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The aff expands precedent against indefinite detention—that destroys military operations

Ford, 10

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

Boumediene, and the potential extension of its holding, impacts U.S. detention operations not only at Guantanamo Bay but also at Bagram and other current or future detention facilities. As a preliminary matter, the natural question in light of Boumediene is how necessary or beneficial is Guantanamo Bay? If the DoD initially established Guantanamo Bay for its foreign location - more convenient for U.S.-based intelligence and interrogation personnel - then, in light of Boumediene, the base is no longer "foreign." The purported freedom from domestic legal requirements initially presumed at Guantanamo no longer exists. As the current administration seeks to close Guantanamo n48 - whether due to legal, political, or policy reasons - it is clear that Boumediene has done away with at least one benefit of housing detainees at Guantanamo. Could Boumediene impact current detention activities in Bagram? If Boumediene reaches that facility, the Eisentrager Court's worst fears would be realized. n49 Military interrogations [\*412] might require court approval, or worse, the presence of a detainee's counsel. Moving a detainee may likewise require approval from the court. Conditions of confinement might be reviewable by a court. Military prison guards may be liable to their enemy captives in constitutional tort. The implications, again, are vast. In addition to detention operations in a theater of war, Boumediene may **directly impact actual day-to-day combat operations**. Justice Scalia warned that Boumediene could "cause more Americans to be killed." n50 Practically speaking, he was referring to a situation where a court releases a terrorist who returns to fight against Americans. Additionally, battlefield impact and risk to service members for other reasons is not improbable. As a preliminary matter, the issue arises in determining when habeas rights attach. Habeas would attach on the battlefield only if the United States exercises functional control over a combatant - that is, if it exercises the functional equivalent of legal sovereignty over the detainee. In a country like Afghanistan, or even Iraq, there is no question that functioning governments active in inter-and intra-state affairs are operating, and the nations maintain their sovereignty. But does (or would) the United States operate in a pocket or umbrella of sovereignty in either nation for purposes of Boumediene? Liberal stationing agreements, UNSCRs, or other documents authorizing or defining the scope and breadth of authority for U.S. forces in a country could be read to grant Boumediene-like autonomy. During the heightened occupation of Iraq, and the initial invasion of Afghanistan, a stronger argument could have been made that habeas in fact attached to [\*413] in-country detentions. And, in a certain area of occupation, such as post-war Germany, or immediately following invasive hostilities, the case is again much closer. If a U.S. soldier operates in a pocket of sovereignty, habeas rights may attach to any enemy he seizes or captures on the battlefield. Those rights would remain during temporary detention, transfer, and long-term detention. In this (hopefully unlikely) situation, U.S. combat troops would have to be trained in the latest version of habeas law for the battlefield. They would need to know not only the operational requirements and details of the military operation - for example, seizing terrain or raiding a compound - but also the legal niceties associated with capturing an enemy who has constitutional rights and seizing the evidence that might be necessary to keep that enemy in detention and off of future battlefields. At the very least, these new requirements would be a distraction to an undertaking where focus and attention to detail are vital, a distraction that could be deadly. Essentially, troops on patrol would be carrying the full panoply of rights and privileges afforded under the U.S. Constitution in their assault packs. Every enemy encountered would be entitled to rummage through the pack to choose the U.S. domestic law - the legal weapon n51 - to use against the soldier. In effect, the military operation would be converted into a pseudo-law enforcement search and seizure operation. U.S. combat troops would be no different than police officers on patrol in any town or city in the United States. **The military would cease to exist as we know it** and would become nothing more than a deployable F.B.I. As indicated above, evidence experts and/or law enforcement experts may be integrated into the operation. These individuals are likely not familiar with military operations and have not trained with the unit to which they would be assigned. The potential for confusion, hesitation, mistaken identity, and uncertainty is great. Each creates a **recipe for fratricide, enemy advantage**, or worse - **mission failure and defeat.**

Nuclear war

Frederick Kagan and Michael O’Hanlon 7, Fred’s a resident scholar at AEI, Michael is a senior fellow in foreign policy at Brookings, “The Case for Larger Ground Forces”, April, http://www.aei.org/files/2007/04/24/20070424\_Kagan20070424.pdf

We live at a time when wars not only rage in nearly every region but threaten to erupt in many places where the current relative calm is tenuous. To view this as a strategic military challenge for the United States is not to espouse a specific theory of America’s role in the world or a certain political philosophy. Such an assessment flows directly from the basic bipartisan view of American foreign policy makers since World War II that overseas threats must be countered before they can directly threaten this country’s shores, that the basic stability of the international system is essential to American peace and prosperity, and that no country besides the United States is in a position to lead the way in countering major challenges to the global order. Let us highlight the threats and their consequences with a few concrete examples, emphasizing those that involve key strategic regions of the world such as the Persian Gulf and East Asia, or key potential threats to American security, such as the spread of nuclear weapons and the strengthening of the global Al Qaeda/jihadist movement. The Iranian government has rejected a series of international demands to halt its efforts at enriching uranium and submit to international inspections. What will happen if the US—or Israeli—government becomes convinced that Tehran is on the verge of fielding a nuclear weapon? North Korea, of course, has already done so, and the ripple effects are beginning to spread. Japan’s recent election to supreme power of a leader who has promised to rewrite that country’s constitution to support increased armed forces—and, possibly, even nuclear weapons— may well alter the delicate balance of fear in Northeast Asia fundamentally and rapidly. Also, in the background, at least for now, SinoTaiwanese tensions continue to flare, as do tensions between India and Pakistan, Pakistan and Afghanistan, Venezuela and the United States, and so on. Meanwhile, the world’s nonintervention in Darfur troubles consciences from Europe to America’s Bible Belt to its bastions of liberalism, yet with no serious international forces on offer, the bloodletting will probably, tragically, continue unabated. And as bad as things are in Iraq today, they could get worse. What would happen if the key Shiite figure, Ali al Sistani, were to die? If another major attack on the scale of the Golden Mosque bombing hit either side (or, perhaps, both sides at the same time)? Such deterioration might convince many Americans that the war there truly was lost—but the costs of reaching such a conclusion would be enormous. Afghanistan is somewhat more stable for the moment, although a major Taliban offensive appears to be in the offing. Sound US grand strategy must proceed from the recognition that, over the next few years and decades, the world is going to be a very unsettled and quite dangerous place, with Al Qaeda and its associated groups as a subset of a much larger set of worries. The only serious response to this international environment is to develop armed forces capable of protecting America’s vital interests throughout this dangerous time. Doing so requires a military capable of a wide range of missions—including not only deterrence of great power conflict in dealing with potential hotspots in Korea, the Taiwan Strait, and the Persian Gulf but also associated with a variety of Special Forces activities and stabilization operations. For today’s US military, which already excels at high technology and is increasingly focused on re-learning the lost art of counterinsurgency, this is first and foremost a question of finding the resources to field a large-enough standing Army and Marine Corps to handle personnel intensive missions such as the ones now under way in Iraq and Afghanistan. Let us hope there will be no such large-scale missions for a while. But preparing for the possibility, while doing whatever we can at this late hour to relieve the pressure on our soldiers and Marines in ongoing operations, is prudent. At worst, the only potential downside to a major program to strengthen the military is the possibility of spending a bit too much money. Recent history shows no link between having a larger military and its overuse; indeed, Ronald Reagan’s time in office was characterized by higher defense budgets and yet much less use of the military, an outcome for which we can hope in the coming years, but hardly guarantee. While the authors disagree between ourselves about proper increases in the size and cost of the military (with O’Hanlon preferring to hold defense to roughly 4 percent of GDP and seeing ground forces increase by a total of perhaps 100,000, and Kagan willing to devote at least 5 percent of GDP to defense as in the Reagan years and increase the Army by at least 250,000), we agree on the need to start expanding ground force capabilities by at least 25,000 a year immediately. Such a measure is not only prudent, it is also badly overdue.

## off 2

The affirmative re-inscribes the primacy of liberal legalism as a method of restraint—that paradoxically collapses resistance to Executive excesses.

**Margulies ‘11**

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

Legalism underpins the violence of empire and creates the conditions of possibility for liberal violence.

Dossa ‘99

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

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

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

**Goldsmith ‘12**

Jack, Harvard Law School Professor, focus on national security law, presidential power, cybersecurity, and conflict of laws, Former Assistant Attorney General, Office of Legal Counsel, and Special Counsel to the Department of Defense, Hoover Institution Task Force on National Security and Law, March 2012, Power and Constraint, p. 205-209

DAVID BRIN is a science-fiction writer who in 1998 turned his imagination to a nonfiction book about privacy called The Transparent Society. Brin argued that individual privacy was on a path to extinction because government surveillance tools—tinier and tinier cameras and recorders, more robust electronic snooping, and bigger and bigger databases—were growing irreversibly more powerful. His solution to this attack on personal space was not to erect privacy walls, which he thought were futile, but rather to induce responsible government action by turning the surveillance devices on the government itself. A government that citizens can watch, Brin argued, is one subject to criticism and reprisals for its errors and abuses, and one that is more careful and responsible in the first place for fear of this backlash. A transparent government, in short, is an accountable one. "If neo-western civilization has one great trick in its repertoire, a technique more responsible than any other for its success, that trick is accountability," Brin argues, "[e]specially the knack—which no other culture ever mastered—of making accountability apply to the mighty."' Brin's notion of reciprocal transparency is in some ways the inverse of the penological design known as a "panopticon," made famous by the eighteenth-century English utilitarian philosopher Jeremy Bentham. Bentham's brother Samuel had designed a prison in Paris that allowed an "inspector" to monitor all of the inmates from a central location without the prisoners knowing whether or when they were being watched (and thus when they might be sanctioned for bad behavior). Bentham described the panopticon prison as a "new mode of obtaining power of mind over mind" because it allowed a single guard to control many prisoners merely by conveying that he might be watching.' The idea that a "watcher" could gain enormous social control over the "watched" through constant surveillance backed with threats of punishment has proved influential. Michel Foucault invoked Bentham's panopticon as a model for how modern societies and governments watch people in order to control them.' George Orwell invoked a similar idea three decades earlier with the panoptical telescreen in his novel 1984. More recently, Yale Law School professor Jack Balkin used the panopticon as a metaphor for what he calls the "National Surveillance State," in which governments "use surveillance, data collection, and data mining technologies not only to keep Americans safe from terrorist attacks but also to prevent ordinary crime and deliver social services." **The direction of the panopticon can be reversed, however, creating a "synopticon" in which many can watch one, including the government**.' The television is a synopticon that enables millions to watch the same governmental speech or hearing, though it is not a terribly robust one because the government can control the broadcast. Digital technology and the Internet combine to make a more powerful synopticon that allows many individuals to record and watch an official event or document in sometimes surprising ways. Video recorders placed in police stations and police cars, cell-phone video cameras, and similar tools increase citizens' ability to watch and record government activity. This new media content can be broadcast on the Internet and through other channels to give citizens synoptical power over the government—a power that some describe as "sousveillance" (watching from below)! These and related forms of watching can have a disciplining effect on government akin to Brin's reciprocal transparency. The various forms of watching and checking the presidency described in this book constitute a vibrant presidential synopticon. Empowered by legal reform and technological change, the "many"—in the form of courts, members of Congress and their staff, human rights activists, journalists and their collaborators, and lawyers and watchdogs inside and outside the executive branch—constantly gaze on the "one," the presidency. Acting alone and in mutually reinforcing networks that crossed organizational boundaries, these institutions extracted and revealed information about the executive branch's conduct in war—sometimes to adversarial actors inside the government, and sometimes to the public. The revelations, in turn, forced the executive branch to account for its actions and enabled many institutions to influence its operations. **The presidential synopticon** also **promoted responsible executive action merely through its broadening gaze.** One consequence of a panopticon, in Foucault's words, is "to induce in the inmate a state of conscious and permanent visibility that assures the automatic functioning of power."' The same thing has happened in reverse but to similar effect within the executive branch, where officials are much more careful merely by virtue of being watched. The presidential synopticon is in some respects not new. Victor Davis Hanson has argued that "war amid audit, scrutiny, and self-critique" has been a defining feature of the Western tradition for 2,500 years.' From the founding of the nation, American war presidents have been subject to intense scrutiny and criticism in the unusually open society that has characterized the United States. And many of the accountability mechanisms described in this book have been growing since the 1970s in step with the modern presidency. What is new, however, is the scope and depth of these modern mechanisms, their intense legalization, and their robust operation during wartime. In previous major wars the President determined when, how, and where to surveil, target, detain, transfer, and interrogate enemy soldiers, often without public knowledge, and almost entirely without unwanted legal interference from within the executive branch itself or from the other branches of government.' Today these **decisions are known inside and outside the government to an unprecedented degree** and are heavily regulated by laws and judicial decisions that are enforced daily by lawyers and critics inside and outside the presidency. Never before have Congress, the courts, and lawyers had such a say in day-to-day military activities; never before has the Commander in Chief been so influenced, and constrained, by law. This regime has many historical antecedents, but it came together and hit the Commander in Chief hard for the first time in the last decade. It did so because of extensive concerns about excessive presidential power in an indefinite and unusually secretive war fought among civilians, not just abroad but at home as well. These concerns were exacerbated and given credibility by the rhetoric and reality of the Bush administration's executive unilateralism—a strategy that was designed to free it from the web of military and intelligence laws but that instead galvanized forces of reaction to presidential power and deepened the laws' impact. Added to this mix were enormous changes in communication and collaboration technologies that grew to maturity in the decade after 9/11. These changes helped render executive branch secrets harder to keep, and had a flattening effect on the executive branch just as it had on other hierarchical institutions, making connections between (and thus accountability to) actors inside and outside the presidency **much more extensive**.

## off 3

Effective pressure on senate dems now to not bring up a vote on iran sanctions– that’s key to prevent a veto override

Greg Sargent, Washington Post, 1/15 [“Push for Iran sanctions bill losing momentum?” http://www.washingtonpost.com/blogs/plum-line/wp/2014/01/15/push-for-iran-sanctions-bill-losing-momentum/]

Harry Reid and Senate Dem leadership aides have been telling reporters that there are no plans for a vote on a new bill to impose sanctions on Iran — a vote the White House fears could derail diplomacy and make war more likely.¶ Yet it may actually be even worse than this for proponents of the bill. **Even Senators who support the measure are no longer pushing for any vote, and have no plans to do so for the foreseeable future**, a Democratic Senator who favors the bill tells me.¶ “At the moment, there’s no rush to put the bill on the floor,” says this Senator, who asked for anonymity to be candid about the real state of play on the measure. “I’m not aware of any deadline in anyone’s head.”¶ It’s unclear whether any of the bill’s Democratic supporters are even privately pushing for a vote on it at this point, in the wake of the recent announcement that **the six month deal curbing Iran’s nukes is set to move forward.¶** One Senator who favors the bill — Richard Blumenthal — has publicly confirmed he’s having second thoughts in the wake of that announcement.¶ And there is clearly more movement behind the scenes. The Senator who spoke to me today allowed it could become “harder” for the pro-bill forces to demand a vote down the line, in the weeks and months ahead, if negotiations are proceeding with Iran.¶ The picture painted by this Senator is one in which the push for a vote on the bill is clearly on hold. In recent days those who favor the bill have boasted that they are gaining ground, and it’s true that some 58 Senators have signed on to the bill**, putting it within range of passing and even potentially of overriding a presidential veto.¶** But editorial boards and commentators have harshly condemned the push for a vote. Many Senate Democrats have continued to remain silent, which could well be a sign of an unwillingness to sign on to the bill. A couple Dem senators have come out against it in the last couple of days, joining 10 Dem committee chairs who have already done the same. Meanwhile, Obama is set to meet with Senate Democrats tonight, and may again make the case against the bill.¶ And in the middle of all of this, Harry Reid has not shown any signs of allowing a vote on the measure. **While** pressure could still intensify **on him to do so, particularly if circumstances change,** right now even Democrats who support the bill are holding off from pushing him. And if the talks produce progress, it could make it less likely over time that this bill gets a vote.¶ So those who oppose this vote should keep at it.

The plan’s authority restriction is a loss for Obama—causes defections

Dr. Andrew J. Loomis, Visiting Fellow at the Center for a New American Security, and Department of Government at Georgetown University, 3/2/2007, Leveraging legitimacy in the crafting of U.S. foreign policy, 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.

