, it will be unadulterated liberal economic norms that control world-wide. Liberals will view this prospect happily, but individuals and societies that prefer other values above (or equal to) material improvement will find it alienating and disempowering.¶ There is also a dark side for the rule of law in this relation- ship. As I have argued elsewhere,126 the rule of law originated prior to liberalism and can exist independent of liberalism. Liberals tend to obscure this in their jealous identification of the rule of law with liberalism. From a broader perspective, the singular achievement of the rule of law is its insistence that governments must act in accordance with the law—an essential restraint that is valuable in all societies regardless of their social, cultural, economic, or political orientation. In view of the awesome power and resources governments can wield, holding the government to legal restraints is a universal good.¶ The risk in recent developments is that the rule of law is ripe to be tainted by its close identification with liberalism, particularly in developing countries. A number of these countries have suffered from the adverse consequences of neoliberal reforms;127 the disparity in wealth has increased to new heights in many countries, without any evident improvement for the poor majority;128 and in many of these societies the populace had little say over whether to accept or modify these reforms. International development organizations now divert money away from infrastructure projects in favor of rule of law projects, like training judges and police, and drafting and implementing legal codes that protect property and foreign investment. In all these various activities, the “rule of law” is put forth as the “front man” for the liberal package. If this initiative goes badly in any number of possible ways owing to an innumerable complex of local and global factors, as seems likely to occur in many places, if substantial pain is suffered without the promised economic benefits to the general public, if courts are perceived to defend the rich who enjoy increasing wealth while most in society are left wanting, the rule of law may be held responsible or tarnished, viewed by the populace with suspicion or cynicism— making it all the harder to implant and build the rule of law.¶ It would be a tragic paradox if the great liberal advocates for the rule of law contributed to preventing it from taking hold and spreading around the world.

#### **No risk of offense for them – modeling of legal norms is a vague, shifting signifier – not supported by evidence, the concept is only meaningful for neoliberal political manipulation**

Mattei 9 – prof of law @ Hastings

(Ugo, written with Marco de Morpurgo, M.Sc. Candidate, International University College of Turin, BOCCONI SCHOOL OF LAW, GLOBAL LAW & PLUNDER: THE DARK SIDE OF THE RULE OF LAW)

The expression ‘rule of law’ has gained currency well outside the specialized learning of lawyers. It has reached political and cultural spheres, entering everyday discourse and media language, it is pronounced in countless political speeches and promenades on the agendas of private and public actors.¶ Unfortunately, the term has incrementally lost clarity and is today interpreted in widely disparate ways. ‘Rule of law’ is almost never carefully defined as a concept; users of the expression allude to meanings that they assume to be clear and objective but are not so. Rule of law has thus become part of that dimension of tacit knowledge, described by Polanyi in his classic study of human communications.6 Naturally, this would be a perfectly innocent and common phenomenon, not worthy of inquiry, were it not for the weighty political implications of the phrase in different contexts.7¶ The connotations of the expression ‘rule of law’ have always been implicitly positive. Today, the concept is inextricably linked to the notion of democracy, thus becoming a powerful, almost indisputable, positively loaded ideal. Who could argue against a society governed under democracy and the rule of law?¶ The rule of law lives today in a comfortable limbo, stretched to fit the needs of every side of the political spectrum as a symbol or an icon rather than as a real-life institutional arrangement with its pros and cons to be discussed and understood as those of any other cultural artefact. It is necessary to get to a better understanding of this powerful political weapon, and to question its almost sacred status, by analyzing it as a Western cultural artifact, closely connected with the diffusion of Western political and economic domination.

### 2NC Framework

#### **Everything we do, everything we read forms us as subjects as the world – social change cannot be effected in the world unless there is a vocabulary to construct subjects that engage in a new way of knowing – the alt is a formation of new ethical subjects via the care of the self – the affirmative solidifies dominant structures and knowledges that actively prevent ethics.**

Scott 9 – prof of philosophy @ Vanderbilt

(Charles, Journal of Medicine and Philosophy, 34: 350–367, Foucault, Genealogy, Ethics)

In Foucault’s analysis of the May 1968 uprising in France, he said that even though “things were coming apart” there did not “exist any vocabulary capable of expressing that process” (Foucault, 2000, 271). We could say on Foucault’s terms that there did not exist a way of knowing (a subject of knowledge) and the language and concepts suited for the complex event of France’s transformation. A momentous event happened without adequate “tools” for its recognition, analysis, and appropriation. Consequently, in the following dispersion of quarreling groups and political factions, the 1968 crisis did not at first become an effective discursive event that opened up a full range of apparent problems and transformations for formal knowledge. That would require a knowing subject that was turned away from the strongest discursive options, such as those of the current Humanists, Marxists, Maoists, French colonialists, and French cultural supremacists. So much was falling apart in France at the time that a subject of knowledge was needed that formed in the interconnecting French crises, a subject informed by marginal experiences in comparison to the experiences recognized by the dominant discourses, marginalized experiences like those of Algerian soldiers, French prisoners, people oppressed by French colonialism, people hammered down by Stalin’s communism or the Proletarian Cultural Revolution in China, and people in highly energized, non-French cultures: a subject that developed with the voices and experiences that were on the margins of the older and authoritative French way of life.¶ In spite of the stammering and stumbling in its aftermath, however, May, 1968 opened an opportunity for a new “vocabulary,” a new discourse, and a new ethos for recognizing and knowing. Its event made possible a transitional and transformative knowing subject whose relative freedom and lack of establishment constituted a major, constructive epistemic difference from the accepted discourses. Much more could be said on this issue, but my present, limited points are that in the context of Foucault’s thought, transformation of the knowing subject constitutes an ethical event; and ethics on an individual level takes place as people work on themselves to be able to change themselves enough to know differently and to transform what is evident about others (Foucault, 2000, 241–2).14 These two kinds of transformation take place in genealogical knowing as Foucault conceives and practices it.¶ Two different senses for ethics are at work here. One sense refers to ways of life that are constituted by discourses, institutions, and practices—by all manner of power formations that are not authored by singular individuals and that are ingrained in people’s lives inclusive of their judgment, knowledge, and codes of behavior. A society, of course, can have a variety of overlapping or competing ways of life, a variety of ethical environments, and changes in these environments would compose ethical changes in this broad sense of “ethical.” The knowledge that genealogy generates comprises a different discourse from many established ones and puts in question many aspects of Western society, especially around the topics of madness, sex, crime, normalcy, social/political suppression of people, and mechanisms of regulation and control. It challenges significant parts of our social environment, encourages deliberation and critique, and intends to make a differential impact on contemporary ways of life. In addition to his writing, Foucault was active in many causes designed to change political and social formations and to have a broad social impact. He played a leading role, for example, in support of Vietnamese boat people who were fleeing from persecution and being ignored by Western governments. He was active in prison reform movements. He spoke out against what he found to be unacceptable injustices in Poland and equally unacceptable silence in their regard in the West, against a Realpolitik that ignores suppression of people and their liberties in countries other than one’s own. He showed in multiple ways that passionate support of institutional transformation and of suppressed and suffering people can be carried out without Humanism or other forms of universalizing or totalizing discourse.¶ A second sense of ethics for Foucault means a work on the self by the self.15 He understood, for example, his writing (and his interviews) as processes of self-formation: “I haven’t written a single book that was not inspired, at least in part, by a direct personal experience,” an experience that he wants to understand better by finding a different vocabulary, changed combinations of concepts, and the mutations they bring by connecting with aspects of experience that are barely emerging at the borders of his awareness (Foucault, 2000, 244). His books, he says, compose experiences inclusive of his own “metamorphosis” as he writes them and comes to a transformed connection with their topics. He would also like for his books to provide readers with something akin to his experience, to bring us to our limits of sense where transformations can occur (Foucault, 2000, 244). The sense of ethics in this case is focused by individual experiences and the care they exercise in connecting with them. In care for themselves, they work at maintaining or altering their behavior and attitudes to appropriate themselves to their experiences.16 Foucault says that his books are “like invitations and public gestures” to join in the book’s process, a process that he finds transformative of aspects of contemporary life and potentially, should individuals join in, transformative of the way they understand and connect with themselves (Foucault, 2000, 245–6).¶ Care for self has a very long lineage that Foucault spent his last years investigating. Indeed, understanding himself without metaphysical help or universalized solutions was one aspect of his caring self-relation. He carried out a project, deeply rooted in a Western tradition that makes caring for oneself inseparable from the ways one knows oneself, the world, and others. In his own process, he finds repeated instances of change in his self-world relation as he experiences the impact of what he is coming to know at the borders of his knowledge and identity. When these boundary-experiences (he calls them limit-experiences) occur, he says, the clarity of some aspects of his identity dies in the impact of what he is coming to find. His affections and behavior often change. As an author he attempts to write into his books these very processes for the reader’s possible engagement.¶ If I find through one of his books, for example, a way of knowing that makes clear some of the dangers inherent in a well-established body of knowledge or a mainstream institution, I have an opportunity for assessing those dangers and choosing how I will connect with them and my experience of them. I might find that what I know and the way I know are violated by what Foucault’s work shows. I might find his approach and the knowledge that it offers highly questionable or irrelevant for my life. I might experience new questions, a need for change, an unexpected dissatisfaction with what I have been accepting as true and good. If Foucault’s works carry out their intention and if I read them carefully, I am engaged in an experience that he found transformative and that will make room for choices and problems that I can experience and that might bring me to an edge where what I know meets a limit and the possibility for an altered discourse and subjectivity. Coming in this way to an edge, a limit of the way I know and who I am in such knowing brings together the epistemic and personal aspects of ethical experience. The very act of caring for myself in this instance interrupts the subliminal processes of normalization and sets in motion another kind of dynamics as I come to the limits of my “authorized” experience and the emergence of a different kind of experience. I am caring for myself, impacting my own affections, values, and way of knowing. The dynamics of what Foucault calls biopower (the powerful complex of social forces that regulate human behavior by means of, for example, health care delivery, education, and moral legislation in both broad and “corpuscular” ways) are interrupted by a different dynamics that builds individual autonomy. Self-caring instead of the anonymous dynamics of normalization begins to form my self’s relation to itself. How will I appropriate the experience of limits and their transgression by emerging “voices”, realities, and intensities? Who shall I be in their impact? How will I present myself to myself and my environment should I affirm what is happening in the margins of my established identity?

