# 1AC

### Plan

The United States federal judiciary should rule that the President of the United States lacks the war powers authority to detain individuals indefinitely.

### Legitimacy 1AC

#### Ending indefinite detention is CRITICAL in re-establishing US foreign policy credibility abroad AND discouraging Arab countries from using Guantanamo as a pre-text for repression

Randall 13 (Diane, executive secretary of the Friends Committee on National Legislation, "America Must Be Better Than Guantanamo," 7/18, http://www.popularresistance.org/america-must-be-better-than-guantanamo/)

If President Barack Obama and the U.S. Congress want to act immediately to bolster the flagging faith among the international community and among much-needed allies in the Arab World, there is one policy lever that could help: Guantanamo Bay.¶ Speaking as the head of a Quaker faith lobby in Washington DC, and as someone who just returned, this month, from the protested and politically active streets of Istanbul, I can attest to the urgency of this moment.¶ From Istanbul to Sana’a, from Beirut to Baghdad, and from Cairo to Kabul, the protests are becoming more common, calls for reform more frequent, and disregard for America’s role in the region more apparent.¶ Whatever moral authority America once commanded continues to wither as we violate our country’s cherished values of human rights and the rule of law with the continued operation of Guantanamo.¶ There, at Guantanamo, 166 detainees live in captivity; over 80 of those men have been on a hunger strike, many being force-fed against their will. Over half of the total detainees have been cleared of charges and await release. The world watches our government’s inaction to address this injustice.¶ Additionally, and in violation of international law prohibitions against “cruel, inhumane and degrading treatment,” several dozen inmates who remain on hunger strike are being force fed. After being physically immobilized, a two-foot long nasal tube is lodged into their bodies. The process ruptures the protective lining of their throats and stomachs and ruptures any sense of dignity, causing injury to body and soul.¶ The harm to these detainees is awful in the very action, but the fact that America — which considers itself the standard bearer for freedom and justice — is allowing this wound to fester harms our nation’s effectiveness with nations around the globe.¶ This Pentagon malpractice is fueling, quite fast and furiously, anti-American sentiment abroad. And while Sens. Diane Feinstein (D-CA) and Richard Durbin (D-IL) have called for the Pentagon to end force feedings and implement the same prisoner protections currently in place at federal prisons, the world isn’t seeing the nuance among America’s leadership.¶ Beyond the absolute illegality and the severe human rights implications here, the message America is sending to leaders in Yemen, Sudan, Egypt, Pakistan, Afghanistan, Syria, and Libya is one that encourages the contravening of the rule of law, criminal justice, and due process in a court.¶ This is hardly the message we want to send to leaders who may be keen to excuse a similar flouting of democratic governance and principles in their countries. This is especially poignant for a president who made a campaign promise to close the detention camp at Guantanamo Bay.¶ If America cannot keep its promises, how can we expect others, such as Egypt’s Mohamed Morsi, Afghanistan’s Hamid Karzai, or Iraq’s Nur al-Maliki, to keep theirs?¶ Despite President Obama’s recent re-focus on Guantanamo, which has garnered little in terms of a new tack, it is up to Congress to legally lift the restrictions on moving detainees to prisons in the U.S. or to foreign countries. While Obama could veto any forthcoming National Defense Authorization Act, if it includes those restrictions, that move is highly unlikely since Guantanamo is such a small portion of the defense-funding bill.¶ The real task, then, lies in the moral argument that must be made by our leaders and by the American people. We live in a country that believes in the rule of law. Yet, in practice, we are operating in direct, deplorable contradiction with this ethos through our continued and indefinite detention and treatment of persons who have not been charged and should have been released years ago from Guantanamo Bay.

#### And detention outweighs the alt causes

Welsh 11 (David, JD University of Utah, “Procedural Justice Post-9/11: The Effects of Procedurally

Unfair Treatment of Detainees on Perceptions of Global Legitimacy” University of New Hampshire Law Review, <http://law.unh.edu/assets/images/uploads/publications/unh-law-review-vol-09-no2-welsh.pdf>)

The Global War on Terror has been ideologically framed as a struggle between the principles of freedom and democracy on the one hand and tyranny and extremism on the other. 2 Although this war has arguably led to a short-term disruption of terrorist threats such as al-Qaeda, it has also damaged America’s image both at home and abroad. 3 Throughout the world, there is a growing consensus that America has “a lack of credibility as a fair and just world leader.” 4 The perceived legitimacy of the United States in the War on Terror is critical because terrorism is not a conventional threat that can surrender or can be defeated in the traditional sense. Instead, this battle can only be won through legitimizing the rule of law and undermining the use of terror as a means of political influence. 5 Although a variety of political, economic, and security policies have negatively impacted the perceived legitimacy of the United States, one of the most damaging has been the detention, treatment, and trial (or in many cases the lack thereof) of suspected terrorists. While many scholars have raised constitutional questions about the legality of U.S. detention procedures, 6 this article offers a psychological perspective of legitimacy in the context of detention.

#### Legitimacy is crucial to sustainable and effective US hegemony—judicial review is key

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

American unipolarity has created a challenge for realists. Unipolarity was thought to be inherently unstable because other nations, seeking to protect their own security, form alliances to counter-balance the leading state. n322 But no nation or group of nations has yet attempted to challenge America's military predominance. n323 Although some realists predict that [\*140] counter-balancing will occur or is already in some ways occurring, n324 William Wohlforth has offered a compelling explanation for why true counter-balancing, in the traditional realist sense, will probably not happen for decades. n325 American unipolarity is unprecedented. n326 First, the United States is geographically isolated from other potential rivals, who are located near one another in Eurasia. n327 This mutes the security threat that the U.S. seems to pose while increasing the threats that potential rivals seem to pose to one another. n328 Second, the U.S. far exceeds the capabilities of all other states in every aspect of power - military, economic, technological, and in terms of what is known as "soft power." This advantage "is larger now than any analogous gap in the history of the modern state system." n329 Third, unipolarity is entrenched as the status quo for the first time since the seventeenth century, multiplying free rider problems for potential rivals and rendering less relevant all modern previous experience with balancing. n330 Finally, the potential rivals' possession of nuclear weapons makes the concentration of power in the United States appear less threatening. A war between great powers in today's world is very unlikely. n331 These factors make the current system much more stable, peaceful and durable than the past multi-polar and bipolar systems in which the United States operated for all of its history until 1991. The lack of balancing means that the United States, and by extension the executive branch, faces much weaker external constraints on its exercise of power than in the past. n332 Therefore, the internal processes of the U.S. matter now more than any other nations' have in history. n333 And it is these internal processes, as much as external developments, that will determine the durability of American unipolarity. As one realist scholar has argued, the U.S. can best ensure the [\*141] stability of this unipolar order by ensuring that its predominance appears legitimate. n334 Hegemonic orders take on hierarchical characteristics, with the preeminent power having denser political ties with other nations than in a unipolar order. n335 Stability in hegemonic orders is maintained in part through security guarantees and trade relationships that result in economic specialization among nations. n336 For example, if Nation X's security is supplied by Hegemon Y, Nation X can de-emphasize military power and focus on economic power. In a hegemonic system, the preeminent state has "the power to shape the rules of international politics according to its own interests." n337 The hegemon, in return, provides public goods for the system as a whole. n338 The hegemon possesses not only superior command of military and economic resources but "soft" power, the ability to guide other states' preferences and interests. n339 The durability and stability of hegemonic orders depends on other states' acceptance of the hegemon's role. The hegemon's leadership must be seen as legitimate. n340 [\*142] The United States qualifies as a global hegemon. In many ways, the U.S. acts as a world government. n341 It provides public goods for the world, such as security guarantees, the protection of sea lanes, and support for open markets. n342 After World War II, the U.S. forged a system of military alliances and transnational economic and political institutions - such as the United Nations, NATO, the International Monetary Fund, and the World Bank - that remain in place today. The U.S. provides security for allies such as Japan and Germany by maintaining a strong military presence in Asia and Europe. n343 Because of its overwhelming military might, the U.S. possesses what amounts to a "quasi-monopoly" on the use of force. n344 This prevents other nations from launching wars that would tend to be truly destabilizing. Similarly, the United States provides a public good through its efforts to combat terrorism and confront - even through regime change - rogue states. n345 The United States also provides a public good through its promulgation and enforcement of international norms. It exercises a dominant influence on the definition of international law because it is the largest "consumer" of such law and the only nation capable of enforcing it on a global scale. n346 The U.S. was the primary driver behind the establishment of the United Nations system and the development of contemporary treaties and institutional regimes to effectuate those treaties in both public and private international law. n347 Moreover, controlling international norms are [\*143] sometimes embodied in the U.S. Constitution and domestic law rather than in treaties or customary international law. For example, whether terrorist threats will be countered effectively depends "in large part on U.S. law regarding armed conflict, from rules that define the circumstances under which the President can use force to those that define the proper treatment of enemy combatants." n348 These public goods provided by the United States stabilize the system by legitimizing it and decreasing resistance to it. The transnational political and economic institutions created by the United States provide other countries with informal access to policymaking and tend to reduce resistance to American hegemony, encouraging others to "bandwagon" with the U.S. rather than seek to create alternative centers of power. n349 American hegemony also coincided with the rise of globalization - the increasing integration and standardization of markets and cultures - which tends to stabilize the global system and reduce conflict. n350 The legitimacy of American hegemony is strengthened and sustained by the democratic and accessible nature of the U.S. government. The American constitutional separation of powers is an international public good. The risk that it will hinder the ability of the U.S. to act swiftly, coherently or decisively in foreign affairs is counter-balanced by the benefits it provides in permitting foreigners multiple points of access to the government. n351 Foreign nations and citizens lobby Congress and executive branch agencies in the State, Treasury, Defense, and Commerce Departments, where foreign policy is made. n352 They use the media to broadcast their point of view in an effort to influence the opinion of decision-makers. n353 Because the United States is a nation of immigrants, many American citizens have a specific interest in the fates of particular countries and form "ethnic lobbies" for the purpose of affecting foreign policy. n354 The courts, too, are accessible to foreign nations and non-citizens. The Alien Tort Statute is emerging as an [\*144] important vehicle for adjudicating tort claims among non-citizens in U.S. courts. n355 Empires are more complex than unipolar or hegemonic systems. Empires consist of a "rimless-hub-and-spoke structure," with an imperial core - the preeminent state - ruling the periphery through intermediaries. n356 The core institutionalizes its control through distinct, asymmetrical bargains (heterogeneous contracting) with each part of the periphery. n357 Ties among peripheries (the spokes) are thin, creating firewalls against the spread of resistance to imperial rule from one part of the empire to the other. n358 The success of imperial governance depends on the lack of a "rim." n359 Stability in imperial orders is maintained through "divide and rule," preventing the formation of countervailing alliances in the periphery by exploiting differences among potential challengers. n360 Divide-and-rule strategies include using resources from one part of the empire against challengers in another part and multi-vocal communication - legitimating imperial rule by signaling "different identities ... to different audiences." n361 Although the U.S. has often been labeled an empire, the term applies only in limited respects and in certain situations. Many foreign relations scholars question the comparison. n362 However, the U.S. does exercise informal imperial rule when it has routine and consistent influence over the foreign policies of other nations, who risk losing "crucial military, economic, or political support" if they refuse to comply. n363 The "Status of Force Agreements" ("SOFAs") that govern legal rights and responsibilities of U.S. military personnel and others on U.S. bases throughout the world are typically one-sided. n364 And the U.S. occupations in Iraq and Afghanistan had a strong imperial dynamic because those regimes depended on American support. n365 [\*145] But the management of empire is increasingly difficult in the era of globalization. Heterogeneous contracting and divide-and-rule strategies tend to fail when peripheries can communicate with one another. The U.S. is less able control "the flow of information ... about its bargains and activities around the world." n366 In late 2008, negotiations on the Status of Force Agreement between the U.S. and Iraq were the subject of intense media scrutiny and became an issue in the presidential campaign. n367 Another classic imperial tactic - the use of brutal, overwhelming force to eliminate resistance to imperial rule - is also unlikely to be effective today. The success of counterinsurgency operations depends on winning a battle of ideas, and collateral damage is used by violent extremists, through the Internet and satellite media, to "create widespread sympathy for their cause." n368 The abuses at Abu Ghraib, once public, harmed America's "brand" and diminished support for U.S. policy abroad. n369 Imperial rule, like hegemony, depends on maintaining legitimacy. B. Constructing a Hegemonic Model International relations scholars are still struggling to define the current era. The U.S.-led international order is unipolar, hegemonic, and, in some instances, imperial. In any event, this order diverges from traditional realist assumptions in important respects. It is unipolar, but stable. It is more hierarchical. The U.S. is not the same as other states; it performs unique functions in the world and has a government open and accessible to foreigners. And the stability and legitimacy of the system depends more on successful functioning of the U.S. government as a whole than it does on balancing alliances crafted by elite statesmen practicing realpolitik. "World power politics are shaped primarily not by the structure created by interstate anarchy but by the foreign policy developed in Washington." n370 These differences require a new model for assessing the institutional competences of the executive and judicial branches in foreign affairs. [\*146] One approach would be to adapt an institutional competence model using insights from a major alternative theory of international relations - liberalism. Liberal IR theory generally holds that internal characteristics of states - in particular, the form of government - dictate states' behavior, and that democracies do not go to war against one another. n371 Liberalists also regard economic interdependence and international institutions as important for maintaining peace and stability in the world. n372 Dean Anne-Marie Slaughter has proposed a binary model that distinguishes between liberal, democratic states and non-democratic states. n373 Because domestic and foreign issues are "most convergent" among liberal democracies, Slaughter reasons, the courts should decide issues concerning the scope of the political branches' powers. n374 With respect to non-liberal states, the position of the U.S. is more "realist," and courts should deploy a high level of deference. n375 One strength of this binary approach is that it would tend to reduce the uncertainty in foreign affairs adjudication. Professor Nzelibe has observed that it would put courts in the difficult position of determining which countries are liberal democracies. n376 But even if courts are capable of making these determinations, they would still face the same dilemmas adjudicating controversies regarding non-liberal states. Where is the appropriate boundary between foreign affairs and domestic matters? How much discretion should be afforded the executive when individual rights and accountability values are at stake? To resolve these dilemmas, an institutional competence model should be applicable to foreign affairs adjudication across the board. In constructing a new realist model, it is worth recalling that the functional justifications for special deference are aimed at addressing problems of a particular sort of role effectiveness - which allocation of power among the branches will best achieve general governmental effectiveness in foreign affairs. In the twenty-first century, America's global role has changed, and the best means of achieving effectiveness in foreign affairs have changed as well. The international realm remains highly political - if not as much as in the past - but it is American politics that matters most. If the U.S. is truly an empire - [\*147] and in some respects it is - the problems of imperial management will be far different from the problems of managing relations with one other great power or many great powers. Similarly, the management of hegemony or unipolarity requires a different set of competences. Although American predominance is recognized as a salient fact, there is no consensus among realists about the precise nature of the current international order. n377 The hegemonic model I offer here adopts common insights from the three IR frameworks - unipolar, hegemonic, and imperial - described above. First, the "hybrid" hegemonic model assumes that the goal of U.S. foreign affairs should be the preservation of American hegemony, which is more stable, more peaceful, and better for America's security and prosperity, than the alternatives. If the United States were to withdraw from its global leadership role, no other nation would be capable of taking its place. n378 The result would be radical instability and a greater risk of major war. n379 In addition, the United States would no longer benefit from the public goods it had formerly produced; as the largest consumer, it would suffer the most. Second, the hegemonic model assumes that American hegemony is unusually stable and durable. n380 As noted above, other nations have many incentives to continue to tolerate the current order. n381 And although other nations or groups of nations - China, the European Union, and India are often mentioned - may eventually overtake the United States in certain areas, such as manufacturing, the U.S. will remain dominant in most measures of capability for decades**.** According to 2007 estimates, the U.S. economy was projected to be twice the size of China's in 2025. n382 The U.S. accounted for half of the world's military spending in 2007 and holds enormous advantages in defense technology that far outstrip would-be competitors. n383 Predictions of American decline are not new, and they have thus far proved premature. n384 [\*148] Third, the hegemonic model assumes that preservation of American hegemony depends not just on power, but legitimacy. n385 All three IR frameworks for describing predominant states - although unipolarity less than hegemony or empire - suggest that legitimacy is crucial to the stability and durability of the system. Although empires and predominant states in unipolar systems can conceivably maintain their position through the use of force, this is much more likely to exhaust the resources of the predominant state and to lead to counter-balancing or the loss of control. n386 Legitimacy as a method of maintaining predominance is far more efficient. The hegemonic model generally values courts' institutional competences more than the anarchic realist model. The courts' strengths in offering a stable interpretation of the law, relative insulation from political pressure, and power to bestow legitimacy are importantfor realizing the functional constitutional goal of effective U.S. foreign policy. This means that courts' treatment of deference in foreign affairs will, in most respects, resemble its treatment of domestic affairs. Given the amorphous quality of foreign affairs deference, this "domestication" reduces uncertainty. The increasing boundary problems caused by the proliferation of treaties and the infiltration of domestic law by foreign affairs issues are lessened by reducing the deference gap. And the dilemma caused by the need to weigh different functional considerations - liberty, accountability, and effectiveness - against one another is made less intractable because it becomes part of the same project that the courts constantly grapple with in adjudicating domestic disputes.

**U.S. leadership is key to global stability and preventing great power wars**

Zhang and Shi 11 (Yuhan, 1-22, Carnegie Endowment for International Peace, and Lin Shi, Columbia University, “America’s Decline: A Harbinger of Conflcit and Rivalry,” EAST ASIA FORUM, <http://www.eastasiaforum.org/2011/01/22/americas-decline-a-harbinger-of-conflict-and-rivalry/>)

This does not necessarily mean that the US is in systemic decline, but it encompasses a trend that appears to be negative and perhaps alarming. Although the US still possesses incomparable military prowess and its economy remains the world’s largest, the once seemingly indomitable chasm that separated America from anyone else is narrowing. Thus, the global distribution of power is shifting, and the inevitable result will be a world that is less peaceful, liberal and prosperous, burdened by a dearth of effective conflict regulation. Over the past two decades, no other state has had the ability to seriously challenge the US military. Under these circumstances, motivated by both opportunity and fear, **many actors have bandwagoned with US hegemony** and accepted a subordinate role. Canada, most of Western Europe, India, Japan, South Korea, Australia, Singapore and the Philippines have all joined the US, **creating a status quo that has tended to mute great power conflicts**. However, **as** the **hegemony** that drew these powers together **withers,** so will the pulling power behind the US alliance. **The result will be an** international **order where power is more diffuse,** American interests and influence can be more readily challenged, **and conflicts or wars may be harder to avoid. As history attests, power decline and redistribution result in military confrontation.** For example, in the late 19th century America’s emergence as a regional power saw it launch its first overseas war of conquest towards Spain. By the turn of the 20th century, accompanying the increase in US power and waning of British power, the American Navy had begun to challenge the notion that Britain ‘rules the waves.’ Such a notion would eventually see the US attain the status of sole guardians of the Western Hemisphere’s security to become the order-creating Leviathan shaping the international system with democracy and rule of law. Defining this US-centred system are three key characteristics: enforcement of property rights, constraints on the actions of powerful individuals and groups and some degree of equal opportunities for broad segments of society. As a result of such political stability, free markets, liberal trade and flexible financial mechanisms have appeared. And, with this, many countries have sought opportunities to enter this system, proliferating stable and cooperative relations. However, what will happen to these advances as America’s influence declines? Given that America’s authority, although sullied at times, has benefited people across much of Latin America, Central and Eastern Europe, the Balkans, as well as parts of Africa and, quite extensively, Asia, the answer to this question could affect global society in a profoundly detrimental way. Public imagination and academia have anticipated that **a post-hegemonic world would return to** the problems of the 1930s: **regional blocs, trade conflicts and strategic rivalry.** Furthermore, multilateral institutions such as the IMF, the World Bank or the WTO might give way to regional organisations. For example, Europe and East Asia would each step forward to fill the vacuum left by Washington’s withering leadership to pursue their own visions of regional political and economic orders. **Free markets would become more politicised — and, well, less free — and major powers would compete for supremacy.** Additionally, such power plays have historically possessed a zero-sum element. In the late 1960s and 1970s, US economic power declined relative to the rise of the Japanese and Western European economies, with the US dollar also becoming less attractive. And, as American power eroded, so did international regimes (such as the Bretton Woods System in 1973). **A world without American hegemony is one where great power wars re-emerge,** the liberal international system is supplanted by an authoritarian one, and trade protectionism devolves into restrictive, anti-globalisation barriers. This, at least, is one possibility we can forecast in a future that will inevitably be devoid of unrivalled US primacy.