Fights draw dems away from Obama – makes new sanctions and Iranian nuclearization inevitable

David Rhode, The Atlantic, 1/15 [“Democrats Could Wreck Obama's Biggest Foreign Policy Success,” http://www.theatlantic.com/international/archive/2014/01/democrats-could-wreck-obamas-biggest-foreign-policy-success/283103/]

By design or accident, it is increasingly clear that the centerpiece of President Barack Obama’s second-term foreign policy is a nuclear agreement with Iran. **Whether Obama can succeed**, however, now **depends on Congress staying out of the negotiations.¶** Over the last few weeks, 16 Democratic senators have supported a bill that would impose new sanctions on Iran over its nuclear program. They have defied the White House’s intense campaign to block Congress from adding new conditions to any deal.¶ In this way, Obama is the victim of an increasingly craven Washington—where **members of his own party are abandoning him out of political expedience**. At the same time, the White House is also a victim of its sometimes erratic responses to events in the Middle East.¶ For the last six years, the president has repeatedly declared that he does not want the United States entangled in another conflict in the Middle East. As a result, allies and enemies at home and abroad, from members of Congress to Israeli and Iranian hawks, question his commitment to use force against Iran if negotiations fail.¶ Experts warn that the stakes are enormous. Political opportunism, maximalist positions, and mixed messages could take on a life of their own, scuttle the talks, and inadvertently spark military action.¶ George Perkovich, director of the Nuclear Policy Program at the Carnegie Endowment for International Peace, lambasted the bill’s congressional sponsors in Foreign Affairs. He accused Senators Robert Menendez (D-N.J.), Charles Schumer (D-N.Y.) and Mark Kirk (R-Ill.) of reckless grandstanding. “**The Menendez-Kirk-Schumer bill** may be politically expedient,” Perkovich wrote, “but it **is** also entirely **unnecessary and dangerous**.”¶ Much of the Democrats’ maneuvering is old-fashioned political posturing. All the Democratic officeholders now supporting the sanctions bill, David Weigel noted in Slate Tuesday, face tough re-election battles. Rejecting calls from the American Israel Public Affairs Committee to support the new sanctions bill could make them vulnerable to attacks of capitulating to Iran. So far, Democrats from “safer, bluer” turf—including Senators Tim Kaine (D-Va.) and Chris Murphy (D-Conn.)—are not supporting the bill.¶ Ambition also plays a role here. Schumer, who is safe in New York, is looking to succeed Senator Harry Reid (D-Nev.) as majority leader. His chief rival for this job, Senator Dick Durbin (D-Ill.), who was the senior senator from Illinois when Obama was the junior senator, is backing the administration.¶ Democrats who support the new sanctions bill claim that their goal is to give Obama greater leverage in talks with Tehran. But Perkovich and other experts warn that the **proposed sanctions threaten to spark a tit-for-tat cycle of escalation**.¶ As American hard-liners saber rattle, Iranian hard-liners are saber rattling back. If Congress does pass the new sanctions bill, a senior member of the Iranian parliament has threatened, his nation would respond by beginning to enrich uranium to 60 percent—a level close to that needed for a nuclear bomb.¶ The major unresolved issue—and the biggest threat to a comprehensive deal—is whether Iran should be allowed any enrichment capability. The White House has signaled that it would accept a tightly monitored program in Iran—one that enriches uranium only to the level used for energy and research. Israeli Prime Minister Benjamin Netanyahu and hawkish members of Congress argue that increased sanctions will force the regime to give up enrichment or collapse.

Nuclear war

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

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

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

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

n-player competition

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

## off 4

CP text: the United States federal judiciary should restrict indefinite detention by legislating these changes:

---U.S. citizens and Legal Permanent Residents are not eligible for indefinite detention

---indefinite detention should conform with the Law of Armed Conflict and be restricted to individuals who cannot be adequately prosecuted in the criminal justice system

---individuals can be detained for providing substantial support only if it is necessary for the completion of a terrorist plot or the ongoing operation of a terrorist organization or a smaller sub-group thereof

---all individuals classified for prosecution by the Guantanamo Review Task Force Report of 2010, and who have not been formally charged, should receive criminal trials in federal court.

Action by the judiciary is key

**Feldman 13** (Noah, professor of Constitutional and International Law at Harvard, “Obama Can Close Guantanamo: Here’s How,” Bloomberg, May 7, 2013, http://www.bloomberg.com/news/2013-05-07/obama-has-leverage-to-get-his-way-on-guantanamo.html)

**Faced with a standoff between two branches, the system allows an orderly answer: turning to the** third branch, the **courts, to resolve the conflict. Since 2003, the Supreme Court has taken an interest in Guantanamo, deciding on the statutory and constitutional rights extended there, and vetting procedures for detainee hearings and trials.** Along the way, it has shown an equal-opportunity willingness to second-guess the executive -- as when President George W. Bush denied hearings to detainees -- and Congress, which passed a law denying habeas corpus to the prisoners. How could the court get involved? The first step would be for the Obama administration to show some of the legal self-confidence it did in justifying drone strikes against U.S. citizens or in ignoring the War Powers Resolution in the Libya military intervention. Likewise, it could assert a right of control over where the detainees should be held. And if the president’s lawyers are worried about Bush-style assertions of plenary executive power (which, for the record, didn’t concern them when it came to drones or Libya), there is a path they could follow that would hew closer to their favored constitutional style. Geneva Conventions **The reasoning could look like this:** The president’s war power must be exercised pursuant to the laws of war embodied in the Geneva Conventions. And though Guantanamo once conformed to those laws -- as the administration asserted in 2009 -- it no longer does. The conditions are too makeshift to manage the continuing prisoner resistance, and **indefinite detention in an indefinite war with no enemy capable of surrendering is pressing on the bounds of lawful POW detention.** Congress doesn’t have the authority to force the president to violate the laws of war. Yet by blocking Obama from closing Guantanamo, that is just what Congress is doing. What’s more, he has the inherent authority to ensure that we are complying with our treaty obligations. This argument isn’t a certain winner. And there would still be the problem of whether the president could put the detainees in an existing prison. But at least spelling this out would put the fear of God into Congress. Continued congressional resistance would also trigger a court case. The president could have a tough time convincing five justices. According to the framework developed by Justice Robert Jackson in the Truman-era steel seizure case, and used today by the courts, the president’s power is at its “lowest ebb” when Congress has expressly barred him from acting. But even at ebb tide there is still an ocean, and **lots of things Congress can’t stop the president from doing. Complying with** his **legal obligations should surely be at the top of the list.** The Supreme Court might want to duck this controversial issue. But **there is a precedent for the court wading in where Congress is blocking necessary action. In the Cold War, lawful racial segregation in the U.S. became costly as a matter of foreign relations.** President Harry **Truman desegregated the military, but he lacked the authority to overturn state-based discrimination.** The Senate filibuster, originally born of slavery, ensured that Congress wouldn’t pass a civil-rights bill that could have solved the problem. **That left the high court -- which gave us Brown v. Board** of Education. And in that case, the U.S. -- as friend of the court -- quoted Secretary of State Dean Acheson to the effect that segregation was being used as propaganda by the Soviet Union. It is absurd that the commander in chief can’t do what he believes is in the country’s national interests when it comes to detainees. Win, lose or draw, it is time to get around Congress. And if ordinary politics won’t do the trick, **going to the courts may be the best option -- because it is the only one.**

## 1st

The plan destroys the war on terror—undermines intel gathering and crisis response

Carafano, 7

(PhD & Assistant Director of the Kathryn and Shelby Cullom Davis Institute for International Studies, “The War on Terrorism: Habeas Corpus On and Off the Battlefield,” 7/5, http://www.heritage.org/research/reports/2007/07/the-war-on-terrorism-habeas-corpus-on-and-off-the-battlefield)

Impeding the Effectiveness of Military Operations

Soldiers have a number of equally compelling responsibilities in war: accomplishing the mission, safeguarding innocents, and protecting their fellow soldiers. These tasks are difficult enough. Soldiers should not be required to provide to unlawful combatants, in the same manner and to the same extent as would be expected of a civil court, the full array of civil protections afforded to U.S. citizens by the Constitution and created by judges since the 1960s. For example, it is highly unrealistic to expect soldiers during active operations to collect evidence and insure the integrity of the chain of custody for that evidence. American soldiers would effectively face a Hobson's choice: on one hand, win the war, bring fellow soldiers home, and safeguard innocents; or, on the other hand, meet novel legal standards that might result in prematurely releasing war criminals who will go back to the battlefield. Crippling Intelligence Gathering **Gaining timely, actionable information is the most powerful weapon in uncovering and thwarting terrorist plots. Requiring the armed forces to place detainees under a civilian legal process will severely restrict their access to detainees and, in turn, cripple their capacity to obtain intelligence through legitimate, lawful interrogation**. Military authorities are giving Gitmo detainees treatment that is as good as or better than that typically afforded to U.S.-held POWs. The only real difference is that Gitmo detainees may be interrogated for more than name, rank, and serial number. Unnecessary Burdens Changing the legal framework governing unlawful combatants is simply unnecessary. The military is already meeting its obligations to deal justly with individuals in its custody. Since the inception of the Geneva Conventions, no country has ever given automatic habeas corpus rights to POWs. Furthermore, such action is not required by the U.S. Constitution. The Supreme Court ruled in 2004 that, at most, some detainees were covered by a statutory privilege to habeas corpus. The Court concluded, in other words, that Congress had implicitly conferred habeas corpus rights to certain individuals. However, the Military Commissions Act of 2006 repealed that privilege and, so far, Congress has not acted to restore it. The Department of Defense already operates two tribunals that safeguard the legal rights of detainees. The Combatant Status Review Tribunal (CSRT) uses a formal process to determine whether detainees meet the criteria to be designated as enemy combatants. Tribunals known as Administrative Review Boards (ARB) ensure that enemy combatants are not held any longer than necessary. Both processes operate within the confines of traditional law-of-war tribunals and are also subject to the appeals process and judicial review. In addition, Congress has established a process under the Military Commissions Act to allow the military to try any non-U.S. detainees for war crimes they are alleged to have committed. Conclusion Imposing U.S. civil procedures over the conduct of armed conflict **will damage national security and make combat more dangerous for soldiers and civilians alike.** The drive to do so is based on erroneous views about the Constitution, the United States' image abroad, and the realities of war. U.S. military legal processes are on par with or exceed the best legal practices in the world. While meeting the needs of national security, the system respects individuals' rights and offers unlawful enemy combatants a fundamentally fair process that is based on that afforded to America's own military men and women. Having proven itself in past conflicts, **the current legal framework can continue to do so in a prolonged war against terrorism.**

No risk of nuclear terror

**Mueller 10** (John, professor of political science at Ohio State, Calming Our Nuclear Jitters, Issues in Science and Technology, Winter, http://www.issues.org/26.2/mueller.html)

