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### Terror 1AC

#### Current US detention policies are collapsing US legitimacy

Vaughns 13 (8/12, Katherine L. JD from Berkley, professor of Law at the University of Maryland, "Of Civil Wrongs and Rights: Kiyemba v. Obama and the Meaning of Freedom, Separation of Powers, and the Rule of Law Ten Years After 9/11," Asian American Law Journal, Vol 20.1

As history will recall, in May 1977, former President Richard M. Nixon famously told British interviewer David Frost that "when the President does it, that means that it is not illegal." n163 The Bush administration, taking a page out of Nixon's playbook, used various tactics, apparently effectively, to "dismantle constitutional checks and balances and to circumvent the rule of law." n164 In so doing, the administration took advantage of 9/11 to assert "the most staggering view of unlimited presidential power since Nixon's assertion of imperial prerogatives." n165 The D.C. Circuit's opinion in Kiyemba III, reinstating as modified its opinion in Kiyemba I, is, as I have noted, now governing precedent. That earlier opinion, adopting a view that the government had argued all along, re-characterizes the law pertaining to detainees at Guantanamo Bay as a matter of immigration. Immigration is an area of law where the sovereign prerogative on which an individual is admitted or excluded from entry into the United States is virtually immune from judicial review. n166 The Bush administration long ago adopted the position that judicial review of its detention policies would frustrate its war efforts and its Commander-in-Chief authority, so that efforts to fit Kiyemba within the immigration framework worked to the government's benefit. But, as the Boumediene Court explained, "the exercise of [the Executive's Commander-in-Chief] powers is vindicated, not eroded, when [or if] confirmed" by the judiciary. n167 In 2007, Ninth Circuit Judge A. Wallace Tashima observed that the rule of law - touted by the United States throughout the world since the end of World War II - has been "steadily undermined ... since we began the so-called "War on Terror.'" n168 "The American legal messenger," Tashima [\*32] notes, "has been regarded throughout the world as a trusted figure of goodwill, mainly by virtue of close identification with the message borne: that the rule of law is fundamental to a free, open, and pluralistic society," that the United States represents "a government of laws and not of persons," and that "no one - not even the President - is above the law." n169 But, according to Tashima, the actions that the United States has "taken in the War on Terror, especially [through] our detention policies, have belied our commitment to the rule of law and caused [a] dramatic shift in world opinion," so that the War on Terror has been greeted internationally with "increasing skepticism and even hostility." n170 Put differently, the United States has shot the messenger - and with it, goes the message, the commitment to the rule of law, and our international credibility. The primary assassin in this "assault on the role of law" is the argument "that the President is not bound by law - that he can flout the Constitution, treaties, and statutes of the United States as Commander-in-Chief during times of war." n171 Also wreaking havoc on the rule of law is the notion, described above, that the President's actions in times of war are unreviewable, and that the judiciary has no role to play in checking wartime policies - a notion perpetuated by placement of issues like those raised in Kiyemba within the immigration framework.

#### 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.

**Hegemony solves conflicts that cause extinction**

Barnett 11 (March 7, Thomas P.M., chief analyst, Wikistrat, “The New Rules: Leadership Fatigue Puts U.S. and Globalization, at Crossroads,” WORLD POLITICS REVIEW www.worldpoliticsreview.com/articles/8099/the-new-rules-leadership-fatigue-puts-u-s-and-globalization-at-crossroads)

Events in Libya are a further reminder for Americans that we stand at a crossroads in our continuing evolution as theworld's sole full-service superpower. Unfortunately, we are increasingly seeking change without cost, and shirking from risk because we are tired of the responsibility. We don't know who we are anymore, and our president is a big part of that problem. Instead of leading us, he explains to us. Barack Obama would have us believe that he is practicing strategic patience. But many experts and ordinary citizens alike have concluded that he is actually beset by strategic incoherence -- in effect, a man overmatched by the job. It is worth first examining the larger picture: We live in a time of arguably the greatest structural change in the global order yet endured, with this historical moment's most amazing feature being its relative and absolute lack of mass violence. That is something to consider when Americans contemplate military intervention in Libya, because if we do take the step to prevent larger-scale killing by engaging in some killing of our own, we will not be adding to some fantastically imagined global death count stemming from the ongoing "megalomania" and "evil" of American "empire." We'll be engaging in the same sort of system-administering activity that has marked our stunningly successful stewardship of global order since World War II. Let me be more blunt: As the guardian of globalization, the U.S. military has been the greatest force for peace the world has ever known. Had America been removed from the global dynamicsthat governed the 20th century, the mass murder never would have ended. Indeed, it's entirely conceivable there would now be no identifiable human civilization left, once nuclear weapons entered the killing equation. But the world did not keep sliding downthat path of perpetual war. Instead, Americastepped up and changed everything by ushering inour now-perpetual great-power peace. We introducedthe international liberal trade order known as globalizationand played loyal Leviathan over its spread. What resulted was the collapse of empires, an explosion of democracy, the persistent spread of human rights, the liberation of women, the doubling of life expectancy, a roughly 10-fold increase in adjusted global GDP and a profound and persistent reduction in battle deaths from state-based conflicts. That is what American "hubris" actually delivgered. Please remember that the next time some TV pundit sells you the image of "unbridled" American military power as the cause of global disorder instead of its cure. With self-deprecation bordering on self-loathing, we now imagine a post-American world that is anything but. Just watch who scatters and who steps up as the Facebook revolutions erupt across the Arab world. While we might imagine ourselves the status quo power, we remain the world's most vigorously revisionist force. As for the sheer "evil" that is our military-industrial complex, again, let's examine what the world looked like before that establishment reared its ugly head. The last great period of global structural change was the first half of the 20th century, a period that saw a death toll of about 100 million across two world wars. That comes to an average of 2 million deaths a year in a world of approximately 2 billion souls. Today, with far more comprehensive worldwide reporting, researchers report an average of less than 100,000 battle deaths annually in a world fast approaching 7 billion people. Though admittedly crude, these calculations suggest a 90 percent absolute drop and a 99 percent relative drop in deaths due to war. We are clearly headed for a world order characterized by multipolarity, something the American-birthed system was designed to both encourage and accommodate. But given how things turned out the last time we collectively faced such a fluid structure, we would do well to keep U.S. power, in all of its forms, deeply embedded in the geometry to come. To continue the historical survey, after salvaging Western Europe from its half-century of civil war, the U.S. emerged as the progenitor of a new, far more just form of globalization -- one based on actual free trade rather than colonialism. America then successfully replicated globalization further in East Asia over the second half of the 20th century, setting the stage for the Pacific Century now unfolding.

**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**

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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.

**PLAN**

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

### Solvency 1AC

**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.

#### 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.

#### Heg is sustainable – declinists are incorrect

**Beckley 12**

[Michael Beckley, research fellow in the International Security Program at Harvard Kennedy School’s Belfer Center for Science and International Affairs, “China’s Century?”, Winter 2012]