#### **This is a comparatively more productive strategy than the aff’s hubristic attempts to change the world – only our framework produces an ethical self that can create productive micropolitics.**

Chandler 13 – prof of IR @ Westminster

(The World of Attachment? The Post-humanist Challenge to Freedom and Necessity, Millenium: Journal of International Studies, 41(3), 516– 534)

The world of becoming thereby is an ontologically flat world without the traditional hierarchies of existence and a more shared conception of agency. For Bennett, therefore, ‘to begin to experience the relationship between persons and other materialities more horizontally, is to take a step toward a more ecological sensibility’.78 Here there is room for human agency but this agency involves a deeper understanding of and receptivity to the world of objects and object relations. Rather than the hubristic focus on transforming the external world, the ethico-political tasks are those of work on the self to erase hubristic liberal traces of subject-centric understandings, understood to merely create the dangers of existential resentment. Work on the self is the only route to changing the world. As Connolly states: ‘To embrace without deep resentment a world of becoming is to work to “become who you are”, so that the word “become” now modifies “are” more than the other way around.’ Becoming who you are involves the ‘microtactics of the self’, and work on the self can then extend into ‘micropolitics’ of more conscious and reflective choices and decisions and lifestyle choices leading to potentially higher levels of ethical self-reflectivity and responsibility. Bennett argues that against the ‘narcissism’ of anthropomorphic understandings of domination of the external world, we need ‘some tactics for cultivating the experience of our selves as vibrant matter’. Rather than hubristically imagining that we can shape the world we live in, Bennett argues that: ‘Perhaps the ethical responsibility of an individual human now resides in one’s response to the assemblages in which one finds oneself participating. Such ethical tactics include reflecting more on our relationship to what we eat and considering the agentic powers of what we consume and enter into an assemblage with. In doing so, if ‘an image of inert matter helps animate our current practice of aggressively wasteful and planet-endangering consumption, then a materiality experienced as a lively force with agentic capacity could animate a more ecologically sustainable public’. For new materialists, the object to be changed or transformed is the human – the human mindset. By changing the way we think about the world and the way we relate to it by including broader, more non-human or inorganic matter in our considerations, we will have overcome our modernist ‘attachment disorders’ and have more ethically aware approaches to our planet. In cultivating these new ethical sensibilities, the human can be remade with a new self and a ‘new self-interest’.

#### **You don’t understand law – only the K solves education**

Mattei 3 – prof of law @ Hastings

(ugo, Global Jurist Frontiers Vol 3 Issue 2, A Theory of Imperial Law: A Study on U.S. Hegemony and the Latin Resistance)

As pointed out in a recent essay, traditional comparative law is particularly ill- equipped to tackle the critical analysis necessary in order to study and understand the “new” legal systems of the global world, those non-territorial suppliers of law that¶ 121¶ characterize the present landscape (WTO, IMF, and so forth). Indeed, traditional¶ comparative law is prisoner of a territorial national paradigm of inquiry that is all but dead as a tool for understanding legal globalization. Thus, in order for the comparativist to become an effective global lawyer, it is necessary to rethink radically the modern idea of borders. Tools must be invented to compare non-territorial legal systems between themselves as well as with territorial ones.¶ The a-critical reception of law and economics, with its grand discursive strategy based on efficiency and objectivity, then becomes the ideological apparatus of global authority. Alternatively, when eventually (if at any point) the post-modern vein of U.S.¶ law and economics becomes understood, the reception will remain embedded in 122¶ postmodernism, “the logic by which global capital operates.”

### AT: Case Outweighs

#### Claiming that war impacts come first directly kills the potential of our alternative – solidifies militaristic structures

Martin 90

(Brian, Uprooting War, http://uow.edu.au/arts/sts/bmartin/pubs/90uw/uw02.html; Jacob)

Focusing on the roots of war, such as political and economic inequality, suggests that war should be seen as only one of a range of social problems, and that the elimination of war must go hand in hand with elimination of other problems. In terms of strategies, this means that war should not be given undue attention compared to other social problems. Campaigns to oppose sexism, heterosexism, economic exploitation, racism, poverty, political repression, alienation and environmental degradation are also a contribution to the overall antiwar effort in as much as they are oriented to challenge and replace oppressive social structures.¶ An implication of this principle is that campaigns of different social movements should be linked at the level of strategy, and should be mutually stimulating and provide mutual learning. This already happens to some extent, for example when feminists emphasise the fostering of aggressiveness in men as a factor in war, or when antiwar activists support environmentalists opposed to nuclear power.¶ On the other hand, antiwar movements, like other social movements, often adopt strategies or demands which have little relevance to other social problems. One example is the demand for a nuclear freeze, promoted heavily in the United States in the 1980s. This demand, that the United States and Soviet governments halt new developments in or additions to their nuclear arsenals, has little immediate relevance to other social problems. This is no coincidence. The nuclear freeze campaign, which is based on influencing state elites by public pressure, has worked through existing structures rather than attempting to transform them.¶ To claim that the problem of war, or nuclear war in particular, is so pressing that it should be given priority over other issues is bad politics. It cuts the antiwar movement off from other social movements vital to opposing war-linked structures. And it often leads to strategies such as the nuclear freeze which do not address the roots of war. The aim should not be to set up hierarchies of oppression, but to link social issues and movements in theory and action.