Politicians of all stripes preach to an anxious, appreciative, and very numerous choir when they, like President Obama, proclaim atomic terrorism to be “the most immediate and extreme threat to global security.” It is the problem that, according to Defense Secretary Robert Gates, currently keeps every senior leader awake at night. This is hardly a new anxiety. In 1946, atomic bomb maker J. Robert Oppenheimer ominously warned that if three or four men could smuggle in units for an atomic bomb, they could blow up New York. This was an early expression of a pattern of dramatic risk inflation that has persisted throughout the nuclear age. In fact, although expanding fires and fallout might increase the effective destructive radius, the blast of a Hiroshima-size device would “blow up” about 1% of the city’s area—a tragedy, of course, but not the same as one 100 times greater. In the early 1970s, nuclear physicist Theodore Taylor proclaimed the atomic terrorist problem to be “immediate,” explaining at length “how comparatively easy it would be to steal nuclear material and step by step make it into a bomb.” At the time he thought it was already too late to “prevent the making of a few bombs, here and there, now and then,” or “in another ten or fifteen years, it will be too late.” Three decades after Taylor, we continue to wait for terrorists to carry out their “easy” task. In contrast to these predictions, terrorist groups seem to have exhibited only limited desire and even less progress in going atomic. This may be because, after brief exploration of the possible routes, they, unlike generations of alarmists, have discovered that the tremendous effort required is scarcely likely to be successful. The most plausible route for terrorists, according to most experts, would be to manufacture an atomic device themselves from purloined fissile material (plutonium or, more likely, highly enriched uranium). This task, however, remains a daunting one, requiring that a considerable series of difficult hurdles be conquered and in sequence. Outright armed theft of fissile material is exceedingly unlikely not only because of the resistance of guards, but because chase would be immediate. A more promising approach would be to corrupt insiders to smuggle out the required substances. However, this requires the terrorists to pay off a host of greedy confederates, including brokers and money-transmitters, any one of whom could turn on them or, either out of guile or incompetence, furnish them with stuff that is useless. Insiders might also consider the possibility that once the heist was accomplished, the terrorists would, as analyst Brian Jenkins none too delicately puts it, “have every incentive to cover their trail, beginning with eliminating their confederates.” If terrorists were somehow successful at obtaining a sufficient mass of relevant material, they would then probably have to transport it a long distance over unfamiliar terrain and probably while being pursued by security forces. Crossing international borders would be facilitated by following established smuggling routes, but these are not as chaotic as they appear and are often under the watch of suspicious and careful criminal regulators. If border personnel became suspicious of the commodity being smuggled, some of them might find it in their interest to disrupt passage, perhaps to collect the bounteous reward money that would probably be offered by alarmed governments once the uranium theft had been discovered. Once outside the country with their precious booty, terrorists would need to set up a large and well-equipped machine shop to manufacture a bomb and then to populate it with a very select team of highly skilled scientists, technicians, machinists, and administrators. The group would have to be assembled and retained for the monumental task while no consequential suspicions were generated among friends, family, and police about their curious and sudden absence from normal pursuits back home. Members of the bomb-building team would also have to be utterly devoted to the cause, of course, and they would have to be willing to put their lives and certainly their careers at high risk, because after their bomb was discovered or exploded they would probably become the targets of an intense worldwide dragnet operation. Some observers have insisted that it would be easy for terrorists to assemble a crude bomb if they could get enough fissile material. But Christoph Wirz and Emmanuel Egger, two senior physicists in charge of nuclear issues at Switzerland‘s Spiez Laboratory, bluntly conclude that the task “could hardly be accomplished by a subnational group.” They point out that precise blueprints are required, not just sketches and general ideas, and that even with a good blueprint the terrorist group would most certainly be forced to redesign. They also stress that the work is difficult, dangerous, and extremely exacting, and that the technical requirements in several fields verge on the unfeasible. Stephen Younger, former director of nuclear weapons research at Los Alamos Laboratories, has made a similar argument, pointing out that uranium is “exceptionally difficult to machine” whereas “plutonium is one of the most complex metals ever discovered, a material whose basic properties are sensitive to exactly how it is processed.“ Stressing the “daunting problems associated with material purity, machining, and a host of other issues,” Younger concludes, “to think that a terrorist group, working in isolation with an unreliable supply of electricity and little access to tools and supplies” could fabricate a bomb “is farfetched at best.” Under the best circumstances, the process of making a bomb could take months or even a year or more, which would, of course, have to be carried out in utter secrecy. In addition, people in the area, including criminals, may observe with increasing curiosity and puzzlement the constant coming and going of technicians unlikely to be locals. If the effort to build a bomb was successful, the finished product, weighing a ton or more, would then have to be transported to and smuggled into the relevant target country where it would have to be received by collaborators who are at once totally dedicated and technically proficient at handling, maintaining, detonating, and perhaps assembling the weapon after it arrives. The financial costs of this extensive and extended operation could easily become monumental. There would be expensive equipment to buy, smuggle, and set up and people to pay or pay off. Some operatives might work for free out of utter dedication to the cause, but the vast conspiracy also requires the subversion of a considerable array of criminals and opportunists, each of whom has every incentive to push the price for cooperation as high as possible. Any criminals competent and capable enough to be effective allies are also likely to be both smart enough to see boundless opportunities for extortion and psychologically equipped by their profession to be willing to exploit them. Those who warn about the likelihood of a terrorist bomb contend that a terrorist group could, if with great difficulty, overcome each obstacle and that doing so in each case is “not impossible.” But although it may not be impossible to surmount each individual step, the likelihood that a group could surmount a series of them quickly becomes vanishingly small. Table 1 attempts to catalogue the barriers that must be overcome under the scenario considered most likely to be successful. In contemplating the task before them, would-be atomic terrorists would effectively be required to go though an exercise that looks much like this. If and when they do, they will undoubtedly conclude that their prospects are daunting and accordingly uninspiring or even terminally dispiriting. It is possible to calculate the chances for success. Adopting probability estimates that purposely and heavily bias the case in the terrorists’ favor—for example, assuming the terrorists have a 50% chance of overcoming each of the 20 obstacles—the chances that a concerted effort would be successful comes out to be less than one in a million. If one assumes, somewhat more realistically, that their chances at each barrier are one in three, the cumulative odds that they will be able to pull off the deed drop to one in well over three billion. Other routes would-be terrorists might take to acquire a bomb are even more problematic. They are unlikely to be given or sold a bomb by a generous like-minded nuclear state for delivery abroad because the risk would be high, even for a country led by extremists, that the bomb (and its source) would be discovered even before delivery or that it would be exploded in a manner and on a target the donor would not approve, including on the donor itself. Another concern would be that the terrorist group might be infiltrated by foreign intelligence. The terrorist group might also seek to steal or illicitly purchase a “loose nuke“ somewhere. However, it seems probable that none exist. All governments have an intense interest in controlling any weapons on their territory because of fears that they might become the primary target. Moreover, as technology has developed, finished bombs have been out-fitted with devices that trigger a non-nuclear explosion that destroys the bomb if it is tampered with. And there are other security techniques: Bombs can be kept disassembled with the component parts stored in separate high-security vaults, and a process can be set up in which two people and multiple codes are required not only to use the bomb but to store, maintain, and deploy it. As Younger points out, “only a few people in the world have the knowledge to cause an unauthorized detonation of a nuclear weapon.” There could be dangers in the chaos that would emerge if a nuclear state were to utterly collapse; Pakistan is frequently cited in this context and sometimes North Korea as well. However, even under such conditions, nuclear weapons would probably remain under heavy guard by people who know that a purloined bomb might be used in their own territory. They would still have locks and, in the case of Pakistan, the weapons would be disassembled. The al Qaeda factor The degree to which al Qaeda, the only terrorist group that seems to want to target the United States, has pursued or even has much interest in a nuclear weapon may have been exaggerated. The 9/11 Commission stated that “al Qaeda has tried to acquire or make nuclear weapons for at least ten years,” but the only substantial evidence it supplies comes from an episode that is supposed to have taken place about 1993 in Sudan, when al Qaeda members may have sought to purchase some uranium that turned out to be bogus. Information about this supposed venture apparently comes entirely from Jamal al Fadl, who defected from al Qaeda in 1996 after being caught stealing $110,000 from the organization. Others, including the man who allegedly purchased the uranium, assert that although there were various other scams taking place at the time that may have served as grist for Fadl, the uranium episode never happened. As a key indication of al Qaeda’s desire to obtain atomic weapons, many have focused on a set of conversations in Afghanistan in August 2001 that two Pakistani nuclear scientists reportedly had with Osama bin Laden and three other al Qaeda officials. Pakistani intelligence officers characterize the discussions as “academic” in nature. It seems that the discussion was wide-ranging and rudimentary and that the scientists provided no material or specific plans. Moreover, the scientists probably were incapable of providing truly helpful information because their expertise was not in bomb design but in the processing of fissile material, which is almost certainly beyond the capacities of a nonstate group. Kalid Sheikh Mohammed, the apparent planner of the 9/11 attacks, reportedly says that al Qaeda’s bomb efforts never went beyond searching the Internet. After the fall of the Taliban in 2001, technical experts from the CIA and the Department of Energy examined documents and other information that were uncovered by intelligence agencies and the media in Afghanistan. They uncovered no credible information that al Qaeda had obtained fissile material or acquired a nuclear weapon. Moreover, they found no evidence of any radioactive material suitable for weapons. They did uncover, however, a “nuclear-related” document discussing “openly available concepts about the nuclear fuel cycle and some weapons-related issues.” Just a day or two before al Qaeda was to flee from Afghanistan in 2001, bin Laden supposedly told a Pakistani journalist, “If the United States uses chemical or nuclear weapons against us, we might respond with chemical and nuclear weapons. We possess these weapons as a deterrent.” Given the military pressure that they were then under and taking into account the evidence of the primitive or more probably nonexistent nature of al Qaeda’s nuclear program, the reported assertions, although unsettling, appear at best to be a desperate bluff. Bin Laden has made statements about nuclear weapons a few other times. Some of these pronouncements can be seen to be threatening, but they are rather coy and indirect, indicating perhaps something of an interest, but not acknowledging a capability. And as terrorism specialist Louise Richardson observes, “Statements claiming a right to possess nuclear weapons have been misinterpreted as expressing a determination to use them. This in turn has fed the exaggeration of the threat we face.” Norwegian researcher Anne Stenersen concluded after an exhaustive study of available materials that, although “it is likely that al Qaeda central has considered the option of using non-conventional weapons,” there is “little evidence that such ideas ever developed into actual plans, or that they were given any kind of priority at the expense of more traditional types of terrorist attacks.” She also notes that information on an al Qaeda computer left behind in Afghanistan in 2001 indicates that only $2,000 to $4,000 was earmarked for weapons of mass destruction research and that the money was mainly for very crude work on chemical weapons. Today, the key portions of al Qaeda central may well total only a few hundred people, apparently assisting the Taliban’s distinctly separate, far larger, and very troublesome insurgency in Afghanistan. Beyond this tiny band, there are thousands of sympathizers and would-be jihadists spread around the globe. They mainly connect in Internet chat rooms, engage in radicalizing conversations, and variously dare each other to actually do something. Any “threat,” particularly to the West, appears, then, principally to derive from self-selected people, often isolated from each other, who fantasize about performing dire deeds. From time to time some of these people, or ones closer to al Qaeda central, actually manage to do some harm. And occasionally, they may even be able to pull off something large, such as 9/11. But in most cases, their capacities and schemes, or alleged schemes, seem to be far less dangerous than initial press reports vividly, even hysterically, suggest. Most important for present purposes, however, is that any notion that al Qaeda has the capacity to acquire nuclear weapons, even if it wanted to, looks farfetched in the extreme. It is also noteworthy that, although there have been plenty of terrorist attacks in the world since 2001, all have relied on conventional destructive methods. For the most part, terrorists seem to be heeding the advice found in a memo on an al Qaeda laptop seized in Pakistan in 2004: “Make use of that which is available … rather than waste valuable time becoming despondent over that which is not within your reach.” In fact, history consistently demonstrates that terrorists prefer weapons that they know and understand, not new, exotic ones. Glenn Carle, a 23-year CIA veteran and once its deputy intelligence officer for transnational threats, warns, “We must not take fright at the specter our leaders have exaggerated. In fact, we must see jihadists for the small, lethal, disjointed, and miserable opponents that they are.” al Qaeda, he says, has only a handful of individuals capable of planning, organizing, and leading a terrorist organization, and although the group has threatened attacks with nuclear weapons, “its capabilities are far inferior to its desires.” Policy alternatives The purpose here has not been to argue that policies designed to inconvenience the atomic terrorist are necessarily unneeded or unwise. Rather, in contrast with the many who insist that atomic terrorism under current conditions is rather likely— indeed, exceedingly likely—to come about, I have contended that it is hugely unlikely. However, it is important to consider not only the likelihood that an event will take place, but also its consequences. Therefore, one must be concerned about catastrophic events even if their probability is small, and efforts to reduce that likelihood even further may well be justified. At some point, however, probabilities become so low that, even for catastrophic events, it may make sense to ignore them or at least put them on the back burner; in short, the risk becomes acceptable. For example, the British could at any time attack the United States with their submarine-launched missiles and kill millions of Americans, far more than even the most monumentally gifted and lucky terrorist group. Yet the risk that this potential calamity might take place evokes little concern; essentially it is an acceptable risk. Meanwhile, Russia, with whom the United States has a rather strained relationship, could at any time do vastly more damage with its nuclear weapons, a fully imaginable calamity that is substantially ignored. In constructing what he calls “a case for fear,” Cass Sunstein, a scholar and current Obama administration official, has pointed out that if there is a yearly probability of 1 in 100,000 that terrorists could launch a nuclear or massive biological attack, the risk would cumulate to 1 in 10,000 over 10 years and to 1 in 5,000 over 20. These odds, he suggests, are “not the most comforting.” Comfort, of course, lies in the viscera of those to be comforted, and, as he suggests, many would probably have difficulty settling down with odds like that. But there must be some point at which the concerns even of these people would ease. Just perhaps it is at one of the levels suggested above: one in a million or one in three billion per attempt.

Terrorists won’t use WMD

Forest 12 (James, PhD and Director of Terrorism Studies and an associate professor at the United States Military Academy, “Framework for Analyzing the Future Threat of WMD Terrorism,” Journal of Strategic Security, Volume 5, Number 4, Article 9, Winter 2012, http://scholarcommons.usf.edu/cgi/viewcontent.cgi?article=1193&context=jss) \*\*NOTE---CBRN weapon = chemical, biological, radiological or nuclear weapon

The terrorist group would additionally need to consider whether a WMD attack would be counterproductive by generating, for example, condemnation among the group's potential supporters. This possible erosion in support, in turn, would degrade the group's political legitimacy among its constituencies, who are viewed as critical to the group's long-term survival. By crossing this WMD threshold, the group could feasibly undermine its popular support, encouraging a perception of the group as deranged mass murders, rather than righteous vanguards of a movement or warriors fighting for a legitimate cause.16 The importance of perception and popular support—or at least tolerance—gives a group reason to think twice before crossing the threshold of catastrophic terrorism. A negative perception can impact a broad range of critical necessities, including finances, safe haven, transportation logistics, and recruitment. Many terrorist groups throughout history have had to learn this lesson the hard way; the terrorist groups we worry about most today have learned from the failures and mistakes of the past, and take these into consideration in their strategic deliberations. Furthermore, a WMD attack could prove counterproductive by provoking a government (or possibly multiple governments) to significantly expand their efforts to destroy the terrorist group. Following a WMD attack in a democracy, there would surely be a great deal of domestic pressure on elected leaders to respond quickly and with a massive show of force. A recognition of his reality is surely a constraining factor on Hezbollah deliberations about attacking Israel, or the Chechen's deliberations about attacking Russia, with such a weapon.

Executive will circumvent any legal challenges to detention

McNeal, 8

(Law Prof-Penn State, Northwestern University Law Review Colloquy, “BEYOND GUANTANAMO, OBSTACLES AND OPTIONS,” 103 Nw. U. L. Rev. Colloquy 29, August, Lexis)

. Executive Forum-Discretion--Any reform which allows for adjudication of guilt in different forums, each with differing procedural protections, raises serious questions of legitimacy and also **incentivizes the Executive to use "lesser" forms of justice**--nonprosecution or prosecutions by military commission. In this section, my focus is on the incentives which compel the Executive to not prosecute, or to prosecute in military commissions rather than Article III courts. Understanding the reason for these discretionary decisions will guide reformers pondering whether a new system will actually be used by the next President. There are two primary concerns that executive actors face when selecting a forum: protecting intelligence and ensuring trial outcomes. Executive forum-discretion is a different form of prosecutorial discretion with a different balancing inquiry from the one engaged in by courts. Where prosecutorial discretion largely deals with the charges a defendant will face, executive forum-discretion impacts the procedural protections a defendant can expect at both the pretrial and trial phase. Where balancing by Courts largely focuses on ensuring a just outcome which protects rights, the balancing engaged in by executive actors has inwardly directed objectives [\*50] which value rights only to the degree they impact the Executive's self interest. Given the unique implications flowing from forum determinations, reformers can benefit from understanding why an executive actor chooses one trial forum over another. I contend that there are seven predictive factors that influence executive discretion; national security court reformers should be aware of at least the two most salient predictive factors: trial outcomes and protection of intelligence equities. n112 The Executive's balancing of factors yields outcomes with direct implications for fundamental notions of due process and substantial justice. Any proposed reform is incomplete without thoroughly addressing the factors that the Executive balances.

Congress is circumvented

Douglas Kriner, Assistant Profess of Political Science at Boston University, 2010, After the Rubicon: Congress, Presidents, and the Politics of Waging War, p. 6-8

The role that Congress plays in deciding whether a war is continued or concluded is of intrinsic interest to academics, policymakers, and casual observers of contemporary American politics alike. Yet the belief that Congress retains some capacity to shape the conduct of military affairs after a venture is launched is also a critically important and untested proposition underlying most theories **asserting** congressional influence over the initiation of military action. Why, according to this emerging literature, do presidents facing a strong opposition party in Congress use force less frequently than do their peers with strong partisan majorities in Congress? The most commonly offered answer is that presidents anticipate Congress's likely reaction to a prospective use of force and respond accordingly.14 Presidents who confront an opposition-led Congress anticipate that it is more willing and able to challenge the administration's conduct of military action than a Congress controlled by their partisan allies. Therefore, the frequency with which presidents use force abroad covaries with the strength of their party in Congress. However, this anticipatory logic requires that Congress has the ability to raise the costs of military action for the president, once that action has begun. If Congress lacks this capacity, presidents have little reason to adjust their willingness to initiate the use of force in anticipation of an adverse congressional response." As a result, determining whether and how Congress can influence the scope and duration of ongoing military operations is critically important even to evaluating prior research that asserts congressional influence over the initiation of military actions. Without it, such analyses rest on shaky ground. Unfortunately, because the dynamics change dramatically once American troops are deployed abroad, simply drawing lessons from existing studies of interbranch dynamics in military policymaking at the conflict initiation phase and applying them to the conflict conduct phase is unlikely to offer much insight." The decision-making environment at the conflict conduct phase differs from that at the conflict initiation phase along at least three key dimensions: the incentives and constraints governing congressional willingness to challenge presidential discretion; the relative institutional capacities of the executive and legislative branches to affect military policymaking; and finally, the ability of unfolding conflict events to change further the political and strategic environment in which the two branches vie for power. With regard to the political constraints that limit would-be adversaries in Congress, the president may **be in an even stronger position** after American troops are deployed in the field. Ordering troops abroad is akin to other unilateral presidential actions; by seizing his office's capacity for independent action, a president can dramatically **change the status quo** and fundamentally alter the political playing field on which Congress and other actors must act to challenge his policies.17 Once the troops are overseas, the political stakes for any congressional challenge to the president's policies are inexorably raised; any such effort is subject to potentially ruinous charges of failing to support the troops. Georgia Senator Richard Russell's conversion from opposition to U.S. intervention in Vietnam in the early 196os to stalwart support for staying the course after Lyndon Johnson's escalation of the American commitment there illustrates this change: "We are there now, and the time for debate has passed. Our flag is committed, and—more importantly—American boys are under fire."" Russell's sentiment was loudly echoed forty years later in the allegations by the Bush administration and its partisan allies in Congress that any legislative efforts to curtail the war in Iraq undermined the troops. As a result of these potentially **intense political costs**, there are reasons to question whether Congress can mount an effective challenge to the policies of the commander in chief. If it cannot, this would compel a reassessment of prior theories asserting congressional influence over the initiation of military actions through the logic of anticipated response. Certainly, more empirical analysis is needed to answer this question.

No impact to economies – diversification

Aiginger 09 (Karl, ÖSTERREICHISCHES INSTITUTE FÜR WIRTSCHAFTSFORSCHUNG, “Strengthening the Resilience of an Economy Strategies to Prevent another Crisis”, WIFO Working Papers, No. 338 June 2009, http://www.wifo.ac.at/wwa/downloadController/displayDbDoc.htm?item=WP\_2009\_338$.PDF)

Sectors with reduced exposure to price and business cycle volatility, e.g. highly processed products as opposed to raw materials and intermediate products, are less influenced by economic cycles even in the current crisis. However, this time the fluctuations in the machinery and construction sectors have been particularly high. The car sector was always strongly cyclical, this time even more so due to flawed model policies (failing to adapt to increasing fuel costs or to look for alternative drive systems). Non-durable consumer goods are less cyclical compared to durable consumer goods. A larger proportion of non durable consumer goods would reduce cyclical fluctuations but could be at the expense of growth since demand e.g. for food and clothes grows more slowly than for other products and Austria is at a competitive disadvantage in this sector. What does make an economy more resilient to a crisis is a larger service sector, although it must be said that fast growing business services are more prone to stronger fluctuations (as compared to personal and public services). High value industrial products with a fast growth rate but also with a service component or product differentiation by quality definitely go some way to insuring against large fluctuations. This is also true of an industry structure which continually and prospectively incorporates the European Energy and Climate packages into any investment plans. This would also reduce fluctuations which occur as a result of the increasing priority of environmental goals. It is however counterproductive to reduce the share of industry in output as it is the basis of many business-related services. There is also a lack of arguments which would justify the government intervening in a market economy in this way. Furthermore Austrian industry is a model for success on both a national and international level (Aiginger − Sieber, 2009). A broad spread of exports across all regions is usually an effective insurance against a crisis. The simultaneity of the economic downturn in the current crisis surprised everyone but even now there markets which are still growing faster than the average or which are already growing fast again after the immediate impact from the crisis. Since one can assume that the next crisis will not be as synchronised it is advantageous to diversify exports across all regions whilst paying special attention to growth markets such as the Middle East, China, the emerging EU countries and neighbouring markets (Turkey, Ukraine and Russia; Wolfmayr, 2009). Building up inventories instead of just-in-time delivery could be increase resilience. However, larger stocks may have the effect of reducing efficiency and increasing costs. Diversifying suppliers (having more than one), a broader range of potential buyers (more than one dominant buyer) and diversifying the application range of products (chip production for cars, mobile telephones and conveying machinery) can have a stabilising effect. Diversification may also reduce the amount of research provided by a supplier for a fixed buyer. Technical knowhow in the supply industry, which is valuable to multiple purchasers and for diverse purposes, generally increases flexibility in a crisis. Public or private storage of goods which tend to be cyclical and whose supply is relatively fixed in the short term (difficult to expand) could be considered, e.g. food and energy. This would curb extreme fluctuations in price and lucrative speculation. Buffer stocks should ideally be on a supra-regional (e.g. European) level. High marginal taxation and high replacement ratios (e.g. for unemployment benefits) can slow down an economic boom or quickly smoothen a recession (without any additional discretionary economic policy intervention). However both instruments have a downside with regards to efficiency (they may reduce workplace motivation and efforts by the unemployed to find a job). We should think about financing social security to a higher degree from tax revenues. The new budgetary framework (“Haushaltsgesetz”) sets spending limits, which, strictly applied, provide a buffer against the state spending too much money during a boom through expenditure ceilings. This prevents the dramatically increasing tax revenues, as seen in 2008, immediately being spent on additional spending programmes which were set up on short notice. Additional mechanisms would be desirable in regional administrative bodies and for the special financing (funds). Also in these institutions any excess funds will immediately be spent in boom time and if there is a deficit an additional grant will be demanded from the “higher” level.