Hegemony is indeed expensive and provocative, but these declinist arguments tell only part of the story. The United States is both “system-maker and privilege-taker”—it pays a large share of system-maintenance costs but takes a disproportionate share of the benefiªts.36 The basic claim of the alternative perspective is that these benefiªts outweigh the costs. Most obvious, the United States, as hegemon, possesses an array of tools with which to reward and punish. It can provide, restrict, or deny access to the U.S. market, technology, foreign aid, support for membership in international organizations, bribes, and White House visits. These tit-for-tat bargains with individual states, however, are not as consequential as the United States’ power over aspects of the international system itself. In the alternative perspective, hegemony is not just preponderant power, it is “structural power.”37 It is the power to set agendas, to shape the normative frameworks within which states relate to one another, and to change the range of choices open to others without putting pressure directly on them. It is, at once, less visible and more profound than brute force. Seen in this light, the United States is neither benevolent nor feeble, but coercive and capable, and the goods it produces “are less collective goods than private ones, accruing primarily to the hegemon and thus helping maintain its hegemony.”38 Military superiority, for example, allows the United States to employ “force without war,” pressuring other countries into making concessions by shifting military units around or putting them on alert.39 It also allows the United States to run a protection racket, garnering inºfluence through the provision of security. As Joseph Nye explains, “Even if the direct use of force were banned among a group of countries, military force would still play an important political role. For example, the American military role in deterring threats to allies, or of assuring access to a crucial resource such as oil in the Persian Gulf, means that the provision of protective force can be used in bargaining situations. Sometimes the linkage may be direct; more often it is a factor not mentioned openly but present in the back of statesmen’s minds.”40 To be sure, the costs of maintaining U.S. military superiority are substantial. By historical standards, however, they are exceptionally small.41 Past hegemons succumbed to imperial overstretch after ªfighting multifront wars against major powers and spending more than 10 percent (and often 100 or 200 percent) of their GDPs on defense.42 The United States, by contrast, spends 4 percent of its GDP on defense and concentrates its enmity on rogue nations and failed states. Past bids for global mastery were strangled before hegemony could be fully consolidated. The United States, on the other hand, has the advantage of being an extant hegemon—it did not overturn an existing international order; rather, the existing order collapsed around it. As a result, its dominant position is entrenched to the point that “any effort to compete directly with the United States is futile, so no one tries.”43 The dollar’s global role may handicap American exports, but it also comes with perks including seigniorage,44 reduced exchange rate risks for U.S. ªfirms involved in international commerce, competitive advantages for American banks in dollarized ªfinancial markets, and the ability to delay and deºflect current account adjustments onto other countries.45 More important, foreign governments that hold dollar reserves depend on U.S. prosperity for their continued economic growth and are thus “entrapped,” unable to disentangle their interests from those of the United States.46 Rather than seeking to undermine the American economy, they invest in its continued expansion.47 Finally, given its position at the top of the world trade regime, the United States can distort international markets in its favor.48 Declinists expect the hegemon to use its power magnanimously. According to the alternative perspective, however, American foreign economic policy involves the routine use of diplomatic leverage at the highest levels to create opportunities for U.S. ªfirms.49 U.S. trade offiªcials, “acting as self-appointed enforcers of the free trade regime, asserted the right with their own national law to single out and punish countries they judged to be unfair traders.”50 Globalization, therefore, may not be a neutral process that diffuses wealth evenly throughout the international system, but a political process shaped by the United States in ways that serve its interests.

#### Supreme court action is key to end indefinite detention

Martin 13 (Ronald, Contributor @ Tenth Amendment Center, "Indefinite Detention is Patently Unconstitutional," http://tenthamendmentcenter.com/2013/06/27/indefinite-detention-is-patently-unconstitutional/#.Uhj8TJLqnoI)

In January 2012, New York Times Pulitzer Prize winning reporter Christopher Hedges filed a federal lawsuit against President Obama, challenging detention provisions in the National Defense Authorization Act (NDAA) of Fiscal Year 2012.¶ The Act authorized $662 billion in funding, “for defense of the United States and it’s interests abroad.” Central to Hedges’ suit, a controversial provision set forth in subsection 1021 of Title X, Sub-title (d) entitled “Counter-Terrorism,” authorizing indefinite military detention of individuals the government suspects are involved in terrorism, including U.S. citizens arrested on American soil.¶ Over the last two years, a broad coalition including the Tenth Amendment Center, the American Civil Liberties Union, the Bill of Rights Defense Committee, and many others formed in opposition to indefinite detention provisions, concerned with over-broad language open to wide interpretation and the growing scope of presidential authority. In support of Hedges, many of these individuals and organizations joined together as an Amicus Curiae, otherwise known as a Friend of the Court. The coalition filed an Amicus Brief supporting Hedges’ interpretation of the controversial issues abounding in Hedges v. Obama. The Amicus Curiae states, “Each entity is dedicated, inter alia (among other things), to the correct construction, interpretation, and application of the law.”¶ For those not familiar with an Amicus Brief, it is a document filed with a court by a person or group not directly involved in the case. The brief often contains information useful to a judge when evaluating the merits of a case and it becomes part of the official record. In addition to filing a brief, Amicus Curiae can involve itself in a case in many ways. It can contribute academic evaluations of subject matters, it can testify in a case, and on rare cases it can help contribute to oral arguments. Many times, state and local governments also join a case as a “Friend” if they believe it will impact them. This happened in Hedges v. Obama. A large number of concerned individuals and advocacy organizations enjoined the case as Amicus Curiae.¶ The Amicus Brief of this case commences by focusing on the ambiguity of the language in section 1021 of the 2012 NDAA.¶ “Rarely has a short statute been subject to more radically different interpretations than Section 1021 of the NDAA of 2012.”¶ The “Friends” contend the verbiage offers diametrically opposite meanings.¶ ”The Framers would be greatly shocked to hear the United States assert that an American President has power to place civilians in the U.S. or citizens abroad into military custody absent status as armed combatants. No President has ever held such power.”¶ As the Amicus Curiae implies, the language of this law is dangerously vague. Many believe the provisions of Section 1021 grant dictatorial powers to the federal government to arrest any American citizen without a warrant and indefinitely detain them without charge. Detainees can be shipped to the military’s offshore prisons and kept there until “the end of hostilities.”¶ Section 1021 defines a “covered person” as “one subject to detention” and “a person who was part of or substantially supported al-Qaeda, the Taliban, or associated forces engaged in hostilities against the United States or it’s coalition partners, including any person who has committed a belligerent act or has directly supported such hostilities in aid of such enemy forces.” However, the law does not define “substantially supported” or “associated forces,” leaving those nebulous terms open to interpretation.¶ The White House and Senate sponsors maintain the Authorization for Use of Military Force (AUMF) previously granted presidential authority for indefinite detention. In their Appellant Brief, the Department of Justice contends that the NDAA does no more than “explicitly reaffirm…the President’s detention authority under AUMF,” a Congressional Joint Resolution passed Sept. 14, 2001.¶ In response to this claim, the plaintiffs’ Coalition rebuts, “If the Government’s theory was true, then the U.S. Senate spent weeks debating and enacting, and the U.S. Department of Justice has worked mightily to uphold a meaningless and unnecessary statute.”¶ The Amicus Curiae addresses a second issue.¶ “The Legislative History of the NDAA Reveals a Gap between the Clear Purpose and the Ambiguous Statutory Language. The NDAA detention provisions, and one amendment which was adopted creating subsection (e), were not drafted in haste. Rather, the legislative history suggests another reason for the stark difference of statutory interpretation.”¶ This section continues, contrasting the original Senate bill (S. 1253) that included limiting language excluding the ability of the government to detain citizens of the United States under the act and the final version of the NDAA. This limiting language was deleted in a substitute bill (S. 1867), by Senator Carl Levin (D-MI). The record shows that this limiting language was removed at the request of the president in order to keep the law consistent with the AUMF of 2001.¶ This fact stands in stark contrast to public statements made by Pres. Obama on the detention issue, including his signing statement.¶ “I want to clarify, that my Administration will not authorize the indefinite detention without trial of American citizens…My Administration will interpret section 1021 in a manner that ensures that any detention it authorizes complies with the Constitution, the laws of war, and all other applicable law.”¶ However in May 2012, Judge Katherine Forrest, (an Obama-appointed judge) ruled part of section 1021 unconstitutional.¶ “The plaintiffs do have standing, and that section 1021 is facially unconstitutional.”¶ In her ruling, Forrest asserted that the provision denies First and Fifth Amendment rights, and she granted a temporary restraining order against Section 1021 of the NDAA. The government responded by requesting that the judge reverse her ruling, claiming the plaintiffs did not have standing to bring the case against the government because they had yet to be indefinitely detained. And the administration argued that even if Mr. Hedges and the other plaintiffs did have standing, they were the only seven American citizens covered by the temporary restraining order.¶ In spite of the administration’s arguments, Judge Forrest returned a clarifying order, making it abundantly clear, without any equivocation, that the temporary restraining order applied to ALL American citizens. According to the judge, the government cannot indefinitely detain any American citizen without access to due process.¶ In September 2012, Judge Forrest issued a permanent injunction against indefinite detention of American citizens, but the Obama administration appealed and was granted a stay pending that appeal.¶ The next consequential argument forwarded in the Amicus Brief is that the 2001 AUMF is not a Constitutional Declaration of War.¶ “The Government misunderstands the Constitution which was written for a time of war, as well as a time of peace. There is only one provision in the Constitution which can be suspended in wartime conditions: the writ of habeus corpus, and that suspension requires an act of Congress. U.S. Constitution, Article I, Section 9. And there is only one wartime exception, that being the right to a Grand Jury indictment as set forth in the Fifth Amendment. The war power does not trump the rights and protections of the people in any other instances.”¶ “The Government’s sole support in attempt to sweep aside the Constitution’s Bill of Rights, is the Congressional declaration of war against the Imperial Department of Japan in World War II (Govt. Br., p.47), which the Government claims to have been: -stated in broadest terms, with no precise descriptions of who may be the subject of force (including detention) or under what circumstances, and without any express carve-outs for arguably protected speech. This pattern holds for every authorization for the use of military force in our nation’s history-including the AUMF.’”¶ Rather than offering support for the Government’s claim, the differences between the 2001 and 1941 declarations undermine it.¶ In contrast the AUMF provides: “that the President is authorized to use all necessary and appropriate force against those nations, organizations or persons he determines planned,authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.” [Pub. L. 107-40, 115 Stat. 224 (Sept. 18, 2001)§ 2(a)¶ The first and most obvious difference between the two resolutions is that the U.S. actually declared war against Japan. Even though the Government argues the Constitution “imposes no constraints on how the declaration should be worded, Congress has never been at a loss for words when declaring war from 1812 to 1941.'”¶ Secondly, the 1941 declaration “authorizes and directs” the President to take action, while the 2001 AUMF merely leaves it to the President’s discretion to “determine” the force necessary.¶ “In 1941, Congress instructed the President to use all of the nation’s military force and government resources to carry on war against a clearly identified enemy, while the 2001 AUMF empowered the President to identify the enemy."¶ Lastly, the 1941 declaration specified a time when the president’s authority ended, when the war was successfully terminated, while the AUMF set no definite time for the president’s power to cease. In the wake of 9/11, Congressman Ron Paul implored Congress to address the war declaration issue, but found little interest in the constitutional process.¶ “As the Apellees have demonstrated, the Constitution does not confer upon the President or upon Congress any power to subject civilians to detention by the military as AUMF and Section 1021 (b)(2) do, even if the nation is at war.”¶ Access to habeus corpus is “not a satisfactory remedy to the burden of military detention” for a citizen who is suspected of “substantially supporting a force associated with any enemy, al-Qaeda, the Taliban, or otherwise.” Not only is habeas relief unsatisfactory, imposing upon an American citizen the burden of seeking habeas relief to escape from military detention is constitutionally impermissible under the Treason Clause of Article III, Section 3. In Federalist No. 43, James Madison asserted that the Treason Clause must be understood as one of the enumerated powers of the federal government, placing severe limits on the legislative power not only to define the elements of treason, but to preclude Congress from evading the constitutional definition of treason by "new-fangled and artificial” definitions.¶ Lastly, the Amicus Brief discusses the judicial branch's duty to address constitutional issues in the case asserted by many states.¶ After the enactment of the NDAA of 2012, many state and local officials expressed opposition to the constitutional violations perceived in Section 1021. State legislators and local officials have taken different approaches in battling this unconstitutional overreach. Some states have passed non-binding resolutions, while others like Virginia and Alaska have enacted laws nullifying Section 1021 by “barring any state agency or political subdivision or employee or National Guard from knowingly aiding an agency of the armed forces of the United States in the unlawful NDAA detention of any citizen…”¶ “These efforts do not break new ground, they build on lessons learned since the beginning of the Republic. When the federal government breeches the bounds of its authority, the nation’s sovereign states can be expected to respond to protect the liberties of the people.” As Chief Justice John Marshall observed, "vesting such power in the courts requires a judge to look into the Constitution, examining it’s text to determine whether actions of the two other branches conform to the written instrument." Marbury v. Madison, 5 U.S. (1 Cranch) 137, 178-79 (1803).¶ “In this case, the executive branch is arguing on behalf of the legislative branch that the judicial branch may not even look into the Constitution to determine if Section 1021 (b) (2) violates First and Fifth Amendments. As Chief Justice John Marshall responded in Marbury, the Government’s claim is too extravagant to be maintained.”¶ The appeals process continues and the case is expected to ultimately be heard by the Supreme Court. If the Plaintiff and it’s coalition are correct, then the district court’s conclusion that, “Section 1021(b)(2), and its companion subsections (d) and (e), differ materially from AUMF, creating a reasonable and objective fear of detention , and should be affirmed” as Unconstitutional.

