# 1AC

**Plan**

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

### 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.

**Indefinite detention increases terrorism—multiple warrants**

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

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

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

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

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

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

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

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

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

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

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

#### Extinction – tech and poor response mechanisms

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

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

**Venezuela Advantage: 1AC**

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

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

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

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

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

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

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

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

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

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

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

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

**Judicial independence in Venezuela is crucial to democracy and stability**

**Provea 13** (Venezuelan Program of Education and Action on Human Rights, “The political use of the Venezuelan judicial system,” Venezuela: International Bulletin on Human Rights Issue No. 5, August 13, <http://www.derechos.org.ve/pw/wp-content/uploads/boletin_05_eng.pdf>)

“In recent years, the Commission has heard of cases in which members of the judiciary have expressly stated their support for the executive, showing the lack of independence of this institution. The Commission has also observed how certain failures caused by the lack of independence of the judiciary is exacerbated in cases of high political significance, and consequently affects society’s confidence in justice.” Four years later the situation is even more worrying. The judiciary and the Public Prosecutor are **political instruments** of the **executive branch to** **criminalize social protest** and to persecute dissident voices. As it has been indicated by several Venezuelan human rights organizations in a statement of July 26 there is “a deep concern over the progressive weakening of judicial guarantees in Venezuela and prosecution as a method to criminalize those with critical positions and to discard them.” The use of justice, to face social protest, led by the working men and women of the country, is expressed in the opening of lawsuits against student leaders, community, indigenous and unions and even, in some cases, by applying **military justice**. The most emblematic case is the trial of the unionist Rubén González after the Criminal Chamber of the Supreme Court set aside the judgment against him, which was deliberately biased in favor of the government, (that verdict sentencing him to seven years in prison). The Criminal Chamber overturned the judgement after unions announced the call for a strike in response to the decision. In its judgment the Criminal Chamber said: “[the judgement] injured the constitutional rights of the defense, due process and hence to effective judicial protection as provided in Articles 26 and 49.1 of the Constitution of the Bolivarian Republic of Venezuela, what ultimately denied the exercise of procedural defenses that our legal system provides in a criminal trial” This biased and unconstitutional conduct of a criminal court The political use of the Venezuelan judicial system has been repeated in trials of other social leaders, some of whom have more than six years on probation. But there are two major elements in the manipulation of the justice system. One of them is a priori defense of senior government officials from the high courts to the claims brought by individuals for violations of their rights. It is even exclude senior officials of their constitutional obligations, through sentences being handed down by the Constitutional Court, which imposed same criteria to other courts. Although the Constitution provides that any public official should give timely and adequate response to the requests made by any person, but when the request is made to the President of the Republic, the Constitutional Court stated that: “In this regard, it is noted that the multiple functions assigned to the President and the scale of these, prevents suchpublic officer to be given equal treatment as any other official who did not answer, -within the time periods-to requests that have been made.” A study conducted by PROVEA on the behavior of the Supreme Court of Justice to complaints against senior government officials, determined that only 7.14% of decisions are in favor of the petitioners, but when it came to action against the National Assembly, the General Prosecutor or against the President of the Republic, the petitioners did not receive positive responses in any case. The other outstanding feature is the use of Justice to prosecute political dissidents. An emblematic case is the open trial against General Francisco Vicente Uson Ramirez, who in a television program gave his opinion about alleged human rights violations in a particular fact. The many irregularities in the judicial process, generated his case had to be presented at the Inter-American system for the protection of human rights, which concluded in a judgment handed down by the Inter-American Court of Human Rights on November 20, 2009. Conclusion issued by the IACHR in its Report on Democracy and Human Rights in Venezuela, is fully in effect: “**The lack of independence** and autonomy of the judiciary from political power is one of the **weakest points of democracy** in Venezuela, a situation that seriously hinders the free exercise of human rights in Venezuela. According to the Commission, is the lack of independence that has allowed the possibility of using the punitive power of the State to criminalize human rights defenders in Venezuela, prosecute peaceful social protest and prosecute political dissidents.”