Diversionary theory is false – people are too smart and leaders too frightened

Boehmer, 07 – political science professor at the University of Texas (Charles, Politics & Policy, 35:4, “The Effects of Economic Crisis, Domestic Discord, and State Efficacy on the Decision to Initiate Interstate Conflict”)

This article examines the contemporaneous effect of low economic growth and domestic instability on the threat of regime change and/ or involvement in external militarized conflicts. Many studies of diversionary conflict argue that lower rates of economic growth should heighten the risk of international conflict. Yet we know that militarized interstate conflicts, and especially wars, are generally rare events whereas lower rates of growth are not. Additionally, a growing body of literature shows that regime changes are also associated with lower rates of economic growth. The question then becomes which event, militarized interstate conflict or regime change, is the most likely to occur with domestic discord and lower rates of economic growth? Diversionary theory claims that leaders seek to divert attention away from domestic problems such as a bad economy or political scandals, or to garner increased support prior to elections. Leaders then supposedly externalize discontented domestic sentiments onto other nations, sometimes as scapegoats based on the similar in-group/out-group dynamic found in the research of Coser (1956) and Simmel (1955), where foreign countries are blamed for domestic problems. This process is said to involve a “rally-round-the-flag” effect, where a leader can expect a short-term boost in popularity with the threat or use of force (Blechman, Kaplan, and Hall 1978; Mueller 1973). Scholarship on diversionary conflict has focused most often on the American case1 but recent studies have sought to identify this possible behavior in other countries.2 The Falklands War is often a popular example of diversionary conflict (Levy and Vakili 1992). Argentina was reeling from hyperinflation and rampant unemployment associated with the Latin American debt crisis. It is plausible that a success in the Falklands War may have helped to rally support for the governing Galtieri regime, although Argentina lost the war and the ruling regime lost power. How many other attempts to use diversionary tactics, if they indeed occur, can be seen to generate a similar outcome? The goal of this article is to provide an assessment of the extent to which diversionary strategy is a threat to peace. Is this a colorful theory kept alive by academics that has little bearing upon real events, or is this a real problem that policy makers should be concerned with? If it is a strategy readily available to leaders, then it is important to know what domestic factors trigger this gambit. Moreover, to know that requires an understanding of the context in external conflict, which occurs relative to regime changes. Theories of diversionary conflict usually emphasize the potential benefits of diversionary tactics, although few pay equal attention to the prospective costs associated with such behavior. It is not contentious to claim that leaders typically seek to remain in office. However, whether they can successfully manipulate public opinion regularly during periods of domestic unpopularity through their states’ participation in foreign militarized conflicts—especially outside of the American case—is a question open for debate. Furthermore, there appears to be a logical disconnect between diversionary theories and extant studies of domestic conflict and regime change. Lower rates of economic growth are purported to increase the risk of both militarized interstate conflicts (and internal conflicts) as well as regime changes (Bloomberg and Hess 2002). This implies that if leaders do, in fact, undertake diversionary conflicts, many may still be thrown from the seat of power—especially if the outcome is defeat to a foreign enemy. Diversionary conflict would thus seem to be a risky gambit (Smith 1996). Scholars such as MacFie (1938) and Blainey (1988) have nevertheless questioned the validity of the diversionary thesis. As noted by Levy (1989), this perspective is rarely formulated as a cohesive and comprehensive theory, and there has been little or no knowledge cumulation. Later analyses do not necessarily build on past studies and the discrepancies between inquiries are often difficult to unravel. “Studies have used a variety of research designs, different dependent variables (uses of force, major uses of force, militarized disputes), different estimation techniques, and different data sets covering different time periods and different states” (Bennett and Nordstrom 2000, 39). To these problems, we should add a lack of theoretical precision and incomplete model specification. By a lack of theoretical precision, I am referring to the linkages between economic conditions and domestic strife that remain unclear in some studies (Miller 1995; Russett 1990). Consequently, extant studies are to a degree incommensurate; they offer a step in the right direction but do not provide robust cross-national explanations and tests of economic growth and interstate conflict. Yet a few studies have attempted to provide deductive explanations about when and how diversionary tactics might be employed. Using a Bayesian updating game, Richards and others (1993) theorize that while the use of force would appear to offer leaders a means to boost their popularity, a poorly performing economy acts as a signal to a leader’s constituents about his or her competence. Hence, attempts to use diversion are likely to fail either because incompetent leaders will likewise fail in foreign policy or people will recognize the gambit for what it is. Instead, these two models conclude that diversion is likely to be undertaken particularly by risk-acceptant leaders. This stress on a heightened risk of removal from office is also apparent in the work of Bueno de Mesquita and others (1999), and Downs and Rocke (1994), where leaders may “gamble for resurrection,” although the diversionary scenario in the former study is only a partial extension of their theory on selectorates, winning coalitions, and leader survival. Again, how often do leaders fail in the process or are removed from positions of power before they can even initiate diversionary tactics? A few studies focusing on leader tenure have examined the removal of leaders following war, although almost no study in the diversionary literature has looked at the effects of domestic problems on the relative risks of regime change, interstate conflict, or both events occurring in the same year.3

## 2nd

The status quo solves the case—the last Uighurs were already released to Slovakia.

Norms arise from inevitable pursuit of self-interest – not a model/custom structure

Goldsmith 98 (Jack, Harvard law prof, and Eric Posner, UChicago law prof, “A Theory of Customary International Law”, November 1998, University of Chicago Law School, John M. Olin Law & Economics Working Paper No. 63, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=145972, ZBurdette)

The theory suggests that most international behavioral regularities associated with CIL reflect coincidence of interest or coercion. These cases are trivial and have no normative content, for states independently pursue their self-interest without generating gains from interaction. The theory also contemplates that some international behavioral regularities associated with CIL will reflect cooperation or coordination, but the theory suggests that these regularities will arise in bilateral, not multilateral, interactions. **What appear to be multilateral CIL norms, then, are** illusions**, the product of some combination of (a)** coincidence of interests among all, or almost all, states, (b) coercion by one or a few powerful states, or (c) a prisoner’s dilemma or a coordination game played out in discrete bilateral contexts.

This theory differs from the standard conception of CIL in several fundamental respects. It rejects the usual explanations of CIL based on opinio juris, legality, morality, and related concepts. **States do not comply with norms of CIL because of a sense of moral or legal obligation**; rather, their compliance and the norms themselves emerge from the states’ pursuit of self-interested policies on the international stage. In other words, CIL is not an exogenous force that controls the behavior of states**; it is a label people attach to behavior** that is generated endogenously from the interactions of states pursuing their self-interest. In addition, our theory rejects the traditional claim that the behaviors associated with CIL reflect a single, unitary logic. These behaviors instead reflect various and importantly different logical structures played out in discrete, historically contingent contexts. Finally, the theory is skeptical of the existence of law-like, multilateral behavioral regularities that are typically thought to constitute CIL. It holds that multinational regularities will invariably reflect coincidence of interest or coercion (and thus not be law-like), and that regularities that reflect cooperation or coordination arise only in bilateral contexts.

**Can’t solve warming – no country will get on board**

**Hale ‘11** - PhD Candidate in the Department of Politics at Princeton University and a Visiting Fellow at LSE Global Governance, London School of Economics (Thomas, “A Climate Coalition of the Willing,” Washington Quarterly, Winter, http://www.twq.com/11winter/docs/11winter\_Hale.pdf

Intergovernmental efforts to limit the gases that cause climate change **have** all but **failed**. After the unsuccessful 2010 Copenhagen summit, and with little progress at the 2010 Cancun meeting, it is hard to see how major emitters will agree any time soon on mutual emissions reductions that are sufficiently ambitious to prevent a substantial (greater than two degree Celsius) increase in average global temperatures. It is not hard to see why. No deal excluding the United States and China, which together emit more than 40 percent of the world’s greenhouse gases (GHGs), **is worth the paper it is written on.** But **domestic politics in both countries** effectively **block** ‘‘G-2’’ **leadership on climate**. In the United States, the **Obama** administration **has basically given up** on national cap-and-trade legislation. Even the relatively modest Kerry-Lieberman-Graham energy bill remains dead in the Senate. The Chinese government, in turn, **faces an even harsher constraint.** Although the nation has adopted important energy efficiency goals, **the** Chinese Communist **Party has staked its legitimacy** and political survival **on raising the living standard** of average Chinese. **Accepting** international **commitments that stand even a small chance of reducing the country’s GDP** growth rate below a crucial threshold **poses an unacceptable risk** to the stability of the regime. Although **the G-2** present the largest and most obvious barrier to a global treaty, they **also provide a convenient excuse for other governments to avoid aggressive action**. Therefore, the international community should not expect to negotiate a worthwhile successor to the Kyoto Protocol, at least not in the near future.

**4. Warming doesn't cause extinction**

**Lomborg ‘8** (Director of the Copenhagen Consensus Center and adjunct professor at the Copenhagen Business School, Bjorn, “Warming warnings get overheated”, The Guardian, 8/15, http://www.guardian.co.uk/commentisfree/2008/aug/15/carbonemissions.climatechange

These alarmist predictions are becoming quite bizarre, and could be dismissed as sociological oddities, if it weren’t for the fact that they get such big play in the media. Oliver Tickell, for instance, writes that a global warming causing a 4C temperature increase by the end of the century would be a “catastrophe” and the beginning of the “extinction” of the human race. This **is simply** silly. His evidence? That 4C would mean that all the ice on the planet would melt, bringing the long-term sea level rise to 70-80m, flooding everything we hold dear, seeing billions of people die. Clearly, Tickell has maxed out the campaigners’ scare potential (because there is no more ice to melt, this is the scariest he could ever conjure). But he is **wrong**. Let us just remember that the UN climate panel, the IPCC, expects a temperature rise by the end of the century between 1.8 and 6.0C. Within this range, the IPCC predicts that, by the end of the century, sea levels will rise 18-59 centimetres – Tickell [he] is simply exaggerating **by a factor of** up to **400**. Tickell will undoubtedly claim that he was talking about what could happen many, many millennia from now. But this is disingenuous. First, the 4C temperature rise is predicted on a century scale – this is what we talk about and can plan for. Second, although sea-level rise will continue for many centuries to come, the **models unanimously show that** Greenland’s ice shelf will be reduced, but Antarctic ice will increase even more (because of increased precipitation in Antarctica) for the next three centuries. What will happen beyond that clearly depends much more on emissions in future centuries. Given that CO2 stays in the atmosphere about a century, what happens with the temperature, say, six centuries from now mainly depends on emissions five centuries from now (where it seems unlikely non-carbon emitting technology such as solar panels will not have become economically competitive). Third, Tickell tells us how the 80m sea-level rise would wipe out all the world’s coastal infrastructure and much of the world’s farmland – “undoubtedly” causing billions to die. But to cause billions to die, it would require the surge to occur within a single human lifespan. This sort of scare tactic is insidiously wrong and misleading, mimicking a firebrand preacher who claims the earth is coming to an end and we need to repent. While it is probably true that the sun will burn up the earth in 4-5bn years’ time, it does give a slightly different perspective on the need for immediate repenting. Tickell’s claim that 4C will be the beginning of our extinction is again many times beyond wrong and misleading, and, of course, made with no data to back it up. Let us just take a look at the realistic impact of such a 4C temperature rise. For **the Copenhagen Consensus**, one of the lead economists of the IPCC, Professor Gary Yohe, **did a survey of all the problems and all the benefits** accruing from a temperature rise over this century of about approximately 4C. And yes, there will, of course, also be benefits: as temperatures rise, more people will die from heat, but fewer from cold; agricultural yields will decline in the tropics, but increase in the temperate zones, etc. The model evaluates the impacts on agriculture, forestry, energy, water, unmanaged ecosystems, coastal zones, heat and cold deaths and disease. The bottom line is that benefits from global warming right now **outweigh the costs** (the benefit is about 0.25% of global GDP). Global warming will continue to be a net benefit until about 2070, when the damages will begin to outweigh the benefits, reaching a total damage cost equivalent to about 3.5% of GDP by 2300. **This is simply not the end of humanity**. If anything, **global warming is a net benefit now; and even in three centuries, it will not be a challenge to our civilisation.** Further**, the IPCC expects the average person on earth to be 1,700% richer by the end of this century.**

China specifically will only model the US and CIL when convenient

deLisle 2k (Jacques, Professor of Law, University of Pennsylvania Law School, “China's Approach to International Law: A Historical Perspective”, Proceedings of the Annual Meeting (American Society of International Law), Vol. 94, (APRIL 5-8, 2000), pp. 267-275, JSTOR, ZBurdette)

At the same time, China has become more assertive in seeking to shape international legal rules to better reflect its interests and preferences. Principal recent examples include support for human rights relativism and strong notions of national sovereignty, and opposition to prospective doctrines permitting intervention on humanitarian or pro-democracy grounds. As China's interest and participation in international legal regimes has increased, so too have the pressures on the international legal system and its participants to take seriously such PRC positions. The PRC's emergence as at least a prospective great power and a large, rapidly developing and increasingly open economy are giving China the ability, as well as the will, to become a more significant actor in the international legal system. With China's greater involvement and influence also has come increasing international concern about the bona fides of Beijing' s commitments, the degree of its compliance with the rules it has nominally accepted, and the systemic consequences of Chinese actions that arguably flout international law.

# 2NC

## 2NC OV

Regulations on detention require huge military investments that trade-off with effective war-fighting—causes failure in Iraq and Afghanistan

Ford, 10

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

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

Nuclear war

Morgan 7

(Stephen John, former National Executive Officer of the British Labour Party, his responsibilities included international relations, ethnic minority work, women’s issues, finance, local government and organization, he specialised particularly in international crisis situations spending long periods working in Belfast, in efforts to overcome sectarian strife and terrorism, former Director of WIC, a research and publishing company based in London, he went to live in Budapest during the Gorbachov period from where he helped build opposition groups in the underground in Hungary, Yugoslavia, Bulgaria and East Germany, Stephen left active politics in the early 1990 and came to live in Brussels, where he established and managed his own publishing company, has lived and worked in more than 27 different countries, including underground political work during the troubles in in Northern Ireland and war in Yugoslavia, http://www.electricarticles.com/display.aspx?id=639)