### AT: Perm

#### **No perms – hegemony of U.S. law crowds out all alternatives**

Mattei 3 – prof of law @ Hastings

(ugo, Global Jurist Frontiers Vol 3 Issue 2, A Theory of Imperial Law: A Study on U.S. Hegemony and the Latin Resistance)

In the course of twenty years, the fundamental characteristics of U.S. law, by a process of naturalization and of technological transformation of the legal discourse, have ceased to be seen as one possible path in the law and, having turned into imperial law, in the making of such imperial law, alternative models foreign to the U.S. cultural imprinting have been abandoned or unable to develop fully because of the irresistible force of U.S. legal expansionism, which is grounded in a “market prone” reactive philosophy. Such alternative models might be seen as patterns of resistance, in the sense that they reflect deep traditional characteristics of what is now a new periphery, hastily abandoned to follow models produced at the center. Such counter-forces have different characteristics and different degrees of intensity. The aggregate of such counter-trends roughly outlines a possible alternative model that shows some interesting features for the development of an antagonistic alternative to the present path of legal globalization. The previous cursory analysis of the recessive trends in the process of Americanization of European law offers the traits of a European social way, grounded in the central position of the welfare State, in which the public domain and the domain of politics seem much broader than the private domain and the domain of the market. As a model of economy and development, the European “social way” was discussed during its political dismantling by French economist Michel Albert, in his classic discussion of what he calls the “Rhine capitalist model” developed in Germany, Scandinavian¶ have been able to assert themselves as the only alternative in global society.¶ countries, Holland, Switzerland, and Japan in the aftermath of World War II. This model, that we will simply name “social capitalism” (as opposed to neo-American or imperial capitalism), deserves a closer look, because it sheds light on the possibilities and limits of counter-fires in the process of the making of imperial law.

### Links

#### **Their form of legal modeling produces constant hostage crises – Western institutions threaten to withhold essential development aid if a developing country does not have a strong legal system – poor countries’ health and economic livelihood are held hostage as the sacrificial lamb for the liberal order**

Tamanaha 8 – prof of law @ Hammond

(Brian, The Dark Side of the Relationship Between the Rule of Law and Liberalism, NYU Journal of Law & Liberty)

The final piece in the entangled relationship between the rule of law and liberalism brings us to the present. Unlike the pre- ceding discussion, it does not involve the work of theorists, but rather represents the culmination of this stream of ideas in a course of action. Beginning in the late 1980s and accelerating in the 1990s, Western nations and international financial institutions implemented world-wide a set of reforms labeled the “Washington consensus.” The World Bank and the International Monetary Fund began to condition loans and grants to developing countries on a package of economic and political reforms called “good governance” and “structural adjustment programs,” which entailed reducing market restrictions and trade barriers, freeing capital flow, privatizing publicly held assets, protecting property and enforcing contracts, protecting foreign investments, enacting western commercial laws, reducing corruption, establishing independent courts, enhancing democracy, and, prominently, building the rule of law.95 This neoliberal package of reforms aims at reproducing the economic and legal conditions that prevail in Western countries. In addition to requiring loan recipient countries to implement these reforms, international lending organizations altered how they allocated aid. Spending money directly on infrastructure development and economic projects came to be seen as wasteful when established legal institutions are lacking. The resultant shift in expenditures has been dramatic. “Thirty years ago,” the General Counsel to the World Bank recently observed, “the Bank had 58% of its portfolio in infrastructure, today it is reduced to 22% while human development and law and institutional reform represent 52% of our total lending.”97¶ Today, establishing the rule of law is the central plank in development thought and activities. As Thomas Carothers observed, “Aid agencies prescribe rule-of-law programs to cure a remarkably wide array of ailments in developing and post- communist countries, from corruption and surging crime to lagging foreign investment and growth.”98 Citing World Bank studies, former President of the World Bank James Wolfensohn “said that the empirical evidence shows a large, significant and causal relation- ship between improved rule of law and income of nations, rule of law and literacy, and rule of law and reduced infant mortality.”99 A detailed study issued in 2006 by the Bank, Where Is the Wealth of Nations?, asserted that “in most countries intangible capital is the largest share of total wealth.”100 “Intangible capital,” according to the study, includes human capital (knowledge and skills in labor force), social capital (trust), and governance elements. The study emphasized that “the rule of law”—which it defined as “the extent to which agents have confidence in and abide by the rules of society”—makes a substantial contribution to intangible capital.102 Increasing the rule of law, it concluded, is one of “the most important” means to increase total wealth.103 The study even made a concrete assertion that a one percent increase in the rule of law index contributes more to intangible capital than a one percent increase in school years.104¶ It is beyond the scope of this article to evaluate the often claimed connection between the rule of law and economic development (although it must be said that the extraordinary economic development of China in the past two decades, when lacking key aspects of the rule of law, serves as a major counter-example). The point of raising it here is to show once again how the rule of law has been intertwined in a broader liberal agenda with adverse implications for democracy. Although enhancing democracy is routinely listed among the collection of development initiatives, a prominent feature of the structural adjustment and good governance programs was the manifestly anti-democratic mode in which they were implemented.¶ Under the threat that the aid would be withheld if they re- fused, these reforms were “voluntarily” accepted by nations that wished to receive economic aid. Political leaders often bypassed popular input, for the reforms invariably brought harsh immediate social and economic consequences.106 Recipient countries typically enacted these programs without seeking or securing broad domestic consent.107 They “emerge from a top-down and secret process of negotiations between technocrats representing a government and an international lending agency.”108 The programs, which restrict and control domestic law-making on a host of important issues, amount to a form of “economic constitutionalism” that precludes policy choices and politics in connection with broad swaths of internal matters.109 Defenders of these programs insist that where properly implemented they have helped the poor (a disputed claim110). What is relevant here is not whether the promised economic benefits have been delivered, but rather the anti- democratic tenor of these programs—the latest episode in the long history set forth in this article. Democracy is fine, as long as it keeps its hands off the liberal program. Even legislation is fine, as this ex- ample shows, when legislation is utilized to implement and protect the liberal program.