**Indefinite detention increases terrorism—multiple warrants**

Scheinin 12 (January 11, Martin, professor of international law and former UN Special Rapporteur on human rights and counter-terrorism from 2005 to 2011, “Should Human Rights Take a Back Seat in Wartime?” <http://www.realclearworld.com/articles/2012/01/11/national_defense_authorization_act_scheinin_interview-full.html>)

The National Defense Authorization Act (NDAA), signed by President Barack Obama December 31, 2011, codifies into law the post-9/11 practice of indefinite detention without charge of terrorist suspects. Martin Scheinin, professor of international law and former UN Special Rapporteur on human rights and counter-terrorism from 2005 to 2011, offered his thoughts on the new law and its potential implications for the global counter-terrorism struggle. Casey L. Coombs: First, Mr. Scheinin, could you provide your general impressions of the NDAA’s indefinite detention provisions vis-à-vis international legal standards governing civil liberties? Martin Scheinin: The NDAA builds upon the well-established rule in international humanitarian law (law of armed conflict) that during an international armed conflict combatants, i.e. soldiers of one of the states involved in the war, can be detained as prisoners of war until the end of hostilities. When there is an international armed conflict and when someone is a combatant, then such detention does not amount to arbitrary detention that would violate international human rights law. The NDAA extends the possibility - even presumption - of indefinite detention to terrorism, far beyond genuine situations of international or even non-international armed conflict. And it extends indefinite detention to persons who are not combatants, or analogously situated persons in a non-international armed conflict. For instance, persons who are held to have provided substantial support to terrorism would be subject to indefinite detention. This approach has no support in the laws of war and will unavoidably result in what human rights law considers arbitrary detention and hence a violation of international treaties legally binding upon the United States, such as the International Covenant on Civil and Political Rights. CLC: As a world leader and active promoter of universal human rights, the practice of indefinite detention without charge would seem to clash with U.S. ideals. Could you comment on this contradiction? MS: One of the main lessons learned in the international fight against terrorism is that counter-terrorism professionals have gradually come to learn and admit that human rights violations are not an acceptable shortcut in an effective fight against terrorism. Such measures tend to backfire in multiple ways. They result in legal problems by hampering prosecution, trial and punishment. The use of torture is a clear example here. They also tend to alienate the communities with which authorities should be working in order to detect and prevent terrorism. And they add to causes of terrorism, both by perpetuating "root causes" that involve the alienation of communities and by providing "triggering causes" through which bitter individuals make the morally inexcusable decision to turn to methods of terrorism. The NDAA is just one more step in the wrong direction, by aggravating the counterproductive effects of human rights violating measures put in place in the name of countering terrorism. CLC: Does the NDAA afford the U.S. a practical advantage in the fight against terrorism? Or might the law undermine its global credibility? MS: It is hard to see any practical advantage gained through the NDAA. It is just another form of what I call symbolic legislation, enacted because the legislators want to be seen as being "tough" or as "doing something." The law is written as just affirming existing powers and practices and hence not providing any meaningful new tools in the combat of terrorism. By constraining the choices by the executive, it nevertheless hampers effective counter-terrorism work, including criminal investigation and prosecution, as well as international counter-terrorism cooperation, markedly in the issue of closing the Guantanamo Bay detention facility. Hence, it carries the risk of distancing the United States from its closest allies and the international community generally. And of course these kinds of legal provisions are always open for bad faith copying by repressive governments that will use them for their own political purposes.

**Indefinite detention is the key internal link to recruitment and causes a resource trade off which shatters the ability to fight terrorism**

**Powell 8** (Catherine, Georgetown Law Visiting Professor for the 2012-13 academic year and teaches international law, constitutional law, and constitutional rights in comparative perspective. She has recently served in government on Secretary of State Hillary Clinton’s Policy Planning Staff and on the White House National Security Staff, where she was Director for Human Rights. “Scholars’ Statement of Principles for the New President on U.S. Detention Policy: An Agenda for Change\*” <http://www.law.yale.edu/documents/pdf/Alumni_Affairs/Scholars_Statement.pdf>)

Across the political spectrum, there is a growing consensus that the existing system of long term detention of terrorism suspects without trial through the network of facilities in Guantanamo and elsewhere is an unsustainable liability for the United States that must be changed. The current policies undermine the rule of law and our national security. The last seven years have seen a dangerous erosion of the rule of law in the United States through a disingenuous interpretation of the laws of war, the denial of ordinary legal process, the violation of the most basic rights, and the use of unreliable evidence (including secret and coerced evidence). The current detention policies also point to the inherent fallibility of “preventive” determinations that are based on assessment of future dangerousness (as opposed to past criminal conduct). Empirical studies demonstrate that “preventive” detention determinations that rely on assessment of future dangerousness generate unacceptably high levels of false positives (i.e., detention of innocent people).1 Indeed, while the Bush Administration once claimed the Guantanamo detainees were “the worst of the worst,” following minimal judicial intervention, it subsequently released more than 300 of them, as of the end of 2006.2 Because it is viewed as unprincipled, unreliable, and illegitimate, the existing detention system undermines our national security. Because the current system threatens our national security, we strongly oppose any effort to extend the status quo by establishing either (1) a comprehensive system of long-term “preventive” detention without trial for suspected terrorists, or (2) a specialized national security court to make “preventive” detention determinations and ultimately to try terrorism suspects.3 Despite dressed up procedures, these proposals would make some of the most notorious aspects of the current failed system permanent. To the extent such systems were established within the territorial United States as opposed to on Guantanamo or elsewhere, they would essentially bring the failed Guantanamo system home. Perhaps most fundamental is the fact that the supporters of these proposals typically fail to make clear who should be detained, much less how such individuals, once designated, can prove they are no longer a threat. Without a reasonably precise definition, not only is arbitrary and indefinite detention possible, it is nearly inevitable. Moreover, many of the proponents of a renewed “preventive” detention regime explicitly underscore the primacy of interrogation with respect to detainees’ otherwise-recognized rights. A detention system that permits ongoing interrogation inevitably treats individuals as means to an end, regardless of the danger they individually pose, thereby creating perverse incentives to prolonged, incommunicado, arbitrary (and indefinite) detention, minimized procedural protections, and coercive interrogation. Such **arrangements instill resentment and provide propaganda for recruitment of future terrorists, undermine our relationships with our allies, and embolden terrorists as “combatants” in a “war on terror”** (rather than delegitimizing them as criminals in the ordinary criminal justice system).4 Moreover, the current system of long term (and, essentially, **indefinite) detention diverts resources and attention away from other, more effective means of combating terrorism.** Reflecting what has now become a broad consensus around the need to use the full range of instruments of state power to combat terrorism, the bi-partisan 9/11 Commission pointed out that “long-term success [in efforts to pursue al Qaeda] demands the use of all elements of national power: diplomacy, intelligence, covert action, law enforcement, economic policy, foreign aid, public diplomacy, and homeland defense.”5 Thus, in addition to revamping the existing detention program to bring it within the rule of law, the incoming President should work with Congress to utilize this broad array of tools to vigorously prosecute terrorism.

**Al Qaeda is still a major threat—predictions of decline are premature and false**

Sinai 13 (Joshua, JINSA Fellow, Washington, DC-based consultant on national security studies, focusing primarily on terrorism, counterterrorism, and homeland security, 3-11-13, “Al Qaeda Threat to U.S. Not Diminished, Data Indicates” The Jewish Institute for National Security Affairs) http://www.jinsa.org/fellowship-program/joshua-sinai/al-qaeda-threat-us-not-diminished-data-indicates#.UbaiWvmsiSo

Conventional wisdom holds that the threat to America posed by al Qaeda and its affiliates is greatly diminished compared to 9/11. Today, it is claimed, al Qaeda is less well organized, with many of its top leaders eliminated, and is so broken into geographically disparate franchises that it is unable to recruit, train, and deploy a specialized cell to carry out a comparable catastrophic attack against America. The fact that no al Qaeda terrorist attacks have been carried out in America over the last two years, while some 20 individuals have plotted to carry out attacks but were arrested and convicted during the pre-incident phases, is seen as evidence that this terrorist threat is decreasing domestically. Therefore, according to this thesis, security authorities should prepare for more numerous and frequently occurring but low casualty attacks mounted by less well-trained and capable homegrown operatives, particularly by what are termed "lone wolves." When a more complete compilation of all the components involved in terrorism are taken into account, however, the magnitude of the threat becomes much clearer and includes a higher likelihood of attempts to carry out catastrophic attacks as well as evidence that al Qaeda continues to recruit and prepare terrorist operatives in the United States. Downplaying the terrorist threat posed by al Qaeda and its affiliates also has significant political implications due in part to the more than $70 billion that is spent annually on America's domestic counterterrorism programs (with larger amounts expended for overseas operations), all of which need to be continuously justified as cost effective by Administration planners and Congressional appropriators. Such purported decline in al Qaeda attacks domestically, however, is now being seized upon by those who favor reduced government funding for counterterrorism programs, including weakening the USA PATRIOT Act, to support their position that a reduced threat requires reduced funding and resources. When the trajectory of attacks by al Qaeda and its associates over the years are carefully studied, however, certain patterns recur. Specifically, every time the threat is underplayed, it is invariably followed by a major attack. In the months leading up to the November 2012 elections, the media was filled with pronouncements that al Qaeda's threat had greatly diminished as a result of the elimination of its leadership and the reduced operational role over attacks by what is termed "al Qaeda Central" in Pakistan's tribal areas. While accurate on one level, this did not stop al Qaeda and its affiliates from continuing to launch major terrorist attacks, including that by its Libyan affiliate against the U.S. consulate in Benghazi on September 11, 2012, which led to severe political repercussions for the Administration for its unpreparedness to anticipate such an attack. This was followed by the launching of the devastating cross-border attack against the natural gas facility in eastern Algeria in mid-January by another al Qaeda affiliate in Mali. Thirty-six foreign workers were murdered in that attack, which, again, was unanticipated.Moreover, the fact that a catastrophic attack against America comparable to 9/11 has not occurred over the past 11 years should not suggest that a future one is not being planned. In summer 2006, al Qaeda-linked operatives in London plotted to detonate liquid explosives on board 10 transatlantic airliners flying from the UK to America and Canada. In September 2009, Najibullah Zazi and his associates were arrested for plotting to conduct a suicide bombing attack against the New York City subway system. On Christmas Day, 2009, Umar Farouk Abdulmutallab failed to detonate plastic explosives while on board an airliner heading to Detroit. Anwar al Awlaki, a former American extremist cleric, reportedly masterminded Abdulmutallab's operation. Awlaki was killed in a drone attack in Yemen on September 30, 2011. The killings of al Awlaki and Samir Khan, another American extremist who had made his way to Yemen in 2009, could well trigger a catastrophic attack by al Qaeda to avenge their deaths.The recent capture of Osama Bin Laden's son-in-law, Sulaiman abu Ghaith, and the decision to try him in New York City, is also likely to trigger a major revenge attack against America. Finally, organizing catastrophic terrorist attacks requires extensive planning, funding and preparation. A terrorist group that feels itself strong will take its time to carefully plan a few but devastating attacks, while a group that regards itself as weak may feel compelled to carry out frequent, but low-casualty attacks to demonstrate its continued relevancy. Some incident databases, such asa recent compilation of data about American al Qaeda terrorists by the UK-based Henry Jackson Society, only account for completed attacks and convictions of those arrested. If such counting is expanded to include other factors, however, then the overall threat becomes much more severe. Other factors, therefore, should include the potential consequences ofthe thwarted attacks had they not been prevented, the number of radicalized Americans who travel overseas to join al Qaeda-affiliated insurgencies, and the extent of radicalized activity by al Qaeda's American sympathizers in jihadi website forums and chatrooms. A more complete accounting of the threat will now reveal that the supportive extremist infrastructure for al Qaeda in America is actually not diminishing and that the purported "lone wolf" actors have actual ties to al Qaeda operatives overseas. We should not, therefore, also be misled into complacencyif catastrophic attacks by al Qaeda do not occur for lengthy periods. Nor so by the comforting but false sense of security that comes with believing that "lone wolf" attacks in the United States are not a product of al Qaeda recruitment and support. It is also possible, nevertheless, that al Qaeda's terrorist planners are considering both types of attacks, infrequent catastrophic and frequent low casualty. This may explain why al Qaeda's propaganda organs are calling on its radicalized followers in the West to take matters into their own hands and embark on any sort of attacks that may be feasible at the moment, but with further surprise attacks of a catastrophic nature still ahead.

**Terrorism goes nuclear---high risk of theft and attacks escalate**

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

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

#### Extinction – tech and poor response mechanisms

Myhrvold 13 (Nathan, Phd in theoretical and mathematical physics from Princeton, and founded Intellectual Ventures after retiring as chief strategist and chief technology officer of Microsoft Corporation , July 2013, "Stratgic Terrorism: A Call to Action," The Lawfare Research Paper Series No.2, <http://www.lawfareblog.com/wp-content/uploads/2013/07/Strategic-Terrorism-Myhrvold-7-3-2013.pdf>)

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

**Venezuela 1AC**

**US efforts to push Judicial Reforms in Venezuela through the Inter-American Human Rights Commission are hampered by hypocritical indefinite detention policy**

**Bosworth 13** (James, Former Associate for Communications at The Inter-American Dialogue and Director of Research at The Rendon Group, Consultant at the Woodrow Wilson International Center for Scholars, “Protecting the IACHR, now make it stronger,” 3-25-13, <http://www.bloggingsbyboz.com/2013/03/protecting-iachr-now-make-it-stronger.html>)

Last Friday, the OAS voted to reform the Inter-American Commission on Human **Rights** (IACHR). Most importantly, the organization managed to **push back** against a set of cynical and **harmful proposals by** four countries - Bolivia, Ecuador, Nicaragua and **Venezuela** - that would have weakened the organization and reduced its funding sources. Those four countries ended up isolated from the other 30 voting members of the OAS who remained committed to strengthening the Inter-American human rights system. Sources: AQ, Pan-American Post, IPS, Ecuador wanted the system to be funded only by countries that have signed the San Jose Pact and wanted all the rapporteurs funded equally. This would have eliminated most of the funding for the IACHR coming from the US, Canada and Europe without guarantees of pledges to replace that money. It also would have weakened the Special Rapporteur on Freedom of Expression, a particularly thorn in the side for Ecuador's censorship-loving president. Of course, the ALBA criticisms aren't actually about funding. The ALBA countries tried to weaken the IACHR because they are annoyed that any independent outside organizations criticizes their abuses of human rights and free speech. So, good on the rest of the Americas including the US, Brazil and Mexico for working to stop those proposals from being implemented. All three of those countries have all recently faced **tough criticisms** from the IACHR, making it notable that they still defended the commission at this session. From the speech of Deputy Secretary Burns: This is why we actively respond to the Commission even as it raises challenging issues for us – from the death penalty and the human rights of migrants and incarcerated children, to **the status of detainees** at Guantanamo Bay. And this is why we continue to collaborate with the Commission – including its recent on-site visit to immigrant detention facilities in the United States. We do this not because we always see eye to eye with the Commission. We do it because we are secure in our **commitment to democratic principles** and in our conviction that we are accountable to our citizens for the protection of their human rights. We do it because we believe that no government should place itself beyond international scrutiny when it comes to the protection of basic human rights and civil liberties. Strong words that I absolutely agree with. However.... On 12 March the US formally answered questions to the IACHR about the detainees held at Guantanamo Bay. At that time, the US lawyer did not provide any timeline for closing the detention center and refused to admit anyone is being held in "indefinite detention," though the fact they are held without trial and without a potential release date seems to be the definition of that term. Though the US defended the conditions of the prison, as far as I can tell, no representative from the IACHR has been allowed to visit. On the issue of immigrant detentions, here is the IACHR in July 2009 based on its visits to detention centers (longer report released in 2011): Finally, the Rapporteurship was distressed at the use of solitary confinement to ostensibly provide personal protection for vulnerable immigrant detainees, including homosexuals, transgender detainees, detainees with mental illnesses, and other minority populations. The use of solitary confinement as a solution to safeguard threatened populations effectively punishes the victims. The Rapporteurship urges the U.S. Government to establish alternatives to protect vulnerable populations in detention and to provide the mentally-ill with appropriate treatment in a proper environment. Here is the NYT yesterday: On any given day, about 300 immigrants are held in solitary confinement at the 50 largest detention facilities that make up the sprawling patchwork of holding centers nationwide overseen by Immigration and Customs Enforcement officials, according to new federal data. Nearly half are isolated for 15 days or more, the point at which psychiatric experts say they are at risk for severe mental harm, with about 35 detainees kept for more than 75 days. Four years after the IACHR visited the immigrant detention facilities and spoke out against the practice of solitary confinement, the article in the NYT from 2013 reads just like the IACHR report from 2009. Nothing has been done to respond to those criticisms. The US gets credit for fighting back against the ALBA countries' push to silence the IACHR. The commission provides a needed voice for the hemisphere's human rights. Over the past month, with the purpose of protecting and strengthening human rights in the hemisphere, I've heard US officials praise Brazil, Mexico and Uruguay for listening and acting on the recommendations of the IACHR. The sad truth is that the US praised those other countries because the US hasn't acted on many of the important criticisms that it has received from the IACHR. It's part of the **credibility gap** that the US faces in this hemisphere. Last week, the Obama administration played a vital role in protecting human rights in the hemisphere by leading the effort at the OAS to maintain a strong IACHR. We need to remember that nothing the US says diplomatically at the OAS will be as powerful as the US ability to **lead by example**. If the US really wants stronger human rights protections in this hemisphere, that effort starts at home. The issues raised by Deputy Secretary Burns in his OAS speech - **Guantanamo and immigrant detention conditions - would be great places to start.**

#### Specifically true for a lack US Judicial Independence – sends a signal of appropriate balancing

**Yamamato 13** (Eric K., law professor at the University of Hawai'i William S. Richardson School of Law, BA University of Hawaiʻi at Mānoa 1975, JD UC Berkeley School of Law 1978, Race, Rights and Reparation: Law and the Japanese American Internment, 2013, p. 411-412)

For all these reasons, Justice Jackson’s warning still resonates loudly today. How will the judiciary prevent false **executive claims** of national security necessity from becoming a “**loaded weapon**” aimed at the essence of American democracy— the balance of national security and civil liberties? Rasul confirmed the salience of **judicial oversight** of executive national security policies. Yet the Rasul majority failed to articulate the appropriate level of judicial review of executive national security actions that curtail fundamental liberties. Deferential judicial review effectively affords the President a **blank check**. Unyielding scrutiny, however, may unduly constrain the executive. Ordinary judicial review doctrine embraces deferential review for most government actions, giving the President wide leeway to act in the best interest of the country. That doctrine also mandates heightened scrutiny where government action restricts fundamental liberties. It is still an open question whether the national security setting alters this paradigm of judicial review. Varying approaches persist. Some judges and scholars, including former Chief Justice William Rehnquist, argued that the judiciary should play a muted role in reviewing military necessity restrictions of civil liberties during military conflict: An entirely separate and important philosophical question is whether occasional presidential excesses and judicial restraint in wartime are desirable or undesirable. . . . [T]here is every reason to believe that the historic trend against the least justified of the curtailments of civil liberty in wartime will continue in the future. It is neither desirable nor remotely likely that civil liberty will occupy as favored a position in wartime as it does in peacetime. But it is both desirable and likely that more **careful attention** will **be paid by the courts** to the basis for the government’s claims of necessity as a basis for curtailing civil liberty. The laws will thus not be silent in time of war, but they will speak with a somewhat different voice.1210 By adopting this posture of sharply limited judicial review or almost total judicial deference to executive actions, courts would have a straightforward task. They would simply align with the executive whenever it invokes national security, even when fundamental liberties are significantly restricted. For others, the highly deferential approach conflicts with constitutional mandates. The judiciary’s purpose is to serve as a constitutional check on the two political branches of government, particularly where fundamental liberties are at stake.1211 Without close **judicial scrutiny,** no governmental body exists to assure executive and legislative accountability under law. The consequences of this were seen in the wartime internment cases. A watchful care approach would call for the judiciary to apply a heightened standard of review to executive restrictions of fundamental liberties even during times of war or national security crises, accounting for the government’s security concerns in the court’s analysis of the government’s asserted compelling interest.1212 During the Civil War, the U.S. Supreme Court barred President Lincoln from suspending the writ of habeas corpus if the civilian courts were open and functioning. The Court ruled that the safeguards of liberty [should receive the] watchful care of those [e]ntrusted with the guardianship of the Constitution and laws [namely, the judiciary].1213 This heightened scrutiny, or watchful care, approach calls for careful judicial assessment of the government’s proffered security justification for the restrictions. Under this approach, [e]xcept as to actions under civilly-declared martial law . . . a heightened standard of review [should] be applied to evaluate government restrictions of constitutionally-protected liberties ostensibly justified by military necessity or national security. At the same time, the watchful care approach affords the government needed protection for sensitive information or policies. In particular, a **heightened standard of review** confirms the appropriate **competency of federal courts** to adjudicate disputes at the intersection of civil liberties and national security. It **announces a confidence that courts possess** existing tools for ensuring strict confidentiality where warranted. Secrecy has its proper place. But the internment illustrates that the executive branch historically has invoked confidentiality to evade accountability.1214 How will American courts respond today and in the future? Some predict that “blind acceptance by the courts of the government’s insistence on the need for secrecy . . . [will] impermissibly compromise the **independence of the judiciary** and open the door to possible abuse.”1215 Yet, in hearing habeas corpus challenges after Rasul and Boumediene, the federal courts have more consistently scrutinized the government’s justification for indefinite detention, upholding 16 detentions and invalidating 37 others.1216 In his final pronouncement, Fred Korematsu urged that through public and judicial vigilance “the internment can remain a lighthouse that helps . . . navigate the rocky shores triangulated by freedom, equality, and security.”121