#### Venezuelan Stability is crucial to oil investment, stops Russian Arctic development, jumpstarts the US Economy and paves the way for US Middle East oil independence, and lowers global oil prices

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

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

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

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

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

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

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

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

**Extinction – it’s categorically different from all other impacts**

**Bostrom 2** (Nick, PhD Philosophy – Oxford University, “Existential Risks: Analyzing Human Extinction Scenarios”, Journal of Evolution and Technology, Vol. 9, March, http://www.nickbostrom.com/existential/risks.html)

The unique challenge of existential risks Risks in this sixth category are a recent phenomenon. This is part of the reason why **it is useful to distinguish them from other risks**. We have not evolved mechanisms, either biologically or culturally, for managing such risks. Our intuitions and coping strategies have been shaped by our long experience with risks such as dangerous animals, hostile individuals or tribes, poisonous foods, automobile accidents, Chernobyl, Bhopal, volcano eruptions, earthquakes, draughts, World War I, World War II, epidemics of influenza, smallpox, black plague, and AIDS. These types of disasters have occurred many times and our cultural attitudes towards risk have been shaped by trial-and-error in managing such hazards. But tragic as such events are to the people immediately affected, in the big picture of things – from the perspective of humankind as a **whole – even the worst of these catastrophes are** **mere ripples** **on the surface of the great sea of life**. They haven’t significantly affected the total amount of human suffering or happiness **or determined the long-term fate of our species**. With the exception of a species-destroying comet or asteroid impact (an extremely rare occurrence), there were probably no significant existential risks in human history until the mid-twentieth century, and certainly none that it was within our power to do something about. The first manmade existential risk was the inaugural detonation of an atomic bomb. At the time, there was some concern that the explosion might start a runaway chain-reaction by “igniting” the atmosphere. Although we now know that such an outcome was physically impossible, it qualifies as an existential risk that was present at the time. For there to be a risk, given the knowledge and understanding available, it suffices that there is some subjective probability of an adverse outcome, even if it later turns out that objectively there was no chance of something bad happening. If we don’t know whether something is objectively risky or not, then it is risky in the subjective sense. The subjective sense is of course what we must base our decisions on.[[2]](http://www.nickbostrom.com/existential/risks.html#_ftn2) At any given time we must use our best current subjective estimate of what the objective risk factors are.[[3]](http://www.nickbostrom.com/existential/risks.html#_ftn3) **A much greater existential risk** **emerged with the build-up of nuclear arsenals in the US and** the **USSR**. **An all-out nuclear war was a possibility with both a substantial probability and with consequences that might** have been persistent enough to **qualify as global and terminal**. There was a real worry among those best acquainted with the information available at the time that a nuclear Armageddon would occur and that it **might annihilate our species** or permanently destroy human civilization.[[4]](http://www.nickbostrom.com/existential/risks.html#_ftn4)  Russia and the US retain large nuclear arsenals that could be used in a future confrontation, either accidentally or deliberately. There is also a risk that other states may one day build up large nuclear arsenals. Note however that **a smaller nuclear exchange**, between India and Pakistan for instance, **is not an existential risk, since it would not destroy** or thwart **humankind’s potential permanently**. Such a war might however be a local terminal risk for the cities most likely to be targeted. Unfortunately, we shall see that nuclear Armageddon and comet or asteroid strikes are mere preludes to the existential risks that we will encounter in the 21st century.

# 2AC

## T

### ASPEC 2AC Long

#### Cross-x checks – they could have asked

#### No ground loss – structural disads linked to the whole government provide ground

#### No resolutional basis – it only says US Federal Government – anything more is infinitely regressive and unpredictable

#### Agent counterplans are bad – they detract from topic-specific education, focus on stale issues and steal Aff ground by doing all of the plan

#### Counter-interpretation – normal means should determine agents. This is best – it allows the Neg to read evidence to get links to disads and increases research about the topic.

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

#### Potential abuse isn’t a voting issue – actual abuse can be countered where it occurs.

#### A2: Conditional

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

#### A2: T-Resolved

#### Resolved isn’t in the resolution – its just an anachronistic precursor

#### We’re resolved – we’ll defend the plan as always being implemented

#### A2: No Solvency

#### Doesn’t take out solvency – the whole USFG acts guaranteeing the plan is implemented

#### Court solve

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.

## S

### 2AC Circumvention

#### Executive circumvention isn’t possible on detention policy – judicial review creates powerful incentives for compliance

Martin 5 (David, professor of law at the University of Virginia, 25 B.C. Third World L.J. 125, Winter, lexis)