Although disliked and despised in many quarters, the Taliban could not advance without the support or acquiescence of parts of the population, especially in the south. In particular, the Taliban is drawing on backing from the Pashtun tribes from whom they originate. The southern and eastern areas have been totally out of government control since 2001. Moreover, not only have they not benefited at all from the Allied occupation, but it is increasingly clear that with a few small centres of exception, all of the country outside Kabul has seen little improvement in its circumstances. The conditions for unrest are ripe and the Taliban is filling the vacuum. The Break-Up of Afghanistan? However, the Taliban is unlikely to win much support outside of the powerful Pashtun tribes. Although they make up a majority of the nation, they are concentrated in the south and east. Among the other key minorities, such as Tajiks and Uzbeks, who control the north they have no chance of making new inroads. They will fight the Taliban and fight hard, but their loyalty to the NATO and US forces is tenuous to say the least. The Northern Alliance originally liberated Kabul from the Taliban without Allied ground support. The Northern Alliance are fierce fighters, veterans of the war of liberation against the Soviets and the Afghanistan civil war. Mobilized they count for a much stronger adversary than the NATO and US forces. It is possible that, while they won’t fight for the current government or coalition forces, they will certainly resist any new Taliban rule. They may decide to withdraw to their areas in the north and west of the country. This would leave the Allied forces with few social reserves, excepting a frightened and unstable urban population in Kabul, much like what happened to the Soviets. Squeezed by facing fierce fighting in Helmund and other provinces, and, at the same time, harried by a complementary tactic of Al Qaeda-style urban terrorism in Kabul, sooner or later, a “Saigon-style” evacuation of US and Allied forces could be in the cards. The net result could be the break-up and partition of Afghanistan into a northern and western area and a southern and eastern area, which would include the two key cities of Kandahar and, the capital Kabul. « Pastunistan?» The Taliban themselves, however may decide not to take on the Northern Alliance and fighting may concentrate on creating a border between the two areas, about which the two sides may reach an agreement regardless of US and Allied plans or preferences. The Taliban may claim the name Afghanistan or might opt for “Pashtunistan” – a long-standing, though intermittent demand of the Pashtuns, within Afghanistan and especially along the ungovernable border regions inside Pakistan. It could not be ruled out that the Taliban could be aiming to lead a break away of the Pakistani Pashtuns to form a 30 million strong greater Pashtun state, encompassing some 18 million Pakistani Pashtuns and 12 Afghan Pashtuns. Although the Pashtuns are more closely linked to tribal and clan loyalty, there exists a strong latent embryo of a Pashtun national consciousness and the idea of an independent Pashtunistan state has been raised regularly in the past with regard to the disputed territories common to Afghanistan and Pakistan. The area was cut in two by the “Durand Line”, a totally artificial border between created by British Imperialism in the 19th century. It has been a question bedevilling relations between the Afghanistan and Pakistan throughout their history, and with India before Partition. It has been an untreated, festering wound which has lead to sporadic wars and border clashes between the two countries and occasional upsurges in movements for Pashtun independence. In fact, is this what lies behind the current policy of appeasement President Musharraf of Pakistan towards the Pashtun tribes in along the Frontiers and his armistice with North Waziristan last year? Is he attempting to avoid further alienating Pashtun tribes there and head–off a potential separatist movement in Pakistan, which could develop from the Taliban’s offensive across the border in Afghanistan? Trying to subdue the frontier lands has proven costly and unpopular for Musharraf. In effect, he faces exactly the same problems as the US and Allies in Afghanistan or Iraq. Indeed, fighting Pashtun tribes has cost him double the number of troops as the US has lost in Iraq. Evidently, he could not win and has settled instead for an attempted political solution. When he agreed the policy of appeasement and virtual self-rule for North Waziristan last year, President Musharraf stated clearly that he is acting first and foremost to protect the interests of Pakistan. While there was outrageous in Kabul, his deal with the Pashtuns is essentially an effort to firewall his country against civil war and disintegration. In his own words, what he fears most is, the « Talibanistation » of the whole Pashtun people, which he warns could inflame the already fierce fundamentalist and other separatist movement across his entire country. He does not want to open the door for any backdraft from the Afghan war to engulf Pakistan. Musharraf faces the nationalist struggle in Kashmir, an insurgency in Balochistan, unrest in the Sindh, and growing terrorist bombings in the main cities. There is also a large Shiite population and clashes between Sunnis and Shias are regular. Moreover, fundamentalist support in his own Armed Forces and Intelligence Services is extremely strong. So much so that analyst consider it likely that the Army and Secret Service is protecting, not only top Taliban leaders, but Bin Laden and the Al Qaeda central leadership thought to be entrenched in the same Pakistani borderlands. For the same reasons, he has not captured or killed Bin Laden and the Al Qaeda leadership. Returning from the frontier provinces with Bin Laden’s severed head would be a trophy that would cost him his own head in Pakistan. At best he takes the occasional risk of giving a nod and a wink to a US incursion, but even then at the peril of the chagrin of the people and his own military and secret service. The Break-Up of Pakistan? Musharraf probably hopes that by giving de facto autonomy to the Taliban and Pashtun leaders now with a virtual free hand for cross border operations into Afghanistan, he will undercut any future upsurge in support for a break-away independent Pashtunistan state or a “Peoples’ War” of the Pashtun populace as a whole, as he himself described it. However events may prove him sorely wrong. Indeed, his policy could completely backfire upon him. As the war intensifies, he has no guarantees that the current autonomy may yet burgeon into a separatist movement. Appetite comes with eating, as they say. Moreover, should the Taliban fail to re-conquer al of Afghanistan, as looks likely, but captures at least half of the country, then a Taliban Pashtun caliphate could be established which would act as a magnet to separatist Pashtuns in Pakistan. Then, the likely break up of Afghanistan along ethnic lines, could, indeed, lead the way to the break up of Pakistan, as well. Strong centrifugal forces have always bedevilled the stability and unity of Pakistan, and, in the context of the new world situation, the country could be faced with civil wars and popular fundamentalist uprisings, probably including a military-fundamentalist coup d’état. Fundamentalism is deeply rooted in Pakistan society. The fact that in the year following 9/11, the most popular name given to male children born that year was “Osama” (not a Pakistani name) is a small indication of the mood. Given the weakening base of the traditional, secular opposition parties, conditions would be ripe for a coup d’état by the fundamentalist wing of the Army and ISI, leaning on the radicalised masses to take power. Some form of radical, military Islamic regime, where legal powers would shift to Islamic courts and forms of shira law would be likely. Although, even then, this might not take place outside of a protracted crisis of upheaval and civil war conditions, mixing fundamentalist movements with nationalist uprisings and sectarian violence between the Sunni and minority Shia populations. The nightmare that is now Iraq would take on gothic proportions across the continent. The prophesy of an arc of civil war over Lebanon, Palestine and Iraq would spread to south Asia, stretching from Pakistan to Palestine, through Afghanistan into Iraq and up to the Mediterranean coast. Undoubtedly, this would also spill over into India both with regards to the Muslim community and Kashmir. Border clashes, terrorist attacks, sectarian pogroms and insurgency would break out. A new war, and possibly nuclear war, between Pakistan and India could not be ruled out. Atomic Al Qaeda Should Pakistan break down completely, a Taliban-style government with strong Al Qaeda influence is a real possibility. Such deep chaos would, of course, open a "Pandora's box" for the region and the world. With the possibility of unstable clerical and military fundamentalist elements being in control of the Pakistan nuclear arsenal, not only their use against India, but Israel becomes a possibility, as well as the acquisition of nuclear and other deadly weapons secrets by Al Qaeda. Invading Pakistan would not be an option for America. Therefore a nuclear war would now again become a real strategic possibility. This would bring a shift in the tectonic plates of global relations. It could usher in a new Cold War with China and Russia pitted against the US. What is at stake in "the half-forgotten war" in Afghanistan is far greater than that in Iraq. But America's capacities for controlling the situation are extremely restricted. Might it be, in the end, they are also forced to accept President Musharraf's unspoken slogan of «Better another Taliban Afghanistan, than a Taliban NUCLEAR Pakistan!

And, Morgan says it draws in China and Russia:

Russia

Bostrom 2(Nick Bostrom, 2002. Professor of Philosophy and Global Studies at Yale. "Existential Risks: Analyzing Human Extinction Scenarios and Related Hazards," 38, www.transhumanist.com/volume9/risks.html)

A much greater existential risk emerged with the build-up of nuclear arsenals in the US and the USSR. An all-out nuclear war was a possibility with both a substantial probability and with consequences that might have been persistent enough to qualify as global and terminal. There was a real worry among those best acquainted with the information available at the time that a nuclear Armageddon would occur and that it might annihilate our species or permanently destroy human civilization. Russia and the US retain large nuclear arsenals that could be used in a future confrontation, either accidentally or deliberately. There is also a risk that other states may one day build up large nuclear arsenals. Note however that a smaller nuclear exchange, between India and Pakistan for instance, is not an existential risk, since it would not destroy or thwart humankind’s potential permanently.

Extinction

Wittner 11 (Lawrence S. Wittner, Emeritus Professor of History at the State University of New York/Albany, Wittner is the author of eight books, the editor or co-editor of another four, and the author of over 250 published articles and book reviews. From 1984 to 1987, he edited Peace & Change, a journal of peace research., 11/28/2011, "Is a Nuclear War With China Possible?", www.huntingtonnews.net/14446)

While nuclear weapons exist, there remains a danger that they will be used. After all, for centuries national conflicts have led to wars, with nations employing their deadliest weapons. The current deterioration of U.S. relations with China might end up providing us with yet another example of this phenomenon. The gathering tension between the United States and China is clear enough. Disturbed by China’s growing economic and military strength, the U.S. government recently challenged China’s claims in the South China Sea, increased the U.S. military presence in Australia, and deepened U.S. military ties with other nations in the Pacific region. According to Secretary of State Hillary Clinton, the United States was “asserting our own position as a Pacific power.” But need this lead to nuclear war? Not necessarily. And yet, there are signs that it could. After all, both the United States and China possess large numbers of nuclear weapons. The U.S. government threatened to attack China with nuclear weapons during the Korean War and, later, during the conflict over the future of China’s offshore islands, Quemoy and Matsu. In the midst of the latter confrontation, President Dwight Eisenhower declared publicly, and chillingly, that U.S. nuclear weapons would “be used just exactly as you would use a bullet or anything else.” Of course, China didn’t have nuclear weapons then. Now that it does, perhaps the behavior of national leaders will be more temperate. But the loose nuclear threats of U.S. and Soviet government officials during the Cold War, when both nations had vast nuclear arsenals, should convince us that, even as the military ante is raised, nuclear saber-rattling persists. Some pundits argue that nuclear weapons prevent wars between nuclear-armed nations; and, admittedly, there haven’t been very many—at least not yet. But the Kargil War of 1999, between nuclear-armed India and nuclear-armed Pakistan, should convince us that such wars can occur. Indeed, in that case, the conflict almost slipped into a nuclear war. Pakistan’s foreign secretary threatened that, if the war escalated, his country felt free to use “any weapon” in its arsenal. During the conflict, Pakistan did move nuclear weapons toward its border, while India, it is claimed, readied its own nuclear missiles for an attack on Pakistan. At the least, though, don’t nuclear weapons deter a nuclear attack? Do they? Obviously, NATO leaders didn’t feel deterred, for, throughout the Cold War, NATO’s strategy was to respond to a Soviet conventional military attack on Western Europe by launching a Western nuclear attack on the nuclear-armed Soviet Union. Furthermore, if U.S. government officials really believed that nuclear deterrence worked, they would not have resorted to championing “Star Wars” and its modern variant, national missile defense. Why are these vastly expensive—and probably unworkable—military defense systems needed if other nuclear powers are deterred from attacking by U.S. nuclear might? Of course, the bottom line for those Americans convinced that nuclear weapons safeguard them from a Chinese nuclear attack might be that the U.S. nuclear arsenal is far greater than its Chinese counterpart. Today, it is estimated that the U.S. government possesses over five thousand nuclear warheads, while the Chinese government has a total inventory of roughly three hundred. Moreover, only about forty of these Chinese nuclear weapons can reach the United States. Surely the United States would “win” any nuclear war with China. But what would that “victory” entail? A nuclear attack by China would immediately slaughter at least 10 million Americans in a great storm of blast and fire, while leaving many more dying horribly of sickness and radiation poisoning. The Chinese death toll in a nuclear war would be far higher. Both nations would be reduced to smoldering, radioactive wastelands. Also, radioactive debris sent aloft by the nuclear explosions would blot out the sun and bring on a “nuclear winter” around the globe—destroying agriculture, creating worldwide famine, and generating chaos and destruction.

#### Turns terror

**Brooks and Wohlforth** 200**2** [Stephen, Assistant Professor, and William, Associate Professor in the Department of Government at Dartmouth, Foreign Affairs, "American Primacy in Perspective", Volume 81, Issue 4]

Some might question the worth of being at the top of a unipolar system if that means serving as a lightning rod for the world's malcontents. When there was a Soviet Union, after all, it bore the brunt of Osama bin Laden's anger, and only after its collapse did he shift his focus to the United States (an indicator of the demise of bipolarity that was ignored at the time but looms larger in retrospect). But terrorism has been a perennial problem in history, and multipolarity did not save the leaders of several great powers from assassination by anarchists around the turn of the twentieth century. In fact, a slide back toward multipolarity would actually be the worst of all worlds for the United States. In such a scenario it would continue to lead the pack and serve as a focal point for resentment and hatred by both state and nonstate actors, but it would have fewer carrots and sticks to use in dealing with the situation. The threats would remain, but the possibility of effective and coordinated action against them would be reduced.

## 2NC---Trials Link

Civilian trials devastate military effectiveness

Ford, 10

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

Justice Scalia devoted attention to what he termed the "disastrous consequences" of the majority opinion. n15 He cautioned that the holding "will almost certainly cause more [\*400] Americans to be killed" n16 and concluded that "the Nation will live to regret what the Court has done today." n17 Justice Scalia pointed to evidence showing that, of the detainees that the DoD has released from Guantanamo, approximately 30 have returned to the battlefield. n18 He argued that this data "illustrates the incredible difficulty of assessing who is and who is not an enemy combatant in a foreign theater of operations where the environment does not lend itself to rigorous evidence collection." n19 Essentially, Justice Scalia argued that **the military, rather than the courts, is in the best position to determine friend or foe**. n20 If the DoD in fact released terrorists inadvertently, under procedures the Court determined were inadequate to protect the detainees, then the heightened review, as now mandated by the Court, would doubtless result in the release, back to the battlefield, of even more terrorists who feign false imprisonment as innocent bystanders. Justice Scalia and Chief Justice Roberts expressed additional concerns about providing detainees access to U.S. military witnesses, who may be otherwise unavailable, at war in a combat zone. n21 They also resisted releasing classified information to detainee counsel, which **could be used against U.S. forces or to the advantage of the terrorist enemy**. n22 Noting that the DoD relied on previous Court decisions, namely Eisentrager, n23 in moving detainees all the way from Afghanistan to Cuba, Justice Scalia chastised the majority for essentially changing the rules in the middle of the war. n24 Concluding his discussion of the decision's consequences, he warned that "how to handle enemy prisoners in this war will ultimately lie with the branch that knows least about the [\*401] national security concerns that the subjects entails." n25 The Boumediene dissenters raise an issue that has slithered into today's modern battlefield and one that must be confronted by national security policy makers: lawfare. Lawfare is the concept that the current enemy, or any enemy for that matter, will use our laws and general compliance with the Rule of Law against us. The term was coined in 2001 by then-Colonel, now Major General, Charles J. Dunlap, Jr., of the U.S. Air Force, in an article questioning whether lawfare undercuts the effectiveness of the military. n26 The Boumediene dissenters would likely argue that it does. More significantly, Boumediene could be described as a form of fratricide - self-imposed, self-perpetuating lawfare. Will the concerns of the dissenters be realized? Is the majority opinion an attempt by the Court to structure a remedy applicable only to Guantanamo Bay, perhaps in order to make a political statement or rectify a perceived particularized wrong? Regardless of the answers, the fact remains that the decision provides a precedential framework for analysis. The Court must be taken at its word. In its holding, the Court fashioned a new test for determining whether a foreign fighter detained overseas may rely on the habeas right. n27 In applying this test, a subsequent court could conceivably determine that the United States exercises functional control over a U.S. prisoner of war holding or detention camp located in a foreign area, particularly where the area is a traditional Occupied Territory under the laws of war - where U.S and/or coalition forces are the occupiers. For some of the practical reasons and obstacles described herein, Boumediene should not be extended. Under Boumediene, did prisoners held at Abu Ghraib [\*402] during the height of the United States' occupation of Iraq possess habeas rights? n28 Does habeas attach to the prisoners currently held in overseas locations, such as Bagram Air Base in Afghanistan? n29 Notwithstanding current restrictions on the use of certain areas for military purposes, what if the United States chose to establish a Guantanamo Bay-like location in Antarctica, or in space? Or in the middle of an ocean, on a ship, or on a man-made island? The questions are fair ones, and some are already being asked by commentators. To many who have followed the Court's decisions in this area, the holding is no surprise. Boumediene reinforced a position the Court began to signal a few years earlier. In 2004, in Rasul v. Bush, the Court found that the statutory habeas corpus provisions contained in the U.S. Code n30 applied to the Guantanamo detainees. n31 And, in deciding Hamdan v. Rumsfeld in 2006, the Court applied Geneva Convention protections to the Guantanamo detainees. n32 Will this trend by the Court of providing rights to detained foreign fighters continue? Referring to Boumediene, former Attorney General Michael Mukasey expressed concern that the trend could continue when he warned that **our wartime efforts in Afghanistan could become an evidentiary nightmare and turn into CSI: Kandahar**. n33 With this in mind, what measures could [\*403] the DoD undertake? II. Boumediene in the Pentagon The scope of the problem the DoD may face is a bit daunting. What could happen - and, in the case of the Guantanamo detainees, what is happening - is that foreign detainees held by U.S. forces in locations deemed to be the functional equivalent of United States territory could be entitled not just to Geneva protections (for prisoners of war) or Detainee Treatment Act n34 protections (in the case of enemy combatants at Guantanamo Bay not declared prisoners of war), but also to habeas review by a federal district court. If the functional analysis test of Boumediene is extended, or is interpreted by the DoD to extend to physical locations other than Guantanamo, then foreign fighters will be afforded additional protections under the U.S. Constitution and U.S. laws - protections normally reserved for U.S. citizens or other persons in the country. n35 These new rights could include a right to counsel, Miranda warnings, heightened due process, and countless other rights and privileges normally associated with citizenship or presence in the United States. Imagine a military commander needing probable cause to detain - or worse, some higher level of proof to attack - an enemy! n36 **The implications are mind-boggling to** [\*404] **a military professional**. Our military force would essentially be converted into a de facto law enforcement organization or would have such an organization as its adjunct. **Such extension would completely change the face of combat**. n37 Perhaps some of these examples are far-fetched; the issue, though, is **how far toward this end will the courts go? They should go no further than Boumediene**. If, however, courts continue the trend and extend this holding, how would the DoD meet these new requirements?