### NSC Fails

#### Illegitimate NSC detention trials turn the case because they will be seen as worse than the status quo:

#### a) Relaxed evidentiary rules

Vladeck 09, Law Prof at American

(Stephen, THE CASE AGAINST NATIONAL SECURITY COURTS, willamette.edu/wucl/resources/journals/review/pdf/Volume%2045/WLR45-3\_Vladeck.pdf)

A national security court, in contrast, would be marked by relaxed evidentiary rules, including the ability to introduce hearsay testimony and perhaps even evidence that is produced by governmental coercion. As importantly, the government would also be able, under most proposals, to use classified information as evidence without fully disclosing such to the defendant. Otherwise, as McCarthy and Velshi describe in their proposal: [P]eople who commit mass murder, who face the death penalty or life imprisonment, and who are devoted members of a movement whose animating purpose is to damage the United States, are certain to be relatively unconcerned about violating court orders (or, for that matter, about being hauled into court at all). Our congenial rules of access to attorneys, paralegals, investigators and visitors make it a very simple matter for accused terrorists to transmit what they learn in discovery to their confederates—and we know that they do so.

#### b) No jury trial or adequate defense counsel

Rittgers 09, Attorney, decorated former Army Special Forces officer, and legal policy analyst at Cato

(David, National Security Court: Reinventing the Wheel, Poorly, www.cato.org/publications/commentary/national-security-court-reinventing-wheel-poorly)

In Sulmasy’s proposed “national security court,” suspected terrorists would be tried in front of a panel of three federal judges, violating their Sixth Amendment right to a jury trial. Defendants would be detained, tried, and imprisoned on military bases, a practice out of step with a federal statutory bar to the military’s direct participation in domestic law enforcement. The Bush administration kept its military commissions more palatable for the public by keeping American citizens and aliens detained in the United States out of Guantanamo. Sulmasy proposes that we bring Gitmo home and open its doors to citizens and non-citizens alike. Sulmasy does endeavor to solve one perceived problem with the military commissions that military lawyers have expressed to me: few courts-martial deal with contested felony charges, so most military lawyers have little courtroom experience. We are now entrusting them with the biggest trials of our time. Sulmasy proposes to fix this by using veteran federal prosecutors instead. The catch? The defense counsel would be those same military lawyers he says are not up to the task of prosecuting the case, unless the defendant could afford his own attorney with a high-level security clearance. Sulmasy also reduces the core protections of defendants by barring the use of the exclusionary rule, the doctrine that bars evidence collected illegally or otherwise in violation of the law. Without the prospect of excluding evidence collected in ways barred by federal courts, there is no incentive for law enforcement officers to follow any rules. Looking for terrorists? No warrant? No problem.

#### c) Judge selection

Cole 08, Professor of Law at Georgetown

(David, A CRITIQUE OF “NATIONAL SECURITY COURTS, www.constitutionproject.org/pdf/Critique\_of\_the\_National\_Security\_Courts.pdf)

In addition, these proposals are alarmingly short on details with respect to the selection of judges for these national security courts. Although there is a history of creating specialized federal courts to handle particular substantive areas of the law (e.g., taxation; patents), unlike tax and patent law, there is simply no highly specialized expertise that would form relevant selection criteria for the judges. Establishing a specialized court solely for prosecutions of alleged terrorists might also create a highly politicized process for nominating and confirming the judges, focusing solely on whether the nominee had sufficient “tough on terrorism” credentials — hardly a criterion that lends itself to the appearance of fairness and impartiality.

### A2: NATO

#### NATO doesn’t have the military to do anything- it’s totally irrelevant

Alexander Melikishvili- research associate with the James Martin Center for Nonproliferation Studies- 1/26/09, YaleGlobal, NATO’s Double Standards Make for a Hollow Alliance, http://yaleglobal.yale.edu/content/nato%E2%80%99s-double-standards-make-hollow-alliance

The lack of adequate military preparedness is the third factor that makes NATO irrelevant. Russia’s actions in Georgia had direct implications for the European security and underscored the importance of contingency planning on the part of NATO. Since 1995, as a matter of official policy doctrine, NATO has not considered Russia a potential source of military threat. Ironically by bullying Georgia, Russia made its perennial fear of Western military encirclement a self-fulfilling prophecy as NATO is taking steps to ensure the security of its most vulnerable members – the Baltic states of Estonia, Latvia and Lithuania. It’s long been an open secret that airspace above these countries is protected by only four fighter jets. NATO planners belatedly scramble to devise plans to defend these countries from possible Russian military incursion. Unburdened by the toxic legacy of disagreements over the invasion of Iraq, the Obama administration will have an opportunity to reinvigorate Euro-Atlantic ties by launching a comprehensive overhaul of the alliance. Unless NATO undergoes radical internal consolidation, it risks becoming increasingly vulnerable and ultimately extinct. An integral part of this process must be emphasis on increasing force projection capabilities to strengthen NATO’s deterrent potential. Ever respectful of brute force, the Kremlin should know that the costs of tempering with the tripwires along Russia’s European periphery will outweigh any benefits, both imagined and real.

### A2: Bioweapons

#### No bioweapon could kill off humanity – natural resistance and technology check.

Easterbrook 3

[Gregg, editor of The New Republic, Wired, "We're All Gonna Die!" 11/7, http://www.wired.com/wired/archive/11.07/doomsday.html]

3. Germ warfare! Like chemical agents, biological weapons have never lived up to their billing in popular culture. Consider the 1995 medical thriller Outbreak, in which a highly contagious virus takes out entire towns. The reality is quite different. Weaponized smallpox escaped from a Soviet lab

oratory in Aralsk, Kazakhstan, in 1971; three people died, no epidemic followed. In 1979, weapons-grade anthrax got out of a Soviet facility in Sverdlovsk (now called Ekaterinburg); 68 died, no epidemic. The loss of life was tragic, but no greater than could have been caused by a single conventional bomb. In 1989, workers at a US government facility near Washington were accidentally exposed to Ebola virus. They walked around the community and hung out with family and friends for several days before the mistake was discovered. No one died. The fact is, evolution has spent millions of years conditioning mammals to resist germs. Consider the Black Plague. It was the worst known pathogen in history, loose in a Middle Ages society of poor public health, awful sanitation, and no antibiotics. Yet it didn't kill off humanity. Most people who were caught in the epidemic survived. Any superbug introduced into today's Western world would encounter top-notch public health, excellent sanitation, and an array of medicines specifically engineered to kill bioagents. Perhaps one day some aspiring Dr. Evil will invent a bug that bypasses the immune system. Because it is possible some novel superdisease could be invented, or that existing pathogens like smallpox could be genetically altered to make them more virulent (two-thirds of those who contract natural smallpox survive), biological agents are a legitimate concern. They may turn increasingly troublesome as time passes and knowledge of biotechnology becomes harder to control, allowing individuals or small groups to cook up nasty germs as readily as they can buy guns today. But no superplague has ever come close to wiping out humanity before, and it seems unlikely to happen in the future.