For administrative officers, including both those in charge of initial detention decisions and those who serve on the review tribunals, the single most important fact is that the federal courts have a review role at all -- whatever the precise formal constraints on that role may be. Such [\*155] a role is now solidly entrenched for detainees at Guantanamo, and apparently for U.S. citizen detainees anywhere in the world; I argue here for extending that entrenchment to longer-term alien detainees at other overseas facilities. In such a setting, anything the administering authorities do is at least potentially subject to being called into question before a federal judge. This exposure provides significant inducements for greater rigor in the internal processes that lead to initial detention decisions, and in decisions to continue detention -- especially when compared to a situation where the administrators know that they cannot be called to explain their actions in any external forum. The pattern of Defense Department responses to the Supreme Court's "enemy combatant" cases illustrates this point. The press reported an accelerated pace of releases from Guantanamo shortly after certiorari was granted in Rasul. 124 More concretely, as noted, within two weeks of the actual decision in Rasul, the Defense Department began to establish combatant status review tribunals at Guantanamo, along lines generally consistent with Hamdi (even though that latter decision was technically distinguishable). 125 Internal review and quality control mechanisms doubtless existed before, but the prospect of court review gives them new urgency, polish, and force. Significantly, the mere prospect of court review greatly enhances the bargaining position of those within the agency who wish to adopt tighter standards, closer supervision, or more protective procedures. The real-world operation of such review magnifies this effect. As a realistic matter, federal judges, even within the confines of a highly deferential standard, can increase the pressure on the agency in any case where they sense that the panel has acted questionably or reached a ruling deeply inconsistent with the evidence presented -- even if there is enough, when it comes time to announce a final decision in the case, to sustain the final agency determination under the [\*156] "some evidence" standard. A judge suspecting such a misfire of decision-making can, for example, minutely scrutinize the procedures employed, or find fault with some element of the description of the legal standard employed. In short, at least some judges will yield to the undertow about which Judge Wilkinson wrote, and find ways to put administrative officers through extra hoops while not overtly transgressing the boundaries of the governing deferential standard -- at least until an appellate court calls them back into line. Most courts, to be sure, will not undertake such a covertly interventionist role and will honor the prescribed limits on their powers. But here is the key to understanding administrative reactions to the presence of review: the administrators cannot know when they make an initial decision to put someone into longer-term detention, or when they conduct a formal review proceeding before a military tribunal, exactly which cases might run into a judicial buzz saw. This ineluctable uncertainty provides an ongoing external incentive for the administrators to set up the administrative system in as professional and careful a manner as possible, and to conduct each case with close attention to fairness, in order to avoid tempting a court into quietly pressing the boundaries of judicial deference and adopting, de facto, a more intrusive review process. Even a deferential standard of review, then, creates an external force for serious internal checks and balances, an outside factor that also strengthens the hand of the inside players who push for better individual protections and closer internal review and monitoring. This dynamic significantly increases the odds of avoiding factually erroneous outcomes, as compared with a system that has no such external spur. Undeniably, it still falls short of guaranteeing against individual injustice worked by a biased or lazy or inattentive decisionmaker. It must be acknowledged, of course, that arming the reviewing court with a highly demanding standard of review would catch and correct a few more wrongful outcomes that evade the internal checks and balances than does a deferential standard. But the point here is that a deferential standard moves us a good deal further in the direction of accuracy than is ordinarily credited, precisely because of the interplay that will regularly occur between judges and the military. We may need to accept the remaining divergences as the price of assuring that the system does not intrude too far on military effectiveness in the struggle against terrorist forces.

#### Doesn’t take out judicial exchanges in Venezuela – the *decision* is the internal link

#### Will comply – even if they disagree

Bradley and Morrison 13

[Curtis, William Van Alstyne Professor of Law, Duke Law School. and Trevor, Liviu Librescu Professor of Law, Columbia Law School, Presidential Power, Historical Practice, And Legal Constraint, 2013 Directors of The Columbia Law Review Association, Inc. Columbia Law Review May, 2013, L/N]

Insisting on a sharp distinction between the law governing presidential authority that is subject to judicial review and the law that is not also takes for granted a phenomenon that merits attention - that Presidents follow judicial decisions. n118 That assumption is generally accurate in the United States today. To take one relatively recent example, despite disagreeing with the Supreme Court's determination in Hamdan v. Rumsfeld that Common Article 3 of the Geneva Conventions applies to the war on terror, the Bush Administration quickly accepted it. n119 But the reason why Presidents abide by court decisions has a connection to the broader issue [\*1131] of the constraining effect of law. An executive obligation to comply with judicial decisions is itself part of the practice-based constitutional law of the United States, so presidential compliance with this obligation may demonstrate that such law can in fact constrain the President. This is true, as we explain further in Part III, even if the effect on presidential behavior is motivated by concerns about external political perceptions rather than an internal sense of fidelity to law (or judicial review). n120