#### Venezuelan denunciation of the Convention on Human Rights means that the OAS’s Inter-American Commission remains the best hope of promoting judicial independence in Venezuela

Biron 13 (Carey L. Biron, Inter Press Service, “Venezuelan Pullout from Rights Pact Called “Deeply Concerning,” <http://www.ipsnews.net/2013/09/venezuelan-pullout-from-rights-pact-called-deeply-concerning/>)

WASHINGTON, Sep 10 2013 (IPS) - The Inter-American Commission on Human Rights (IACHR) says it is “deeply concerned” over the Venezuelan government’s decision to withdraw from the American Convention on Human Rights, a move that went into effect Tuesday. The Venezuelan government has denounced the four-decade-old convention, which currently covers 23 of the 35 members of the Organisation of American States (OAS), as a tool of U.S. meddling in Latin America. But rights groups warn the move will eliminate a court-of-last-resort option for Venezuelans who feel they are unable to receive a fair judicial response within their own country – an option that remains guaranteed in the Venezuelan constitution. “This comes at the expense of the protection of rights of the people of Venezuela, who are stripped of a mechanism to protect their human rights,” the IACHR, based here in Washington, stated Tuesday. “The Inter-American Commission calls on Venezuela to reconsider this decision … [and] regrets that, despite repeated calls by the Commission and by other international bodies for Venezuela to reconsider its decision to denounce the Convention, the State of Venezuela has not reversed that decision.” The American Convention on Human Rights sets out how OAS countries must guarantee citizens’ human rights. It also empowers the IACHR and the Inter-American Court of Human Rights, based in Costa Rica, to monitor and rule on rights-related complaints that have not been dealt with through domestic judicial channels. Venezuela is the third country to formally denounce the American Convention on Human Rights and withdraw from the Inter-American Court’s jurisdiction. Trinidad & Tobago made a similar decision in 1998 after the court criticised that country’s use of the death penalty, while Peru tried to do the same the following year. “It is very unfortunate that the Venezuelan government has decided to go through with this action,” Francisco Quintana, programme director for the Andean, North America and Caribbean region at the Centre for Justice and International Law (CEJIL), a Washington-based advocacy group, told IPS. “Yet if the government thought it was going to get away from this international supervision completely, that’s not right – at least with regard to any human rights violations that occurred before Sep. 10.” Indeed, given that Venezuela remains a member of the OAS, the IACHR will maintain jurisdiction to monitor the country’s human rights situation. Further, as Quintana notes, the Inter-American Court will be able to continue hearing cases of alleged rights violations from during the period that Venezuela was party to the convention, from 1977 until Tuesday. Yet critics worry about the potential impact not only on Venezuelans who have suffered abuses but also on the strength of the overall Inter-American structure, one of the world’s oldest pan-regional rights systems. The United Nations warned Tuesday the move could “have a very negative impact on human rights in [Venezuela] and beyond”. ‘Grave backlash’ Tuesday’s withdrawal follows through on one of the last policy decisions made by former president Hugo Chavez, who in July 2012 stepped up complaints that the Inter-American Court was interfering in domestic affairs. Chavez had earlier accused the OAS of supporting a coup against his government. But the final motivation to withdraw appears to have been a ruling by the Inter-American Court in favour of Raul Diaz Pena, a Venezuelan who was found to have been mistreated in prison after being convicted of placing bombs near Caracas embassies. “The Venezuelan government was against the external supervision of human rights issues from an international organ – over the past decade, the Inter-American Court lodged many cases against Venezuela, and the Chavez administration began to view these as political attacks,” CEJIL’s Quintana says. “While the court established that there were clear violations of human rights, many didn’t even take place under Chavez. Some had to do with judicial independence, others with excessive force by the police – a wide range of cases, which offered no reason for the government to become frustrated with the system as a whole. After all, these rights were explicitly protected by the system and the convention.” On Monday, CEJIL and more than 50 other organisations from 14 countries throughout the region derided the Venezuelan move and lamented its broader implications. “Venezuela’s denunciation of the American Convention represents a grave backlash for the protection of human rights in the region,” the groups warned. “Additionally, this denunciation is preceded in recent years by the non-compliance of most of the sentences and measures of protection issued by the Inter-American Court.” Also on Monday, Venezuela’s president, Nicolas Maduro, reiterated Chavez’s charge that the Inter-American system was a U.S. pawn. “[T]he U.S. is not part of the human rights system, does not acknowledge the court’s jurisdiction or the commission, but … the commission headquarters is in Washington,” President Maduro said at a news conference, according to media reports. “Almost all participants and bureaucracy that are part of the IACHR are captured by the interests of the State Department of the United States.” Indeed, the United States, itself a member of the OAS, has signed but never ratified the American Convention on Human Rights, part of a longstanding suspicion of international legal instruments. Yet rights groups are suggesting that Maduro’s criticism underlines an incongruous policy stance. “The Venezuelan government’s attitude is highly contradictory,” Guadalupe Marengo, deputy director of the Americas programme at Amnesty International, a watchdog group, said Tuesday. “On the one hand it is promoting universal ratification of the American Convention on Human Rights and urging other countries to ratify this instrument while, on the other, it is withdrawing from it and denying its inhabitants access to the protection of one of its bodies.”

**Now is the key time – Maduro is consolidating power in Venezuela – a signal of an independent judiciary is crucial to a smooth, democratic transition**

**The Economist 13** (“Latin America’s Venezuela problem: Ostrich diplomacy, Venezuela’s neighbours studiously ignore the crisis unfolding next door,” 6-8-13, <http://www.economist.com/news/americas/21579067-venezuelas-neighbours-studiously-ignore-crisis-unfolding-next-door-ostrich-diplomacy/>)

FOR Latin American presidents of all political persuasions, a knock on the door from Henrique Capriles is a far from welcome sound these days. Not that the leader of Venezuela’s opposition is a particularly boring or obnoxious guest, despite the strenuous efforts of President Nicolás Maduro to portray him as a “murderous fascist”. It’s just that having Mr Capriles round for a cup of tea can get you into all sorts of trouble, as Colombia’s Juan Manuel Santos found out to his cost. On May 29th a shirtsleeved Mr Santos held a private meeting of about an hour with Mr Capriles, which provoked a barrage of invective from the Venezuelan government. The Colombian president had “put a bomb under” relations between the two countries, said Diosdado Cabello, the speaker of Venezuela’s National Assembly. Venezuela would have to “review” its support for Colombia’s peace talks with the leftist FARC guerrillas, added Elías Jaua, the foreign minister. To top things off, Mr Maduro said certain Colombian institutions “at the highest level” were plotting with the Venezuelan opposition to inject him with a poison that would lead to a slow death. Mr Santos said this was “crazy”. His foreign minister declined to engage in microphone diplomacy. Colombia and Venezuela, whose governments are poles apart ideologically, have enjoyed a friendship of convenience in recent years after a very rocky decade. The reason for all the huffing and puffing is that Mr Capriles, who came within an ace of winning a snap presidential election on April 14th, has challenged the result in the **supreme court** and is seeking to persuade the region’s governments of his case. Mr Maduro is the chosen successor of Hugo Chávez, who died of cancer in March, five months after being re-elected. He heads a weak administration beset by political and economic problems and desperate to hang on to the international support that Chávez built up over more than a decade of oil diplomacy. With the Chávez charisma gone, the new president’s **legitimacy in doubt** and the money running out, bluster is one of the few resources not in short supply. This week was to have been Peru’s turn to receive a visit from Mr Capriles. But such was the panic in Ollanta Humala’s government at having to decide whether to receive him that the trip was postponed. Peru currently chairs the South American Union (Unasur), one of several regional bodies failing to deal with the Venezuelan crisis. Unasur held an emergency meeting on the eve of Mr Maduro’s inauguration to insist on an audit of the election result. But although the opposition says the partial audit now under way is insufficient, Unasur has failed to pursue the case. Peru’s foreign minister stood down—officially for health reasons—shortly after he had the effrontery to say publicly that a fresh Unasur summit on the subject was being mooted. Most Latin American and Caribbean governments are either ideologically close to the chavista regime, dependent on its oil-fuelled largesse, or simply disinclined to incur its wrath. The Organisation of American States (OAS), whose annual assembly began on June 4th in Guatemala, is bound by treaty to monitor its members’ democratic credentials. But the OAS’s Democratic Charter, launched in 2001, has so far been used only to protect presidents (including Chávez) and to bludgeon puny countries such as Honduras and Paraguay. Brazil, which has the muscle to take on a country the size of Venezuela, seems more concerned with protecting its businesses, which are making billions from trade with its northern neighbour. Ahead of the OAS meeting its secretary-general, José Miguel Insulza, said the “atmosphere” was not conducive to a discussion of the Venezuelan crisis—a diplomatic way of saying no one was prepared to pick up the hot potato. Mr Insulza himself has in the past admitted that Venezuela is in breach of the **Democratic Charter**. Among other things, it requires an **independent judiciary** and guarantees recourse to the inter-American human-rights system. Venezuela has announced that it will abandon the system later this year. The ostrich approach may not work for ever. For one thing, the Venezuelan **opposition’s campaign** across the region is putting presidents under pressure from their parliaments and civic groups to **support democracy**. Second, Venezuela’s **political fragility** and Mr Maduro’s weakness threaten instability which the region may be unable to ignore. Shutting the door in Mr Capriles’ face could prove a short-sighted policy, as well as a shameful one.

#### Venezuelan Stability stops Russian Arctic development and jumpstarts the US Economy

**Weafer 13** (Chris Weafer is chief strategist at Sberbank Investment Research, BBC Monitoring Former Soviet Union – Political, “No business as usual for Russia in Venezuela – paper,” 3-12-13, Supplied by BBC Worldwide Monitoring)

Despite assurances from government officials in Caracas that it will be business as usual after the death of Venezuelan President Hugo Chavez last week, his passing will almost certainly lead to the start of political and social changes in that country. The only question is the **time frame**. Chavez's death and the emergence of a new presidential administration will surely have a significant impact on the global oil industry and price of oil, although perhaps on an even longer timeline. According to the BP Energy Review, Venezuela sits on the world's largest exploitable reserves of oil. Chavez's policies have led not only to no significant exploitation of those reserves but have actually directly led to a cut in the country's average daily oil output by one-third in the 14 years he served as president. In 1999, the country produced an average of 3.5 million barrels per day, while the current average output has dropped to 2.5 million barrels. With the right investments, the country may easily support average daily oil output of 5 million barrels and probably higher, according to industry estimates. There can be little doubt that as of last week, Venezuela has become the **most important target location** for foreign oil majors, especially **US companies**. Russian oil majors still have a small advantage, and senior executives from state-owned Rosneft and Gazprom will be eager to ensure good relations with the next administration. But they must know that there is now a limited window to convert promised cooperation with the Venezuelan state-owned oil company, PDVSA, into actual projects. Oil executives from Houston will soon be descending on Venezuela with lucrative alternatives, and **PDVSA**, in dire need of capital investment, **will** surely **be listening to** their **offers**. For Russia, that means three risks. First, Gazprom and Rosneft will have more competition for joint-venture deals in that country. Second, Venezuela is an **easier alternative** to the hostile and unpredictable **Russian Arctic** for US oil companies, which may make it harder for Moscow to attract joint-venture deals. Finally, the prospect of more oil coming out of Venezuela adds to the growth projections for shale oil as a significant longer-term threat to the price of oil, and therefore, to the Russian economy. None of this will be lost on the Kremlin. It means that there will have to be greater urgency to convert promised deals into real projects in Venezuela. At the same time, the Kremlin will want to conclude more joint ventures to **exploit the Arctic**. It also means that the clock counting down to lower oil revenues is now ticking, increasing the need for more urgent progress in economic reforms. The Venezuelan constitution mandates that a new election must take place within 30 days. As it stands today, the current vice president, Nicolas Maduro, is expected to be elected to replace Chavez. Maduro said he intends to stick with the economic and political policies and ideologies of his former boss, but since Maduro is no Chavez, this will be virtually impossible to achieve. Chavez was a hugely charismatic, larger-than-life leader who managed to maintain unity of purpose among the many vested interests in the country. At the same time, he stayed popular with the people even as the economy slid further into trouble. With oil averaging over 110 dollars per barrel last year, the Venezuelan state budget ran a deficit of close to 20 per cent of gross domestic product. Now that Chavez is gone, the soon-to-be-elected president Maduro will come under **increasing pressure** to take actions to start improving the economy. No different from President Vladimir Putin's situation when he took over an ailing economy in Russia in 2000, **the only place** that the new Venezuelan president can get revenue is from **the oil sector**. But after Chavez practically destroyed PDVSA when he fired 20,000 skilled engineers and other workers in 2002, PDVSA will need a huge boost to capital spending and joint-venture partnerships. Although politically risky, Maduro may have no other choice than to ask ExxonMobil and Chevron, two of the US majors that had their local projects nationalized by Chavez, to come back. Venezuela is certainly an attractive option for the world's big oil majors. Recoverable reserves are now put at just under 300 billion barrels, compared to about 265 billion in Saudi Arabia and less than 100 billion in Russia. Most of Venezuelan oil is heavy and more expensive to refine, but it lies only a few hundred meters below the Orinoco Belt. That makes it a lot more attractive than, for example, speculatively drilling in the hostile Russian Arctic while dodging icebergs. The Orinoco Belt is an extremely important natural environment, and the inevitable objections from domestic, regional and international environmentalists will slow any development. But as has happened in similar situations elsewhere, the quest for the prize will almost certainly prevail. Venezuela needs the money. Venezuela has also very likely moved to near the top of the US government's list of geopolitical priorities. The US is set on a course to become **energy independent**, and the International Energy Agency calculates this may take two to three decades based on current trends and with optimistic assumptions for US shale oil production. Such assumptions have always been speculative when it comes to the oil industry. But a more achievable target for the US is to become **regionally oil independent** -that is, to only source its oil requirements domestically and from Canada, Mexico and now perhaps from **Venezuela**. That would allow the US to become completely independent of Middle East oil within 10 years or so. A change in Venezuela's political and economic priorities would also weaken the Cuban economy since Chavez supplied Cuba with almost free oil. That would hasten the inevitable regime change there as well, an extra bonus for Washington. But while such an outcome would be **very favourable for the US economy**, it would **accelerate the game change** already started in the global oil industry with the rapid growth in **shale oil volumes**. No matter how you work the assumptions, the world is heading for a lot more oil supply over the balance of this decade. New major oil production will come from North America, Iraq and the Caspian Sea, where Kazakhstan's giant Kashagan field starts to produce from this year, almost certainly from Venezuela if a new administration takes concrete steps to increase foreign investment and production in the oil sector. This may be the real reason Russian officials shed a few tears at Chavez's funeral on Friday.

#### Economic decline causes nuclear war

Harris and Burrows, 9 – \*counselor in the National Intelligence Council, the principal drafter of Global Trends 2025, \*\*member of the NIC’s Long Range Analysis Unit “Revisiting the Future: Geopolitical Effects of the Financial Crisis”, Washington Quarterly, http://www.twq.com/09april/docs/09apr\_burrows.pdf)

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

**Russian energy development in the Arctic causes escalating military competition**

**Talmadge 12** (Eric – AP, Huffington Post, “Arctic Climate Change Opening Region To New Military Activity’, 4/16, http://www.huffingtonpost.com/2012/04/16/arctic-climate-change-military-activity\_n\_1427565.html)

To the world's military leaders, the debate over climate change is long over. **They are preparing for a new kind of Cold War in the Arctic**, anticipating that rising temperatures there will open up a treasure trove of resources, long-dreamed-of sea lanes and **a slew of potential conflicts**. By Arctic standards, **the region is already buzzing with military activity**, and experts believe that **will increase significantly** in the years ahead. Last month, Norway wrapped up one of the largest Arctic maneuvers ever — Exercise Cold Response — with 16,300 troops from 14 countries training on the ice for everything from high intensity warfare to terror threats. Attesting to the harsh conditions, five Norwegian troops were killed when their C-130 Hercules aircraft crashed near the summit of Kebnekaise, Sweden's highest mountain. The U.S., Canada and Denmark held major exercises two months ago, and in an unprecedented move, the military chiefs of the eight main Arctic powers — Canada, the U.S., Russia, Iceland, Denmark, Sweden, Norway and Finland — gathered at a Canadian military base last week to specifically discuss regional security issues. None of this means a shooting war is likely at the North Pole any time soon. But as the number of workers and ships increases in the High North to exploit oil and gas reserves, **so will the need for policing, border patrols and** — if push comes to shove — **military muscle to enforce rival claims**. The U.S. Geological Survey estimates that 13 percent of the world's undiscovered oil and **30 percent of its untapped natural gas is in the Arctic**. Shipping lanes could be regularly open across the Arctic by 2030 as rising temperatures continue to melt the sea ice, according to a National Research Council analysis commissioned by the U.S. Navy last year. What countries should do about climate change remains a heated political debate. But that has not stopped north-looking militaries from moving ahead with strategies that assume current trends will continue. Russia, Canada and the United States have the biggest stakes in the Arctic. With its military budget stretched thin by Iraq, Afghanistan and more pressing issues elsewhere, the United States has been something of a reluctant northern power, though its nuclear-powered submarine fleet, which can navigate for months underwater and below the ice cap, remains second to none. Russia — one-third of which lies within the Arctic Circle — **has been the most aggressive in establishing itself as the emerging region's superpower**. Rob Huebert, an associate political science professor at the University of Calgary in Canada, said Russia has recovered enough from its economic troubles of the 1990s to significantly rebuild its Arctic military capabilities, which were a key to the overall Cold War strategy of the Soviet Union, and has increased its bomber patrols and submarine activity. He said that has in turn led other Arctic countries — Norway, Denmark and Canada — to resume regional military exercises that they had abandoned or cut back on after the Soviet collapse. Even non-Arctic nations such as France have expressed interest in deploying their militaries to the Arctic. "We have an entire ocean region that had previously been closed to the world now opening up," Huebert said. "There are numerous factors now coming together that are mutually reinforcing themselves, causing a buildup of military capabilities in the region. **This is only going to increase as time goes on**." Noting that the Arctic is warming twice as fast as the rest of the globe, the U.S. Navy in 2009 announced a beefed-up Arctic Roadmap by its own task force on climate change that called for a three-stage strategy to increase readiness, build cooperative relations with Arctic nations and identify areas of potential conflict. "**We want to maintain our edge up there**," said Cmdr. Ian Johnson, the captain of the USS Connecticut, which is one of the U.S. Navy's most Arctic-capable nuclear submarines and was deployed to the North Pole last year. "Our interest in **the Arctic** has never really waned. It **remains very important**." **But the U.S. remains ill-equipped for large-scale Arctic missions**, according to a simulation conducted by the U.S. Naval War College. A summary released last month found the Navy is "inadequately prepared to conduct sustained maritime operations in the Arctic" because it **lacks ships** able to operate in or near Arctic ice, **support facilities and adequate communications**. "The findings indicate the Navy is entering a new realm in the Arctic," said Walter Berbrick, a War College professor who participated in the simulation. "Instead of other nations relying on the U.S. Navy for capabilities and resources, sustained operations in the Arctic region will require the Navy to rely on other nations for capabilities and resources." He added that although the U.S. nuclear submarine fleet is a major asset, the Navy has severe gaps elsewhere — **it doesn't have any icebreakers**, for example. The only one in operation belongs to the Coast Guard. **The U.S. is currently mulling whether to add more icebreakers**.