# 1NR

## DA

### OV

#### Immigration reform solves terrorism

Griswold, ‘02 – associate director of the Cato Institute’s Center for Trade Policy Studies (10/15/02, Daniel T., “Willing Workers: Fixing the Problem of Illegal Mexican Migration to the United States,” http://www.freetrade.org/pubs/pas/tpa-019.pdf)

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

#### Economic growth requires immigration reform

Palomarez, writer for Forbes, 3/6/2013

(Javier, “The Pent Up Entrepreneurship That Immigration Reform Would Unleash, www.forbes.com/sites/realspin/2013/03/06/the-pent-up-entrepreneurship-that-immigration-reform-would-unleash/print/)

The main difference between now and 2007 is that today the role of immigrants and their many contributions to the American economy have been central in the country’s national conversation on the issue. Never before have Latinos been so central to the election of a U.S. President as in 2012. New evidence about the economic importance of immigration reform, coupled with the new political realities presented by the election, have given reform a higher likelihood of passing. As the President & CEO of the country’s largest Hispanic business association, the U.S. Hispanic Chamber of Commerce (USHCC), which advocates for the interests of over 3 million Hispanic owned businesses, I have noticed that nearly every meeting I hold with corporate leaders now involves a discussion of how and when immigration reform will pass. The USHCC has long seen comprehensive immigration reform as an economic imperative, and now the wider business community seems to be sharing our approach. It is no longer a question of whether it will pass. Out of countless conversations with business leaders in virtually every sector and every state, a consensus has emerged: our broken and outdated immigration system hinders our economy’s growth and puts America’s global leadership in jeopardy. Innovation drives the American economy**,** and without good ideas and skilled workers, ourcountry won’t be able to transform industries or to lead world markets as effectively as it has done for decades. Consider some figures: Immigrant-owned firms generate an estimated $775 billion in annual revenue, $125 billion in payroll and about $100 billion in income. A study conducted by the New American Economy found that over 40 percent of Fortune 500 companies were started by immigrants or children of immigrants. Leading brands, like Google, Kohls, eBay, Pfizer, and AT&T, were founded by immigrants. Researchers at the Kauffman Foundation released a study late last year showing that from 2006 to 2012, one in four engineering and technology companies started in the U.S. had at least one foreign-born founder — in Silicon Valley it was almost half of new companies. There are an estimated 11 million undocumented workers currently in the U.S. Imagine what small business growth in the U.S. would look like if they were provided legal status, if they had an opportunity for citizenship. Without fear of deportation or prosecution, imagine the pent up entrepreneurship that could be unleashed. After all, these are people who are clearly entrepreneurial in spirit to have come here and risk all in the first place. Immigrants are twice as likely to start businesses as native-born Americans, and statistics show that most job growth comes from small businesses. While immigrants are both critically-important consumers and producers, they boost the economic well-being of native-born Americans as well. Scholars at the Brookings Institution recently described the relationship of these two groups of workers as complementary. This is because lower-skilled immigrants largely take farming and other manual, low-paid jobs that native-born workers don’t usually want. For example, when Alabama passed HB 56, an immigration law in 2012 aimed at forcing self-deportation, the state lost roughly $11 billion in economic productivity as crops were left to wither and jobs were lost. Immigration reform would also address another important angle in the debate – the need to entice high-skilled immigrants. Higher-skilled immigrants provide talent that high-tech companies often cannot locate domestically. High-tech leaders recently organized a nationwide “virtual march for immigration reform” to pressure policymakers to remove barriers that prevent them from recruiting the workers they need. Finally, and perhaps most importantly, fixing immigration makes sound fiscal sense. Economist Raul Hinojosa-Ojeda calculated in 2010 that comprehensive immigration reform would add $1.5 trillion to the country’s GDP over 10 years and add $66 billion in tax revenue – enough to fully fund the Small Business Administration and the Departments of the Treasury and Commerce for over two years. As Congress continues to wring its hands and debate the issue, lawmakers must understand what both businesses and workers already know: The American economy needs comprehensive immigration reform**.**

### 2nc Uniqueness

#### Immigration reform can pass now – GOP likely to be more cooperative – 1996 shutdown proves

Talev & Dorning, 10/17 (Margaret Talev & Mike Dorning, “Obama’s Fiscal Fight Win Won’t Secure Success for Agenda,” <http://www.bloomberg.com/news/2013-10-17/obama-s-fiscal-fight-win-won-t-secure-success-for-agenda.html)>)

**\*\*\*Note --- David Plouffe is a former senior adviser to Obama**

Next Round¶ The biggest victory for the president was in cutting off the Republican attempt to scuttle the health-care law, Plouffe said. By the time the next round of fiscal negotiations occurs in January, coverage will have begun for Americans who signed up through the health insurance exchanges. That means Republicans who attack the law in the next budget fight would have to try to take away existing coverage from constituents.¶ Whether Obama gets from Congress a new immigration law or changes he’s seeking in taxes and entitlement programs depends on how Republicans read the outcome of this fight, Plouffe said.¶ He recalled that following their political loss in the 1996 shutdown, House Republicans under Gingrich reached deals with Clinton on welfare reform and the minimum wage.¶ “There was a strategic necessity for them post-shutdown to show they could govern,” Plouffe said. Immigration law “would be the natural place” for Republicans to act, he said.¶ “I don’t think we know the answer yet,” he said. “They may say, ‘We don’t feel the need to do what Gingrich did.’”

#### Will pass --- Obama has momentum and cooperation is likely on this issue but the timeline is tight

McMorris-Santoro, 10/15 (Evan, 10/15/2013, “Obama Has Already Won The Shutdown Fight And He’s Coming For Immigration Next,” <http://www.buzzfeed.com/evanmcsan/obama-has-already-won-the-shutdown-fight-and-hes-coming-for>))