Expansion of rights for detainees would require huge diversion of resources from operations

Bellinger, 11

(Sr. Fellow-National Security Law-CFR & Law Prof-Cardozo, April, Detention Operations in Contemporary Conflicts: Four Challenges for the Geneva Conventions and Other Existing Law, http://www.lawfareblog.com/wp-content/uploads/2013/08/BellingerPadmanabhan\_Detentions\_April\_20111.pdf)

A second difficulty concerning judicial review is whether it is feasible in conflicts having larger numbers of detainees.143 For example, the demands that the U.S. federal courts have imposed on the government in justifying detention at Guantanamo could not practically be applied if many more detainees were involved. In 2007, the D.C. Circuit in Bismullah v. Gates interpreted the Detainee Treatment Act as granting the court the authority to review all reasonably available information in the government’s possession bearing on the issue of whether the detainee was an enemy combatant.144 In seeking en banc and later Supreme Court review of the decision, the United States explained that meeting such demands required “hundreds of man-hours” per case, **diverting valuable intelligence and military resources from the ongoing war effort**.145 While these demands may be met relatively easily with small numbers of detainees, such as the population at Guantanamo, **they would be impractical if** imposed in conflicts with nonstate actors resulting in thousands of detainees.146 In those cases, administrative review may be more realistic.

## loac arg

The plan breaks down LOAC by modifying the currently legal detention structure

Bialke, 4

(Lt. Colonel, MA & JD-University of North Dakota, LLM-University of Iowa, “Al-Qaeda & Taliban Unlawful Combatant Detainees, Unlawful Belligerency, and the International Laws of Armed Conflict,” 55 A.F. L. Rev. 1, Lexis)

International Obligations & Responsibilities and the International Rule of Law

The United States (U.S.) is currently detaining several hundred al-Qaeda and Taliban unlawful enemy combatants from more than 40 countries at a multi-million dollar maximum-security detention facility at the U.S. Naval Base in Guantanamo Bay, Cuba. These enemy detainees were captured while engaged in hostilities against the U.S. and its allies during the post-September 11, 2001 international armed conflict centered primarily in Afghanistan. The conflict now involves an ongoing concerted international campaign in collective self-defense against a common stateless enemy dispersed throughout the world. Domestic and international human rights organizations and other groups have criticized the U.S., n1 arguing that al-Qaeda and Taliban detainees in Cuba should be granted Geneva Convention III prisoner of war (POW) n2 status. They contend broadly that pursuant to the international laws of armed conflict (LOAC), combatants captured during armed conflict must be treated equally and conferred POW status. However, no such blanket obligation exists in international law. There is no legal or moral equivalence in LOAC between lawful combatants and unlawful combatants, or between lawful belligerency [\*2] and unlawful belligerency (also referred to as lawful combatantry and unlawful combatantry). The U.S. has applied well-established existing international law in holding that the al-Qaeda and Taliban **detainees are presumptively unlawful combatants** not entitled to POW status. n3 Taliban and al-Qaeda enemy combatants captured without military uniforms in armed conflict are not presumptively entitled to, nor automatically granted, POW status. POW status is a privileged status given by a capturing party as an international obligation to a captured enemy combatant, if and when the enemy's previous lawful actions in armed conflict demonstrate that POW status is merited. In the case of captured al-Qaeda and Taliban combatants, their combined unlawful actions in armed conflict, and al-Qaeda's failure to adequately align with a state show POW status is not warranted. The role of the U.S. in the international community is unique. The U.S., although relatively a young state, is the world's oldest continuing democracy and constitutional form of government. The U.S. is a permanent member of the United Nations Security Council, the world's leading economic power, and its only military superpower. The U.S. is the only country in the world capable of commencing and supporting effectively substantial international military operations with an extensive series of military alliances, and the required numbers of mission-ready expeditionary forces consisting of combat airpower, land and naval forces, intelligence, special operations, airlift, sealift, and logistics. Great influence and capabilities, however, exact great responsibility. As a result of its unique role and influence within the international community, the U.S. has been placed at the forefront of respecting LOAC and promoting international respect for LOAC. The U.S. military has the largest, most sophisticated and comprehensive LOAC program in the world. The U.S. demonstrates respect for LOAC by devoting an extraordinary and unequalled level of resources to the development and enforcement of these laws, through an unparalleled LOAC training and education regimen for U.S. and allied [\*3] military members, and a **conscientious and consistent requirement that its forces comply with these laws in all military operations**. Customary LOAC binds every country in the world including the U.S. **International collective security and U.S. national security may be achieved only through a steadfast commitment to the Rule of Law**. For the U.S. to grant POW status to captured members of al-Qaeda or the Taliban **would be an abdication of these international legal responsibilities** and obligations. It would set a **dangerous precedent contrary to the Rule of Law and LOAC,** and to the highest purpose of the laws of warfare, the protection of civilians during armed conflict. This article begins by explaining how LOAC protects civilians through the **enforcement of clear distinctions between lawful combatants, unlawful combatants, and protected noncombatants**. It summarizes the four conditions of lawful belligerency under customary and treaty-based LOAC, and instructs why combatants who do not meet these conditions do not possess combatant's privilege; that is, the immunity provided to members of the armed forces for acts in armed conflict that would otherwise be crimes in time of peace. The article then reviews why LOAC does not require that captured unlawful combatants be afforded POW status, and addresses specifically captured al-Qaeda and Taliban fighters. The practices and behavior of these fighters en masse in combat deny them privileges as lawful belligerents entitled to combatant's privilege. The article argues that al-Qaeda unlawful combatants are most appropriately described as hostes humani generis, "the common enemies of humankind." The article subsequently explains why al-Qaeda members, as hostes humani generis, are classic unlawful combatants, as part of a stateless organization that en masse engaged in combat unlawfully in an international armed conflict without any legitimate state or other authority. The article explicates al-Qaeda's theocratic-political hegemonic objectives and its use of global terrorism to further those objectives. The article expounds as to why international law deems a transnational act of private warfare by al-Qaeda as malum in se, "a wrong in itself." Related to al-Qaeda's status as hostes humani generis, the article describes one of the Taliban's many violations of international law; that is, willfully allowing al-Qaeda hostes humani generis to reside within Afghanistan's sovereign borders from where al-Qaeda could and did attack unlawfully other sovereign states. The article then details a state's inherent rights if and when attacked by such hostes humani generis. Following this, the article continues by asserting that there is no doubt or ambiguity as to the unlawful combatant status of the Taliban and al-Qaeda (shown by the failure of the Taliban en masse to meet the four fundamental criteria of lawful belligerency, al-Qaeda's statelessness en masse, and both their many acts of unlawful belligerency and violations of LOAC). As a result, the article states that **there is no need or requirement for proceedings** under [\*4] Geneva Convention III, art. 5 **to adjudicate their presumptive unlawful combatant status and non-entitlement to POW status pro forma.** The article subsequently illustrates that, even though captured al-Qaeda and Taliban are unlawful combatants and not POWs, the U.S. as a matter of policy has treated and continues to treat all al-Qaeda and Taliban detainees humanely in accordance with customary international law, to the extent appropriate and consistent with military necessity and in a manner consistent with the principles and spirit of the Geneva Conventions. The article discusses that, under LOAC, the detainees are captured unlawful combatants that **can be interned without criminal charges or access to legal counsel until the cessation of hostilities**. However, the article then points out that the U.S. has no desire to, and will not, hold any unlawful combatant indefinitely. The article then notes that al-Qaeda and Taliban detainees, as unlawful combatants, are subject to trial by U.S. military commissions for their acts of unlawful belligerency or other violations of LOAC and international humanitarian law. It expounds that, when an opposing force detains an unlawful combatant in time of armed conflict, the unlawful combatant's right to legal counsel or other representation only arises if criminal charges are brought against the unlawful combatant. The article illustrates the security measures, evidence procedures, and the many executive due process protections afforded to detainees subject to the jurisdiction of U.S. military commissions. The article states that; if tried and convicted in a U.S. military commission, a detainee may be required to serve the adjudged sentence, such as punitive confinement. The article concludes that it is in the immediate and long-term national security interests of the **U.S. to respect and uphold LOAC in all military operations**. Ultimately, the United States has an obligation to the international community and the Rule of Law not to afford POW status to captured unlawful combatants such as the al-Qaeda and Taliban detainees in furtherance of both domestic and international security.

Nuclear war

Delahunty, associate prof – U St. Thomas Law, and Yoo, law prof – UC Berkeley, ‘10

(Robert and John, 59 DePaul L. Rev. 803)

Finally, the extension of IHRL to armed conflict may have significant consequences for the success of international law in advancing global welfare. Rules of the LOAC represent the delicate balancing between the imperatives of combat and the humanitarian goals in wartime. The LOAC has been remarkably successful in achieving compliance from warring nations in obeying these rules. This is most likely due to the reciprocal nature of the obligations involved. Nations treat prisoners of war well in order to guarantee that their own captive soldiers will be treated well by the enemy; **nations will refrain from using** weapons of mass destruction because they are deterred by their enemy's possession of the same weapons. It has been one of the triumphs of international law to increase the restrictions on the use of unnecessarily destructive and cruel weapons, and to advance the norms of distinction and the humane treatment of combatants and civilians in wartime. IHRL norms, on the other hand, may suffer from much lower rates of compliance. This may be due, in part, to the non-reciprocal nature of the obligations. One nation's refusal to observe freedom of speech, for example, will not cause another country to respond by depriving its own citizens of their rights. If IHRL norms--which were developed without much, if any, consideration of the imperatives of combat--merge into the LOAC, it will be likely that compliance with international law will decline. If nations must balance their security [\*849] needs against ever more restrictive and out-of-place international rules supplied by IHRL, we hazard to guess that the latter will give way. Rather than attempt to superimpose rules for peacetime civilian affairs on the unique circumstances of the "war on terror," a better strategy for encouraging compliance with international law would be to adapt the legal system already specifically designed for armed conflict.

Double bind either they result in indefinite detention which is an implicit part of loac or they don’t which means they link to the da

Bialke, 4

(Lt. Colonel, MA & JD-University of North Dakota, LLM-University of Iowa, “Al-Qaeda & Taliban Unlawful Combatant Detainees, Unlawful Belligerency, and the International Laws of Armed Conflict,” 55 A.F. L. Rev. 1, Lexis)

C. Length of Taliban and Al-Qaeda Unlawful Combatant Preventive Detention [\*60] According to well-settled LOAC, the historical practice among nations, and the spirit and principles contained within Geneva Convention III, art. 118, n63 the U.S. may continue to hold both lawful and unlawful combatant detainees for the entire duration of the present international armed-conflict; that is, until the cessation of hostilities. Unless a captured combatant has been justly tried, convicted and sentenced to confinement, the lawful internment of any captured combatant in time of international armed conflict is not punitive, nor is it a form of pre-trial custody or confinement. It is mere preventive detainment that is fully authorized under LOAC. n64 **LOAC is unambiguous** in this regard, **authorizing throughout history** the **long-term preventive detention of combatants** in an international armed conflict by the capturing party until the cessation of hostilities. Al-Qaeda and Taliban detainees are being interned as enemy combatants in an ongoing international armed conflict. Such **long-standing, clear international authority to detain** subdued enemy combatants is provided to a capturing party because of the understandable and compelling rejection of the unpalatable alternatives. While captured combatants are detained during active hostilities, there is **no requirement under international law to charge such detainees with a crime or, before they are charged, to provide them legal counsel t**

**o challenge their detention**. n65 **No nation at war has ever done** so. Nor, during ongoing hostilities, has any nation ever allowed captured and detained enemy combatants to **access its civilian court system in order to challenge their detention**. Mere detention of captured combatants during time of hostilities is not a criminal judicial process. It is a military action to disarm enemy combatants, as well as a means to facilitate the gathering of military intelligence. Most importantly, however, it supports the ongoing war effort and avoids prolonging the conflict by removing hostile combatants from the battlefield. Through the preventive quarantine of unlawful combatant [\*62] detainees in Guantanamo Bay, they are curtailed, from again taking up arms illegally and fighting, or otherwise supporting the fight, against the U.S. and its coalition allies during the current ongoing global armed conflict. Al-Qaeda and the Taliban are in a self-professed Islamist jihad - a nihilistic holy war without end against all people who do not believe as they do, including fellow Muslims who hold different views. It is therefore al-Qaeda and the Taliban, not the U.S., who have made the duration of the detention of captured al-Qaeda and Taliban unlawful combatant detainees seemingly open-ended. Releasing prematurely such detainees would have the operative effect of **reinforcing the enemy's combat forces.** The repatriated forces likely then would simply return to their jihad arena of battle, re-engage U.S. and allied forces, and perpetrate more acts of terrorism against protected civilians. n66

## 2NC---Terror Turn---Overview

That means it o/w any turns

Yoo, 4

(Law Prof, UC-Berkeley, “War, Responsibility, and the Age of Terrorism,” http://works.bepress.com/cgi/viewcontent.cgi?article=1015&context=johnyoo)

Third, the nature of warfare against such unconventional enemies may well be different from the set-piece battlefield matches between nation-states. **Gathering intelligence**, from both electronic and human sources, about the future plans of terrorist groups **may be the only way to prevent** September 11-style **attacks** from occurring again. Covert action by the Central Intelligence Agency or unconventional measures by special forces may prove to be the **most effective tool for acting on that intelligence**. Similarly, the least dangerous means for preventing rogue nations from acquiring WMD may depend on **secret intelligence gathering** and covert action, rather than open military intervention. A **public revelation of the means of gathering intelligence, or the discussion of the nature of covert actions** taken to forestall the threat by terrorist organizations or rogue nations, **could render the use of force ineffectual or sources of information useless**. Suppose, for example, that American intelligence agencies detected through intercepted phone calls that a terrorist group had built headquarters and training facilities in Yemen. A public discussion in Congress about a resolution to use force against Yemeni territory and how Yemen was identified could tip-off the group, allowing terrorists to disperse and to prevent further interception of their communications.

## 2NC---AT: No Link/Link Turn

Studies prove detention irrelevant to recruiting

Joscelyn, 10

(Sr. Fellow-Foundation for Defense of Democracies, 12/27, “Gitmo is not Al Qaeda’s Number One Recruitment Tool,” http://www.weeklystandard.com/blogs/gitmo-not-al-qaedas-number-one-recruitment-tool\_524997.html)

During a press conference on December 22, President Obama was asked about the difficulties his administration has encountered in trying to close Guantanamo. The president explained (emphasis added): Obviously, we haven’t gotten it closed. And let me just step back and explain that the reason for wanting to close Guantanamo was because my number one priority is keeping the American people safe. One of the most powerful tools we have to keep the American people safe is not providing al Qaeda and jihadists recruiting tools for fledgling terrorists. And Guantanamo is probably the number one recruitment tool that is used by these jihadist organizations. And we see it in the websites that they put up. We see it in the messages that they're delivering. President Obama and his surrogates have made this argument before, but they have provided no real evidence that it is true. In fact, al Qaeda’s top leaders rarely mention Guantanamo in their messages to the West, Muslims and the world at large. No journalist in attendance had the opportunity to challenge President Obama’s assertion. The president should have been asked: If Guantanamo is such a valuable recruiting tool, then why do al Qaeda’s leaders rarely mention it? THE WEEKLY STANDARD has reviewed translations of 34 messages and interviews delivered by top al Qaeda leaders operating in Pakistan and Afghanistan (“Al Qaeda Central”), including Osama bin Laden and Ayman al Zawahiri, since January 2009. The translations were published online by the NEFA Foundation. Guantanamo is mentioned in only 3 of the 34 messages. The other 31 messages contain no reference to Guantanamo. And even in the three messages in which al Qaeda mentions the detention facility it is not a prominent theme. Instead, al Qaeda’s leaders repeatedly focus on a narrative that has dominated their propaganda for the better part of two decades. According to bin Laden, Zawahiri, and other al Qaeda chieftains, there is a Zionist-Crusader conspiracy against Muslims. Relying on this deeply paranoid and conspiratorial worldview, al Qaeda routinely calls upon Muslims to take up arms against Jews and Christians, as well as any Muslims rulers who refuse to fight this imaginary coalition. This theme forms the backbone of al Qaeda’s messaging – not Guantanamo. To illustrate this point, consider the results of some basic keyword searches. Guantanamo is mentioned a mere 7 times in the 34 messages we reviewed. (Again, all 7 of those references appear in just 3 of the 34 messages.) By way of comparison, all of the following keywords are mentioned far more frequently: Israel/Israeli/Israelis (98 mentions), Jew/Jews (129), Zionist(s) (94), Palestine/Palestinian (200), Gaza (131), and Crusader(s) (322). (Note: Zionist is often paired with Crusader in al Qaeda’s rhetoric.) Naturally, al Qaeda’s leaders also focus on the wars in Afghanistan (333 mentions) and Iraq (157). Pakistan (331), which is home to the jihadist hydra, is featured prominently, too. Al Qaeda has designs on each of these three nations and implores willing recruits to fight America and her allies there. Keywords related to other jihadist hotspots also feature more prominently than Gitmo, including Somalia (67 mentions), Yemen (18) and Chechnya (15). Simply put, there is no evidence in the 34 messages we reviewed that al Qaeda’s leaders are using Guantanamo as a recruiting tool. Undoubtedly, “Al Qaeda Central” has released other messages during the past two years that are not included in our sample. Some of those messages may refer to Guantanamo. And some of the al Qaeda messages provided by NEFA, which does a remarkable job collecting and translating al Qaeda’s statements and interviews, may be only partial translations of longer texts. However, the messages we reviewed also surely include most of what al Qaeda’s honchos have said publicly since January 2009. These messages do not support the president’s claim.