#### Terrorists will obtain nuclear weapons—multiple potential sources

Neely 13 (Meggaen, research intern for the Project on Nuclear Issues, 3-21-13, "Doubting Deterrence of Nuclear Terrorism" Center for Strategic and International Studies) csis.org/blog/doubting-deterrence-nuclear-terrorism

The risk that terrorists will set off a nuclear weapon on U.S. soil is disconcertingly high. While a terrorist organization may experience difficulty constructing nuclear weapons facilities, there is significant concern that terrorists can obtain a nuclear weapon or nuclear materials. The fear that an actor could steal a nuclear weapon or fissile material and transport it to the United States has long-existed. It takes a great amount of time and resources (including territory) to construct centrifuges and reactors to build a nuclear weapon from scratch. Relatively easily-transportable nuclear weapons, however, present one opportunity to terrorists. For example, exercises similar to the recent Russian movement of nuclear weapons from munitions depots to storage sites may prove attractive targets. Loose nuclear materials pose a second opportunity. Terrorists could use them to create a crude nuclear weapon similar to the gun-type design of Little Boy. Its simplicity – two subcritical masses of highly-enriched uranium – may make it attractive to terrorists. While such a weapon might not produce the immediate destruction seen at Hiroshima, the radioactive fall-out and psychological effects would still be damaging. These two opportunities for terrorists differ from concerns about a “dirty bomb,” which mixes radioactive material with conventional explosives.

# 2AC

### GSPEC 2AC

#### Cross-x checks – they couldve asked grounds – the plan is also INCREDIBLY specific to this – we uphold a decision

#### Counter-interpretation –

#### Judicial restriction means to reduce the scope of

Newman 8 (Pauline, Judge @ UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT, 545 F.3d 943; 2008 U.S. App. LEXIS 22479; 88 U.S.P.Q.2D (BNA) 1385; 2008-2 U.S. Tax Cas. (CCH) P50,621, IN RE BERNARD L. BILSKI and RAND A. WARSAW, lexis)

Id. at 315 (quoting U.S. Const., art. I, §8). The Court referred to the use of "any" in Section 101 ("Whoever invents or discovers any new and useful process . . . or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title"), and reiterated that the statutory language shows that Congress "plainly contemplated that the patent laws would be given wide scope." Id. at 308. The Court referred to the legislative intent to include within the scope of Section 101 "anything under the sun that is made by man," id. at 309 (citing S. Rep. 82-1979, at 5; H.R. Rep. 82-1923, at 6 (1952)), and stated that the unforeseeable future should not be inhibited by judicial restriction of the "broad general language" of Section 101: A rule that unanticipated inventions are without protection would conflict with the core concept of the patent law that anticipation undermines patentability. Mr. Justice Douglas reminded that the [\*981] inventions most benefiting mankind are those that push back the frontiers of chemistry, physics, and the like. Congress employed broad general language in [\*\*103] drafting §101 precisely because such inventions are often unforeseeable.

#### Aff is an example of a judicial restriction – we resitrict presidential war powers over detention policy – no reason we have to cite grounds

#### Infinitely regressive – there is no resolutional basis – it only says judicial restriction – no reason we have to specify – that’s unpredictable

#### No ground loss – structural disads linked to restrictions or plan topic area provide ground

#### Not a voting issue – if they win this it just means we should be forced to specify.

#### A2: Conditional

#### Plan isn’t conditional – we’ll always defend it gets implemented

#### A2: No Solvency

#### Doesn’t implicate solvency – plan solvency is based on review occurring, this still happens

#### And our plan is super specific to upholding a specific ruling – the grounds were stated in that ruling meets we meet

## Legitimacy

### IL

#### Reputational legitimacy theory is true and key to foster cooperation

Douglas M Gibler 8, Department of Political Science University of Alabama, Tuscaloosa “The Costs of Reneging: Reputation and Alliance Formation” The Journal of Conflict Resolution, Vol. 52, No. 3, June, pp. 426-454

More sophisticated treatments of the reputation logic have been produced by formal theorists, both in economics and in political science. In economics, the ability of firm reputation to deter competition has been well analyzed (see Kreps and Wilson, 1982; Wilson, 1989; and Weigelt and Camerer, 1988), and political scientists have adopted these theories as tools in understanding the types of signals leaders can send (see for example, Alt, Calvert, and Humes, 1988; Ordeshook, 1986; and Wagner, 1992). Sartori (2002) and Guisinger and Smith (2002) probably go furthest in arguing that leaders and their envoys have incentives to develop certain types of reputations in order to overcome the uncertainty endemic to crisis diplomacy. In these models, a reputation for honesty allows the sender to credibly give information that would otherwise be “cheap talk”, and thus, leaders may concede less important issues, without bluffing, in order to maintain a reputation for honesty when more important issues arise (Sartori, 2002: 122).¶ The sum argument of these statements and theoretical treatments is clear. Decision-makers argue and act, at least in part, based on reputations. Traditional deterrence theory suggests reputations should be pursued by leaders as important and manipulable tools, which are useful in future crises. Formal theorists agree; reputations provide valuable information when the costs of signaling are low.