WASHINGTON — As the fiscal fight roiling Washington nears its end, the White House is already signaling that it plans to use the political momentum it has gained during the shutdown fight to charge back into the immigration debate. And this time, Democratic pollsters and advocates say, they could actually win.¶ The final chapter of the current crisis hasn’t been written yet, but Democrats in Washington are privately confident that they’ll emerge with the upper hand over the conservatives in Congress who forced a government shutdown. And sources say the administration plans to use its victory to resurrect an issue that was always intended to be a top priority of Obama’s second-term agenda.¶ Advocates argue the post-fiscal crisis political reality could thaw debate on the issue in the House, which froze in earlier this year after the Senate passed a bipartisan immigration bill that was led by Republican Sen. Marco Rubio and Democratic Sen. Chuck Schumer.¶ “It’s at least possible with sinking poll numbers for the Republicans, with a [GOP] brand that is badly damaged as the party that can’t govern responsibly and is reckless that they’re going to say, ‘All right, what can we do that will be in our political interest and also do tough things?’” said Frank Sharry, executive director of the immigration reform group America’s Voice. “That’s where immigration could fill the bill.”¶The White House and Democrats are “ready” to jump back into the immigration fray when the fiscal crises ends, Sharry said. And advocates are already drawing up their plans to put immigration back on the agenda — plans they’ll likely initiate the morning after a fiscal deal is struck.¶ “We’re talking about it. We want to be next up and we’re going to position ourselves that way,” Sharry said. “There are different people doing different things, and our movement will be increasingly confrontational with Republicans, including civil disobedience. A lot of people are going to say, ‘We’re not going to wait.’”¶ The White House isn’t ready to talk about the world after the debt limit fight yet, but officials have signaled strongly they want to put immigration back on the agenda.¶ Asked about future strategic plans after the shutdown Monday, a senior White House official said, “That’s a conversation for when the government opens and we haven’t defaulted.” But on Tuesday, Press Secretary Jay Carney specifically mentioned immigration when asked “how the White House proceeds” after the current fracas is history.¶ “Just like we wish for the country, for deficit reduction, for our economy, that the House would follow the Senate’s lead and pass comprehensive immigration reform with a big bipartisan vote,” he said. “That might be good for the Republican Party. Analysts say so; Republicans say so. We hope they do it.”¶ The president set immigration as his next priority in an interview with Univision Tuesday.¶ “Once that’s done, you know, the day after, I’m going to be pushing to say, call a vote on immigration reform,” Obama said. He also set up another fight with the House GOP on the issue.¶ “We had a very strong Democratic and Republican vote in the Senate,” Obama said. “The only thing right now that’s holding it back is, again, Speaker Boehner not willing to call the bill on the floor of the House of Representatives.”¶ Don’t expect the White House effort to include barnstorming across the country on behalf of immigration reform in the days after the fiscal crisis ends, reform proponents predict. Advocates said the White House has tried hard to help immigration reform along, and in the current climate that means trying to thread the needle with Republicans who support reform but have also reflexively opposed every one of Obama’s major policy proposals.¶ Democrats and advocates seem to hope the GOP comes back to immigration on its own, albeit with a boost from Democrats eager to join them. Polls show Republicans have taken on more of the blame from the fiscal battle of the past couple of weeks. But Tom Jensen, a pollster with the Democratic firm Public Policy Polling, said moving to pass immigration reform could be just what the doctor ordered to get the public back on the side of the Republicans.¶ “We’ve consistently found that a sizable chunk of Republican voters support immigration reform, and obviously a decent number of Republican politicians do too,” Jensen said. “After this huge partisan impasse, they may want to focus on something that’s not quite as polarized, and immigration would certainly fit the bill since we see voters across party lines calling for reform.”¶ In a political environment where the best-laid plans often amount to nothing, though, the White House may not be able to leverage momentum or even hang onto it for very long. While Republicans have suffered the brunt of the blame for the shutdown, Obama’s approval ratings have also steeply declined in recent weeks and months.¶ What’s more, a short-term deal on reopening the government and raising the debt ceiling could mean the current fiscal arguments will roll on at a significantly toned-down level. Continuing bad news coming from the implementation of Obamacare could take center stage, giving the Republicans a chance to rebuild their brand while the White House plays defense.¶ But immigration reform is something virtually all Democrats want to see back on in the spotlight ahead of the 2014 midterm elections. At this point, the fight is really another debate between the White House and the conservative wing of the House GOP caucus, a situation that could equal déjà vu for political observers. Conservatives have lined up against a Senate-passed immigration bill, and House Speaker Boehner has refused to move the the Senate bill, despite its bipartisan Senate support.¶ Those dynamics don’t make Democratic Senate veteran Jim Manley especially confident about the potential outcome of a new immigration fight, though he did agree that a return to reform is the logical move for the White House. Manley says he just hasn’t seen many signs that conservatives have learned much from the current fiscal battle and its impact on Republican poll numbers. That means the reform debate is done before it starts.¶ “I’m not prepared to go bravado on this thing yet. Maybe someone else is, but not me,” Manley said Monday. “The question is whether House Republicans, in particular, have learned anything about what we’ve gone through in the last couple weeks. There’s obviously a group of Republicans in the Senate who have had it with being led around by Ted Cruz and Mike Lee. The question is how many minds are going to be changed in the House.”¶ Sharry said immigration reform advocates have sketched out a calendar that has them pushing the House Republicans to take action on immigration reform through the end of the year. If that doesn’t work, advocates will abandon the current legislative effort in favor of a program that seeks to punish Republicans in 2014 and urges Obama to use his executive power to meet as many of the reform advocates’ goals as possible.¶ That’s a tight timeline for a White House victory, especially considering reform may have a hard time making it to the front burner. Martha McKenna, a former political director at the Democratic Senatorial Campaign Committee, said fiscal policy is likely to remain the top issue even after the government reopens.

### Link

#### Plan is a perceived loss for Obama that saps his capital

Loomis, 7 --- Department of Government at Georgetown

(3/2/2007, Dr. Andrew J. Loomis is a Visiting Fellow at the Center for a New American Security, “Leveraging legitimacy in the crafting of U.S. foreign policy,” pg 35-36, <http://citation.allacademic.com//meta/p_mla_apa_research_citation/1/7/9/4/8/pages179487/p179487-36.php>)

Declining political authority encourages defection. American political analyst Norman Ornstein writes of the domestic context, ¶ In a system where a President has limited formal power, perception matters. The reputation for success—the belief by other political actors that even when he looks down, a president will find a way to pull out a victory—is the most valuable resource a chief executive can have. Conversely, the widespread belief that the Oval Office occupant is on the defensive, on the wane or without the ability to win under adversity can lead to disaster, as individual lawmakers calculate who will be on the winning side and negotiate accordingly. In simple terms, winners win and losers lose more often than not. ¶ Failure begets failure. In short, a president experiencing declining amounts of political capital has diminished capacity to advance his goals. As a result, political allies perceive a decreasing benefit in publicly tying themselves to the president, and an increasing benefit in allying with rising centers of authority. A president’s incapacity and his record of success are interlocked and reinforce each other. Incapacity leads to political failure, which reinforces perceptions of incapacity. This feedback loop accelerates decay both in leadership capacity and defection by key allies. ¶ The central point of this review of the presidential literature is that the sources of presidential influence—and thus their prospects for enjoying success in pursuing preferred foreign policies—go beyond the structural factors imbued by the Constitution. Presidential authority is affected by ideational resources in the form of public perceptions of legitimacy. The public offers and rescinds its support in accordance with normative trends and historical patterns, non-material sources of power that affects the character of U.S. policy, foreign and domestic.¶ This brief review of the literature suggests how legitimacy norms enhance presidential influence in ways that structural powers cannot explain. Correspondingly, increased executive power improves the prospects for policy success. As a variety of cases indicate—from Woodrow Wilson’s failure to generate domestic support for the League of Nations to public pressure that is changing the current course of U.S. involvement in Iraq—the effective execution of foreign policy depends on public support. Public support turns on perceptions of policy legitimacy. As a result, policymakers—starting with the president—pay close attention to the receptivity that U.S. policy has with the domestic public. In this way, normative influences infiltrate policy-making processes and affect the character of policy decisions.

### AT: Republicans Don’t Trust

#### Debt fight cost him zero political capital

Miller, 10/17 --- senior editor of opinion for The Washington Times (Emily, 10/17/2013, “MILLER: Obama’s victory lap - Republicans routed in shutdown, Obamacare fight,” <http://www.washingtontimes.com/news/2013/oct/17/miller-obamas-victory-lap/)>)

Once again, President Obama routed congressional Republicans. He use zero political capital and got everything he wanted — Obamacare is untouched, deficit spending continues endlessly, the government is reopened and the the debt ceiling is raised.

#### Obama now has the upper hand --- future fights over debt issues unlikely

Talev & Dorning, 10/17 (Margaret Talev & Mike Dorning, “Obama’s Fiscal Fight Win Won’t Secure Success for Agenda,” <http://www.bloomberg.com/news/2013-10-17/obama-s-fiscal-fight-win-won-t-secure-success-for-agenda.html>))

‘No Winners’

White House press secretary Jay Carney declined to say if Obama can use the Republican defeat to his advantage in budget negotiations early next year or as he tries again to win passage of a new immigration law.

“There are no winners here,” Carney said. “I can’t really say that we’re either encouraged or discouraged. We will just have to see.”

David Plouffe, a former senior adviser to Obama, said the president is likely to emerge with a stronger hand in any case. The Tea Party faction in the House overplayed its hand, he said, and that probably enhances the position of the Senate, where Democrats have a majority, and of House Republicans who are willing to compromise with the administration.

The outcome of this standoff makes future confrontations over the debt limit less likely, Plouffe said.

“Hopefully, we have broken forever using the debt ceiling as a political weapon,” Plouffe said. “I’m not naïve but I think it’s unlikely the Republicans in Congress want to go through this anytime again soon.”