**De-escalation is key to prevent Arctic conflicts from going nuclear – draws in major powers**

**Wallace and Staples 10** (Michael Wallace and Steven Staples. \*Professor Emeritus at the University of British Columbia and President of the Rideau Institute in Ottawa “Ridding the Arctic of Nuclear Weapons: A Task Long Overdue,”http://www.arcticsecurity.org/docs/arctic-nuclear-report-web.pdf)

The fact is, the Arctic is becoming a zone of increased military competition. Russian President Medvedev has announced the creation of a special military force to defend Arctic claims. Last year Russian General Vladimir Shamanov declared that Russian troops would step up training for Arctic combat, and that Russia’s submarine fleet would increase its “operational radius.” 55 Recently, two Russian attack submarines were spotted off the U.S. east coast for the first time in 15 years. 56 In January 2009, on the eve of Obama’s inauguration, President Bush issued a National Security Presidential Directive on Arctic Regional Policy. It affirmed as a priority the preservation of U.S. military vessel and aircraft mobility and transit throughout the Arctic, including the Northwest Passage, **and foresaw greater capabilities to protect U.S. borders in the Arctic**. 57 The Bush administration’s disastrous eight years in office, particularly its decision to withdraw from the ABM treaty and deploy missile defence interceptors and a radar station in Eastern Europe, have greatly contributed to the instability we are seeing today, even though the Obama administration has scaled back the planned deployments. The Arctic has figured in this renewed interest in Cold War weapons systems, particularly the upgrading of the Thule Ballistic Missile Early Warning System radar in Northern Greenland for ballistic missile defence. The Canadian government, as well, has put forward new military capabilities to protect Canadian sovereignty claims in the Arctic, including proposed ice-capable ships, a northern military training base and a deep-water port. Earlier this year Denmark released an all-party defence position paper that suggests the country should create a dedicated Arctic military contingent that draws on army, navy and air force assets with shipbased helicopters able to drop troops anywhere. 58 Danish fighter planes would be tasked to patrol Greenlandic airspace. Last year Norway chose to buy 48 Lockheed Martin F-35 fighter jets, partly because of their suitability for Arctic patrols. In March, that country held a major Arctic military practice involving 7,000 soldiers from 13 countries in which a fictional country called Northland seized offshore oil rigs. 59 The manoeuvres prompted a protest from Russia – which objected again in June after Sweden held its largest northern military exercise since the end of the Second World War. About 12,000 troops, 50 aircraft and several warships were involved. 609 Ridding the Arctic of Nuclear Weapons: A Task Long Overdue Jayantha Dhanapala, President of Pugwash and former UN under-secretary for disarmament affairs, summarized the situation bluntly: “From those in the international peace and security sector, **deep concerns are being expressed over the fact that two nuclear weapon states** – the United States and the Russian Federation, which **together own 95 per cent of the nuclear weapons in the world** **– converge on the Arctic and have competing claims**. These claims, together **with those of other allied NATO countries** – Canada, Denmark, Iceland, and Norway – could, **if unresolved**, **lead to conflict escalating into the threat or use of nuclear weapons**.” 61 Many will no doubt argue that this is excessively alarmist, but **no circumstance in which nuclear powers find themselves in military confrontation can be taken lightly**. The current geo-political threat level is nebulous and low – for now, according to Rob Huebert of the University of Calgary, “[the] issue is the uncertainty as Arctic states and non-Arctic states begin to recognize the geo-political/economic significance of the Arctic because of climate change.” 62

### Solvency 1AC

#### Obama would comply with the court – costs of circumvention too high

Vladeck 9 (Stephen I.. Professor of Law and Associate Dean for Scholarship at American University Washington College of Law, senior editor of the peer-reviewed Journal of National Security Law and Policy, Supreme Court Fellow at the Constitution Project, and fellow at the Center on National Security at Fordham University School of Law, JD from Yale Law School, 3-1-2009, “The Long War, the Federal Courts, and the Necessity / Legality Paradox,” <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1002&context=facsch_bkrev>)

Moreover, even if one believes that suspensions are unreviewable, there is a critical difference between the Suspension Clause and the issue here: at least with regard to the former, there is a colorable claim that the Constitution itself ousts the courts from reviewing whether there is a “Case[ ] of Rebellion or Invasion [where] the public Safety may require” suspension––and even then, only for the duration of the suspension.179 In contrast, Jackson’s argument sounds purely in pragmatism—courts should not review whether military necessity exists because such review will lead either to the courts affirming an unlawful policy, or to the potential that the political branches will simply ignore a judicial decision invalidating such a policy.180 Like Jackson before him, Wittes seems to believe that the threat to liberty posed by judicial deference in that situation pales in comparison to the threat posed by judicial review. ¶ The problem is that such a belief is based on a series of assumptions that Wittes does not attempt to prove. First, he assumes that the executive branch would ignore a judicial decision invalidating action that might be justified by military necessity.181 While Jackson may arguably have had credible reason to fear such conduct (given his experience with both the Gold Clause Cases182 and the “switch in time”),183 **a lot has changed in the past six-and-a-half decades**, to the point where I, at least, **cannot imagine** a contemporary President possessing the **political capital** to squarely refuse to comply with a Supreme Court decision. But perhaps I am naïve.184

#### Multiple controversial decisions coming now

Wakefield 9/16/13 (Mike, "Supreme Court Preview: Three Cases to Watch Next Term," http://redalertpolitics.com/2013/09/16/supreme-court-preview-three-cases-to-watch-next-term/)

The Supreme Court’s upcoming term will not feature the same blockbuster, hyper-political issues like same-sex marriage or the Voting Rights Act, but Americans should be aware of several important cases on the docket for oral arguments beginning in October. Here are three cases particularly likely to make news and have significant political implications.¶ 1) National Labor Relations Board v. Canning¶ The Supreme Court is set to rule on the constitutionality of President Barack Obama’s controversial recess appointments to the National Labor Relations Board without Senate confirmation. To date, three federal appellate courts have already held that Obama’s appointments were unconstitutional.¶ You may recall that President Obama’s questionable NLRB appointments were part of his administration’s “We can’t wait” call-to-action back in 2011, in which Obama announced that he intended to do as much as possible without Congress’s approval using executive orders or other means. The Supreme Court is likely to hand Obama an embarrassing rebuke for his impatience, potentially invalidating every action undertaken by the NLRB during the time it had unconfirmed members.¶ 2) Schuette v. Coalition to Defend Affirmative Action¶ Schuette is another college affirmative action case, but with a bizarre twist — the Court is being asked to decide whether the Constitution sometimes might actually require racial discrimination. We previously reported this case as the “worst case of the year.”¶ The case was raised in response to a successful Michigan initiative amending the state’s constitution to prohibit the use of preferential treatment in college admissions and public hiring. The Sixth Circuit Court of Appeals ruled that under the circumstances, the state constitutional amendment requiring equal treatment was prohibited by the U.S. Constitution.¶ Presumably recalling the text of the Fourteenth Amendment, which requires “equal protection under the law,” a dissenting judge on the Sixth Circuit concluded that “a State does not deny equal treatment by mandating it.” Expect the Supreme Court, which in the past has been blunt in its denunciations of truly discriminatory “anti-discrimination” policies, to wholeheartedly agree.¶ 3) McCutcheon v. Federal Election Commission¶ In this campaign finance case, an Alabama resident and the Republican National Committee have asked the Court to strike down the current aggregated political contribution limits as unconstitutional under the First Amendment’s protection of political speech.¶ Currently, individuals may contribute no more than $2,600 per election to a candidate and no more than $32,400 per year to a national political committee like the RNC. However, individuals are also limited by aggregate contribution limits. For example, no individual may donate more than $48,600 to candidates or more than $74,600 to anything else during a two-year election period. That means someone can give the maximum legal contribution of $2,600 to 18 different candidates but not to 19 or more. The Justices may now overturn that somewhat arbitrary limit.¶ Last time the Court issued a significant campaign finance decision, liberals howled about the “end of democracy,” and President Obama took the unprecedented step of publicly scolding the Justices, right to their faces, at his nationally televised State of the Union address. Be on the look out for similarly dramatic hyperbole in the lead up to the decision.

**Supreme court action to restrict detention powers is key**

**Reinhardt 6** (Stephen, Judge, U.S. Court of Appeals for the Ninth Circuit, "The Judicial Role in National Security," http://www.bu.edu/law/central/jd/organizations/journals/bulr/volume86n5/documents/REINHARDTv.2.pdf)

The role of judges during times of war – whether it be a traditional war or a ¶ “war on terrorism” – is essentially no different than during times of peace: it is ¶ to interpret the law to the best of our ability, consistent with our ¶ constitutionally mandated role **and without regard to external pressure**. Among ¶ the differences in wartime for the judiciary, however, is one that involves a ¶ principle that is essential to the proper operation of the federal courts – **judicial** ¶ **independence**. In wartime, the need for judicial independence is **at its highest**, ¶ yet the very concept is **at its most vulnerable**

, imperiled by threats both within ¶ and without the judiciary. Externally, there is pressure from the elected ¶ branches, and often the public, to afford far more deference than may be ¶ desirable to the President and Congress, as they wage wars to keep the nation ¶ safe. Often this pressure includes threats of retribution, including threats to ¶ strip the courts of jurisdiction. Internally, judges may question their own right ¶ or ability to make the necessary, potentially perilous judgments at the very ¶ time when it is most important that they exercise their full authority. This ¶ concern is exacerbated by the fact that the judiciary is essentially a ¶ conservative institution and judges are generally conservative individuals who ¶ dislike controversy, risk taking, and change. ¶ As Professor Stone can tell you, the history of judicial responses to threats ¶ to our liberties in wartime is mixed at best.1¶ Now, in the first years of the ¶ twenty-first century, the threat to judicial independence is **proving particularly troublesome**, and I am not referring just to those demagogues who rush to the ¶ steps of the Capitol to call for legislation stripping the federal courts of ¶ jurisdiction every time they do not like a decision bolstering the Bill of Rights. ¶ Rather, I refer to the chilling reality that, as we enter the fifth year of the socalled “Global War on Terror,” we are faced with a conflict with no projected ¶ or foreseeable end, and, thus, with the prospect that the war-related challenges ¶ to constitutional rights and to judicial independence, which typically subside ¶ with the end of a conflict, will continue unabated into the indefinite future. In ¶ an era of “war without end,” any inclination of judges to lessen the necessary ¶ constitutional vigilance will not only seriously jeopardize basic rights to ¶ privacy and liberty, but also **will make it more difficult to fend off** other, nonwar-related challenges to judicial **independence**, and as a result cause harm to ¶ all of our fundamental rights and liberties. ¶ Archibald Cox – who knew a thing or two about the necessity of ¶ government actors being independent – emphasized that an essential element ¶ of judicial independence is that “there shall be no tampering with the ¶ organization or jurisdiction of the courts for the purposes of controlling their ¶ decisions upon constitutional questions.”2¶ Applying Professor Cox’s precept ¶ to current events, we might question whether some recent actions and ¶ arguments advanced by the elected branches constitute threats to judicial ¶ independence. Congress, for instance, recently passed the Detainee Treatment ¶ Act.3¶ The Graham-Levin Amendment, which is part of that legislation, ¶ prohibits any court from hearing or considering habeas petitions filed by aliens ¶ detained at Guantanamo Bay.4¶ The Supreme Court has been asked to rule on ¶ whether the Act applies only prospectively, or whether it applies to pending ¶ habeas petitions as well. It is unclear at this time which interpretation will ¶ prevail.5¶ But if the Act is ultimately construed as applying to pending appeals, ¶ one must ask whether it constitutes “tampering with the . . . jurisdiction of the ¶ courts for the purposes of controlling their decisions,” which Professor Cox ¶ identified as a key marker of a violation of judicial independence. All of this, ¶ of course, is wholly aside from the question of whether Congress and the ¶ President may strip the courts of such jurisdiction prospectively. And it is, of ¶ course, also wholly apart from the Padilla case,6¶ in which many critics believe ¶ that the administration has played fast and loose with the courts’ jurisdiction in ¶ order to avoid a substantive decision on a fundamental issue of great ¶ importance to all Americans. ¶ Another possible **threat to judicial independence** involves the position taken ¶ by the administration regarding the scope of its war powers. In challenging ¶ cases brought by individuals charged as enemy combatants or detained at ¶ Guantanamo, the administration has argued that the President has “inherent ¶ powers” as Commander in Chief under Article II and that actions he takes ¶ pursuant to those powers are essentially not reviewable by courts or subject to ¶ limitation by Congress.7¶ The administration’s position in the initial round of ¶ Guantanamo cases was that no court anywhere had any jurisdiction to consider ¶ any claim, be it torture or pending execution, by any individual held on that ¶ American base, which is located on territory under American jurisdiction, for ¶ an indefinite period.8¶ The executive branch has also relied on sweeping and ¶ often startling assertions of executive authority in defending the ¶ administration’s domestic surveillance program, asserting at times as well a ¶ congressional resolution for the authorization of the use of military force. To ¶ some extent, such assertions carry with them a challenge to judicial ¶ independence, as they seem to rely on the proposition that a broad range of ¶ cases – those that in the administration’s view relate to the President’s exercise ¶ of power as Commander in Chief (and that is a broad range of cases indeed) – ¶ are, in effect, beyond the reach of judicial review. The full implications of the ¶ President’s arguments are open to debate, especially since the scope of the ¶ inherent power appears, in the view of some current and former administration ¶ lawyers, to be limitless. What is clear, however, is that the administration’s ¶ stance raises important questions about how the constitutionally imposed ¶ system of checks and balances should operate during periods of military ¶ conflict, **questions judges should not shirk from resolving**. ¶ The fundamental question, I suppose, is whether the role of the judge should ¶ change in wartime. The answer is that while our function does not change, the ¶ manner in which we perform the balancing of interests that we so often ¶ undertake in constitutional cases does. In times of national emergency, we ¶ must necessarily give greater weight in many instances to the governmental, ¶ more specifically the national security, interest than we might at other times. ¶ As courts have often recognized, the government’s interests in protecting the ¶ nation’s security are heightened during periods of military conflict. ¶ Accordingly, particular searches or detentions that might be unconstitutional ¶ during peacetime may well be deemed constitutional during times of war – not ¶ because the role of the judge is any different, and not because courts curtail ¶ their constitutionally mandated role, but because a governmental interest that ¶ may be insufficient to justify such deprivations in peacetime may be ¶ sufficiently substantial to justify that action during times of national ¶ emergency. **Courts must not**, however, at any time allow the balancing to turn ¶ into a routine licensing of unbridled and unsupervised governmental power.

# 2AC

## Legitimacy

## Venezuela

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#### Huge controversial decisions coming now – abortion, establishment clause, campaign finance, aff action

Eastman 10/5/13 (John, professor and former dean at Chapman University's Dale E. Fowler School of Law, "Controversy again on docket for Supreme Court," http://www.latimes.com/opinion/commentary/la-oe-eastman-supreme-court-preview-20131006,0,5689006.story)

The Supreme Court convenes for its new term Monday, the first Monday in October. It is hard to imagine how the coming term could possibly compare with the highly contentious and high-profile decisions of the last two: Obamacare in 2012, and the same-sex marriage cases this June. Yet there are several cases among the 52 already on the court's docket that have landmark potential and will certainly be contentious, covering subjects such as abortion, campaign finance, legislative prayer and affirmative action. The court seems increasingly to be at the center of every national controversy.¶ On the second day of oral argument, for example, the court will consider in McCutcheon vs. FEC the constitutionality of aggregate donation caps on political donors. This is somewhat of a follow-on case to Citizens United, so all of the controversy still swirling around that case is likely to be repeated here.¶ Federal law limits contributions to candidates to $2,500, which the Supreme Court has previously upheld because of the important governmental interest in preventing quid-pro-quo corruption, but it also imposes an aggregate cap of $46,500 on total donations to all candidates, which does not further that interest at all (or at most only marginally). The aggregate cap simply prevents a donor from providing maximum $2,500 contributions to 20 or more candidates. The goal seems to be to lessen the political speech of wealthy donors, a "level-the-playing-field" purpose that has been repeatedly rejected by the Supreme Court, and rightly so; the 1st Amendment does not allow government to restrict the speech of some to enhance the relative weight of others' speech.¶ Two abortion cases may make this one of the most significant terms for the issue in decades. One, Cline vs. Oklahoma Center for Reproductive Justice, challenges Oklahoma's law requiring that abortion-inducing drugs be administered only according to the guidelines on FDA-approved labels. That case is on hold pending a request to the Oklahoma Supreme Court about the proper interpretation of the Oklahoma law.¶ Another, Horne vs. Isaacson, was filed last week. It asks the court to review the U.S. 9th Circuit Court of Appeals' decision holding unconstitutional Arizona's decision to regulate non-emergency abortions after 20 weeks because of legislative findings that a fetus feels pain by that point in a pregnancy. If the court accepts the case, we'll have oral argument in the spring and perhaps a dramatic abortion decision by June; the petition asks the court to revisit Roe vs. Wade, if existing precedent does not permit a state to protect against fetal pain.¶ The establishment clause is also again on the docket. Town of Greece vs. Galloway explores whether an invocation before a city council meeting that mentioned Jesus Christ violates the church/state separation. The Supreme Court has previously upheld legislative prayer but cautioned against prayer that proselytizes. The lower court in this case found that the mere mention of the name of Jesus Christ crossed that ephemeral line, contrary to a long historical tradition. The Supreme Court is poised to make significant revision of its establishment clause jurisprudence, which has become increasingly hostile to religion in recent years. This case provides a suitable vehicle to start moving away from that hostility, and the notorious case that engendered the hostility, Lemon vs. Kurtzman, may be on the chopping block. One can only hope.¶ And after the somewhat stillborn decision last term in the University of Texas affirmative action case, Schuette vs. Coalition to Defend Affirmative Action will give the court another opportunity to confront race-based admissions, albeit from the other side of the coin. After a University of Michigan Law School race-based admissions plan was upheld a decade ago as barely constitutional, voters in Michigan decided to ban the use of race in admissions altogether. The Coalition to Defend Affirmative Action By Any Means Necessary — its name reveals a lot about its tactics — contended that the state's requirement that every student be treated equally without regard to skin color violated the Constitution's requirement that everyone be treated equally. The 6th Circuit agreed with that "impeccable" logic, and it is now up to the Supreme Court to restore some semblance of sanity to its equal protection jurisprudence.