#### Legitimacy’s the fundamental internal link to effective hegemony---power distributions perceived as illegitimate are the most likely causes of great power war

Martha Finnemore 9, professor of political science and international affairs at George Washington University, January 2009, “Legitimacy, Hypocrisy, and the Social Structure of Unipolarity: Why Being a Unipole Isn’t All It’s Cracked Up to Be,” World Politics, Volume 61, Number 1

Legitimacy is, by its nature, a social and relational phenomenon. One’s position or power cannot be legitimate in a vacuum. The concept only has meaning in a particular social context. Actors, even unipoles, cannot create legitimacy unilaterally. Legitimacy can only be given by others. It is conferred either by peers, as when great powers accept or reject the actions of another power, or by those upon whom power is exercised. Reasons to confer legitimacy have varied throughout history. Tradition, blood, and claims of divine right have all provided reasons to confer legitimacy, although in contemporary politics conformity with [End Page 61] international norms and law is more influential in determining which actors and actions will be accepted as legitimate. 9¶ Recognizing the legitimacy of power does not mean these others necessarily like the powerful or their policies, but it implies at least tacit acceptance of the social structure in which power is exercised. One may not like the inequalities of global capitalism but still believe that markets are the only realistic or likely way to organize successful economic growth. One may not like the P5 vetoes of the Security Council but still understand that the United Nations cannot exist without this concession to power asymmetries. We can see the importance of legitimacy by thinking about its absence. Active rejection of social structures and the withdrawal of recognition of their legitimacy create a crisis. In domestic politics, regimes suffering legitimacy crises face resistance, whether passive or active and armed. Internationally, systems suffering legitimacy crises tend to be violent and noncooperative. Post-Reformation Europe might be an example of such a system. Without at least tacit acceptance of power’s legitimacy, the wheels of international social life get derailed. Material force alone remains to impose order, and order creation or maintenance by that means is difficult, even under unipolarity. Successful and stable orders require the grease of some legitimation structure to persist and prosper.10¶ The social and relational character of legitimacy thus strongly colors the nature of any unipolar order and the kinds of orders a unipole can construct. Yes, unipoles can impose their will, but only to an extent. The willingness of others to recognize the legitimacy of a unipole’s actions and defer to its wishes or judgment shapes the character of the order that will emerge. Unipolar power without any underlying legitimacy will have a very particular character. The unipole’s policies will meet with resistance, either active or passive, at every turn. Cooperation will be induced only through material quid pro quo payoffs. Trust will be thin to nonexistent. This is obviously an expensive system to run and few unipoles have tried to do so.

### MP

#### Multipolarity kills all liberal institutions-causes global wars

**Kagan 12**

[ Robert Kagan, Senior Fellow, Foreign Policy, Center on the United States and Europe, 3/14/12, <http://www.brookings.edu/opinions/2012/0314_us_power_kagan.aspx>]

We take a lot for granted about the way the world looks today -- the widespread freedom, the unprecedented global prosperity (even despite the current economic crisis), and the absence of war among great powers. In 1941 there were only a dozen democracies in the world. Today there are more than 100. For four centuries prior to 1950, global GDP rose by less than 1 percent a year. Since 1950 it has risen by an average of 4 percent a year, and billions of people have been lifted out of poverty. The first half of the 20th century saw the two most destructive wars in the history of mankind, and in prior centuries war among great powers was almost constant. But for the past 60 years no great powers have gone to war. This is the world America made when it assumed global leadership after World War II. Would this world order survive if America declined as a great power? Some American intellectuals insist that a "Post-American" world need not look very different from the American world and that all we need to do is "manage" American decline. But that is wishful thinking. If the balance of power shifts in the direction of other powers, the world order will inevitably change to suit their interests and preferences. Take the issue of democracy. For several decades, the balance of power in the world has favored democratic governments. In a genuinely post-American world, the balance would shift toward the great power autocracies. Both China and Russia already protect dictators like Syria's Bashar al-Assad. If they gain greater relative influence in the future, we will see fewer democratic transitions and more autocrats hanging on to power. What about the free market, free trade economic order? People assume China and other rising powers that have benefited so much from the present system would have a stake in preserving it. They wouldn't kill the goose that lays the golden eggs. But China's form of capitalism is heavily dominated by the state, with the ultimate goal being preservation of the ruling party. Although the Chinese have been beneficiaries of an open international economic order, they could end up undermining it simply because, as an autocratic society, their priority is to preserve the state's control of wealth and the power it brings. They might kill the goose because they can't figure out how to keep both it and themselves alive. Finally, what about the long peace that has held among the great powers for the better part of six decades? Many people imagine that American predominance will be replaced by some kind of multipolar harmony. But multipolar systems have historically been neither stable nor peaceful. War among the great powers was a common, if not constant, occurrence in the long periods of multipolarity in the 16th, 17th, and 18th centuries. The 19th century was notable for two stretches of great-power peace of roughly four decades each, punctuated, however, by major wars among great powers and culminating in World War I, the most destructive and deadly war mankind had known up to that point. The era of American predominance has shown that there is no better recipe for great-power peace than certainty about who holds the upper hand. Many people view the present international order as the inevitable result of human progress, a combination of advancing science and technology, an increasingly global economy, strengthening international institutions, evolving "norms" of international behavior, and the gradual but inevitable triumph of liberal democracy over other forms of government -- forces of change that transcend the actions of men and nations. But there was nothing inevitable about the world that was created after World War II. International order is not an evolution; it is an imposition. It is the domination of one vision over others -- in America's case, the domination of liberal free market principles of economics, democratic principles of politics, and a peaceful international system that supports these, over other visions that other nations and peoples may have. The present order will last only as long as those who favor it and benefit from it retain the will and capacity to defend it. If and when American power declines, the institutions and norms American power has supported will decline, too. Or they may collapse altogether as we transition into another kind of world order, or into disorder. We may discover then that the United States was essential to keeping the present world order together and that the alternative to American power was not peace and harmony but chaos and catastrophe -- which was what the world looked like right before the American order came into being.

#### No multipolarity now – 1AC

### SCS

#### Heg is good-

#### A) We control uniqueness- Heg has been here for a while and intervention is inevitable – that’s Zhang and Shi - means their impact turns are empirically denied

#### B) We solve all their impact turns- Zhang and Shi evidence indicates that the only way to uphold stability is to maintain the status quo military and leadership structure- that allows for deterrence, bandwagoning, and democracy promotion – checks any backlash

#### Heg doesn’t cause china war

**Foot 06**

Professor of International Relations and Swire Senior Research Fellow in the International Relations of East Asia at St Antony's College, Oxford

(Rosemary, Chinese strategies in a US-hegemonic global order: accommodating and hedging, International Affairs, Jan 06)

China is neither part of, nor determinedly seeking to build, anti-hegemonic coalitions. Consequently, other emerging states such as Brazil, India or Russia should not expect too much in the way of sustained cooperation from China on this front, assuming they are interested in forming such coalitions. It is unlikely to stick out for negotiating positions that the US would see as seriously detrimental to its interests. This approach seems likely to change only were China to become convinced that it faced sustained US hostility. Beijing’s leaders remain preoccupied with their relationship with the US, Hu Jintao reportedly describing America in 2002 as the ‘central thread in China’s foreign policy strategy’.49 A consequence of this preoccupation is that its strategy is fixed only in the broadest of terms, and largely remains contingent on what is decided in Washington as a reaction to China’s rise. Beijing’s policy, therefore, is not determined simply by inequalities in the distribution of power: it is not US hegemony as such that influences China’s policies, but how that hegemonic position is used, especially with reference to China itself.