### AT: No Capital

#### Emerged from crisis with capital to push agenda

Wolfgang, 10/10 (Ben, 10/10/2013, “Obama’s second-term agenda could hinge on shutdown resolution,” <http://www.washingtontimes.com/news/2013/oct/10/obamas-second-term-agenda-could-hinge-on-shutdown-/?utm_source%3DRSS_Feed%26utm_medium%3DRSS)>)

Some of president’s key goals hang in balance¶The eventual resolution to the government shutdown and debt-ceiling standoff carries serious consequences for the U.S. economy, but it also could make or break President Obama’s second-term agenda.¶ Expanded background checks on gun purchases, immigration reform and other key goals for the president over the next three years hang in the balance, analysts say, and threaten to be crowded out and ultimately relegated to the political graveyard if Mr. Obama is unable to make a deal with Republicans.¶ On the flip side, the president could emerge from the current impasse with renewed political capital and a stronger hand to help shepherd his aims through Congress.

## CP

### OV

#### The aff is key—perception of US provision of habeas rights is critical to US soft power—the vital aspect of US legal jurisprudence—court action is key

Sidhu 11, law professor at University of New Mexico

[2011, Dawinder S. Sidhu, Supreme Court Fellow, Professor of law at University of New Mexico, JD The George Washington University; M.A., Johns Hopkins University; B.A., University of Pennsylvania, Judicial Review as Soft Power: How the Courts Can Help Us Win the Post-9/11 Conflict”, NATIONAL SECURITY LAW BRIEF, Vol. 1, Issue 1 http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1003&context=nslb]

The “Great Wall” The writ of habeas corpus enables an individual to challenge the factual basis and legality of his detention,91 activating the judiciary’s review function in the separation of powers scheme.92 Because the writ acts to secure individual liberty by way of the judicial checking of unlawful executive detentions, the writ has been regarded as a bulwark of liberty. The Supreme Court has observed, for example, that “There is no higher duty of a court, under our constitutional system, than the careful processing and adjudication of petitions for writs of habeas corpus . . . .”93 The writ is seen as a vital aspect of American jurisprudence, and an essential element of the law since the time of the Framers.94 The United States is a conspicuous actor in the world theater, subject to the interests and inclinations of other players, and possessing a similar, natural desire to shape the global community in a manner most favorable to its own objects. The tendency to attempt to inﬂuence others is an inevitable symptom of international heterogeneity and, at present, the United States is mired in an epic battle with fundamentalists bent on using terrorism as a means to repel,95 if not destroy, America.96 American success in foreign policy depends on the internal assets available to and usable by the United States, including its soft power. The law in America is an aspect of its national soft power. In particular, the moderates in the Muslim world—the intended audience of America’s soft power— may ﬁnd attractive the American constitutional system of governance in which 1) the people are the sovereign and the government consists of merely temporary and recallable agents of the people, 2) federal power is diffused so as to diminish the possibility that any branch of the government, or any of them acting in tandem, can infringe upon the liberty of the people, 3) structural protections notwithstanding, the people are entitled to certain substantive rights including the right to be free of governmental interference with respect to religious exercise, 4) the diversity of interests inherent in its populace is considered a critical safeguard against the ability of a majority group to oppress the minority constituents, 5) the courts are to ensure that the people’s rights to life, liberty, and property are not abridged, according to law, by the government or others, and 6) individuals deprived of liberty have available to them the writ of habeas corpus to invoke the judiciary’s checking function as to executive detention decisions.

The Constitution, in the eyes of Judge Learned Hand, is “the best political document ever made.”97 If the aforementioned constitutional principles are part of the closest approximation to a just and reasoned society produced by man, surely they may have some persuasive appeal to the rest of the world, including moderate Muslims who generally live in areas less respectful of minority rights and religious pluralism. Such reverence is to be expected and warranted only if the United States has remained true to these constitutional principles in practice, and in particular, in its behavior in the aftermath of the 9/11 attacks, when national stress is heightened and the option of deviating from such values in favor of an expedient “law of necessity” similarly tempting.98 The extent to which the United States has remained true to itself as a nation of laws—and thus may credibly claim such legal soft power—is the subject of the next section. II. THE COURTS AND SOFT POWER The Judiciary In Wartime The United States has been charged with being unfaithful to its own laws and values in its prosecution of the post-9/11 campaign against transnational terrorism. With respect to its conduct outside of the United States, following 9/11, America has been alleged to have tortured captured individuals in violation of its domestic and international legal obligations,99 and detained individuals indeﬁnitely without basic legal protections.100 Closer to home, the United States is thought to have proﬁ led Muslims, Arabs, and South Asians in airports and other settings,101 conducted immigration sweeps targeting Muslims,102 and engaged in mass preventative detention of Muslims in the United States,103 among other things. These are serious claims. The mere perception that they bear any resemblance to the truth undoubtedly impairs the way in which the United States is viewed by Muslims around the world, including Muslim-Americans, and thus diminishes the United States’ soft power resources.104 The degree to which they are valid degrades the ability of the United States to argue persuasively that it not only touts the rule of law, but exhibits actual ﬁ delity to the law in times of crisis. These claims relate to conduct of the executive and/or the legislature in the aftermath of the 9/11 attacks. This Article is concerned, however, with the judiciary, that is whether the courts have upheld the rule of law in the post-9/11 context—and thus whether the courts may be a source of soft power today (even if the other branches have engaged, or are alleged to have engaged, in conduct that is illegal or unwise). As to the courts, it is my contention that the judiciary has been faithful to the rule of law after 9/11 and as such should be considered a positive instrument of American soft power. Prior to discussing post-9/11 cases supporting this contention, it is important to provide a historical backdrop to relationship between the courts and wartime situations because judicial decision-making in cases implicating the wars in Afghanistan and Iraq does not take occur on a blank slate, despite the unique and modern circumstances of the post-9/11 conﬂ ict.

**The courts don’t link**

Stimson 9 [09/25/09, Cully Stimson is a senior legal fellow at the Heritage Foundation and an instructor at the Naval Justice School former American career appointee at the Pentagon. Stimson was the Deputy Assistant Secretary of Defense for Detainee Affairs., “Punting National Security To The Judiciary”, http://blog.heritage.org/2009/09/25/punting-national-security-to-the-judiciary/]

So what is really going on here? To those of us who have either served in senior policy posts and dealt with these issues on a daily basis, or followed them closely from the outside, it is becoming increasingly clear that this administration is trying to create the appearance of a tough national-security policy regarding the detention of terrorists at Guantanamo, yet allow the courts to make the tough calls on releasing the bad guys. Letting the courts do the dirty work would give the administration plausible cover and distance from the decision-making process. The numbers speak for themselves. Of the 38 detainees whose cases have been adjudicated through the habeas process in federal court in Washington, 30 have been ordered released by civilian judges. That is close to an 80 percent loss rate for the government, which argued for continued detention. Yet, how many of these decisions has this administration appealed, knowing full well that many of those 30 detainees should not in good conscience be let go? The answer: one. Letting the courts do it for him gives the president distance from the unsavory release decisions. It also allows him to state with a straight face, as he did at the Archives speech, “We are not going to release anyone if it would endanger our national security, nor will we release detainees within the United States who endanger the American people.” No, the president won’t release detainees; he’ll sit back and let the courts to do it for him. And the president won’t seek congressional authorization for prolonged detention of the enemy, as he promised, because it will anger his political base on the Left. The ultra-liberals aren’t about to relinquish their “try them or set them free” mantra, even though such a policy threatens to put terrorists back on the battlefield. Moreover, the president would have to spend political capital to win congressional authorization for a prolonged detention policy. Obviously, he would rather spend that capital on other policy priorities. Politically speaking, it is easier to maintain the status quo and let the detainees seek release from federal judges. The passive approach also helps the administration close Gitmo without taking the heat for actually releasing detainees themselves.