#### Legitimacy low – DOMA

Sanchez 13

[Elizabeth, Charisma News, Supreme Court Loses Legitimacy, Authority With Gay Rights Ruling, 6/28/13, <http://www.charismanews.com/politics/40067-supreme-court-loses-legitimacy-authority-with-gay-rights-ruling>]

The 5-4 opinion by the Supreme Court on the Federal Defense of Marriage Act (DOMA) raises serious questions about the legitimacy of the Court’s authority. History has proven that the Supreme Court does not always issue legitimate opinions. In Dred Scott v. Sandford, 60 U.S. 393 (1857), Chief Justice Roger Taney wrote for the majority that while some states had granted citizenship to blacks, the U.S. Constitution did not recognize citizenship of blacks. Taney wrote that blacks were “regarded as beings of inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights that the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his own benefit.” Thus, according to the Supreme Court, Scott had no standing to file the suit. As might be expected, this decision created further rift between the North and the South in the days leading up to the Civil War. The Fourteenth Amendment later put the nail in the coffin of the Dred Scott decision. This decision was thus made illegitimate and is repudiated today. In Buck v. Bell, 274 U.S. 200 (1927), Justice Oliver Wendell Holmes, writing for the Court, described Charlottesville, Va., native Carrie Buck, whom he described as an “imbecile,” as the “probable potential parent of socially inadequate offspring, likewise afflicted,” and he went on to say that “her welfare and that of society will be promoted by her sterilization.” His infamous words still cause one to shudder when he wrote, “Three generations of imbeciles are enough.” The Buck v. Bell case approved forced sterilization to prevent “feebleminded and socially inadequate” people from having children. This horrible decision set the stage for more than 60,000 sterilizations in the United States and was cited favorably at the Nuremberg trials in defense of Nazi sterilization experiments. Incredibly, this decision has never been overturned. Even so, this decision was illegitimate and is repudiated today. In Korematsu v. U.S., 324 U.S. 885 (1945), the Supreme Court upheld Executive Order 9066, which ordered Japanese Americans to be herded into internment camps during World War II. Citizenship had no value to the Japanese. All persons of Japanese descent were placed in custody, despite the constitutional guarantee of the Fifth Amendment. This decision, too, is illegitimate. Justice O’Connor, writing in Planned Parenthood of Southeastern Penn. v. Casey, 505 U.S. 833, 864-869 (1992), candidly acknowledged, “As Americans of each succeeding generation are rightly told, the Court cannot buy support for its decisions by spending money and, except to a minor degree, it cannot independently coerce obedience to its decrees. The Court’s power lies, rather, in its legitimacy, a product of substance and perception that shows itself in the people’s acceptance of the Judiciary as fit to determine what the Nation’s law means and to declare what it demands. ... “The Court must take care to speak and act in ways that allow people to accept its decisions on the terms the Court claims for them, as grounded truly in principle, not as compromises with social and political pressures having, as such, no bearing on the principled choices that the Court is obliged to make. Thus, the Court’s legitimacy depends on making legally principled decisions under circumstances in which their principled character is sufficiently plausible to be accepted by the Nation.” “The 5-4 decision by the Supreme Court in the Federal Defense of Marriage Act case has caused millions of Americans to lose confidence in the Court,” says Mat Staver, founder and chairman of Liberty Counsel. “The decision is as far removed from the Constitution and the Court’s prior precedent as the east is from the west. Led by Justice Kennedy, the majority of the justices have cut the tether that once connected them to the Constitution. "This decision does not even pretend to be governed by the Constitution or Court precedent. Although the Court used the words 'equal protection,' the Court never engaged in an equal protection analysis. Not once did the Court identify the right sought by the petitioners. "Not once did the Court ask whether the claimed right was protected, either by an enumerated provision of the Constitution or deeply rooted in history and necessary to ordered liberty. Not once did the Court seek to determine the level of judicial scrutiny the case should receive. In short, the opinion represents the personal views of five Justices and it finds no support in the Constitution or reason. As history has shown us, such decisions delegitimize the Court. "On top of this flawed opinion, the majority demeaned the Court and weakened its authority by labeling as hateful those who believe that marriage is the union of one man and one woman. Marriage pre-dates religion and all civil authorities. It is ontologically a union of a man and a woman and is part of the natural created order. Such irresponsible language by the Court undermines its legitimacy in the eyes of the people. The Court does not have unlimited authority. This decision presumed too much of the people’s blind acceptance of its authority. Just like a corporate act cannot be ultra vires (beyond its authority), the people may determine that this decision is beyond the authority of this Court. If that happens, the Court will lose its authority,” concludes Staver.

## Solvency

## Off

### Schmidt K

####  1. Framework- the role of the ballot is to weigh the plan against a competitive policy option

#### Net benefits-

#### First- Fairness- they moot the entirety of the 1ac, makes it impossible to be affirmative

#### Second – Education- Policy education is good- it teaches future decisionmaking

#### NO LINK – we’re for trade blocs, not the kinds of liberalism your authors indict – also, the aff says we shouldn’t detain people because it causes bad things, not we shouldn’t detain them because we should be nice

#### -- Enmity is impossible – its rejected globally

Scheppele 4 (Kim Lane, John J. O'Brien Professor of Comparative Law and Professor of Sociology – University of Pennsylvania, May, University of Pennsylvania Journal of Constitutional Law, 6 U. Pa. J. Const. L. 1001, p. 1082-1083)

In this Article, I have tried to explain why the logic of Schmitt's analyses **no longer work** as a practical matter to justify states of exception, even when it is clear to the international community that something fundamental has changed in the world system since 9/11. The institutional elaboration of a new international system that has occurred since Schmitt's time make his ideas seem all the more dangerous, and yet **all the more dated**. There are simply fewer states in the world willing to tolerate either Schmitt's conception of politics or his conception of the defining qualities of sovereignty. Schmitt's philosophy has, in short, been met with a different sociology. For his ideas to be either persuasive or effective, they must be more than internally coherent or **even plausible**; they must be loosed in a context in which they can win against other competing ideas. Precisely because of the horrors of the twentieth century, much of the international community that has **entrenched** both democracy and the rule of law has turned away from these extra-legal justifications for states of exception. Instead, such states have attempted to embed exceptionality as an instance of the normal, and not as a repudiation of the  [\*1083]  possibility of normality. Only the United States, with its eighteenth-century constitution and Cold War legacy of exceptionalism, seems to be soldiering on in this new legal space of conflict unaware that the defining aspect of the new sovereignty is that even the new sovereign is bound by rules.

#### Perm do both

#### -- Enmity doesn’t solve conflict – U.S. isn’t key

Scheuerman 6 (William E., Professor of Political Science – Indiana University, Constellations, 13(1), p. 111-112)

First, their Marxist orientation exists in deep tension with any serious political or theoretical emphasis on the significance of concrete space or territory. Like its liberal Enlightenment cousin, Marxism ultimately leaves no room for this approach. Lenin is thus a more authentic Marxist than Mao, Schmitt suggests, but his inconsistencies as a Marxist simultaneously made Mao better able to appreciate the political and military opportunities of partisan warfare (40–41). Second, modern technology works to counteract an authentically telluric brand of partisan warfare. Mobility in contemporary military affairs rests on advanced technology which clashes badly with the deeply rooted localism of the classical partisan fighter, the original backwoods Spanish guerrillero: even the autochthonous partisan of agrarian origin is drawn into the force-field of irresistible technical-industrial progress. His mobility is so enhanced by motorization that he runs the risk of complete dislocation. (14) When successful guerrilla warfare relies on forms of technology which dramatically compress space and time, his intimate relationship to a concrete locality is lost (48–50). He no longer fights with the farmer’s pitch fork and butcher’s knife; now he needs machine guns and advanced explosives. Dependent on complex technology, and tied to global movements having their own universalistic aspirations (e.g., world revolution), the modern-day partisan fighter losses his telluric character and becomes “a transportable, replaceable cog in the wheel of a powerful world-political machine” (14). Why is this trend so threatening to the identity of the partisan? It renders him indistinguishable from his foes, whose universalistic aspirations he increasingly mirrors: both American liberals and their revolutionary guerrilla opponents claim to speak in the name of a (mythical) unified humanity. In this way, partisans abandon the special connection to concrete territoriality which Schmitt considers essential to their political intensity, jettisoning their healthy political instincts for the fictional normative or moral ideal of the “community of humankind.” Unlike the anti-Napoleonic freedom fighters of Spain or Tyrol, they now disingenuously and self-righteously wage wars “in the name of humanity,” and thus are likely to reproduce the terrible ills of Enlightenment-based political worldviews which, in Schmitt’s account, engender the horrors of modern total war.9 For this reason, *The Partisan*, no less than Schmitt’s other works after 1945, ultimately remains a deeply nostalgic book. Even though postwar guerrilla movements initially provide some reason to hope that an authentic mode of politics is alive and well, his study ends on a cautious note, strongly suggesting that the most sophisticated mode of guerrilla warfare in modern times was found among the telluric peasants of early nineteenth century counterrevolutionary Spain, but hardly among the revolutionary movements of 1960s Southeast Asia or Latin and South America.

#### -- Case outweighs –

#### No global war results

Dickinson 4 (Edward Ross, University of Cincinnati, “Biopolitics, Fascism, Democracy: Some Reflections on Our Discourse About ‘Modernity’”, Central European History, 37(1), p. 18-19)

In an important programmatic statement of 1996 Geoff Eley celebrated the fact that Foucault’s ideas have “fundamentally directed attention away from institutionally centered conceptions of government and the state . . . and toward a dispersed and decentered notion of power and its ‘microphysics.’”48 The “broader, deeper, and less visible ideological consensus” on “technocratic reason and the ethical unboundedness of science” was the focus of his interest.49 But the “power-producing effects in Foucault’s ‘microphysical’ sense” (Eley) of the construction of social bureaucracies and social knowledge, of “an entire institutional apparatus and system of practice” ( Jean Quataert), simply do not explain Nazi policy.50 The destructive dynamic of Nazism was a product not so much of a particular modern set of ideas as of a particular modern political structure, one that could realize the disastrous potential of those ideas. What was critical was not the expansion of the instruments and disciplines of biopolitics, which occurred everywhere in Europe. Instead, it was the principles that guided how those instruments and disciplines were organized and used, and the external constraints on them. In National Socialism, biopolitics was shaped by a totalitarian conception of social management focused on the power and ubiquity of the völkisch state. In democratic societies, biopolitics has historically been constrained by a rights-based strategy of social management. This is a point to which I will return shortly. For now, the point is that what was decisive was actually politics at the level of the state. A comparative framework can help us to clarify this point. Other states passed compulsory sterilization laws in the 1930s — indeed, individual states in the United States had already begun doing so in 1907. Yet they **did not proceed** **to** the next steps adopted by National Socialism — mass sterilization, mass “eugenic” abortion and **murder** of the “defective.” Individual figures in, for example, the U.S. did make such suggestions. But neither the political structures of democratic states nor their legal and political principles permitted such policies actually being enacted. Nor did the scale of forcible sterilization in other countries match that of the Nazi program. I do not mean to suggest that such programs were not horrible; but in a democratic political context they did not develop the dynamic of constant radicalization and escalation that characterized Nazi policies.

#### The Aff at least minimizes the scale of violence – the alt risks global escalation

Scheuerman 6 (William E., Professor of Political Science – Indiana University, Constellations, 13(1), p. 116)

Schmitt offers three reasons in support of this view. First, he implicitly relies on the stock argument that “authentic” politics necessarily elides legal regulation: when conflicts involve “existentially” distinct collectivities faced with “the real possibility of killing,” the attempt to tame such conflicts by juridical means is destined to fail, or at least badly distort the fundamental (political) questions at hand. Insofar as the partisan fighter represents one of the last vestiges of authentic (i.e., *Schmittian*) politics in an increasingly depoliticized world, he has to dub any attempt to regulate the phenomenon at hand as misguided and maybe even dangerous. Yet this argument relies on Schmitt’s controversial model of politics, as outlined eloquently but unconvincingly in his famous Concept of the Political. To be sure, there *are* intense conflicts in which it is naïve to expect an easy resolution by legal or juridical means. But the argument suffers from a **troubling circularity**: Schmitt occasionally wants to define “political” conflicts as those irresolvable by legal or juridical devices *in order then* to argue against legal or juridical solutions to them. The claim also suffers from a certain **vagueness** and **lack of** **conceptual precision**. At times, it seems to be directed against trying to resolve conflicts in the courts or juridical system narrowly understood; at other times it is directed against any legal regulation of intense conflict. The former argument is surely stronger than the latter. After all, legal devices have **undoubtedly played a positive role in** taming or at least **minimizing** the potential **dangers** of harsh political antagonisms. In the Cold War, for example, international law contributed to the peaceful resolution of conflicts which otherwise might have **exploded into horrific violence**, even if attempts to bring such conflicts before an international court or tribunal probably would have failed.22

#### -- Turn – liberalism –

#### There’s no alternative to liberalism – their friend/enemy distinction inevitable collapses into unrestrained fascism

Gross 00 (Oren, Assistant Professor of Law – Tel Aviv University, May, Cardozo Law Review, 21 Cardozo L. Rev. 1825, p. 1828-1829)

From a normative perspective, Schmitt's theory, simply put, is indefensible. [14](http://web.lexis-nexis.com/universe/document?_m=dc5f7f3f7d1ef2992b92217b460683e6&_docnum=1&wchp=dGLbVzW-zSkVA&_md5=0908128bd66443908285e8e3955dc6c6#n14) In this article, I engage in an internal evaluation of his theory of the exception. Such a critique - taking Schmitt's own goals, parameters, and criteria as our reference point - drives substantial holes into his theoretical corpus. For all the rhetoric of Schmitt and his disciples and defenders, his theory proves to be a crude version of nihilism. Yet, this approach is hidden behind the veneer of overt aspiration to legal determinacy [15](http://web.lexis-nexis.com/universe/document?_m=dc5f7f3f7d1ef2992b92217b460683e6&_docnum=1&wchp=dGLbVzW-zSkVA&_md5=0908128bd66443908285e8e3955dc6c6#n15) and to substantive, semireligious content of the legal order. [16](http://web.lexis-nexis.com/universe/document?_m=dc5f7f3f7d1ef2992b92217b460683e6&_docnum=1&wchp=dGLbVzW-zSkVA&_md5=0908128bd66443908285e8e3955dc6c6#n16) Among other things, Schmitt challenges liberalism for being negligent, if not outright deceitful, in disregarding the state of exception, and in pretending that the legal universe is governed by a complete, comprehensive, and exceptionless normative order. [17](http://web.lexis-nexis.com/universe/document?_m=dc5f7f3f7d1ef2992b92217b460683e6&_docnum=1&wchp=dGLbVzW-zSkVA&_md5=0908128bd66443908285e8e3955dc6c6#n17) Following the guidance of the natural sciences - which, according to Schmitt, do not recognize the possibility of exceptions in the natural world - liberalism presents us with a legal world view that is based on universalism, generalities, and utopian normativeness, without allowing for the possibility of exceptions. Against liberalism's intellectual dishonesty, Schmitt offers an alternative that is allegedly candid and transparent. However, Schmitt's project does not comply with his own yardsticks of legitimacy. His theory falls  [\*1829]  prey to the very same basic challenge which he puts to liberalism. Schmitt's rhetoric of norm and exception does not adequately reflect the real thrust of his theory, which calls for the **complete destruction** of the normal by the exception. Taken to its logical extreme, Schmitt's intellectual work, especially as reflected in his Political Theology [18](http://web.lexis-nexis.com/universe/document?_m=dc5f7f3f7d1ef2992b92217b460683e6&_docnum=1&wchp=dGLbVzW-zSkVA&_md5=0908128bd66443908285e8e3955dc6c6#n18) and The Concept of the Political, [19](http://web.lexis-nexis.com/universe/document?_m=dc5f7f3f7d1ef2992b92217b460683e6&_docnum=1&wchp=dGLbVzW-zSkVA&_md5=0908128bd66443908285e8e3955dc6c6#n19) forms the basis not only for a normless exception, but also for an **authoritarian exceptionless exception**. Part I of this article focuses on these themes.

#### Turns the alt – it reproduces the worst aspects of liberalism

Gross 00 (Oren, Assistant Professor of Law – Tel Aviv University, May, Cardozo Law Review, 21 Cardozo L. Rev. 1825, p. 1851-1852)

Schmitt's alternative model, which he offers as a replacement to the liberal model, introduces as much predictability as the **sovereign's whim**. If liberalism's fault inheres in the normative and utopian nature of its structures, Schmitt's fault lies with the apologetic overtones of his proposals. [132](http://web.lexis-nexis.com/universe/document?_m=dc5f7f3f7d1ef2992b92217b460683e6&_docnum=1&wchp=dGLbVzW-zSkVA&_md5=0908128bd66443908285e8e3955dc6c6#n132) Against liberalism's rigidity, Schmitt puts forward an all too flexible alternative. Whatever the sovereign decides is legitimate. There is no substantive content against which legitimacy of such actions can be measured - not even Hobbes's minimalist principle of self-preservation. Despite Schmitt's attacks against the content-neutrality of liberalism and positivism, his theory, in the last  [\*1852]  account, is nihilistic. [133](http://web.lexis-nexis.com/universe/document?_m=dc5f7f3f7d1ef2992b92217b460683e6&_docnum=1&wchp=dGLbVzW-zSkVA&_md5=0908128bd66443908285e8e3955dc6c6#n133) In its purest form, a decision emerges out of nothing, i.e., it does not presuppose any given set of norms, and it does not owe its validity or its legitimacy to any preexisting normative structure. No such structure, therefore, can attempt to limit the decision's scope in any meaningful way. [134](http://web.lexis-nexis.com/universe/document?_m=dc5f7f3f7d1ef2992b92217b460683e6&_docnum=1&wchp=dGLbVzW-zSkVA&_md5=0908128bd66443908285e8e3955dc6c6#n134) Similarly, since the decision is not the product of any abstract rationality, but is rather reflective of an irrational element, it cannot - by definition - be bound by any element found in the rational dimension. [135](http://web.lexis-nexis.com/universe/document?_m=dc5f7f3f7d1ef2992b92217b460683e6&_docnum=1&wchp=dGLbVzW-zSkVA&_md5=0908128bd66443908285e8e3955dc6c6#n135) As William Scheuerman pointedly notes:   A rigorous decisionist legal theory reduces law to an altogether arbitrary, and potentially inconsistent, series of power decisions, and thus proves unable to secure even a modicum of legal determinacy. It represents a theoretical recipe for a legal system characterized by a kind of permanent revolutionary dictatorship ... **Decisionism**, at best, **simply reproduces the ills of liberal legalism**, **and**, at worst, **makes a virtue out of liberalism's** most telling jurisprudential **vice**.

### Executive CP – 2AC

#### Perm – do both

#### Obama tried to the do the CP and Congress rolled it back

WSJ 10, Congress Bars Gitmo Transfers, online.wsj.com/article/SB10001424052748704774604576036520690885858.html

Congress on Wednesday passed legislation that would effectively bar the transfer of Guantanamo detainees to the U.S. for trial, rejecting pleas from Obama administration officials who called the move unwise.¶ A defense authorization bill passed by the House and Senate included the language on the offshore prison, which President Barack Obama tried unsuccessfully to close in his first year in office.¶ The measure for fiscal year 2011 blocks the Department of Defense from using any money to move Guantanamo prisoners to the U.S. for any reason. It also says the Pentagon can't spend money on any U.S. facility aimed at housing detainees moved from Guantanamo, in a slap at the administration's study of building such a facility in Illinois.¶ The Guantanamo ban was originally included in a broad appropriations bill earlier this month in the House, which died for unrelated reasons. At the time, Attorney General Eric Holder sent a letter to congressional leaders calling the ban "an extreme and risky encroachment on the authority of the executive branch to determine when and where to prosecute terrorist suspects."¶ Republicans and some Democrats say the prison at Guantanamo Bay, Cuba, which the government has spent millions of dollars upgrading, is the most secure place to keep terror suspects.¶ By banning transfers to the U.S., Congress is blocking trials of detainees in U.S. civilian courts. Proponents of the ban say military tribunals, not civilian courts, are the proper forum for bringing to justice suspects accused of trying to attack the U.S.¶ Those contentions grew stronger last month when a New York federal jury acquitted a former Guantanamo detainee of all but one count in the 1998 bombings of U.S. embassies in Africa. The defendant, Ahmed Ghailani, still faces 20 years to life in prison.¶ [2justice]¶ ERIC HOLDER¶ Mr. Obama originally pledged to close the prison by January 2010. That goal has foundered amid congressional opposition, and some 174 detainees remain at Guantanamo.¶ At a news conference Wednesday, the president expressed renewed desire to close Guantanamo, saying it has "become a symbol" and a recruiting tool for "al Qaeda and jihadists." "That's what closing Guantanamo is about," he said, adding: "I think we can do just as good of a job housing [detainees] somewhere else.