## Off

### Fem K 2ac

#### 1. Perm do both- solves the residual links - their link evidence is a description of the status quo and we are able to solve the root cause of terrorism

#### 2. 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

#### 3. K doesn’t come first

**Owens 2002** (David – professor of social and political philosophy at the University of Southampton, Re-orienting International Relations: On Pragmatism, Pluralism and Practical Reasoning, Millenium, p. 655-657)

Commenting on the ‘philosophical turn’ in IR, Wæver remarks that ‘[a] frenzy for words like “epistemology” and “ontology” often signals this philosophical turn’, although he goes on to comment that these terms are often used loosely.4 However, loosely deployed or not, it is clear that debates concerning ontology and epistemology play a central role in the contemporary IR theory wars. In one respect, this is unsurprising since it is a characteristic feature of the social sciences that periods of disciplinary disorientation involve recourse to reflection on the philosophical commitments of different theoretical approaches, and there is no doubt that such reflection can play a valuable role in making explicit the commitments that characterise (and help individuate) diverse theoretical positions. Yet, such a philosophical turn is not without its dangers and I will briefly mention three before turning to consider a confusion that has, I will suggest, helped to promote the IR theory wars by motivating this philosophical turn. The first danger with the philosophical turn is that it has an inbuilt tendency to prioritise issues of ontology and epistemology **over explanatory** and/or interpretive **power** as if the latter two were merely a **simple function** of the former. But while the explanatory and/or interpretive power of a theoretical account is not wholly independent of its ontological and/or epistemological commitments (otherwise criticism of these features would not be a criticism that had any value), **it is by no means clear that it is**, in contrast, wholly dependent **on these philosophical commitments**. Thus, for example, one need not be sympathetic to rational choice theory to recognise that it can provide powerful accounts of certain kinds of problems, such as the tragedy of the commons in which dilemmas of collective action are foregrounded. It may, of course, be the case that the advocates of rational choice theory cannot give a good account of why this type of theory is powerful in accounting for this class of problems (i.e., how it is that the relevant actors come to exhibit features in these circumstances that approximate the assumptions of rational choice theory) and, if this is the case, it is a philosophical weakness—but **this does not undermine** the point that, for a certain class of problems, rational choice theory may provide the best account available to us. In other words, while the critical judgement of theoretical accounts in terms of their ontological and/or epistemological sophistication is one kind of critical judgement, **it is not the only or even necessarily the** most important kind. The second danger run by the philosophical turn is that because prioritisation of ontology and epistemology promotes theory-construction from philosophical first principles, it cultivates a theory-driven rather than problem-driven approach to IR. Paraphrasing Ian Shapiro, the point can be put like this: since it is the case that there is always a plurality of possible true descriptions of a given action, event or phenomenon, the challenge is to decide which is the most apt in terms of getting a perspicuous grip on the action, event or phenomenon in question given the purposes of the inquiry; yet, from this standpoint, ‘theory-driven work is part of a reductionist program’ in that it ‘dictates always opting for the description that calls for the explanation that flows from the preferred model or theory’.5 The justification offered for this strategy rests on the mistaken belief that it is necessary for social science because general explanations are required to characterise the classes of phenomena studied in similar terms. However, as Shapiro points out, this is to misunderstand the enterprise of science since ‘whether there are general explanations for classes of phenomena is a **question for social-scientific inquiry**, not to be prejudged before conducting that inquiry’.6 Moreover, this strategy easily slips into the promotion of the pursuit of generality over that of empirical validity. The third danger is that the preceding two combine to encourage the formation of a particular image of disciplinary debate in IR—what might be called (only slightly tongue in cheek) ‘the Highlander view’—namely, an image of warring theoretical approaches with each, despite occasional temporary tactical alliances, dedicated to the strategic achievement of sovereignty over the disciplinary field. It encourages this view because the turn to, and prioritisation of, ontology and epistemology stimulates the idea that there can only be one **theoretical approach which gets things right**, namely, the theoretical approach that gets its ontology and epistemology right. This image feeds back into IR exacerbating the first and second dangers, and so a potentially vicious circle arises.

#### 5. Alternative is vague – voting issue – neg can shift to get around our offense, kills faireness – also justifies permutation do the alt- also means no floating piks

#### 6. Case is a disad to the alt- the aff solves multiple scenarios for conflict

#### And Extinction outweighs

Bok 88

(Sissela, Professor of Philosophy at Brandeis, Applied Ethics and Ethical Theory, Rosenthal and Shehadi, Ed.)

The same argument can be made for Kant’s other formulations of the Categorical Imperative: “So act as to use humanity, both in your own person and in the person of every other, always at the same time as an end, never simply as a means”; and “So act as if you were always through your actions a law-making member in a universal Kingdom of Ends.” No one with a concern for humanity could consistently will to risk eliminating humanity in the person of himself and every other or to risk the death of all members in a universal Kingdom of Ends for the sake of justice. To risk their collective death for the sake of following one’s conscience would be, as Rawls said, “irrational, crazy.” And to say that one did not intend such a catastrophe, but that one merely failed to stop other persons from bringing it about would be beside the point when the end of the world was at stake. For although it is true that we cannot be held responsible for most of the wrongs that others commit, the Latin maxim presents a case where we would have to take such responsibility seriously – perhaps to the point of deceiving, bribing, even killing an innocent person, in order that the world not perish. To avoid self-contradiction, the Categorical Imperative would, therefore, have to rule against the Latin maxim on account of its cavalier attitude toward the survival of mankind. But the ruling would then produce a rift in the application of the Categorical Imperative. Most often the Imperative would ask us to disregard all unintended but foreseeable consequences, such as the death of innocent persons, whenever concern for such consequences conflicts with concern for acting according to duty. But, in the extreme case, we might have to go against even the strictest moral duty precisely because of the consequences. Acknowledging such a rift would post a strong challenge to the unity and simplicity of Kant’s moral theory.

#### Judicial Review is key to preventing torture

**Amnesty International** USA, Guantanamo, and Beyond: The Continuing Pursuit of Unchecked Executive Power, May 13, 20**05**, http://web.amnesty.org/library/Index/ENGAMR510632005

Judicial review of the lawfulness of detentions is a fundamental safeguard against arbitrary detention, torture and ill-treatment, and "disappearance". Unsurprisingly, then, with the US courts having been kept out of reviewing the cases for more than three years, there is evidence that all these categories of abuse have occurred at the hands of US authorities in the "war on terror". Indeed, Amnesty International believes that abuses have been the result of official policies and policy failures and linked to the executive decision to leave detainees unprotected by not only the courts, but also by the prohibition on torture and other cruel, inhuman or degrading treatment as defined under international humanitarian and human rights treaties binding on the USA. The US administration still does not believe itself legally bound by the Geneva Conventions in relation to the detainees in Guantánamo, Afghanistan and in secret locations, by customary international law, or by the human rights treaty prohibition on the use of cruel, inhuman or degrading treatment in the case of foreign detainees in US custody held outside of US sovereign territory. Nor has it expressly abandoned the notion that the President may in times of war ignore all the USA’s international legal obligations and order torture, or that torturers may be exempted from criminal liability by entering a plea of "necessity" or "self-defence" (see below).

#### Torture is a deontological evil that must be rejected

Oren **Gross,** Professor, Law, University of Minnesota, MINNESOTA LAW REVIEW, June 20**04**, p. 1492-1493.

Absolutists - those who believe that an unconditional ban on torture ought to apply without exception regardless of circumstances - often base their position on deontological grounds. For adherents of the absolutist view of morality, torture is intrinsically wrong. It violates the physical and mental integrity of the person subjected to it, negates her autonomy, and deprives her of human dignity. It reduces her to a mere object, a body from which information is to be extracted; it coerces her to act in a manner that may be contrary to her most fundamental beliefs, values, and interests, depriving her of any choice and controlling her voice. Torture is also wrong because of its depraving and corrupting effects on individual torturers and society at large. Moreover, torture is an evil that can never be justified or excused. Under no circumstances should the resort to torture be morally acceptable or legally permissible. It is a reprehensible action whose wrongfulness may never be assuaged or rectified morally even if the consequences of taking such action in any particular case are deemed to be, on the whole, good. Indeed, one may argue that the inherent wrongfulness of torture and possible good consequences are incommensurable, i.e., they cannot be measured by any common currency and therefore cannot be compared, or balanced, one against the other. The conclusion drawn from such a claim is that "the wrong of torture can be taken as a trump or side constraint on welfare maximization in all possible cases."