## Case

### AT: Terror

#### The aff is key to win over muslim moderates—that’s critical to victory

Sidhu 11

[2011, Dawinder S. Sidhu, J.D., The George Washington University; M.A., Johns Hopkins University; B.A., University of Pennsylvania, Judicial Review as Soft Power: How the Courts Can Help Us Win the Post-9/11 Conflict”, NATIONAL SECURITY LAW BRIEF, Vol. 1, Issue 1 http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1003&context=nslb]

For soft power to move from the shadows to a place of prominence in American foreign policy with respect to the national struggle against terrorists, America must ﬁ rst determine what soft power resources are available to it. The universe of American soft power resources is indeed extensive and includes, for example, American popular culture, democracy, support of human rights, and its civic institutions.62 This Article is concerned with the law as an aspect of American soft power. Nye, in almost passing fashion, indicates that the law is subsumed under the banner of soft power.63 But he does not explicitly ﬂ esh out the precise features of the law in America that may attract others to our interests. The question therefore arises, what is it about law in America that may serve as soft power? Before attempting an answer, it is important to identify the audience of any soft power volley in the post-9/11 context. As Nye acknowledges, a prerequisite for the use of soft power is the existence of “willing receivers” of a nation’s particular message.64 The core fundamentalists absorbed by their warped take on Islam may be beyond reason and thus may not be receptive to a message on the intangible virtues of the American state. The moderate elements in Afghanistan, Iraq, and neighboring regions, however, may be amenable to persuasion and, if convinced, may be effective agents of the American narrative by subsequently and more meaningfully conveying it to the extremists. With the hardcore fundamentalists presumptively out of the reach of reasonable argument or enticement, “the ability to attract the moderates is critical to victory.65 Therefore, legal soft power must address and convince these moderates.

### Link NonUQ

#### **Every case since 9/11 non-uniques your link**

Flaherty 12, Leitner Professor of International Law, Fordham Law School

(Martin S., “ARTICLE: Judicial Foreign Relations Authority After 9/11” 2New York Law School Law Review 56 N.Y.L. Sch. L. Rev. 119, Lexis)

For a time the forces of judicial isolationism appeared to have gained traction and may yet carry the day. It is all the more surprising, then, that the Supreme Court reasserted the judiciary's traditional foreign affairs role in the areas in which its opponents assert deference is most urgent--national security, terrorism, and war. Yet so far, in every major case arising out of 9/11, the Court has rejected the position staked out by the executive branch, even when supported by Congress. At critical points, moreover, each of these rejections involved the Court reclaiming its primacy in legal interpretation, an area in which advocates of judicial deference have appeared to make substantial progress. The Court nonetheless rejected deference in statutory construction in Rasul v. Bush. n16 It took the same tack with regard to treaties in Hamdan v. Rumsfeld. n17 It further rejected deference in constitutional interpretation in both Hamdi v. Rumsfeld n18 and Boumediene v. Bush. n19 Together, these cases represent a stunning reassertion of the judiciary's proper role in foreign relations. Whether reassertion will mean restoration, however, still remains to be seen.

#### **Plan creates a dialogue which legitimates executive actions**

Gatmaytan 10, Associate Professor, University of the Philippines

(Dante, “Crafting Policies for the Guantánamo Bay Detainees: An Interbranch Perspective” DEPAUL!RULE!OF!LAW!JOURNAL!

International\*Human\*Rights\*Law\*Institute, Fall 2010, http://laworgs.depaul.edu/journals/RuleofLaw/Documents/Gatmaytan\_-\_Guantanamo%20final.pdf)

The Petitioners in Boumediene were aliens detained at Guantánamo after being captured during the war on terror. They were then classified as enemy combatants by the CSRTs.81 Every petitioner sought a writ of habeas corpus in United States District Court for the District of Columbia district court, which dismissed the cases for lack of jurisdiction because Guantánamo is outside of the United States. 82 The D.C. Circuit then concluded that the MCA stripped away its jurisdiction to consider the habeas applications of the petitioners. As a result, the petitioners were not entitled to habeas proceedings and therefore the court did not need to determine whether the DTA provided an adequate substitute for habeas.83 On June 12, 2008, the Supreme Court decided Boumediene v. Bush. 84 It ruled that the detainees were not barred from seeking habeas merely because they had been designated as enemy combatants or held at Guantánamo Bay.85 Again, while the Supreme Court took a position opposed to the Executive, its language did not seem to reflect a degree of condemnation. Rather, its language may be interpreted as part of a continuing dialogue that urged the executive and legislative branches to fashion a policy consistent with its view: We acknowledge, moreover, the litigation history that prompted Congress to enact the MCA. In Hamdan the Court found it unnecessary to address the petitioner’s Suspension Clause arguments but noted the relevance of the clear statement rule in deciding whether Congress intended to reach pending habeas corpus case. This interpretive rule facilitates a dialogue between Congress and the Court. If the Court invokes a clear statement rule to advise that certain statutory interpretations are favored in order to avoid constitutional difficulties, Congress can make an informed legislative choice either to amend the statute or to retain its existing text. If Congress amends, its intent must be respected even if a difficult constitutional question is presented. The usual presumption is that Members of Congress, in accord with their oath of office, considered the constitutional issue and determined the amended statute to be a lawful one; and the Judiciary, in light of that determination, proceeds to its own independent judgment on the constitutional question when required to do so in a proper case.86 If this ongoing dialogue between and among the branches of Government is to be respected, we cannot ignore that the MCA was a direct response to Hamdan’s holding that the DTA’s jurisdiction-stripping provision had no application to pending cases….87 Later, the Court stated: Our opinion does not undermine the Executive’s powers as Commander in Chief. On the contrary, the exercise of those powers is vindicated, not eroded, when confirmed by the Judicial Branch. Within the Constitution’s separation-of-powers structure, few exercises of judicial power are as legitimate or as necessary as the responsibility to hear challenges to the authority of the Executive to imprison a person. Some of these petitioners have been in custody for six years with no definitive judicial determination as to the legality of their detention. Their access to the writ is a necessity to determine the lawfulness of their status, even if, in the end, they do not obtain the relief they seek. Because our Nation’s past military conflicts have been of limited duration, it has been possible to leave the outer boundaries of war powers undefined. If, as some fear, terrorism continues to pose dangerous threats to us for years to come, the Court might not have this luxury. This result is not inevitable, however. The political branches, consistent with their independent obligations to interpret and uphold the Constitution, can engage in a genuine debate about how best to preserve constitutional values while protecting the Nation from terrorism.88 That the Supreme Court believed it was engaged in dialogue with the other branches of government is unmistakably clear. Indeed, the Court’s language since Hamdan has been explicit. But the successive losses suffered by the Bush administration as well as its refusal to acquiesce to the Supreme Court’s paradigm suggests that there was in fact no dialogue occurring–a quarrel perhaps, but not a dialogue. This policy debate therefore raises questions regarding the usefulness of the interbranch framework. Still as the analysis that follows illustrates, the apparent animosity between the executive and legislative branches on one hand and the Judiciary on the other was a court-led attempt to bring the branches together in genuine dialogue.