#### Conditionality is a voter-

#### A – it results in argument irresponsibility because it encourages contradictory positions

#### B – creates time and strat skews by making the neg a moving target

#### no cost options in the 1nc make the 2ac impossible- one condo advocacy/ dispo solves your offense

#### Uniquely worse with multiple worlds – forces us into strategic double binds and tradeoffs

#### Court action is key to Solve Legitimacy –

#### Interrogation techniques benefit from judicial oversight – it’s a strategic benefit to the war on terror – that’s Powell

#### external oversight via Judicial review is vital to a credible signal of legitimacy in the context of reinvigorating multilateralism – that’s Knowles

#### *Judicial* restrictions are key to effective counterterrorism

Guiora 11 (Amos, Prof of Law @ Univ. of Utah, "Indeﬁnite Detention of Megaterrorists: A Road We Must Not Travel," April, http://johnjayresearch.org/cje/files/2012/10/GUIORA-out.pdf)

Offering modifications or alternatives, such as indefinite detention, to¶ replace existing legal structures\*in¶ whole or in part\*raises a fundamental question: have sufficient controls been created? Although creating¶ alternatives, even if justifiable, is¶ risky, any expansion of executive¶

power\*the net result of Scheid’s¶ proposal\*must be tempered by¶ both independent judicial review¶ and robust congressional oversight.¶ Restraining the executive branch is¶ essential, especially when alternatives are created.¶ When Scheid asked if I would¶ consider commenting on his paper¶ (before I had a chance to read it) I instinctively agreed. My reasons were¶ simple. I first met Scheid when he¶ graciously attended a public lecture I¶ gave at the William Mitchell Law¶ School (hosted by my good friend¶ and colleague, John Radson). His questions were particularly engaging and¶ our subsequent communications\*including Scheid’s insightful and critical¶ blog postings in response to my¶ writings\*have invariably been interesting and thought-provoking.¶ When Scheid explained the article’s thesis I was intrigued, largely¶ because of my own efforts to grapple¶ with how to create alternative legal¶ infrastructures relevant to the post 9/¶ 11 world. As a consistent advocate¶ for the creation of a National Security¶ Court,1¶ I have probed the limits of¶ many of the issues Scheid addresses.¶ Friends and colleagues have criticized various aspects of my proposal;¶ similarly, members of the U.S. Senate¶ Judiciary Committee were skeptical¶ of my proposal when I testified¶ before the committee.¶ Precisely for the above reasons, I¶ feel well suited to respond to Scheid’s¶ proposal. Perhaps I have an insider’s¶ perspective of proposing an alternative and then responding to the inevitable criticism. Experience has¶ taught me that any alternative that¶ involves an expansion of executive¶ powers is only as good as the limits¶ it also imposes.¶ Scheid’s proposal does not conjure up images of President Bush’s¶ ‘‘by all means necessary’’ approach¶ to counterterrorism because it wisely¶ includes independent judicial review¶ in accordance with constitutional¶ principles of checks and balances¶ and separation of powers. The key¶ question, however, is: ‘‘how much¶ judicial review’’? Not enough to ensure effective external restraints on¶ the executive. Although Scheid¶ clearly incorporates some control¶ measures, the overall sense is of¶ insufficient restraint.¶ To push the issue: we must ask¶ whether there are controls, whether¶ they are sufficiently defined, and¶ whether they can be implemented.¶ Simply put, suggesting an alternative¶ alone is not sufficient, particularly¶ when its intended purpose is to¶ create an infrastructure specifically¶ designed to limit rights rather than¶ protect them.

#### Doesn’t solve Venezuela –

#### court action key – that’s Biron – it’s the international court of human rights, so they perceive judicial remedies, not executive remedies – doesn’t change the legal hypocrisy of the united states

#### Venezuelan transition to democracy requires an IJ – that’s Yamamoto

#### It’s a rubber stamp---1AC [economist] says external oversight key

Ilya Somin 11, Professor of Law at George Mason University School of Law, June 21 2011, “Obama, the OLC, and the Libya Intervention,” http://www.volokh.com/2011/06/21/obama-the-olc-and-the-libya-intervention/

But I am more skeptical than Balkin that illegal presidential action can be constrained through better consultation with legal experts within the executive branch. The fact is that the president can almost always find respectable lawyers within his administration who will tell him that any policy he really wants to undertake is constitutional. Despite the opposition of the OLC, Obama got the view he wanted from the White House Counsel and from State Department Legal Adviser Harold Koh. Bush, of course, got it from within the OLC itself, in the form of John Yoo’s “torture memo.” This isn’t just because administration lawyers want to tell their political masters what they want to hear. It also arises from the understandable fact that administrations tend to appoint people who share the president’s ideological agenda and approach to constitutional interpretation. By all accounts, John Yoo was and is a true believer in nearly unlimited wartime executive power. He wasn’t simply trying to please Bush or Dick Cheney.¶ Better and more thorough consultation with executive branch lawyers can prevent the president from undertaking actions that virtually all legal experts believe to be unconstitutional. But on the many disputed questions where there is no such consensus, the president will usually be able find administration lawyers who will tell him what he wants to hear. To his credit, Ackerman is aware of this possibility, and recommends a creative institutional fix in his recent book: a new quasi-independent tribunal for assessing constitutional issues within the executive branch. I am somewhat skeptical that his approach will work, and it may well require a constitutional amendment to enact. I may elaborate these points in a future post, if time permits.¶ Regardless, for the foreseeable future, the main constraints on unconstitutional presidential activity must come from outside executive branch – that is, from Congress, the courts, and public opinion. These constraints are highly imperfect. But they do impose genuine costs on presidents who cross the line. Ackerman cites the Watergate scandal, Iran-Contra and the “torture memo” as examples of the sorts of abuses of executive power that need to be restricted. True enough. But it’s worth remembering that Nixon was forced to resign over Watergate, Reagan paid a high political price for Iran-Contra, and the torture memo was a public relations disaster for Bush, whose administration eventually ended up withdrawing it (thanks in large part to the efforts of Jack Goldsmith). On the other side of the ledger, Bill Clinton paid little price for waging an illegal war in Kosovo, though he avoided it in part by keeping that conflict short and limited. It remains to be seen whether President Obama will suffer any political damage over Libya.

#### Future presidents prevent solvency

Harvard Law Review 12, "Developments in the Law: Presidential Authority," Vol. 125:2057, www.harvardlawreview.org/media/pdf/vol125\_devo.pdf

The recent history of signing statements demonstrates how public opinion can effectively check presidential expansions of power by inducing executive self-binding. It remains to be seen, however, if this more restrained view of signing statements can remain intact, for **it relies on the promises of one branch — indeed of one person — to enforce and maintain the separation of powers**. To be sure, President Obama’s guidelines for the use of signing statements contain all the hallmarks of good executive branch policy: transparency, accountability, and fidelity to constitutional limitations. Yet, in practice, this apparent constraint (however well intentioned) may amount to little more than voluntary self-restraint. 146 Without a formal institutional check, it is unclear what mechanism will prevent the next President (or President Obama himself) from reverting to the allegedly abusive Bush-era practices. 147 Only time, and perhaps public opinion, will tell.

#### Links to the NB

#### 6. Perm do the CP – it’s an example of the president complying with judicial oversight

#### 7. Counterplan is a voter

#### A) Topic education – shifts the focus of the debate from whether the president should have the authority and to whether the president should be the person to stop it – causes stale debate about process

#### B) Fairness- steals the entirety off the aff and makes it impossible to generate offense

#### \*C) Object fiat – fiats the object of the resolution which makes clash impossible- no way to have a stable source of aff offense

#### South Sudan models US precedent of judicial supremacy – key to ensuring peace in the Abyei region

PILPG 8 (Public International Law & Policy Group, a global pro bono law firm that provides legal assistance to foreign governments and international organizations on the negotiation and implementation of peace agreements, the drafting and implementation of post-conflict constitutions, and the creation and operation of war crimes tribunals. PILPG also assists states with the training of judges and the drafting of legislation, “brief of the public international law & policy group as amicus curiae in support of petitioners”, http://www.americanbar.org/content/dam/aba/publishing/preview/publiced\_preview\_briefs\_pdfs\_09\_10\_08\_1234\_PetitionerAmCuPILPG.authcheckdam.pdf)

In the South Sudan peace process, the Sudan People’s Liberation Movement/Army (SPLM/A), the¶ leading political party in the Government of Southern Sudan, relied on U.S. precedent to argue for the primacy¶ of law and the importance of the enforceability of adjudicative decisions in deciding one of the most important and contentious issues in the ongoing peace¶ process. In May 2008, large-scale violence in Abyei, South Sudan, resulted in the destruction of Abyei Town¶ and the displacement of its residents. The violence further threatened to unravel the 2005 Comprehensive¶ Peace Agreement between the Government of Sudan and the SPLM/A. The violence was a result of tension¶ between the parties regarding the long-overdue establishment of boundaries of the Abyei Area, which¶ straddles the North and South of Sudan and was the location of widespread violence during decades of civil¶ war. The parties had agreed in the Comprehensive Peace Agreement to a specific process to determine the¶ boundaries of the Abyei Area. When the Abyei Boundaries Commission issued its binding decision,¶ however, the Government of Sudan refused to implement the ruling. Given the long and violent history between¶ the parties, the unresolved status of Abyei threatened to re-ignite widespread conflict.¶ Rather than returning to hostilities, however, the parties elected to refer the Abyei question to an¶ adjudicative body. On July 7, 2008, the parties signed the Abyei Arbitration Agreement. Under the terms of¶ the Arbitration Agreement, the parties agreed to submit questions regarding the boundaries of the Abyei Area¶ to an arbitration tribunal seated at the Permanent Court of Arbitration in The Hague. The leaders of the¶ SPLM/A told PILPG that they sought recourse to an adjudicative body because they believed that the ruling¶ would be enforceable and would be supported by the international community. ¶ Based on the belief that the U.S. legal system promotes the primacy of law and affirms the critical role¶ of adjudicative bodies in a system dedicated to the rule of law, the SPLM/A cited U.S. court decisions in its¶ submissions to the Abyei Arbitration tribunal. The SPLM/A memorials specifically cited this Court, as well¶ as U.S. district and circuit court decisions, to bolster the SPLM/A’s position that the tribunal should respect¶ the finality of the award of an adjudicative body, such as the Abyei Boundaries Commission.2¶ When the Abyei Arbitration tribunal issued its binding decision in July¶ 2009, the arbitration decision also cited this Court’s precedent.3¶ This Court thus played an important role in the peaceful resolution of one of the most contentious¶ issues in the South Sudan peace process.¶ As the foregoing examples illustrate, foreign governments rely on the precedent set by the U.S. and¶ this Court when addressing new and complex issues in times of conflict. Finding for the Petitioners in the¶ present case will reaffirm this Court’s leadership in promoting respect for rule of law in foreign states during¶ times of conflict.

#### That sets a precedent against global secessionism

Cheney 10/31/13 (Catherine, World Politics Review, "Abyei Vote the Latest Opportunity for Brinkmanship Between Sudan, South Sudan," http://www.worldpoliticsreview.com/trend-lines/13343/abyei-vote-the-latest-opportunity-for-brinkmanship-between-sudan-south-sudan)

Some had hoped Abyei could be a bridge between Sudan and South Sudan rather than a source of greater tension, Temin explained, but this is not possible without the buy-in of important constituencies. ¶ What happens next has implications for the wider world, he added, because “situations like these always have the capacity to be sort of precedent-setting.”¶ “People in Abyei talk about Kosovo and East Timor,” he said. “Whatever the next disputed area is, they could be talking about what happened in Abyei.”

#### Impact is global nuclear war

Shehadi 93 (Kamal, Research Associate – International Institute for Strategic Studies, December, Ethnic Self Determination and the Break Up of States, p. 81)

This paper has argued that self-determination conflicts have direct adverse consequences on international security. As they begin to tear nuclear states apart, the likelihood of nuclear weapons falling into the hands of individuals or groups willing to use them, or to trade them to others, will reach frightening levels. This likelihood increases if a conflict over self-determination **escalates into a war between two nuclear states**. The Russian Federation and Ukraine may fight over the Crimea and the Donbass area; and India and Pakistan may fight over Kashmir. Ethnic conflicts may also spread both within a state and from one state to the next. This can happen in countries where more than one ethnic self-determination conflict is brewing: Russia, India and Ethio­pia, for example. The conflict may also spread by contagion from one country to another if the state is weak politically and militarily and cannot contain the conflict on its doorstep. Lastly, there is a real danger that regional conflicts will erupt over national minorities and borders.

#### Executive detention schemes fail

Deborah N. Pearlstein 9, lecturer in public and international affairs, Woodrow Wilson School of Public & International Affairs, July 2009, "Form and Function in the National Security Constitution," Connecticut Law Review, 41 Conn. L. Rev. 1549, lexis nexis

A. Unitary Executive Detention¶ In theory, a detention scheme involving only the executive branch in set-up and function might be able to operate quickly and in secret. n261 But it **raises a range of concerns against the functional effectiveness** criteria proposed here. For example, it is theoretically possible that the executive would design and operate a detention scheme to function principally in non-war or emergency settings and that could remain functional with minimal adjustments during emergencies. Indeed, the well-developed military justice system does just that. But the military justice system that exists is of course the product of an elaborate statutory scheme, designed to perform a chronic function of military governance. **It is hard to conceive of an organizational or political incentive that would drive an individual, term- limited executive to bear the political burden of setting up and running a new detention scheme, with no certainty or expectation that it would continue beyond that administration, other than an acute short-term need.** n262 Likewise, an executive-driven detention initiative need not (and for similar reasons is unlikely to) incorporate planning incentives or [\*1621] other mechanisms that help to mitigate errors associated with "emergency" decision- making.

#### Multiple congressional restrictions block—only court action solves

Rosenberg 12 (Carol, 1-9-12, "Congress, rules keep Obama from closing Guantanamo Bay" The Miami Herald) www.mcclatchydc.com/2012/01/09/135179/congress-rule-keep-obama-from.html#.UjXQNcasiSo

The last two prisoners to leave the U.S. detention center at Guantánamo Bay were dead. On February 1, Awal Gul, a 48-year-old Afghan, collapsed in the shower and died of an apparent heart attack after working out on an exercise machine. Then, at dawn one morning in May, Haji Nassim, a 37-year-old man also from Afghanistan, was found hanging from bed linen in a prison camp recreation yard. In both cases, the Pentagon conducted swift autopsies and the U.S. military sent the bodies back to Afghanistan for traditional Muslim burials. These voyages were something the Pentagon had not planned for either man: Each was an “indefinite detainee,” categorized by the Obama administration’s 2009 Guantánamo Review Task Force as someone against whom the United States had no evidence to convict of a war crime but had concluded was too dangerous to let go. Today, this category of detainees makes up 46 of the last 171 captives held at Guantánamo. The only guaranteed route out of Guantánamo these days for a detainee, it seems, is in a body bag. The responsibility lies not so much with the White House but with Congress, which has thwarted President Barack Obama’s plans to close the detention center, which the Bush administration opened on Jan. 11, 2002, with 20 captives. Congress has used its spending oversight authority both to forbid the White House from financing trials of Guantánamo captives on U.S. soil and to block the acquisition of a state prison in Illinois to hold captives currently held in Cuba who would not be put on trial — a sort of Guantánamo North. The latest defense bill adopted by Congress moved to mandate military detention for most future al Qaida cases. The White House withdrew a veto threat on the eve of passage, and then Obama signed it into law with a “signing statement” that suggested he could lawfully ignore it. On paper, at least, the Obama administration would be set to release almost half the current captives at Guantánamo. The 2009 Task Force Review concluded that about 80 of the 171 detainees now held at Guantánamo could be let go if their home country was stable enough to help resettle them or if a foreign country could safely give them a new start. But Congress has made it nearly impossible to transfer captives anywhere. Legislation passed since Obama took office has created a series of roadblocks that mean that only a federal court order or a national security waiver issued by Secretary of Defense Leon Panetta could trump Congress and permit the release of a detainee to another country.

#### Court has unique symbolic effect --- key to foreign perception of the plan

Fontana 8 (David, Associate Professor of Law – George Washington University Law School, “The Supreme Court: Missing in Action”, Dissent Magazine, Spring, http://www.dissentmagazine.org/article/?article=1165)

*The Results of Inaction*
What is the problem with this approach? The answer, simply put, is that it legitimates and even catalyzes political activity by Congress and the president, but it does so without including in this political activity the critically influential background voice of the Supreme Court on issues related to individual rights. The Court has two main powers: one has to do with law and compulsion, the other has to do with political debate. The Court can legally compel other branches of government to do something. When it told states and the federal government in Roe v. Wade that they could not criminalize all abortions, for example, the Court’s decision was a binding legal order. But the Supreme Court also plays a role in political debate, even when it does not order anyone to do anything. If the Justices discuss the potential problems for individual rights of a governmental action, even if they don’t contravene the action, their decision still has enormous import. This is because other actors (members of Congress, lawyers, newspaper editorial writers, college teachers, and many others) can now recite the Court’s language in support of their cause. Supreme Court phrases such as “one person, one vote” have enormous symbolic effect and practical influence. If there had been a case about torture, for example, and some of the justices had written in detail about its evils, then Senator Patrick Leahy (senior Democrat on the Judiciary Committee) could have used the Justices’ arguments to criticize attorney general nominee Michael Mukasey during his confirmation hearings. Attorneys for those being detained at Guantánamo could have made appearances on CNN and (even) Fox News reciting the evils of torture as described by the Court. Concerns about rights could have been presented far more effectively than if, as actually happened, the Court refused to speak to these issues. The Supreme Court’s discussion of constitutional questions is particularly important for two reasons. First, the justices view these questions from a distinct standpoint. While members of Congress and the president have to focus more on short-term and tangible goods, members of the Court (regardless of which president appointed them) focus more on the long term and on abstract values. The Court offers a perspective that the other branches simply cannot offer. Second, when the Supreme Court presents this perspective, people listen. It is and has been for some time the most popular branch of American government. Although there is some debate about terminology and measurement, most scholars agree that the Court enjoys “diffuse” rather than “specific” support. Thus, even when Americans don’t like a specific decision, they still support the Court. By contrast, when the president or Congress does something Americans don’t like, their support drops substantially. AMERICANS BECOME more aware of the Court the more it involves itself in controversies. This is because of what political scientists call “positivity bias.” The legitimating symbols of the Court (the robes, the appearance of detachment, the sophisticated legal opinions) help to separate it from other political institutions—and in a good way for the Court. If the Justices had drawn attention to violations of individual rights, most of America would have listened and possibly agreed. As it is, our politics has been devoid of a voice—and an authoritative voice—on individual rights. For most of the time since September 11, few major political figures have been willing to stand up and speak in support of these rights. Recall that the Patriot Act was passed in 2001 by a vote of ninety-eight to one in the Senate, with very little debate. Congress overwhelmingly passed the Detainee Treatment Act (DTA) of 2005, which barred many of those complaining of torture from access to a U.S. court. Congress also overwhelmingly passed the Military Commissions Act (MCA) of 2006, which prevented aliens detained by the government from challenging their detention—and barred them from looking to the Geneva Conventions as a source of a legal claim.

#### The executive has openly defended a right to indefinite detention *without judicial review* – review is critical to check dictatorialexecutive power – that’s Martin

#### 8. Court action is critical to ensure rights and prevent executive tyranny

Simpson 13 (Mike Simpson, May 16, writer and teacher on topics related to government and politics, Tutor2u, online learning resource of the year via BETT, the world’s leading educational show, “Revision Update: US / UK Politics: Exemplar Answer: A Bill of Rights?” <http://www.tutor2u.net/blog/index.php/politics/print/revision-update-us-uk-politics-exemplar-answer-a-bill-of-rights>)

The concept of “paper rights” would suggest that rights exist on paper (in a bill of rights) but that they are not enforced in practice. This would suggest that the judiciary need to play an active role in the defence of rights and liberties. The role of an independent judiciary in enforcing the “rule of law” allows them to stand up to the arbitrary exercise of power by executives and legislatures which might see the tyranny of the majority override minority and individual rights. The record of the Supreme Court in this regard might be regarded as inadequate in this regard. The Roberts Court has failed to protect rights as outlined in the Bill of Rights. The composition of the court has a conservative bias. The Bush appointment of Alito was critical in this regard as the departure of Justice O’Connor allowed GW Bush to replace a centrist with a conservative. The above ruling and others such as Florence v Board of Chosen Freeholders 2012 allowing strip searches for any offence contrary to privacy rights established under the fourth amendment; Wal-mart v Dukes 2011 which prevented a case to prove sex discrimination contrary to equal protection 14th amendment rights; and Baze v Rees which allowed lethal injection contrary to 8th amendment rights which prevent “cruel and unusual” punishments. The Supreme Court has not ruled on the constitutionality of the Patriot Act. In Russia, the courts upheld the decision to punish the members of “Pussy Riot” which illustrates the need for a judiciary to be independent in order to enforce a bill of rights.