#### 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

‘

**No circumvention – review mechanism distributes power and insulates from pressure**

**Siegel 12** - Senior Editor for UCLA Law Review, UCLA Law Review, April, 2012, 59 UCLA L. Rev. 1076Reconciling Caperton and Citizens United: When Campaign Spending Should Compel Recusal of Elected Officials, Samuel P. Siegel

BIO: \* AUTHOR Samuel P. Siegel is a Senior Editor for UCLA Law Review

The influence of campaign expenditures is further lessened when an adjudicatory decision is made by a **group of executive officials**, even if each of those officials is directly accountable to the elected official. For example, the Committee on Foreign Investment in the United States - comprised of top-ranking officials from various executive departments n258 - is a body authorized by Congress to screen and investigate foreign-investment proposals "to determine the effects of the transaction on the national security of the United States," n259 negotiate mitigation agreements with foreign investors to minimize national security concerns, n260 and, should mitigation efforts fail, recommend to the president that she block the [\*1119] deal, n261 powers that are "like individual adjudications (or quasi-adjudications)." n262 Yet the very fact that a committee, rather than a single officer, exercises this adjudicatory power **insulates its decisions from presidential control**: "With a single agency, the President could credibly threaten to remove or otherwise pressure or discipline that agency's Secretary or Administrator. **But there is strength in numbers**." n263 Thus, **even within a unitary executive**, such a structure **would likely temper** the **influence** that campaign expenditures would have on the outcome of an adjudication.

**Obama believes he is constrained by statute – won’t circumvent**

Saikrishna **Prakash 12,** professor of law at the University of Virginia and Michael Ramsey, professor of law at San Diego, “The Goldilocks Executive” Feb, SSRN

We accept that the President’s lawyers search for legal arguments to justify presidential action, that they find the President’s policy preferences legal more often than they do not, and that the President sometimes disregards their conclusions. But the close attention the Executive pays to legal constraints suggests that the President (who, after all, is in a good position to know) **believes** himself constrained by **law**. Perhaps Posner and Vermeule believe that the President is mistaken. But we think, to the contrary, it represents the President’s **recognition of** the various **constraints** we have listed, and his **appreciation** that attempting to operate **outside the bounds of law** would **trigger censure from Congress, courts, and the public**.

**Obama will comply—the Court has the final word**

Meacham 12 (Joe executive editor, Random House, “Why Obama Shouldn’t Declare War on Supreme Court,” TIME, 4—2—12, http://ideas.time.com/2012/04/02/why-obama-shouldnt-declare-war-on-the-supreme-court/)

With the Supreme Court weighing the constitutionality of a central element of President Obama’s comprehensive health care reform, there’s a lot of talk (in the places where people talk about such things, usually unburdened by responsibility or firsthand knowledge) of making the court an issue in the campaign if it were to rule against the White House. But here is a pretty good rule of thumb for Democratic Presidents: if it didn’t work for Franklin D. Roosevelt, who won four terms and a World War, it probably won’t work for you either. In one of the rare political debacles of his long life, FDR overreached after his landslide win against Alf Landon in 1936. (Roosevelt carried every state, save for Maine and Vermont.) A largely conservative Supreme Court had already struck down key parts of New Deal legislation, and there was the threat of more anti-Roosevelt decisions to come. And so FDR proposed a plan that would have enabled him to appoint additional justices in an attempt to shift the court’s political orientation. The effort failed, miserably. Justified or not, the Supreme Court has a kind of sacred statusin American life. For whatever reason, Presidents can safely run against Congress, and vice versa, but I think there is an inherent popular aversion to assaults on the court itself. Perhaps it has to do with an instinctive belief that life needs umpires, even ones who blow calls now and then. Ironies abound. One of the great partisans of the early republic, John Marshall, created an ethos around the court that has largely protected it (even from itself) from successful partisan attack. Even when it makes bad law (Bush v. Gore), it has the last word. Even when it makes decisions that enrage vast swaths of politically, culturally and religiously motivated citizens (Roe v. Wade), it basically has the last word. (If you disagree with this example, ask yourself how successful pro-lifers have been in amending the Constitution over the past 40 years.) It has had the grimmest of hours (Dred Scott v. Sandford) and the finest (Brown v. Board of Education). The court is, of course, a political institution. In no way is it a clinically impartial tribunal, for virtually every decision requires an application of values and an assessment in light of experience. “Activist judges” tend to be judges who make decisions with which you disagree. Wise Presidents have learned that taking the court on directly rarely turns out well. Thomas Jefferson cordially hated his cousin Marshall, but even Jefferson trod carefully as he repealed John Adams’ extension of Federalist judicial power. “John Marshall has made his decision,” Andrew Jackson is alleged to have said after a Cherokee case. “Now let him enforce it.” The showdown between Marshall and Jackson over the fate of Native Americans, however, was much more subtle on both sides, with Marshall characteristically taking care not to force an existential crisis with the executive branch. Segregationist Southerners may have put up billboards urging the impeachment of Earl Warren in the 1950s, but the chief justice’s job — and his place in history — was never in actual jeopardy. On a human level, Presidents who have to fight and claw their way to shape public opinion, pass legislation and then try to implement their policies must be mightily tempted to make a hostile Supreme Court a target to energize the base. But history shows that Obama should resist the temptation. There are subtle ways to make the point about a given court’s seeming hostility to your agenda and still win over highly informed independents in swing states who tend to decide elections. The big thing experience shows is that you should not declare war on the court. More in sadness than in anger, just mention the issues on which you feel stymied by the justices. From health care to campaign finance, those independent voters will get the message without being frightened off by an unsettling rhetorical attack on the judiciary. That’s what FDR got wrong. Obama may well have a chance to get it right.