Other factors overwhelm—the turn is key

Lynch, 10

(Poli Sci Prof-GW, June, "Rhetoric and Reality: Countering Terrorism in the Age of Obama", http://www.cnas.org/files/documents/publications/CNAS\_Rhetoric%20and%20Reality\_Lynch.pdf)

The nature of the threat posed by al Qaeda has changed significantly in the years since 9/11. There are at least three interlocking dimensions to the al Qaeda challenge: the central organization, often termed al Qaeda Central; a network of affiliated movements; and a decentralized network of like- minded groups and individuals. Al Qaeda in any variant is no longer capable of attracting mass Arab support as it may have appeared back in 2001 and 2002. Its ability to appeal to mainstream Muslims as the avatar of resistance to the United States has dramatically declined since peaking mid-decade. However, its ideology and networks have taken root in several capable and resilient local affiliates, and in an increasingly active Western milieu. Despite years of pressure and the recent escalation of drone strikes that have reportedly decimated its leadership, the core of the organization remains intact – presumably in Pakistan – as does its ability to craft and disseminate narratives attractive to specific populations susceptible to radicalization. Recent plots against the American homeland sug - gest the possibility of a new strategy. U.S. strategy has begun to adapt, and should continue, to adapt to the evolving nature of the threat. Al Qaeda’s reduced mass appeal should not be taken for granted. In the months after 9/11, even as American forces were destroying al Qaeda’s sanctuary in Afghanistan, many feared that it was the vanguard of a mass movement capable of uniting Muslims against the West. Many Muslims who knew little about al Qaeda or bin Laden found the narrative it presented – of an America leading a global campaign against Islam – plausible. While al Qaeda was motivated by a distinctive salafi-jihadist ideology, bin Laden’s public rhetoric and the propaganda videos directed toward mainstream Arab audiences focused on issues of widely-shared Arab and Muslim concern: Palestine, Iraq, domestic corruption and American hegemony. After 9/11, this narrative gained strength even as al Qaeda’s core leadership was scattered and damaged by the American invasion of Afghanistan. Israel’s bloody re-occupation of the West Bank in April 2002, the invasion of Iraq, Abu Ghraib, Guantanamo and American rhetoric all fueled al Qaeda’s narrative. Its propaganda wove such developments together to argue that the United States was in fact at war with Islam – a belief that became alarmingly widespread across the Muslim world – and that al Qaeda represented the authentic leader of the Islamic world in that struggle.

Prefer our evidence

Wittes, 10

(Senior Fellow in Governance Studies-Brookings Institution, 12/24 “Thoughts on Obama’s Gitmo Remarks,” http://www.lawfareblog.com/2010/12/thoughts-on-obamas-gitmo-remarks/)

“Obviously, we haven’t gotten it closed. And let me just step back and explain that the reason for wanting to close Guantanamo was because my number one priority is keeping the American people safe. One of the most powerful tools we have to keep the American people safe is not providing al Qaeda and jihadists recruiting tools for fledgling terrorists. And Guantanamo is probably the number one recruitment tool that is used by these jihadist organizations.” The more I think about this claim, **the less I believe it is true**. I claim no expertise on Al Qaeda recruiting–or, indeed, on Al Qaeda itself. And clearly, the President has access to a huge range of intelligence which I don’t see. But I just have never seen any evidence that Guantanamo plays a particular role in Al Qaeda recruiting–an important role relative to other complaints about the United States or a role different from that which any facility that might replace it would play. I know the claim that Gitmo creates more terrorists than it holds is a common argument for closing the facility, but I have never seen a serious piece of reporting of any kind that purports to support it. Sure, there are mentions of Guantanamo in Al Qaeda propaganda, and there are mentions of detainees (who would presumably be held somewhere else were Gitmo closed), but where is the evidence that Guantanamo is playing some outsized role in Al Qaeda’s recruitment efforts–let alone in its actual recruitment?

1AC decimates detention authority—forcing military commanders to place legal limitations around interrogation prevents quickly gaining intel about key terrorist moves—that’s Carafano.

Their Powell evidence says not giving terrorists a trial is key to solve rule of law—proves they must give trials or they don’t solve the aff—that results in premature release of terrorists

McNeal, 8

(Law Prof-Penn State, Northwestern University Law Review Colloquy, “BEYOND GUANTANAMO, OBSTACLES AND OPTIONS,” 103 Nw. U. L. Rev. Colloquy 29, August, Lexis)

Evidence derived from coercion also presents a challenge for reformers. Many organizations have argued that techniques such as "waterboarding" are torture per se and should result in criminal prosecutions for those responsible. n105 Many released detainees or counsel for those currently held have described even more serious forms of coercive interrogation practices. n106 As the trials of detainees are likely to reveal further details regarding the nature of the interrogation practices, many government officials have a strong interest in preventing the dissemination of or declassification of information revealing those practices. A second factor compelling those officials to resist declassification is possible evidence of detention in secret CIA facilities prior to a detainee's incarceration in Guantanamo. n107 Civil rights groups have alleged that many detainees were subjected to illegal interrogation practices while in those prisons. n108 Given the problem of illegal interrogation practices, some argue that the only realistic course of action is to craft restrictive plea agreements. For example, Australian citizen David Hicks pleaded guilty to the charge of providing material support to terrorism. The terms of his plea preclude him from discussing his detention with the media for a period of one year after making the agreement. n109 This type of plea agreement, critics argue, is the [\*49] only possible course for an administration that wants action but is handicapped by the inadmissibility of statements obtained under coercion or fear of the potential of criminal liability. n110 **The challenges presented by foreign evidence and coerced evidence both suggest that reformers should temper their optimism regarding a clean reform of either the military commissions or indefinite detentions**. The solution to both problems may require the continued use of military commissions, at least for the current eighty triable detainees, and may even suggest a need to maintain a system of administrative detention for selected individuals n111--a conclusion that presents substantial impediments to comprehensive reform. 3. Executive Forum-Discretion--Any reform which allows for adjudication of guilt in different forums, each with differing procedural protections, raises serious questions of legitimacy and also incentivizes the Executive to use "lesser" forms of justice--nonprosecution or prosecutions by military commission. In this section, my focus is on the incentives which compel the Executive to not prosecute, or to prosecute in military commissions rather than Article III courts. Understanding the reason for these discretionary decisions will guide reformers pondering whether a new system will actually be used by the next President. There are two primary concerns that executive actors face when selecting a forum: **protecting intelligence** and **ensuring trial outcomes**. Executive forum-discretion is a different form of prosecutorial discretion with a different balancing inquiry from the one engaged in by courts. Where prosecutorial discretion largely deals with the charges a defendant will face, executive forum-discretion impacts the procedural protections a defendant can expect at both the pretrial and trial phase. Where balancing by Courts largely focuses on ensuring a just outcome which protects rights, the balancing engaged in by executive actors has inwardly directed objectives [\*50] which value rights only to the degree they impact the Executive's self interest.Given the unique implications flowing from forum determinations, reformers can benefit from understanding why an executive actor chooses one trial forum over another. I contend that there are seven predictive factors that influence executive discretion; national security court reformers should be aware of at least the two most salient predictive factors: trial outcomes and protection of intelligence equities. n112 The Executive's balancing of factors yields outcomes with direct implications for fundamental notions of **due process** and **substantial justice**. Any proposed reform is incomplete without thoroughly addressing the factors that the Executive balances.

Causes terror

Bialke, 4

(Lt. Colonel, MA & JD-University of North Dakota, LLM-University of Iowa, “Al-Qaeda & Taliban Unlawful Combatant Detainees, Unlawful Belligerency, and the International Laws of Armed Conflict,” 55 A.F. L. Rev. 1, Lexis)

A military commission convened in the course of ongoing hostilities can provide better security and protection to the accused, judges, prosecutors, juries, witnesses, defense counsel, court-room observers and other participants n75 than could a parallel civilian criminal justice forum. Given that any courtroom in which an unlawful combatant is tried could itself become a terrorist target, additional security may be provided and the risk to the physical safety of court participants minimized when a U.S. military commission is convened on a U.S. military installation with sophisticated security measures, limited access, and one that is isolated from major civilian population centers. Additionally, a U.S. military commission would be better able to protect the identities of court participants in order to reduce the potential of post-trial Taliban and al-Qaeda retaliation. Similarly, when necessary, a U.S. military commission can more adequately protect classified evidence involving on-going military operations and investigations which involve continuing threats to U.S. national security, and can **better protect classified U.S. intelligence communications,** sources, identities, capabilities**, and gathering methods. U.S. military personnel are well trained in protecting such sensitive operational information from compromise.** Additionally, U.S. military commission members and other commission participants would already have undergone extensive background security investigations and, as a result, possess the applicable information security clearances, to include Secret, Top Secret, and, if necessary, higher clearances. The safeguarding of sensitive information received gratuitously from foreign intelligence agencies of allied countries (including intelligence agencies of mideastern allied countries), as well as the protection of the [\*74] identities of foreign intelligence sources, is **indispensable if the U.S. wishes to rely on their continued cooperation**. **The protection of such information from enemy espionage and other enemy strategic intelligence collection efforts would be extremely difficult, if not impossible, in an "open and public" civilian criminal trial.** Safeguarding and preserving such highly sensitive information from compromise, and ensuring that unlawful combatants cannot abuse the criminal justice system evidence discovery process for illicit purposes, are **imperatives to U.S. national security.** This is because al-Qaeda followers still at large could possibly exploit such classified information to adapt their methods, protect themselves from capture, attack the U.S. and its allies, retaliate against court/commission participants, or carry out additional acts of terrorism against protected civilians. n76

CIL is dominated by self interest – states don’t feel moral obligation to follow them, there are just certain traditions that states follow because they’re in their own self interest – that’s Goldsmith

Syria corroborates this theory of i-law—prefer evidence that speaks to the politics of law.

Posner 9/3**/13** (Eric, law prof, “Obama Is Only Making His War Powers Mightier”, Sept. 3, 2013, http://www.slate.com/articles/news\_and\_politics/view\_from\_chicago/2013/09/obama\_going\_to\_congress\_on\_syria\_he\_s\_actually\_strengthening\_the\_war\_powers.html, ZBurdette)

And it is not hard to see why foreign countries refused to provide support. The legal rationale for the Syria intervention that the president fashioned—deterring the use of chemical weapons—has satisfied no other country. While no one likes chemical weapons, there is no reason to believe that the U.S. must deter their use by striking Syria. Iraq used chemical weapons 30 years ago, but no country followed its lead—even though no one bombed Iraq to punish it. Countries refrain from using chemical weapons because they inspire revulsion among people that governments usually need for support, not because there is a “norm” against them. And no matter how often Obama and Kerry say that they must intervene to enforce this norm, everyone understands that the real reason for U.S. intervention is to maintain the administration’s credibility, or to ensure that the U.S. retains influence over events, or to give a psychological boost to moderate Syrian rebel groups—not to vindicate international law (which the U.S. is violating in any event by disregarding the United Nations charter).

Some countries want to bombard Syria in order to stop the atrocities or counter Iran or lift favored rebel groups to power. Other countries want Syria left alone. But no country (except perhaps France) sees any sense in a limited strike to punish Syria for using chemical weapons—and, moreover, in such a way as to sting but not topple Assad’s government, a view shared by Sen. John McCain as well. You either kill the rattlesnake or leave it alone; you don’t poke it with a stick. So Obama’s international law theory failed not just because of its legal defects, but because it did not mesh with political realities. When Obama charged ahead nonetheless, he found himself naked and alone, and he turned to Congress for cover.

Prefer our evidence—better methodology than traditional CIL theorists.

Goldsmith 98 (Jack, Harvard law prof, and Eric Posner, UChicago law prof, “A Theory of Customary International Law”, November 1998, University of Chicago Law School, John M. Olin Law & Economics Working Paper No. 63, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=145972, ZBurdette)

Section III tests the theory using case studies from four traditional areas of CIL: neutrality, diplomatic immunity, prize, and maritime jurisdiction. We chose to study these areas of the law because they represent a broad spectrum of CIL norms, and because these CIL norms are, according to conventional accounts, among the most robust that exist. The case studies teach several lessons. The main lesson is that CIL as traditionally understood has little explanatory power. The international behaviors said to constitute CIL are actually disparate and changing practices that follow different logics depending on the interaction of state interests in particular contexts. The case studies suggest that the behaviors associated with CIL do not reflect a unitary underlying logic, and that CIL understood as a normative force does no independent work in guiding national behavior. The case studies also reveal how **commentators and courts commit errors of induction** in moving from the observation of a behavioral regularity to the conclusion that a CIL rule exists. In addition, in analyzing CIL courts and **commentators** **rely too heavily on what nations say at the expense of what they do and why** they do it, and they tend to limit CIL to behavioral regularities that are “good” from their normative perspective to be CIL, denigrating regularities that are bad as “comity” or a violation or an exception to the CIL rule. Finally, the case studies confirm that CIL does not reflect multilateral, law-like behavioral regularities.

Even if the US will follow i-law, other countries pursue their self-interests first.

Eppsaug 13 (Garrett, The Atlantic, “The Authority to 'Declare War': A Power Barack Obama Does Not Have”, http://www.theatlantic.com/politics/archive/2013/08/a-power-barack-obama-does-not-have/279212/, ZBurdette)

Before discussing American constitutional law, we should admit that the world situation is terrifying, and the arguments for American intervention -- alone, if need be -- are powerful. Syria has apparently used chemical weapons against civilians on a mass scale -- a crime against humanity. Use of chemical weapons is a "red line" not only to Obama but in international law; perhaps only the threat or use of nuclear weapons would be a worse violation of the laws of war. The United Nations, created and empowered to deal with just such an emergency, is paralyzed because two great powers, Russia and China, have shameless decided to pursue short-term self interest and defend the criminals in defiance of the world.

And Syria proves self-interest outweighs their internal link.

Davenport 9/11**/13** (David, Forbes, “International Law? U.S. Military Action In Syria Is Actually Prohibited By The UN Charter”, http://www.forbes.com/sites/daviddavenport/2013/09/11/international-law-u-s-military-action-is-actually-prohibited-by-the-un-charter/, ZBurdette)

While everyone seems focused on whether President Obama needs congressional authority under the U.S. Constitution to bomb Syria, there is surprisingly little discussion whether such an attack would be proper under international law. What that tells us, in part, is how little a superpower such as the United States frets over the niceties of international law.

The reality is that much of international law isn’t really “law” in the sense that most Americans understand the term. There is no world constitution to frame international law, no powerful supreme court or legal system to define and enforce it, and no global police force to arrest and detain those who violate the law. **It would be more accurate to say that international law is a set of norms that countries agree to follow,** at least when it’s in their interest to do so.

Self-interest is the sole determinant—behavior changes with pay offs, not a nebulous sense of legal obligation.

Goldsmith 98 (Jack, Harvard law prof, and Eric Posner, UChicago law prof, “A Theory of Customary International Law”, November 1998, University of Chicago Law School, John M. Olin Law & Economics Working Paper No. 63, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=145972, ZBurdette)

But this explanation for an international behavioral regularity differs from the traditional account in important respects. A nation’s “compliance” with the cooperative strategy in the bilateral prisoner’s dilemma has **nothing to do with following a norm from a sense of legal obligation.** Nations do not act in accordance with a norm that they feel obliged to follow; they act because it is in their long-term (or medium-term) interest to do so. The norm does not cause the nations’ behavior; it reflects their behavior. As a result, **behavior** in bilateral iterated prisoner’s dilemmas **will change with variations in the underlying payoffs**. Cooperation will rise or fall or break down with changes in technology and environment. Although most traditional scholars acknowledge that states are more likely to violate norms of CIL as the payoff from doing so changes, they appear to insist that the sense of legal obligation will at least put some drag on such deviations. We, by contrast, insist that the payoffs from cooperation or deviation are the sole determinants of whether states engage in the behavioral regularities that are labeled norms of CIL. This is why we deny the claim that CIL as exogenous influence on states’ behavior. In addition, the bilateral prisoner’s dilemma cannot generalize to the situation of multilateral cooperation that is such an important part of the traditional account.