**Heg decreases structural violence---any alt dooms humanity to deprivation**

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First the absurdity: A few of the most **over-the-top Bush-Cheney neocons did** indeed **promote a vision of U.S. primacy by which America shouldn't be afraid to wage war to keep other rising powers at bay. It was a nutty concept then, and it remains a nutty concept today.** But since it feeds a lot of major military weapons system purchases, especially for the China-centric Air Force and Navy, don't expect it to disappear so long as the Pentagon's internal budget fights are growing in intensity. ¶ **Meanwhile**, the Chinese do their stupid best to fuel this outdated logic by building a force designed to keep America out of East Asia just as their nation's dependency on resources flowing from unstable developing regions skyrockets. **With America's fiscal constraints now abundantly clear, the world's primary policing force is pulling back, while that force's implied successor is nowhere close to being able to field a similar power-projection capacity -- and never will be.** So with NATO clearly stretched to its limits by the combination of Afghanistan and Libya, **a lot of future fires in developing regions will likely be left to burn on their own**. We'll just have to wait and see how much foreign commentators delight in that G-Zero dynamic in the years ahead. ¶ That gets us to the original "insult": **the U.S. did not lord it over the world in the 1990s. Yes, it did argue for and promote the most rapid spread of globalization possible. But the "evil" of the Washington Consensus only yielded the most rapid growth of a truly global middle class that the world has ever seen**. Yes, we can, in our current economic funk, somehow cast that development as the "loss of U.S. hegemony," in that the American consumer is no longer the demand-center of globalization's universe. But this is without a doubt the most amazing achievement of U.S. foreign policy, surpassing even our role in World War II. ¶ **Numerous world powers served as global or regional hegemons before we came along, and their record on economic development was painfully transparent: Elites got richer, and the masses got poorer. Then America showed up after World War II and engineered an international liberal trade order**, one that was at first admittedly limited to the West. But **within four decades it went virally global, and now for the first time in history, more than half of our planet's population lives in conditions of modest-to-mounting abundance -- after millennia of mere sustenance**. ¶ You may choose to interpret this as some sort of cosmic coincidence, but **the historical sequence is undeniable: With its unrivaled power, America made the world a far better place**. ¶ That spreading wave of global abundance has reformatted all sorts of traditional societies that lay in its path. Some, like the Chinese, have adapted to it magnificently in an economic and social sense, with the political adaptation sure to follow eventually. Others, being already democracies, have done far better across the board, like Turkey, Indonesia and India. But there are also numerous traditional societies where that reformatting impulse from below has been met by both harsh repression from above and violent attempts by religious extremists to effect a "counterreformation" that firewalls the "faithful" from an "evil" outside world.¶ Does this violent blowback constitute the great threat of our age? Not really. As I've long argued, this "friction" from globalization's tectonic advance is merely what's left over now that great-power war has gone dormant for 66 years and counting, with interstate wars now so infrequent and so less lethal as to be dwarfed by the civil strife that plagues those developing regions still suffering weak connectivity to the global economy. ¶ **Let's remember what the U.S. actually did across the 1990s** after the Soviet threat disappeared. **It went out of its way to police the world's poorly governed spaces, battling rogue regimes and answering the 9-1-1 call repeatedly when disaster and/or civil strife struck vulnerable societies. Yes, playing globalization's bodyguard made America public enemy No. 1 in the eyes of its most violent rejectionist movements**, including al-Qaida, **but we made the effort because**, in our heart of hearts, **we knew that this is what blessed powers are supposed § Marked 16:12 § to do**. ¶ Some, like the Bush-Cheney neocons, were driven by more than that sense of moral responsibility. They saw a chance to remake the world so as to assure U.S. primacy deep into the future. The timing of their dream was cruelly ironic, for it blossomed just as America's decades-in-the-making grand strategy reached its apogee in the peaceful rise of so many great powers at once. Had Sept. 11 not intervened, the neocons would likely have eventually targeted rising China for strategic demonization. Instead, they locked in on Osama bin Laden. The rest, as they say, is history. ¶ The follow-on irony of **the War on Terror** is that its operational requirements **actually revolutionized a major portion of the U.S. military -- specifically the Army, Marines and Special Forces -- in such a way as to redirect their strategic ethos from big wars to small ones**. It also forged a new operational bond between the military's irregular elements and that portion of the Central Intelligence Agency that pursues direct action against transnational bad actors. The up-front costs of this transformation were far too high, largely because the Bush White House stubbornly refused to embrace counterinsurgency tactics until after the popular repudiation signaled by the 2006 midterm election. But **the end result is clear: We now have the force we actually need to manage this global era.¶ But,** of course, **that can all be tossed into the dumpster if we convince ourselves that our "loss" of hegemony was somehow the result of our own misdeed, instead of being our most profound gift to world history. Again, we grabbed the reins of global leadership and patiently engineered not only the greatest redistribution -- and expansion -- of global wealth ever seen, but also the greatest consolidation of global peace ever seen. ¶ Now, if we can sensibly realign our strategic relationship with the one rising great power, China,** whose growing strength upsets us so much, **then in combination with the rest of the world's rising great powers we can collectively wield enough global policing power to manage what's yet to come.** ¶ As always, **the choice is ours.**

#### -- Alt fails – reverses the error and can’t build transformational theory

**Caprioli 4** (Mary, Professor of Political Science – University of Tennessee, “Feminist IR Theory and Quantitative Methodology: A Critical Analysis”, International Studies Review, 42(1), March, http://www.blackwell-synergy.com/links/doi/10.1111/0020-8833.00076)

If researchers cannot add gender to an analysis, then they must necessarily use a purely female-centered analysis, even though the utility of using a purely female centered analysis seems **equally biased**. Such research would merely be gendercentric based on women rather than men, and it would thereby provide an equally biased account of international relations as those that are male-centric. Although one might speculate that having research done from the two opposing worldviews might more fully explain international relations, surely an integrated approach would offer a more comprehensive analysis of world affairs. Beyond a female-centric analysis, some scholars (for example, Carver 2002) argue that feminist research must offer a critique of gender as a set of power relations. Gender categories, however, do exist and have very real implications for individuals, social relations, and international affairs. Critiquing the social construction of gender is important, but it fails to provide new theories of international relations or to address the implications of gender for what happens in the world.

### Grab Bag CP

Perm do both

Perm do the plan and ANY possible combination of planks

#### 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 and destroys argumentative cohesiveness – it makes the debate a mess of conflicting strategies and destroys the chance for reasonable narratives

**Air power not key -**to overall power or deterrence – their evidence is biased  
**Axe ‘9** (David, military correspondent, regular contributor to The Washington Times, C-SPAN, and Wired, 3/30/9, http://www.warisboring.com/2009/03/30/f-22s-versus-russias-rusting-ramshackle-air-force/)

Analyst Gregory Martin, a retired Air Force general, said the erosion of world influence is largely the result of weak public support for the F-22 and F-35 stealth fighters, which are built by Lockheed Martin, Boeing and Northrop Grumman. “If you can’t afford that [mix], then your national objectives have to be scaled back,” Martin said. In other words, stealth fighters equal national power. And the absence of stealth fighters equals weakness. Hogwash. The economic crisis is having an effect on every country, unevenly. Arguably, the U.S. is faring better than most as investors flee to the comparative safety of the dollar. **Power** in the world **is** a **relative** thing: if everyone else gets much weaker, and we stay the same or only grow a little weak, then we are, in fact, more powerful than we were before. Get it? The global recession, alone, does not mean we are losing influence. In fact, the recession might even boost our influence, by underscoring just how much the world depends on America as a consumer market. But more importantly, American national power does not hinge on fighter jets. **We could retire every single fighter** in the U.S. Air Force, **tomorrow, and still remain the most powerful nation** in the world, **by far**. National power is a complex and shifting thing, comprising military force, financial and cultural influence, leadership in international coalitions and organizations and even language. Every country in the world teaches American English to its business students, aviators and sea captains. Does that have anything to do with the F-22? Do some of our biggest exports — music, movies and television — depend on a squadron of F-35s flying orbits over North Dakota? Ignore the noise coming out of Washington’s punditocracy as the Obama Administration shapes its first defense budget. And when that budget is published, and it (inevitably) includes cuts to Air Force fighter programs, take a deep breath before panicking and consider: **Nearly everyone telling you we must buy** a given quantity of stealth **fighters, or lose global influence, has a financial stake** in advocating such purchases. Of the speakers at the Wednesday confab: \* Loren Thompson, from the Lexington Institute, runs a private consultancy for the defense industry, with clients including Lockheed Martin \* Thompson’s colleague, Rebecca Grant, also runs her own consultancy for the defense industry \* Gregory Martin has been a Northrop Grumman consultant The U.S. Air Force is in deep trouble, but it’s trouble of its own making. And **it’s testimony to just how overwhelming, and sustainable, is America’s military, cultural, linguistic and financial dominance in the world that our primary military air service can commit slow, institutional suicide without alarming too many peopl**e, aside from a few hardware nerds like me and the consultants who get rich gabbing about certain pointy airplanes on behalf of wealthy corporate clients.