#### No institutional memory

Bruce Ackerman 11, Sterling Professor of Law and Political Science at Yale University, “LOST INSIDE THE BELTWAY: A REPLY TO PROFESSOR MORRISON,” Harvard Law Review Forum Vol 124:13, http://www.harvardlawreview.org/media/pdf/vol124forum\_ackerman.pdf

Which leads to a fundamental question. Morrison relies heavily on the “norms” and “longstanding traditions” of the OLC to serve as a bulwark against presidential overreaching. But given the composition of the Office, precisely who is supposed to be safeguarding this tradition? ¶ If we credit Madison’s maxim, we can’t count on the Administration’s appointees to do the job — “enlightened statesmen” will only sometimes manipulate the political networks required to get these plum jobs. And surely youngish up-and-comers are unlikely repositories of the very complex “tradition” Morrison describes — by definition, it takes a good deal of time to master the practice of providing opinions that, in the words of Jack Goldsmith, are “neither like advice from a private attorney nor like a politically neutral ruling from a court. It is something inevitably, and uncomfortably, in between.”15 As his memoirs suggest, even Goldsmith had trouble enacting this “awkward” role during the nine months he served as head of the OLC before he quit under pressure from the Bush White House.16 It’s a bit much to ask young attorney-advisers to serve as the principal guardians of these “cultural norms.” This puts an enormous burden on the (very) small number of senior counsel. ¶ Morrison assures us “that Senior Counsels play a vital role in OLC precisely because they are such rich repositories of institutional memory.”17 While they surely help the transient- lawyers “resist the importuning of . . . clients”18 in garden variety cases, it is unrealistic to expect them effectively to defend entrenched constitutional principles against high-priority presidential initiatives — especially when political appointees, aided by able attorney-advisers, think up all sorts of clever legal arguments to evade and undercut these principles. ¶ The senior counsel’s position is particularly problematic at present. Granting their role as keepers of institutional memory, precisely what are they supposed to be remembering about the operation of the Office during the Bush years? **¶** To be sure, Goldsmith’s legalistic scruples, and the Abu Ghraib scandal, forced the White House to accept the repudiation of a couple of “torture memos.”19 But as Morrison recognizes, the OLC replaced Yoo’s memos “with a more modestly phrased opinion in late 2004 . . . [which] maintained its basic position on the legality of . . . ‘waterboarding’”20 throughout the rest of the Bush Administration. So if the oldtimers act as memory- keepers, are they supposed to tell the transients that the OLC continued to give the Bush White House what it wanted to the bitter end, merely toning down John Yoo’s extravagant legal arguments?

#### 9. Perm do the counterplan then the plan – shields the link to the net benefit because it looks like the court enforcing the XO

#### IJ - only court action solves the independent judiciary advantage – turns the counterplan – deference sets a model which causes global instability – that’s Mirow and CJA – and indefinite detention policy is uniquely important – that’s McCormack

### Flexibility DA – 2AC

#### No impact – no reason prez needs to be completely unfettered to solve terrorism – plan solves the larger IL

#### Obama will continue to consult for military actions – takes out the link

Rothkopf 13

[David, CEO and editor at large of Foreign Policy, The Gamble, 8/31/13, <http://www.foreignpolicy.com/articles/2013/08/31/the_gamble?page=0,1>]

Whatever happens with regard to Syria, the larger consequence of the president's action will resonate for years. The president has made it highly unlikely that at any time during the remainder of his term he will be able to initiate military action without seeking congressional approval. It is understandable that many who have opposed actions (see: Libya) taken by the president without congressional approval under the War Powers Act would welcome Obama's newly consultative approach. It certainly appears to be more in keeping with the kind of executive-legislative collaboration envisioned in the Constitution. While America hasn't actually required a congressional declaration of war to use military force since the World War II era, the bad decisions of past presidents make Obama's move appealing to the war-weary and the war-wary. But whether you agree with the move or not, it must be acknowledged that now that Obama has set this kind of precedent -- and for a military action that is exceptionally limited by any standard (a couple of days, no boots on the ground, perhaps 100 cruise missiles fired against a limited number of military targets) -- it will be very hard for him to do anything comparable or greater without again returning to the Congress for support. And that's true whether or not the upcoming vote goes his way. 4. This president just dialed back the power of his own office. Obama has reversed decades of precedent regarding the nature of presidential war powers -- and whether you prefer this change in the balance of power or not, as a matter of quantifiable fact he is transferring greater responsibility for U.S. foreign policy to a Congress that is more divided, more incapable of reasoned debate or action, and more dysfunctional than any in modern American history. Just wait for the Rand Paul filibuster or similar congressional gamesmanship. The president's own action in Libya was undertaken without such approval. So, too, was his expansion of America's drone and cyber programs. Will future offensive actions require Congress to weigh in? How will Congress react if the president tries to pick and choose when this precedent should be applied? At best, the door is open to further acrimony. At worst, the paralysis of the U.S. Congress that has given us the current budget crisis and almost no meaningful recent legislation will soon be coming to a foreign policy decision near you. Consider that John Boehner was instantly more clear about setting the timing for any potential action against Syria with his statement that Congress will not reconvene before its scheduled September 9 return to Washington than anyone in the administration has been thus far. Perhaps more importantly, what will future Congresses expect of future presidents? If Obama abides by this new approach for the next three years, will his successors lack the ability to act quickly and on their own? While past presidents have no doubt abused their War Powers authority to take action and ask for congressional approval within 60 days, we live in a volatile world; sometimes security requires swift action. The president still legally has that right, but Obama's decision may have done more -- for better or worse -- to **dial back the imperial presidency than anything his predecessors or Congress have done for decades.**

#### Court rules against executive now

Wong 13 -- PhD dissertation in Government to Georgetown University (U Jin, 4/22/2013, "THE BLANK CHECK: SUPREME COURT DECISION - MAKING IN NATIONAL SECURITY CLAIMS AND DURING WARTIME," http://repository.library.georgetown.edu/bitstream/handle/10822/558286/Wong\_georgetown\_0076D\_12276.pdf?sequence=1)

This study started out with two questions. The first was: ?Does war influence judicial decision - making?? The second was: ?Do **national security** claims influence judicial decision - making?? The answer to the first question is: In a general hypothetical s ignificant war, there is a **statistically significant finding** of voting against the government. In the models run using the Spaeth database where the government is a party, the influence of all significant wars on judicial decision - making generally was to vote against the government. Presidential approval ratings are statistically significant only in wartime, but with a positive coefficient. Outside of wartime, presidential approval ratings are not statistically likely to influence Supreme Court behavior. This result suggests that while Courts vote strategically and support a popular president, they are still statistically likely to find against the government in a significant war. These findings altogether suggest that that the Supreme Court votes strat egically with an eye towards the popularity of the president, but revert to skepticism of government‘s wartime claims as the war progresses. The answer to the second question is: National security claims brought by the government achieve a **statistically significant likelihood** that the Supreme Court will vote against the government. National security claims were statistically significant with a negative signifier. **This finding is consistent across all the major wars as well as peacetime**. It also suggest s that the Supreme Court generally is not predisposed to defer to the executive branch‘s arguments when it comes to national security claims

#### 1. No link – the plan is only a restriction on the ability to indefinitely detain – not the counter-terror forces their impact evidence assumes

#### 2. Plan doesn’t affect all power – the president will do what he wants absent direct prohibition

Marshall 08

[William, Kenan Professor of Law, University of North Carolina, Eleven Reasons Presidential Power Inevitably Expands and Why It Matters, 2008,

<http://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/MARSHALL.pdf>]

The first and perhaps overarching reason underlying the growth of presidential power is that the constitutional text on the subject is notoriously unspecific, allowing as one writer maintains, for the office “to grow with the developing nation.”19 Unlike Article I, which sets forth the specific powers granted to Congress,20 the key provisions of Article II that grant authority to the President are written in indeterminate terms such as “executive power,”21 or the duty “to take care that the laws be faithfully executed.”22 Moreover, unlike the other branches, the Presidency has consistently been deemed to possess significant inherent powers.23 Thus, many of the President’s recognized powers, such as the authority to act in times of national emergency24 or the right to keep advice from subordinates confidential,25 are nowhere mentioned in the Constitution itself. In addition, case law on presidential power is underdeveloped. Unlike the many precedents addressing Congressional26 or federal judicial27 power, there are remarkably few Supreme Court cases analyzing presidential power. And the leading case on the subject, Youngstown Sheet & Tube Co. v. Sawyer, 28 is known less for its majority opinion than for its concurrence by Justice Jackson, an opinion primarily celebrated for its rather less-than-definitive announcement that much of presidential power exists in a “zone of twilight.”29 Accordingly, the question whether a President has exceeded her authority is seldom immediately obvious because the powers of the office are so openended.30 This fluidity in definition, in turn, allows presidential power to readily expand when factors such as national crisis, military action, or other matters of expedience call for its exercise.31 Additionally, such fluidity allows political expectations to affect public perceptions of the presidential office in a manner that can lead to expanded notions of the office’s power.32 This perception of expanded powers, in turn, can then lead to the perceived legitimacy of the President actually exercising those powers. Without direct prohibitions to the contrary, expectations easily translate into political reality.33

#### 3. Expertise solves – as forces get used to the restrictions they will be able to make decisions quickly which ensures the plan doesn’t hurt flexibility

#### Courts don’t need to invalidate the political question doctrine

Abebe 12 -- Assistant Professor of Law, The University of Chicago Law School (Daniel, "One Voice or Many? The Political Question Doctrine and Acoustic Dissonance in Foreign Affairs," The Supreme Court Review, 2012 Vol 1, JSTOR)

Courts can gain traction on this question by assessing the background conditions of international politics to understand when a presumption in favor of speaking with one voice is warranted, and when such a presumption is unnecessary. As I have argued in prior scholarship,33 the **courts can adopt a parsimonious framework**, based on the international relations concept of polarity, to assess background international political conditions and the role of the US in the world. Based on this assessment, the courts **would not decide whether a particular foreign affairs question required the application of the political question doctrine**; rather, the assessment would assist the courts in weighing the benefits of speaking with one voice.

#### 4. Even if they win that the aff spills over to broader authority, it would not wreck flex

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What is an asset in the criminal justice system, however, would be a liability in a system whose priority is not justice for the individual but the security of the American people. That liability, though, can be satisfactorily rectified by clear procedural rules which underscore that the overriding mission – into which the judicial function is being imported for very limited purposes – remains executive and military. The default position of the criminal justice system would not carry over to a system conceived for enemies of the United States – i.e., terrorist operatives who would not be facing NSC trials in the first place absent a finding, tested by judicial review, that they were alien enemy combatants. ¶ In such a system, the opportunities for judicial creativity would be limited by being plainspoken and unapologetic in enabling legislation about the fact that the defendants are not Americans but those who mean America harm; that the task of federal judges is not to ensure that defendants are considered as equals to our government before the bar of justice, but merely to ensure that they are not capriciously convicted of war crimes by the same branch of government that is prosecuting the war; that if credible and convincing evidence supports the allegations, the system’s preference is that defendants be convicted and harshly sentenced; and that the authority of judges is enumerated and finite – if the rules as promulgated do not expressly provide for the defendant to have particular relief, the judge is powerless to direct it. In short, the system would curb judicial excess by the recognition, which underlies the military justice system, that prosecuting war remains a quintessentially executive endeavor; in the NSC, judges would be a check against arbitrariness but they would not have any general supervisory authority over the conduct of proceedings and they would not be at liberty to create new entitlements by analogizing to ordinary criminal proceedings.

#### Executive powers too overstreched- we tip it back into balance without killing flexibility

Magnusson 9 -- J.D. Candidate, April 2010, J. Reuben Clark Law School, Brigham Young University (Landon Wade, 2009, "Note and Comment: Forget the Whales: Expanding the Twilight and Diminishing the Nadir of Youngstown," 24 BYU J. Pub. L. 149, L/N)

IV. Implications: Winter's Expanding Emergency Although Framers, such as Alexander Hamilton, viewed the emergency prerogative of the dictators of the Roman Republic with favor, it has always been evident that it was the abuse of those temporary and yet expansive emergency powers that led to the demise of the Roman Republic and the creation of the Roman Empire. n85 Consequently, none of [\*160] the Framers believed that the Constitution should ever grant the Executive absolute and unfettered authority. n86 Unfortunately, the Supreme Court in Winter took a step in that direction when it **erroneously stretched the normal boundaries of emergency executive powers**. First, the Court expanded the legal definition of emergency in a manner that would allow the Executive to seek the protection of "self-made" emergencies. Second, it **significantly lowered the bar** for emergency powers by deferring to the judgment of the Executive for the determination of necessity. A. Ransoming the Public for Power The circumstances necessitating the Navy training exercises at issue were not an emergency under either NEPA or the common law. In 1978, the CEQ, which has the authority to issue regulations interpreting NEPA, n87 promulgated a regulation allowing the federal government to act "without observing the provisions of [the] regulation[]" when "emergency circumstances make it necessary." n88 This regulation would seem to be a **codification of the implicit emergency powers of the Executive**, as pertaining to NEPA. However, neither the regulation itself, nor any judicial interpretations of the statute have provided a definition for emergency circumstances. This requires an interpreter to look to the common law, as well as at general practice under the statute to discover its significance. Under the common law, an emergency is "an unforeseen combination of circumstances that calls for immediate action without time for full deliberation." n89 Using this definition, emergencies require both unpredictability and immediate action. Though the District Court's injunction in Winter may have created a necessity that called for immediate action, the injunction was not an unforeseeable event. NEPA has been in effect since 1969, and "training exercises [] have been taking place in [Southern California] for the last 40 years." n90 Moreover, the Navy has "described the ability to operate MFA sonar," a key component [\*161] of its training exercises, "as a "highly perishable skill" that must be repeatedly practiced under realistic conditions." n91 Under circumstances where the Navy should reasonably foresee its need to conduct future exercises and where the Navy has always had to comply with the statute in order to conduct those exercises, it is not reasonable to conclude that the Navy could not have foreseen the necessity of preparing an EIS. Additionally, general tort law requires governmental entities that seek the protection of emergency doctrines to not have created or contributed to the emergency in question. n92 This is another instance where the Supreme Court has **stretched the definition of emergency** in order to accommodate the Executive. Because of the foreseeability of the need to file an EIS, the District Court's emergency-creating injunction could have been avoided if the Navy had properly followed procedure from the beginning. It was only because of the Navy's negligence or reckless disregard for the law, that the emergency was created. n93 The Executive's previous record in making alternative arrangements for NEPA compliance confirms the common law requirements of an emergency. Other occasions where alternative arrangements have been made include disasters such as: wildfires in San Diego, grasshopper infestations in Arizona, Hurricane Katrina relief, and even an impending war in the Persian Gulf. n94 In the past, each time the Executive exercised its power to go beyond the boundaries of the statute, it was the result of an unforeseeable circumstance that required immediate action and was not the direct result of previous executive action. [\*162] Under the circumstances, "if the Navy sought to avoid its NEPA obligations, its remedy [laid] in the Legislative Branch." n95 However, under this new definition of emergency powers handed down by the Court, the Executive no longer needs the Legislature. Hypothetically, the public safety, put in danger only through the Executive's reckless disregard for the law, may be ransomed again with emergency power. B. The Executive Will Necessarily Favor the Executive According to the Navy, the declaration that the Navy's training exercises were ""essential to national security'" and that the injunction would ""create[] a significant and unreasonable risk'" to the American people, n96 combined with CEQ's alternative arrangements, "eliminated the injunction's legal foundation." n97 Although the Supreme Court refused to specifically rule on whether the Executive's actions actually relieved the Navy of its obligations, n98 the Court used those very same statements from the Executive to vacate the lower court's injunction and effectively rule that the circumstances did not require the Navy to comply with the Act. n99 Admittedly, "neither the Members of [the Supreme] Court nor most federal judges," nor the author of this Note for that matter, "begin the day with briefings that may describe new and serious threats to our Nation and its people." n100 Moreover, the Executive is probably the most qualified of all the branches of government to make determinations concerning emergencies and the imminence of dangerous attacks on the American people. However, **deferring to the Executive by granting it unfettered review of its own policies** completely abolishes the boundaries found in Justice Jackson's nadir. Indeed, without independent review, "the **false pretext of imminent danger**" creates an additional zenith of executive power. n101 Yet, unlike Jackson's zenith, n102 here the Executive reaches this summit of power independently. The resulting effects on the separation of powers are vast. In practice, an Executive could claim "emergency" or [\*163] "necessity" to justify **any actions** contrary to the law whenever it felt that such actions were prudent. n103 Additionally, affording the Executive the prerogative to interpret the extent of its own emergency license will necessarily **lower the threshold** for a constitutionally permissible suspension of the normal balance of powers. When it comes to the use of executive-executed emergency powers, an Executive will be faced with two choices: First, it could refrain from exercising emergency powers at the risk of an emergency actually occurring, and then call upon those powers anyway in order to remedy the situation. Alternatively, the Executive might mitigate risks by exercising the power immediately at the expense of the constitutional balance of powers. Obviously, the latter choice leads to a propensity to call upon emergency powers even when necessity would not require them. n104 Prior to Winter, the Supreme Court had already taken a position on this issue: "a state of war," the **most severe of emergencies**, "is **not a blank check for the President**." n105 However, in "giving great deference to the professional judgment of military authorities concerning the relative importance of a particular military interest," n106 the **Supreme Court disregards** Youngstown's **boundaries of presidential power** and [\*164] **cedes its important role of exercising judicial review to the Executiv**e. n107 This, essentially, grants the Executive carte blanche in determining when, and to what extent, he or she may rely on emergency circumstances to justify his or her actions. Such a ruling is a **blank check for abuse**. V. Conclusion It may be tempting to brush Winter aside because the Supreme Court did not reach a decision on the merits due to the nature of the suit, but one should remember that fifty years ago, another case, more explicitly concerning the limits of presidential powers, sought after the same remedy. n108 Both cases occurred during a period when the United States was at war. n109 In each case, the Executive's actions were directly contrary to congressional will. n110 Most importantly, in both situations, because of emergency circumstances, the Executive Branch justified its actions as necessary in defense of the public good. n111 Nevertheless, in Winter, the Supreme Court **departs from the standard** set half a century ago in Youngstown. By finding in favor of the Navy, the Court altered the accepted Jackson taxonomy by expanding its zone of twilight, and diminishing its nadir. Winter accomplished this by first **revising the definition of an emergency** - eliminating its requirement of unforeseeability and permitting an Executive to seek the protection of emergency powers for **manufactured emergencies** caused by the reckless disregard of the law or negligence of that Executive. Second, the Winter decision allows the Executive to "**be the judge in [its] own case**," n112 [\*165] deferring to [it] for a determination of when emergency circumstances are present, creating an incentive for Executives to **call upon those powers more often and under circumstances** that are less than public emergencies.

#### 5. Court rules against executive now

Wong 13 -- PhD dissertation in Government to Georgetown University (U Jin, 4/22/2013, "THE BLANK CHECK: SUPREME COURT DECISION - MAKING IN NATIONAL SECURITY CLAIMS AND DURING WARTIME," http://repository.library.georgetown.edu/bitstream/handle/10822/558286/Wong\_georgetown\_0076D\_12276.pdf?sequence=1)

This study started out with two questions. The first was: ?Does war influence judicial decision - making?? The second was: ?Do **national security** claims influence judicial decision - making?? The answer to the first question is: In a general hypothetical s ignificant war, there is a **statistically significant finding** of voting against the government. In the models run using the Spaeth database where the government is a party, the influence of all significant wars on judicial decision - making generally was to vote against the government. Presidential approval ratings are statistically significant only in wartime, but with a positive coefficient. Outside of wartime, presidential approval ratings are not statistically likely to influence Supreme Court behavior. This result suggests that while Courts vote strategically and support a popular president, they are still statistically likely to find against the government in a significant war. These findings altogether suggest that that the Supreme Court votes strat egically with an eye towards the popularity of the president, but revert to skepticism of government‘s wartime claims as the war progresses. The answer to the second question is: National security claims brought by the government achieve a **statistically significant likelihood** that the Supreme Court will vote against the government. National security claims were statistically significant with a negative signifier. **This finding is consistent across all the major wars as well as peacetime**. It also suggest s that the Supreme Court generally is not predisposed to defer to the executive branch‘s arguments when it comes to national security claims

#### 6. **Rules during crises don’t hurt flexibility**

Holmes 9 -- Walter E. Meyer Professor of Law, New York University School of Law (Stephen, 4/30/2009, "In Case of Emergency: Misunderstanding Tradeoffs in the War on Terror," http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1140&context=californialawreview)

Thus, it also illustrates the truism, profoundly relevant to the war on terror, that limiting options available during emergencies can be good or bad, depending on what emergency responders, who may be tempted by sheer exhaustion to take hazardous shortcuts, will do with the latitudes they seize or receive. Campaigners for executive discretion routinely invoke the imperative need for "**flexibility**" to explain why counterterrorism cannot be successfully conducted within the Constitution and the rule of law. But general rules and situation-specific improvisation, far from being mutually exclusive, are perfectly compatible. 1 8 There is no reason why mechanically following protocols designed to prevent harried nurses from negligently administering the wrong blood type should preclude the same nurses from improvising unique solutions to the unique problems of a particular trauma patient. Drilled-in emergency protocols provide a **psychologically stabilizing floor**, shared by co- workers, on the basis of which **untried solutions can then be improvised**. 9 In other words, there is no reason to assert, at least not as a matter of general validity, that the importance of flexibility excludes reliance on rules during emergencies, including national-security emergencies. The emergency-room example can also deepen our understanding of national-security crises by bringing into focus an important but sometimes neglected distinction between threats that are novel and threats that are urgent. **Dangers may be unprecedented without demanding a split-second response**. Contrariwise, urgent threats that have appeared repeatedly in the past can be managed according to protocols that have become automatic and routine. Emergency-room emergencies are urgent even when they are perfectly familiar. Terrorists with access to weapons of mass destruction ("WMD"), by contrast, present a novel threat that is destined to endure for decades, if not longer. **Such a threat is not an "emergency"** in the sense of a sudden event, such as a house on fire, **requiring genuinely split-second decision making**, with no opportunity for serious consultation or debate. **Managing the risks of nuclear terrorism requires sustained policies, not short-term measures**. This is feasible precisely because, in such an enduring crisis, national-security personnel have **ample time to think and rethink, to plan ahead and revise their plans**. In depicting today's terrorist threat as "an emergency," executive-discretion advocates almost always blur together urgency and novelty. This is a consequential intellectual fallacy. But it also provides an opportunity for critics of executive discretion in times of crisis. If classical emergencies, in the house- on-fire or emergency-room sense, turn out to invite and require rule-governed responses, then the justification for dispensing with rules in the war on terror seems that much more tenuous and open to question. In crises where "time is of the essence" 2 1 and serious consultation is difficult or impossible, it is imperative for emergency responders to follow previously crafted first-order rules (or behavioral commands) to enable prompt remedial action and coordination. In crises that are not sudden and transient but, instead, endure over time and that therefore allow for extensive consultation with knowledgeable parties, it is essential to rely on previously crafted second-order rules (or decision-making procedures) designed to **encourage decision makers to consider the costs and benefits of, and feasible alternatives to, proposed action plans**. In medicine, a typical first-order rule is "always wash your hands before inserting a stent," and a typical second-order rule is "always get a second opinion before undertaking major surgery."