Err neg on evidence—their authors are heavy on claims, but light on warrants.

Goldsmith 98 (Jack, Harvard law prof, and Eric Posner, UChicago law prof, “A Theory of Customary International Law”, November 1998, University of Chicago Law School, John M. Olin Law & Economics Working Paper No. 63, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=145972, ZBurdette)

We have described some of the many uncertainties that bedevil the standard conception of CIL. These problems are well known. They are the subject of an enormous literature that endlessly (and in our opinion unproductively) debates definitional issues, the relative significance of practice and opinio juris, and other conceptual matters internal to the traditional account.23 Although our theory has implications for many of these issues, such issues are not the main focus of our analysis. Instead, we focus on two sets of issues that are rarely discussed in the international law literature, but that are fundamental to understanding CIL. The first set of issues concerns the unarticulated and undefended assumptions that underlie the traditional conception of CIL. Despite the many disagreements within the traditional paradigm, the parties to this debate assume that CIL is unitary, universal, and exogenous. CIL is unitary in the sense that all the behaviors it describes have an identical logical form that is described in the standard definition. CIL is universal in the sense that its obligations bind all nations except those that “persistently object” during the development of the CIL norm.24 And CIL is an exogenous influence on national behavior in the sense that it guides, shapes, and influences national actions. When nations are lawabiding they conform their behavior to CIL. When they violate CIL they act in defiance of it. Our theory of CIL challenges each of these assumptions. The second set of issues on which we focus concerns the traditional paradigm’s inability to explain international behavior. For example, the traditional paradigm has no account for how CIL originates.25 It does not explain how international behavioral regularities emerge from disorder. As we saw above, it also fails to explain how nations move from a “mere” behavioral regularity to a behavioral regularity that nations follow from a sense of legal obligation. The traditional account cannot explain how CIL rules change over time.26 To take one of scores of examples: the ostensible CIL rule governing a nation’s jurisdiction over its coasts changed from a cannon-shot rule to a three-mile rule to a twelve mile rule with many qualifications.27 On the traditional account, the process of change is necessarily illegal, since some states must initiate a departure from the prior regularity that they were bound to follow as a matter of law. More broadly, the traditional account does not explain why CIL changes track the interests of powerful nations, or why technological changes and other exogenous factors often produce significant changes in the content of CIL.

## 2NC---Circumvention Extension

And, he would just signing statement the aff

Jeffrey Crouch, assistant professor of American politics at American University, Mark J. Rozell, acting dean and a professor of public policy at George Mason University, and Mitchel A. Sollenberger, associate professor of political science at the University of Michigan-Dearborn, December 2013, The Law: President Obama's Signing Statements and the Expansion of Executive Power, Presidential Studies Quarterly 43.4

In a January 2013 signing statement, President Barack Obama stated that his constitutional powers as president limited him to signing or vetoing a law outright and that he lacked the authority to reject legislative provisions “one by one.” Yet he then proceeded in a nearly 1,200 word statement to pick the law apart, section by section, and to effectively challenge many provisions by declaring that they violated his constitutional powers as commander in chief.

According to his signing statement, a provision restricting the president's authority to transfer detainees to foreign countries “hinders the Executive's ability to carry out its military, national security, and foreign relations activities and would, under certain circumstances, violate constitutional separation of powers principles” (Obama 2013). Obama did not mention, however, that Congress specifically authorized transfers to foreign countries as long as the secretary of defense, with the concurrence of the secretary of state and in consultation with the director of national intelligence, certified that the foreign government receiving the detainees was not a designated state sponsor of terrorism and possessed control over the facility the individual would be housed (P.L. 112-239; see Fisher 2013).

Obama also objected to a number of provisions that he claimed would violate his “constitutional duty to supervise the executive branch” and several others that he said could encroach upon his “constitutional authority to recommend such measures to the Congress as I ‘judge necessary and expedient.’ My Administration will interpret and implement these provisions in a manner that does not interfere with my constitutional authority” (Obama 2013).

What the president could not block or modify through concessions or veto threats during budget negotiations with members of Congress, he decided he could **unilaterally strip from a signed bill.** Similar to his predecessor, George W. Bush, Obama suggested that he was the ultimate “decider” on what is constitutional and proper. **Few** acts by **occupants of the White House so completely embody the unchecked presidency.**

Candidate Obama on Signing Statements President Obama's actions have been surprising given that he proclaimed while first running for his office that he would not issue signing statements that modify or nullify acts of Congress (YouTube 2013 2013). In a December 2007 response to the Boston Globe, presidential candidate Obama provided a detailed explanation for his thinking: “I will not use signing statements to nullify or undermine congressional instructions as enacted into law. The problem with [the George W. Bush] administration is that it has attached signing statements to legislation in an effort to change the meaning of the legislation, to avoid enforcing certain provisions of the legislation that the President does not like, and to raise implausible or dubious constitutional objections to the legislation” (Savage 2007a). Candidate Obama's objection to President Bush's actions centered on one of the three varieties of signing statement, in this case, a “constitutional” signing statement. In a “constitutional” signing statement, a president not only points out flaws in a bill, but also declares—in often vague language—his intent not to enforce certain provisions. Such statements may be different than ones that are “political” in nature. In “political” signing statements, a president gives executive branch agencies guidance on how to apply the law.1 Finally, the most common type of signing statements are “rhetorical,” whereby the intent of the president is to focus attention on one or more provisions for political gain (Kelley 2003, 45-50). President Obama's Policy on Signing Statements At the start of his term, it seemed that President Obama would honor his campaign commitments and break with his predecessor when he issued a memorandum to heads of executive branch departments and agencies regarding his policy on signing statements. In this memorandum, he wrote, “there is no doubt that the practice of issuing [signing] statements can be abused.” He objected to the use of signing statements where a president disregards “statutory requirements on the basis of policy disagreements.” Only when signing statements are “based on well-founded constitutional objections” do they become legitimate. Therefore, “in appropriately limited circumstances, they represent an exercise of the President's constitutional obligation to take care that the laws be faithfully executed, and they promote a healthy dialogue between the executive branch and the Congress.” President Obama proceeded to list four key principles he would follow when issuing signing statements: (1) Congress shall be informed, “whenever practicable,” of the president's constitutional objections; (2) the president “will act with caution and restraint” when issuing statements that are based on “well-founded” constitutional interpretations; (3) there will be “sufficient specificity” in each statement “to make clear the nature and basis of the constitutional objection”; and finally, (4) the president would “construe a statutory provision in a manner that avoids a constitutional problem only if that construction is a legitimate one” (Obama 2009a). Media coverage praised President Obama's action. The Boston Globe declared, “Obama reins in signing statements” (Editorial 2009). David Jackson of USA Today reported, “Obama tried to overturn his predecessor again on Monday, saying he will not use bill signing statements to tell his aides to ignore provisions of laws passed by Congress that he doesn't like” (Jackson 2009). Another reporter noted, President Obama “signaled that, unlike Bush, he would not use signing statements to do end runs around Congress” (James 2009).

Any expectations for a shift in the exercise of signing statements ultimately were misplaced, as President **Obama**, like his predecessor, **has used signing statements in ways that attempt to increase presidential power**. In this article, we first describe and analyze the continuity of policy and action between Barack Obama and George W. Bush. Second, we address why signing statements—at least one type of them—can not only be unconstitutional abuses of presidential power, but may also be unproductive tools for promoting interbranch dialogue and cooperation. Third, we show that signing statements are a natural result of expanding power in the modern presidency and that they have come to be used as a means of unilateral executive action. Finally, we provide a possible corrective to some of the more aggressive forms of constitutional signing statements that impact appropriations.

## Ext #1 – China Outweighs

A. Global cuts are meaningless absent China

Chandler, 8 – Senior Associate at the Carnegie Endowment for International Peace

(William, <http://www.carnegieendowment.org/files/pb57_chandler_final.pdf>)

Together, China and the United States produce 40 percent of global greenhouse gas emissions. Their actions to curb or expand energy consumption will determine whether efforts to stop global climate change succeed or fail. If these two nations act to curb emissions, the rest of the world can more easily coalesce on a global plan. If either fails to act, the mitigation strategies adopted by the rest of the world will fall far short of averting disaster for large parts of the earth. These two nations are now joined in what energy analyst Joe Romm has aptly called “a mutual suicide pact.” American leaders point to emissions growth in China and demand that Chinese leaders take responsibility for climate change. Chinese leaders counter that American per capita greenhouse gas emissions are five times theirs and say, “You czreated this problem, you do something about it.” Concern for energy security deepens this dilemma. U.S. congressional staff experts think energy is **twice as likely** to cause **conflict** between the two countries as human rights. Mainstream Americans fear that China is gobbling up oil and driving up the price of gasoline. The Chinese fear American control of Middle East oil and of shipping lanes to China.However, current events are opening a window for change. The United States is moving to address climate change, if only at the state level. Almost half the fifty states have made significant commitments to cut carbon emissions. Crucially, Chinese leaders recently suggested that they might be willing to make a climate commitment. Analysts at the Energy Research Institute, a leading Chinese government think tank, suggest that China could cut its current emissions growth rate by half through 2020, and from that level reduce absolute emissions by one-third by 2050. This scenario would put within reach a global goal of stabilizing the atmospheric concentration of carbon dioxide below 500 parts per million. Such a commitment would represent a profound shift in China’s position, and it could be **pivotal** in reducing the worst risks of climate change. Thus, a path can be glimpsed to breaking the suicide pact and achieving a bilateral breakthrough, if Chinese and American leaders and policy makers can find a deeper understanding of energy realities; grasp the need for immediate action to reduce carbon emissions; and develop a new, non-treaty-based approach to reaching an international agreement—and eventually even a post-Kyoto global climate accord.

# 1NR

## 1NR Framework

Technocrats DA—the aff’s restricted to the logic of the military experts on in their cards – these is an Orwellian newspeak that keeps certain ideas from being expressed

Stephanie A. Levin 92, law prof at Hampshire College, Grassroots Voices: Local Action and National Military Policy, 40 Buff. L. Rev. 372

This question must be central to any serious effort to foster widespread political participation of the kind envisioned by republican theory. While general discussion of this complex but crucial topic is beyond the scope of this paper, it is significant to note that the arena of military policy is one in which the general population is particularly silenced. Indeed, if we consider the process of "nuclear numbing" described earlier, or the sense of disempowerment most individuals feel in connection with complex decisions about national security and defense policy, we can see an intriguing parallel between the types of knowing described in Women's Ways of Knowing and people's feelings about the possibility of playing a more participatory role. Many will feel limited to the stances of "silence" ("voiceless and subject to the whims of external authority") or, at best, "received knowledge" ("capable of receiving, even reproducing, knowledge from the all-knowing external authorities but not capable of creating knowledge on their own"). Some, operating from the orientation of "subjective knowledge" ("truth and knowledge are conceived of as personal, private, and subjectively known or intuited") may feel opposed to official policy, but believe they have no sufficient basis on which to justify their position and no way to express their opposition except through private complaining and cynical withdrawal. Only those who are first able to develop "procedural knowledge" (learning "objective procedures for obtaining and communicating knowledge") and then to integrate this knowledge with their own values and concerns to shape a personal form of "constructed knowledge" (experiencing themselves as "creators of knowledge") will be able to envision playing a meaningful role as citizens in the shaping of public policy about the military. Carol Cohn, a feminist psychologist, has written about the particular difficulties involved in developing a voice with which citizens can engage in critical thinking about that core of our military policy known as "strategic doctrine" — the theory of nuclear weaponry. Driven by a compelling desire to learn how those who develop this theory could "think this way," Cohn spent a year at a special institute studying strategic theory. In her article "Sex and Death in the Rational World of Defense Intellectuals,"171 she describes her discovery that the very language used by strategic theorists prevents both certain questions from being raised and also excludes the uninitiated from participation. In the world of "technostrategic language," which is a pseudo-scientific jargon composed of abstractions, acronyms, and euphemisms, speakers of ordinary English — no matter how well-informed — are treated as "ignorant, simpleminded, or both."172 At the same time, if one speaks in the technostrategic language in order to demonstrate legitimacy and gain respect, it becomes impossible to express certain ideas. Cohn uses the example of the concept "peace," explaining that it is not a part of this discourse. As close as one can come is "strategic stability," a term that refers to a balance of numbers and types of weapon systems — not the political, social, economic, and psychological conditions implied by the word "peace." Not only is there no word signifying peace in this discourse, but the word "peace" itself cannot be used. To speak it is immediately to brand oneself as a soft-headed activist instead of an expert\_\_\_\_173 When such ingrown and exclusionary forms of discourse come to dominate policy making, this is fertile ground for a dangerous divorce between the concerns of experts and the concerns of ordinary citizens.174 Originally, the ferninist commitment to the importance of fostering voice was a response to the traditional silencing of female voices, but it has been extended to recognize the need to increase our capacity to hear from others who have been excluded.175 In the arena of military policy, women's voices historically have been almost entirely shut out, but this is in a process of transition.176 However, even if women and others now excluded from the domains of technostrategic policy formation were admitted, so that those domains became more fully representative of the population, this would not heal the split between expert and citizen. The political scientist Jean Bethke Elshtain points out that while more equal representation of women in the "nuclear priesthood"177 of strategic theorists means that "[w]omen, too, would speak in the voice of the knowing insiders" the language would remain "dissociated: that is, its linguistic use of euphemisms.. . removes it from what it claims to be talking about."178 Most important for present purposes, the language would also remain exclusionary, "not available to most citizens, whether male or female, for the ordinary tasks of everyday civic life."179 Some opponents of this kind of technostrategic talk have sought to counter it with a psychological or apocalyptic language for talking about modern warfare and military strategy, an approach which centers on acknowledging despair and doom.180 But while this approach may be valuable as a way of breaking through "nuclear numbing" or other forms of apathy and disempowerment, Elshtain urges that there be a search for another way which "promotes civic identity and connection."181 She warns, however, that talk of enhanced citizen voice and participation must go beyond the level of abstract platitude.182 It is here that a renewed decentralism — understood not as a panacea, nor as a substitute for either private action or national politics, but as another locus for meaningful citizen involvement — has its place. Dean Paul Brest, in a friendly critique of neo-republican theorists,183 shares Elshtain's view that the commitment to enhanced citizenship must go beyond the level of abstraction. He chides neo-republican legal scholars for their obsession with the courts, their unfortunate willingness to treat "the judiciary as the 'trace of the People's absent selfgovernment.\* "I84 Rejecting this court-centered approach, he urges **instead** a search for "programs of genuine **participatory democracy** in the multifold spheres of human activity.'"85 While his emphasis in that article is on workplace democracy, the underlying thesis applies equally well to local action.186 Following Brest's advice, the final section of this Article will sketch out an argument for "genuine participatory democracy" at the grassroots level in the national security sphere. This argument has a foundation in ideas of federalism, but it is a federalism which must be carefully distinguished both from the old "states' rights" version, and also from the "new federalism" which is rooted in the federal government's attempt to cast off responsibility for the welfare of the citizenry.187 It is what I will call a "participatory federalism" — a federalism that has the goal of creating more opportunities for citizen empowerment and meaningful participation in national political life.

## 1NR Alt

The alternative is to reject legal restrictions on war powers in favor of political restrictions—they’re the only check on presidential authority—it’s empirically effective in every application because the government thinks it’s effective—that’s Goldsmith—more evidence

Eric A. Posner and Adrian Vermeule 11, law profs at the University of Chicago and Harvard, Demystifying Schmitt, January, <http://www.law.uchicago.edu/files/file/333-eap-Schmitt.pdf>

Finally, the models of the political foundations of constitutionalism allow a demystifying and less ominous interpretation of Schmitt’s insistence that the public’s role under constitutionalism is in effect restricted to negative measures – either rejection of proposals in a referendum or, in extreme cases, resistance to the ruling power.22 In the models we have canvassed, political groups exert influence on incumbents and competitors for powers not through persuasion or democratic deliberation, but through credible threats of resistance or armed conflict. In the lurid context of Weimar these ideas call up associations with torchlight rallies and thuggish street violence – “soccer-stadium democracy” – but this is to overlook that a credible threat of mass public resistance to exploitative action by incumbents can be necessary for the health of constitutionalism and democratic institutions. As Schmitt put it, “the ancient problem of ‘resistance against the tyrant’ remains, that is, resistance against injustice and misuse of state power, and the functionalistic-formalistic hollowing out of the parliamentary legislative state is not able to resolve it.”23 Here too, Schmitt’s distinction between legality and legitimacy opens up a way of thinking about constitutionalism that proves more fruitful, because more politically realistic, than liberal insistence that legitimacy can straightforwardly be reduced to legality.