#### Ten plank counterplans are SUPER abusive – jacks all 2ac ability to respond to arguments, moots our offense, are bad for education because no single actor would approve – it’s extra abusive when they have no solvency advocate for doing all the planks – independent reasons to reject the team - the damage has been done, it destroys our aff strategy

### 2AC Drone Shift

#### non-unique, - decreasing detainees now

Brookings 8 (Benjamin Wittes and Zaahira Wyne with Erin Miller, Julia Pilcer, and Georgina Druce, December 16, 2008, “The Current Detainee Population of Guantánamo: An Empirical Study” http://www.brookings.edu/~/media/research/files/reports/2008/12/16%20detainees%20wittes/1216\_detainees\_wittes)

As of December 16, 2008, the detention facility at Guantánamo Bay, Cuba held 248 detainees. This figure represents only a fraction of the 779 who have passed through the facility since it opened in 2002. Of the 558 detainees who remained at the base long enough to go through the CSRT process, 330 have been transferred or released. Over that same time period, 20 additional detainees have arrived at Guantánamo. Fourteen of these came in September 2006, when the CIA transferred the so-called high-value detainees, whom it had previously held for interrogation in its secret detention program overseas; six additional detainees arrived between March 2007 and March 2008.21 Our calculations concerning the current population have a small but real margin of error, described below in our discussion of sources and methods.

#### Previous rulings non-unique

Vladeck 12 (10/01/12, Professor Stephen I. Vladeck of the Washington College of Law at American University, “Detention Policies: What Role for Judicial Review?”, <http://www.abajournal.com/magazine/article/detention_policies_what_role_for_judicial_review/>)

The short chapter that follows aims to take Judge Brown’s suggestion seriously. As I explain, although Judge Brown is clearly correct that judicial review has affected the size of the detainee populations within the territorial United States and at Guantanamo, it does not even remotely follow that the jurisprudence of the past decade has precipitated a shift away from detention and toward targeted killings. To the contrary, the jurisprudence of Judge Brown’s own court has simultaneously (1) left the government with far greater detention authority than might otherwise be apparent where noncitizens outside the United States are concerned; and (2) for better or worse, added a semblance of legitimacy to a regime that had previously and repeatedly been decried as lawless. And in cases where judicial review prompted the government to release those against whom it had insufficient evidence, the effects of such review can only be seen as salutary. Thus, at the end of a decade where not a single U.S. military detainee was freed by order of a federal judge, it is more than a little ironic for Judge Brown to identify “take no prisoners” as Boumediene’s true legacy.

#### 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 capturing 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.

#### Strikes now

McClatchy 13 (May 23, Lesley Clark and Jonathan S. Landay | McClatchy Washington Bureau

“Obama speech suggests possible expansion of drone killings”

www.mcclatchydc.com/2013/05/23/192081/obama-promises-anew-to-transfer.html#storylink=cpy)

But Obama’s speech appeared to expand those who are targeted in drone strikes and other undisclosed “lethal actions” in apparent anticipation of an overhaul of the 2001 congressional resolution authorizing the use of force against al Qaida and allied groups that supported the 9/11 attacks on the United States. In every previous speech, interview and congressional testimony, Obama and his top aides have said that drone strikes are restricted to killing confirmed “senior operational leaders of al Qaida and associated forces” plotting imminent violent attacks against the United States. But Obama dropped that wording Thursday, making no reference at all to senior operational leaders. While saying that the United States is at war with al Qaida and its associated forces, he used a variety of descriptions of potential targets, from “those who want to kill us” and “terrorists who pose a continuing and imminent threat” to “all potential terrorist targets.” The previous wording also was absent from a fact sheet distributed by the White House. Targeted killings outside of “areas of active hostilities,” it said, could be used against “a senior operational leader of a terrorist organization or the forces that organization is using or intends to use to conduct terrorist attacks.” The preconditions for targeted killings set out by Obama and the fact sheet appear to correspond to the findings of a McClatchy review published in April of U.S. intelligence reports that showed the CIA killed hundreds of lower-level suspected Afghan, Pakistani and unidentified “other” militants in scores of drone attacks in Pakistan’s tribal are during the height of the operations in 2010-11. Nearly 4,000 people are estimated to have died in U.S. drone strikes since 2004, the vast majority if them conducted by the CIA in Pakistan’s tribal area bordering Afghanistan. The fact sheet also said that those who can be killed must pose a “continuing and imminent threat” to “U.S. persons,” setting no geographic limits. Previous administration statements have referred to imminent threats to the United States – the homeland or its interests. “They appear to be broadening the potential target set,” said Christopher Swift, an international legal expert who teaches national security studies at Georgetown University and closely follows the targeted killing issue.

#### Not an alt cause – our evidence indicates that overturning indefinite detention is SUFFICIENT to solve the aff – its seen as changing the deference trend – that’s Martin and Reinhardt and it’s the key internal to hearts and minds - spaulding

### Militarism DA

#### Don’t buy their link evidence – the restraint ev via Broughton is from winter 2001 – IE before September eleventh, before hamdi, before boumediene, before all of these obvious examples of a lack of deliberation – their drones alt cause arg is proof

**No impact to militarism and no global war**

David **Chandler 9**, Professor of International Relations at the Department of Politics and International Relations, University of Westminster, War Without End(s): Grounding the Discourse of `Global War', Security Dialogue 2009; 40; 243

Western governments appear to portray some of the distinctive characteristics that Schmitt attributed to ‘motorized partisans’, in that the shift from narrowly strategic concepts of security to more abstract concerns reflects the fact that Western states have tended to fight free-floating and non-strategic wars of aggression without real enemies at the same time as professing to have the highest values and the absolute enmity that accompanies these. The government policy documents and critical frameworks of ‘global war’ have been so accepted that it is assumed that it is the strategic interests of Western actors that lie behind the often irrational policy responses, with ‘global war’ thereby being understood as merely the extension of instrumental struggles for control. This perspective seems unable to contemplate the possibility that it is the lack of a strategic desire for control that drives and defines ‘global’ war today. ¶ Very few studies of the ‘war on terror’ start from a study of the Western actors themselves rather than from their declarations of intent with regard to the international sphere itself. This methodological framing inevitably makes assumptions about strategic interactions and grounded interests of domestic or international regulation and control, which are then revealed to explain the proliferation of enemies and the abstract and metaphysical discourse of the ‘war on terror’ (Chandler, 2009a). For its radical critics, the abstract, global discourse merely reveals the global intent of the hegemonizing designs of biopower or neoliberal empire, as critiques of liberal projections of power are ‘scaled up’ from the international to the global.¶ Radical critics working within a broadly Foucauldian problematic have no problem grounding global war in the needs of neoliberal or biopolitical governance or US hegemonic designs. These critics have produced numerous frameworks, which seek to assert that global war is somehow inevitable, based on their view of the needs of late capitalism, late modernity, neoliberalism or biopolitical frameworks of rule or domination. From the declarations of global war and practices of military intervention, rationality, instrumentality and strategic interests are read in a variety of ways (Chandler, 2007). Global war is taken very much on its own terms, with the declarations of Western governments explaining and giving power to radical abstract theories of the global power and regulatory might of the new global order of domination, hegemony or empire¶ The alternative reading of ‘global war’ rendered here seeks to clarify that the declarations of global war are a sign of the lack of political stakes and strategic structuring of the international sphere rather than frameworks for asserting global domination. We increasingly see Western diplomatic and military interventions presented as justified on the basis of value-based declarations, rather than in traditional terms of interest-based outcomes. This was as apparent in the wars of humanitarian intervention in Bosnia, Somalia and Kosovo – where there was no clarity of objectives and therefore little possibility of strategic planning in terms of the military intervention or the post-conflict political outcomes – as it is in the ‘war on terror’ campaigns, still ongoing, in Afghanistan and Iraq. ¶ There would appear to be a direct relationship between the lack of strategic clarity shaping and structuring interventions and the lack of political stakes involved in their outcome. In fact, the globalization of security discourses seems to reflect the lack of political stakes rather than the urgency of the security threat or of the intervention. Since the end of the Cold War, the central problematic could well be grasped as one of withdrawal and the emptying of contestation from the international sphere rather than as intervention and the contestation for control. The disengagement of the USA and Russia from sub-Saharan Africa and the Balkans forms the backdrop to the policy debates about sharing responsibility for stability and the management of failed or failing states (see, for example, Deng et al., 1996). It is the lack of political stakes in the international sphere that has meant that the latter has become more open to ad hoc and arbitrary interventions as states and international institutions use the lack of strategic imperatives to construct their own meaning through intervention. As Zaki Laïdi (1998: 95) explains:¶ war is not waged necessarily to achieve predefined objectives, and it is in waging war that the motivation needed to continue it is found. In these cases – of which there are very many – war is no longer a continuation of politics by other means, as in Clausewitz’s classic model – but sometimes the initial expression of forms of activity or organization in search of meaning. . . . War becomes not the ultimate means to achieve an objective, but the most ‘efficient’ way of finding one. ¶ The lack of political stakes in the international sphere would appear to be the precondition for the globalization of security discourses and the ad hoc and often arbitrary decisions to go to ‘war’. In this sense, global wars reflect the fact that the international sphere has been reduced to little more than a vanity mirror for globalized actors who are freed from strategic necessities and whose concerns are no longer structured in the form of political struggles against ‘real enemies’. The mainstream critical approaches to global wars, with their heavy reliance on recycling the work of Foucault, Schmitt and Agamben, appear to invert this reality, portraying the use of military firepower and the implosion of international law as a product of the high stakes involved in global struggle, rather than the lack of clear contestation involving the strategic accommodation of diverse powers and interests.