#### 8. Court expertise is sufficient—their link is blown out of proportion

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

A common justification for deference is that the President possesses superior competence due to expertise, information gathering, and political savvy in foreign affairs. These conclusions flow from the realist tenet that the external context is fundamentally distinct from the domestic context. The domestic realm is hierarchical and legal; the outside world is anarchical and political. The international realm is thus far more complex and fluid than the domestic realm. The executive is a political branch, popularly-elected and far more attuned to politics than are the courts. n258 Judges are, for the most part, generalists who possess no special expertise in foreign affairs. n259 Courts can only receive the information presented to them and cannot look beyond the record. n260 The President has a vast foreign relations bureaucracy to obtain and process information from around the world. Executive agencies such as the State Department and the military better understand the nature of foreign countries - their institutions and culture - and can predict responses in ways that courts cannot. n261 In the context of the political question doctrine, this rationale often appears when courts conclude that an issue lacks "judicially discoverable and manageable standards." n262 A stronger, related rationale is that the political branches are better suited for tracking dynamic and evolving norms in the anarchic international environment. n263 The meaning of international law changes over time and nations do not agree today on its meaning. Moreover, the relationships among nations in many instances will be governed by informal norms that do not correspond to international law. n264 In addition, many foreign affairs provisions in the Constitution had fixed meanings under international law in the Eighteenth Century - what it meant, for example, to "declare war" or to issue "letters of marquee and [\*129] reprisal" - but subsequent practice has substantially altered their meaning or rendered them irrelevant. n265 Courts are not adept at tracking these shifts. As many critics have observed, the "lack of judicially-manageable standards" argument is weak. Courts create rules to govern disputes regarding vague constitutional provisions such as the Due Process Clause. n266 Furthermore, if courts were to adjudicate foreign affairs disputes more often, they would have the opportunity to create clearer standards, making them more manageable. n267 Thus the lack-of-standards argument does not alone explain why foreign affairs should be off-limits. The argument regarding courts' limited access to information and lack of expertise seem persuasive at first, but it loses its force upon deeper inspection. For instance, expertise is also a rationale for Chevron deference in the domestic context. n268 Generalist judges handle cases involving highly complex and obscure non-foreign affairs issues while giving appropriate deference to interpretations of agencies charged with administering statutory schemes. n269 What makes foreign affairs issues so different that they justify even greater deference? n270 Perhaps foreign affairs issues are just an order of magnitude more complex than even the most complex domestic issues. However, this line of thinking very quickly leads to boundary problems. Economic globalization, rapid global information flow, and increased transborder movement have "radically increased the number of cases that directly implicate foreign relations" and have made foreign parties and conduct, as well as international law questions, increasingly [\*130] common in U.S. litigation. n271 If courts were to cabin off all matters touching on foreign relations as beyond their expertise, it would result in an ever-increasing abdication of their role. The political norm-tracking argument reveals the second major problem with using anarchy as a basis for special deference: it fails to account for the degree of deference that should be afforded to the President. Under the anarchy-based argument, the meaning of treaties and other concepts in foreign affairs depend entirely on politics and power dynamics, which the President is especially competent (and the courts especially incompetent) in tracking. If this is so, the courts must give total deference to the executive branch. If one does not wish to take the position that the courts should butt out altogether in foreign affairs, there must be other reasons for the courts' involvement. Even proponents of special deference generally acknowledge that some of the courts' strengths lie in protecting individual rights and "democracy-forcing." n272 But what is the correct balance to strike between competing functional goals of the separation of powers?

### Iran DA

#### 1 – No link – you’ve said Obama doesn’t like congressional restrictions – not the aff

#### This DA doesn’t have a link – their link evidence is about internal negotiations failure – there’s no reason the plan changes

#### A. The SENATE and how they approach sanctions OR

#### B. How INTERNAL deals go down in Iran

#### New conference means flare-up likely

Collinson 1/29 (Stephen, “Obama repels new Iran sanctions push... for now”, 2014, http://news.yahoo.com/obama-repels-iran-sanctions-push-now-032127269.html)

Washington (AFP) - President Barack Obama appears to have prevailed, for now, in a campaign to stop Congress from imposing new sanctions on Iran he fears could derail nuclear diplomacy. Several Democratic senators who previously backed a bipartisan sanctions bill publicly stepped back after Obama threatened a veto during his State of the Union address Tuesday. Several sources familiar with behind-the-scenes maneuvring say a number of other Democratic senators signed up for more sanctions had privately recoiled from a damaging vote against their own president. According to some counts in recent weeks, the measure had 59 likely votes, including 16 Democrats, and was even approaching a two-thirds veto-proof majority in the 100-seat Senate. But latest developments appear to have checked that momentum. "I am strongly supporting the bill but I think a vote is unnecessary right now as long as there's visible and meaningful progress" in the Iran negotiations, Senator Richard Blumenthal told AFP, after expressing reservations earlier this month. Democratic Senator Chris Coons made a similar declaration at a post-State of the Union event hosted by Politico. "Now is not the time for a vote on an Iran sanctions bill," he said. Another Democratic Senator, Joe Manchin, hopes Senate Majority Leader Harry Reid will not bring it up. "I did not sign it with the intention that it would ever be voted upon or used upon while we're negotiating," Manchin told MSNBC television. "I signed it because I wanted to make sure the president had a hammer if he needed it and showed him how determined we were to do it and use it if we had to." The White House mounted an intense campaign against a bill it feared would undermine Tehran's negotiators with conservatives back home or prompt them to ditch diplomacy. Obama aides infuriated pro-sanctions senators by warning the measure could box America into a march to war to halt Tehran's nuclear program if diplomacy died. The campaign included a letter to Reid from Democratic committee chairs urging a vote be put off. Another letter was orchestrated from a group of distinguished foreign policy experts. Multi-faith groups weighed in and coordinated calls from constituents backing Obama on nuclear diplomacy poured into offices of key Democrats. The campaign appears for now to have overpowered the pro-sanctions push by hawkish senators and the Israel lobby, whose doubts on the Iran nuclear deal mirror those of Israeli Prime Minister Benjamin Netanyahu. Senator Johnny Isakson, a Republican co-sponsor of the legislation, said: "It looks like we're kind of frozen in place." Those behind the anti-sanctions campaign though privately concede they may have won a battle, not a war. 'A crucial victory' The push for new sanctions will flare again ahead of the American Israel Public Affairs Committee's (AIPAC) annual conference in March, which Netanyahu is expected to address. It could also recur if the talks with Iran on a final pact extend past the six-month window set by the interim deal. But for now, groups that supported the push against sanctions are jubilant. "This is a major victory, a crucial victory for the American public who don't want to see a war," said Kate Gould of the Friends Committee on National Legislation. But she warned: "There'll be other efforts to try and sabotage the process."

**Zero risk of Israeli strike on Iran -**this impact is a huge joke – any evidence to the contrary is based on Israel fearmongering in order to increase pressure on the US

**Rubin, ‘12** – professor at the Interdisciplinary Center in Herzliya, Israel, the Director of the Global Research and International Affairs (GLORIA) Center, and a Senior Fellow at the International Policy Institute for Counterterrorism (Barry, “[Israel Isn’t Going to Attack Iran and Neither Will the United States](http://pjmedia.com/barryrubin/2012/01/26/israel-is-not-about-to-attack-iran-and-neither-is-the-united-states-get-used-to-it/).” http://pjmedia.com/barryrubin/2012/01/26/israel-is-not-about-to-attack-iran-and-neither-is-the-united-states-get-used-to-it/)

The radio superhero The Shadow had the power to “cloud men’s minds.” But nothing clouds men’s minds like anything that has to do with Jews or Israel. This year’s variation on that theme is the idea that Israel is about to attack Iran. Such a claim repeatedly appears in the media. Some have criticized Israel for attacking Iran and turning the Middle East into a cauldron of turmoil (not as if the region needs any help in that department) despite the fact that it hasn’t even happened. On the surface, of course, there is apparent evidence for such a thesis. Israel has talked about attacking Iran and one can make a case for such an operation. Yet any serious consideration of this scenario — based on actual research and real analysis rather than what the uninformed assemble in their own heads or Israeli leaders sending a message to create a situation where an attack isn’t necessary — is this: It isn’t going to happen. Indeed, the main leak from the Israeli government, by an ex-intelligence official who hates Prime Minister Benjamin Netanyahu, has been that the Israeli government already decided not to attack Iran. He says that he worries this might change in the future but there’s no hint that this has happened or will happen. Defense Minister Ehud Barak has publicly denied plans for an imminent attack as have other senior government officials. Of course, one might joke that the fact that Israeli leaders talk about attacking Iran is the biggest proof that they aren’t about to do it. But Israel, like other countries, should be subject to rational analysis. Articles written by others are being spun as saying Israel is going to attack when that’s not what they are saying. I stand by my analysis and before December 31 we will see who was right. I’m not at all worried about stating very clearly that Israel is not going to go to war with Iran. So why are Israelis talking about a potential attack on Iran’s nuclear facilities? Because that’s a good way – indeed, the only way Israel has — to pressure Western countries to work harder on the issue, to increase sanctions and diplomatic efforts. If one believes that somehow pushing Tehran into slowing down or stopping its nuclear weapons drive is the only alternative to war, that greatly concentrates policymakers’ minds. Personally, I don’t participate — consciously or as an instrument — in disinformation campaigns, even if they are for a good cause. Regarding [Ronen Bergman’s article in the New York Times](http://www.nytimes.com/2012/01/29/magazine/will-israel-attack-iran.html?pagewanted=all), I think the answer is simple: Israeli leaders are not announcing that they are about to attack Iran. They are sending a message that the United States and Europe should act more decisively so that Israel does not feel the need to attack Iran in the future. That is a debate that can be held but it does not deal with a different issue: Is Israel about to attack Iran? The answer is “no.”

#### Negotiations fail

Jennifer Rubin 1/24, Political Analyst for the Washington Post, 2014, Iran negotiations ‘train wreck’ ahead, http://www.washingtonpost.com/blogs/right-turn/wp/2014/01/24/iran-negotiations-train-wreck-ahead/

The last time a liberal (Sen. Max Baucus of Montana) warned about an Obama administration “train wreck” (regarding Obamacare), he was prescient. There is a good chance now that CNN’s foreign policy pundit and Post columnist Fareed Zakaria, usually very much in tune with the administration’s foreign policy, hit the nail on the head following an interview with Iranian President Hassan Rouhani. Zakaria surmised that the Iran negotiations are facing “a train wreck . . . a potentially huge obstacle because the Iranian conception of what the deal is going to look like and the American conception now look like they are miles apart.”¶ There is good reason to believe Zakaria. His conclusion was based in large part on his interview with Rouhani, who candidly described his country’s views on dismantling its nuclear weapons program: “Not under any circumstances.”¶ Zakaria’s conclusion, even without Rouhani’s admission, is also bolstered, as we have noted, by the independent Institute for Science and International Security report’s description of the vast changes Iran would have to make — far in excess of anything it has suggested in the past — to meet the bare minimum requirements even the U.S. negotiators say are required (already watered-down from the United Nations resolutions).¶ Given everything we know, it is hard to fathom how the Obama administration, as feckless as it is, could possibly believe the Iranians are willing to do what we are demanding.¶ Josh Block, a Democrat and executive director of the Israel Project, e-mailed, “It is deeply troubling but not at all shocking that Rouhani says Iran will never step back their nuclear pursuit. The America people know Iran is lying when they say they aren’t building nukes.” He continued, “Congress knows they are lying. But if the Administration wants to leaves Iran enriching uranium — after Rouhani himself said if they can enrich to 3.5% they can make a bomb and now declares they will never dismantle their centrifuges — clearly they would be putting our fate in Iran’s hands.” Or put differently, Obama seems willing to continue a ludicrous process and/or accept any deal to avoid the United States having to take matters into its own hands.¶ Rouhani’s comment, coupled with the refusal to release publicly the entire text of the so-called implementation agreement for the interim deal, suggests either the White House is misleading the public (i.e. it knows negotiations can’t succeed) or is delusional in its expectation that a deal anywhere in the ballpark of acceptability is in the offing. (In the same way Secretary of State John Kerry is convinced a peace agreement for Syria can work out, abject fear of failure is a powerful narcotic.) The White House is obsessively focused on shutting down Senate legislation and on tamping down the push-back it has received from allies and pro-Israel groups here. No doubt the White House drones are buzzing with resentment that their handiwork is being revealed to be a smoke screen for containment. (You can hear it now: There is nothing to be done. We tried. Do you want boots on the ground? Do you?) The Obama gang has infinite time and energy to attack Israel for making trouble, label sanctions supporters as war-mongers, spin the media and its supporters (I repeat) and plot to block congressional action, but it has no stomach for dealing with the real world.

# 1AR

#### Trials good for intel

HRF 9 (March 2009, human rights first non-profit, nonpartisan international human rights organization based in New York and Washington D.C., "The Case Against A Special Terrorism Court" Human Rights First) www.humanrightsfirst.org/wp-content/uploads/pdf/090323-LS-nsc-policy-paper.pdf

Finally, In Pursuit of Justice finds that criminal prosecution often assists rather than inhibits intelligence gathering. The Sixth Amendment to the U.S. Constitution entitles any suspect who has been criminally charged to legal representation. But many suspects with lawyers end up cooperating with the government in exchange for leniency in sentencing. “The cooperation process has proven historically to be one of the government’s most powerful tools in gathering intelligence,” write Zabel and Benjamin. “Indeed, the government recognizes that cultivating cooperation pleas is an effective intelligence gathering tool for all types of criminal investigations, including significant terrorist cases.”18

#### No link uniqueness- we use drones when capturing is impossible now- and there wouldn’t be a shift

Robert Chesney 11, Charles I. Francis Professor in Law at the UT School of Law as well as a non-resident Senior Fellow at Brookings, "Examining the Evidence of a Detention-Drone Strike Tradeoff", October 17, www.lawfareblog.com/2011/10/examining-the-evidence-of-a-detention-drone-strike-tradeoff/

Yesterday Jack linked to this piece by Noah Feldman, which among other things advances the argument that the Obama administration has resorted to drone strikes at least in part in order to avoid having to grapple with the legal and political problems associated with military detention:¶ Guantanamo is still open, in part because Congress put obstacles in the way. Instead of detaining new terror suspects there, however, Obama vastly expanded the tactic of targeting them, with eight times more drone strikes in his first year than in all of Bush’s time in office.¶ Is there truly a detention-drone strike tradeoff, such that the Obama administration favors killing rather than capturing? As an initial matter, the numbers quoted above aren’t correct according to the New America Foundation database of drone strikes in Pakistan, 2008 saw a total of 33 strikes, while in 2009 there were 53 (51 subsequent to President Obama’s inauguration). Of course, you can recapture something close to the same point conveyed in the quote by looking instead to the full number of strikes conducted under Bush and Obama, respectively. There were relatively few drone strikes prior to 2008, after all, while the numbers jump to 118 for 2010 and at least 60 this year (plus an emerging Yemen drone strike campaign). But what does all this really prove?¶ Not much, I think. Most if not all of the difference in drone strike rates can be accounted for by specific policy decisions relating to the quantity of drones available for these missions, the locations in Pakistan where drones have been permitted to operate, and most notably whether drone strikes were conditioned on obtaining Pakistani permission. Here is how I summarize the matter in my forthcoming article on the legal consequences of the convergence of military and intelligence activities:¶ According to an analysis published by the New America Foundation, two more drone strikes in Pakistan’s FATA region followed in 2005, with at least two more in 2006, four more in 2007, and four more in the first half of 2008.[1] The pattern was halting at best. Yet that soon changed. U.S. policy up to that point had been to obtain Pakistan’s consent for strikes,[2] and toward that end to provide the Pakistani government with advance notification of them.[3] But intelligence suggested that on some occasions “the Pakistanis would delay planned strikes in order to warn al Qaeda and the Afghan Taliban, whose fighters would then disperse.”[4] A former official explained that in this environment, it was rare to get permission and not have the target slip away: “If you had to ask for permission, you got one of three answers: either ‘No,’ or ‘We’re thinking about it,’ or ‘Oops, where did the target go?”[5]¶ Declaring that he’d “had enough,” Bush in the summer of 2008 “ordered stepped-up Predator drone strikes on al Qaeda leaders and specific camps,” and specified that Pakistani officials going forward should receive only “‘concurrent notification’…meaning they learned of a strike as it was underway or, just to be sure, a few minutes after.”[6] Pakistani permission no longer was required.[7] ¶ The results were dramatic. The CIA conducted dozens of strikes in Pakistan over the remainder of 2008, vastly exceeding the number of strikes over the prior four years combined.[8] That pace continued in 2009, which eventually saw a total of 53 strikes.[9] And then, in 2010, the rate more than doubled, with 188 attacks (followed by 56 more as of late August 2011).[10] The further acceleration in 2010 appears to stem at least in part from a meeting in October 2009 during which President Obama granted a CIA request both for more drones and for permission to extend drone operations into areas of Pakistan’s FATA that previously had been off limits or at least discouraged.[11] ¶ There is an additional reason to doubt that the number of drone strikes tells us much about a potential detention/targeting tradeoff: most of these strikes involved circumstances in which there was no feasible option for captur

ing the target. These strikes are concentrated in the FATA region, after all. ¶ Having said all that: it does not follow that there is no detention-targeting tradeoff at work. I’m just saying that drone strikes in the FATA typically should not be understood in that way (though there might be limited exceptions where a capture raid could have been feasible). Where else to look, then, for evidence of a detention/targeting tradeoff?¶ Bear in mind that it is not as if we can simply assume that the same number of targets emerge in the same locations and circumstances each year, enabling an apples-to-apples comparison. But set that aside.¶ First, consider locations that (i) are outside Afghanistan (since we obviously still do conduct detention ops for new captures there) and (ii) entail host-state government control over the relevant territory plus a willingness either to enable us to conduct our own ops on their territory or to simply effectuate captures themselves and then turn the person(s) over to us. This is how most GTMO detainees captured outside Afghanistan ended up at GTMO. Think Bosnia with respect to the Boumediene petitioners, Pakistan’s non-FATA regions, and a variety of African and Asian states where such conditions obtained in years past. In such locations, we seem to be using neither drones nor detention. Rather, we either are relying on host-state intervention or we are limiting ourselves to surveillance. Very hard to know how much of each might be going on, of course. If it is occurring often, moreover, it might reflect a decline in host-state willingness to cooperate with us (in light of increased domestic and diplomatic pressure from being seen to be responsible for funneling someone into our hands, and the backdrop understanding that, in the age of wikileaks, we simply can’t promise credibly that such cooperation will be kept secret). In any event, this tradeoff is not about detention versus targeting, but something much more complex and difficult to measure.