#### Total rejection of hegemony increases imperialism. The plan’s reformation of leadership solves the impact

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My preference here is to advocate a forward-leaning, prudential strategy of institutionally governed change. By `forward-leaning', I mean that the progressive realization of cosmopolitan values should be the measure of success­ful politics in international society. As long as gross viola­tions of basic human rights mar global social life, we, as individuals, and the states that purport to represent us, have obligations to direct what political influence we have to the improvement of the human condition, both at home and abroad. I recommend, however, that our approach be prudent rather than imprudent. Historically, the violence of inter-state warfare and the oppression of imperial rule have been deeply corrosive of basic human rights across the globe. The institutions of international society, along with their constitutive norms, such as **sover­eignty,** non-intervention, self-determination and limits on the use of force, have helped to reduce these corrosive forces dramatically. The incidence of inter-state wars has declined markedly, even though the number of states has multiplied, and imperialism and colonialism have moved from being core institutions of international society to practices beyond the pale. Prudence dictates, therefore, that we lean forward without losing our footing on valu­able institutions and norms. This means, in effect, giving priority to **institutionally governed change**, working with the rules and procedures of international society rather than against them. What does this mean in practice? In general, I take it to mean two things. First, it means recognizing the principal rules of international society, and accepting the obligations they impose on actors, including oneself. These rules fall into two broad categories: procedural and substantive. The most specific procedural rules are embodied in insti­tutions such as the United Nations Security Council, which is empowered to 'determine the existence of any threat to peace, breach of the peace or act of aggression' and the measures that will be taken 'to maintain or restore international peace and security'.28 More general, yet equally crucial, procedural rules include the cardinal principle that states are only bound by rules to which they have consented. Even customary international law, which binds states without their express consent, is based in part on the assumption of their tacit consent. The substantive rules of international society are legion, but perhaps the most important are the rules governing the use of force, both when force is permitted (jus ad bellum) and how it may be used (jus in bello). Second, working with the rules and procedures of international society also means recognizing that the principal modality of in­novation and change must be communicative. That is, establishing new rules and mechanisms for achieving cosmopolitan ends and international public goods, or modifying existing ones, should be done through persua­sion and negotiation, not ultimatum and coercion. A pre­mium must be placed, therefore, on articulating the case for change, on recognizing the concerns and interests of others as legitimate, on building upon existing rules, and on seeing genuine communication as a process of give and take, not demand and take. Giving priority to institutionally governed change may seem an overly conservative strategy, but it need not be. As explained above, the established procedural and substantive rules of international society have de­livered international public goods that actually further cosmopolitan ends, albeit in a partial and inadequate fash­ion. **Eroding these rules would only lead to increases in inter-state violence and imperialism**, and this would almost certainly produce a radical deterioration in the protection of basic human rights across the globe. Saying that we ought to preserve these rules is prudent, not con­servative. More than this, though, we have learnt that the institutions of international society have transformative potential, even if this is only now being creatively exploited.

#### Case solves the impact – status quo U.S. militarism prevents worse forms of violence –

Kagan, Hillhouse Professor of History at Yale, 1997 (Donald, “Roles and Missions.” Orbis, Spring, Volume 41)

Few, if any, nations in the history of the world have ever enjoyed such a favorable situation. It stands to reason that the keystone of American strategy should be an effort to preserve and sustain the situation as well and as long as possible. America's most vital interest, therefore, is maintaining the general peace, for war has been the swiftest, most expensive, and most devastating means of changing the balance of international power. But peace does not keep itself, although one of the most common errors in modern thinking about international relations is the assumption that peace is natural and can be preserved merely by having peace-seeking nations avoid provocative actions. The last three-quarters of the twentieth century strongly suggests the opposite conclusion: major war is more likely to come when satisfied states neglect their defenses and fail to take an active part in the preservation of peace. It is vital to understand that the current relatively peaceful and secure situation is neither inevitable nor immutable. It reflects two conditions built up with tremendous effort and expense during the last half century: the great power of the United States and the general expectation that Americans will be willing to use that power when necessary. The diminution of U.S. power and credibility, which would follow on a policy of reduced responsibility, would thus not be a neutral act that would leave the situation as it stands. Instead, it would be a critical step in undermining the stability of the international situation. Calculations based on the absence of visible potential enemies would immediately be made invalid by America's withdrawal from its current position as the major bulwark supporting the world order. The cost of the resulting upheaval in wealth, instability, and the likelihood of war would be infinitely greater than the cost of continuing to uphold the existing international structure.

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#### They confuse conflict and competition.

Lamb 3-21 [Gregory M., Christian Science Monitor, Good Reads: US-China relations, 'Lean In,' ballet's whodunit, Ireland's Downton, http://www.csmonitor.com/World/Global-News/2013/0321/Good-Reads-US-China-relations-Lean-In-ballet-s-whodunit-Ireland-s-Downton]

Competition between the US and China is inevitable, but conflict is not, Mr. Lee argues in an excerpt from his new book in The Atlantic.¶ “This is not the Cold War. The Soviet Union was contesting with the United States for global supremacy. China is acting purely in its own national interests. It is not interested in changing the world.”¶ The complex Chinese-US relationship is underpinned by an essential truth: Each side needs the other.¶ “Chinese leaders know that U.S. military superiority is overwhelming and will remain so for the next few decades,” he writes. “[T]he Chinese do not want to clash with anyone – at least not for the next 15 to 20 years.”

#### Economic ties lead to MAD with China.

Shor 12 (Francis, Professor of History – Wayne State, “Declining US Hegemony and Rising Chinese Power: A Formula for Conflict?”, Perspectives on Global Development and Technology, 11(1), pp. 157-167)

While the United States no longer dominates the global economy as it did during the first two decades after WWII, it still is the leading economic power in the world. However, over the last few decades China, with all its internal contradictions, has made enormous leaps until it now occupies the number two spot. In fact, the IMF recently projected that the Chinese economy would become the world's largest in 2016. In manufacturing China has displaced the US in so many areas, including becoming the number one producer of steel and exporter of four-fifths of all of the textile products in the world and two-thirds of the world's copy machines, DVD players, and microwaves ovens. Yet, a significant portion of this manufacturing is still owned by foreign companies, including U.S. firms like General Motors. [5] On the other hand, China is also the largest holder of U.S. foreign reserves, e.g. treasury bonds. This may be one of the reasons mitigating full-blown conflict with the U.S. now, since China has such a large stake in the U.S. economy, both as a holder of bonds and as the leading exporter of goods to the U.S. Nonetheless, "the U.S. has blocked several large scale Chinese investments and buyouts of oil companies, technology firms, and other enterprises." [6] In effect, there are still clear nation-centric responses to China's rising economic power, especially as an expression of the U.S. governing elite's ideological commitment to national security.