<INSERT OBAMA LOVES THE PLAN>

#### Courts can successfully restrain executive actions via precedent – history proves

Cole 3 (David, Prof of Law @ Georgetown, "JUDGING JUDICIAL REVIEW: MARBURY IN THE MODERN ERA: JUDGING THE NEXT EMERGENCY: JUDICIAL REVIEW AND INDIVIDUAL RIGHTS IN TIMES OF CRISIS," August, 101 Mich. L. Rev. 2565, lexis)

Considered over time, judicial review of emergency and national-security measures can and has established important constraints on the exercise of emergency powers and has restricted the scope of what is acceptable in future emergencies. Because emergency measures frequently last well beyond the de facto end of the emergency, and because the wheels of justice move slowly, courts often have an opportunity to assess the validity of emergency measures after the emergency has passed, when passions have been reduced and reasoned judgment is more attainable. In doing so, courts have at least sometimes been able to take advantage of hindsight to pronounce certain emergency measures invalid for infringing constitutional rights. And because courts, unlike the political branches or the political culture more generally, must explain their reasons in a formal manner that then has precedential authority in future disputes, judicial decisions offer an opportunity to set the terms of the next crisis, even if they often come too late to be of much assistance in the immediate term. Thus, the Court has over time developed a highly protective test for speech advocating illegal activity, n5 subjected all racial discrimination since Korematsu to exacting scrutiny, n6 and prohibited guilt by association. n7 These decisions, among others, impose important limits on what the government can do in the current, post-September 11th crisis.¶ Since Marbury, scholars have devoted thousands of pages to debating the issue of judicial review, offering critiques of Chief Justice Marshall's reasoning, proposing alternative defenses of judicial review, and, more recently, questioning the value of judicial review altogether. One of the most familiar, and in my view still the strongest, defenses of judicial review is that first advanced in footnote four of Carolene Products, n8 implemented by the Warren Court and given its definitive academic elaboration in Professor John Hart Ely's Democracy and Distrust. n9 This is the notion that as an institution insulated from [\*2567] everyday politics, the Court is best suited to protect the interests of those who cannot protect themselves through the political process, whether they be members of discrete and insular minorities, dissidents, noncitizens, or other vulnerable individuals. As others have shown, the Court does not always live up to its responsibility. n10 But it is nonetheless an important ideal to which courts should be held accountable.¶ How should we judge judicial review from the standpoint of protecting the constitutional rights and liberties of the vulnerable in times of crisis? It is in times of crisis that constitutional rights and liberties are most needed, because the temptation to sacrifice them in the name of national security will be at its most acute. To government officials, civil rights and liberties often appear to be mere obstacles to effective protection of the national interest. As Bush-administration supporters frequently intone when defending their post-September 11th initiatives, "the Constitution is not a suicide pact." n11 Judicial protection is also critical because crisis measures are typically targeted at the most vulnerable among us, especially noncitizens, who have little or no voice in the political process. n12 We have been in such a crisis period since September 11th and will be for the foreseeable future. So now is a particularly propitious time to assess the value of judicial review in times of crisis. n13¶ Part I of this Article will set forth the traditional view that the judiciary is inadequate in times of crisis, along with the evidence that supports it and the reasons that might explain it. Part II maintains that the traditional view overstates the case, because over time judicial decisions have had more of a constraining influence on emergency measures than appears when one looks only at the courts' performance in the midst of a crisis. Part III surveys judicial performance since September 11th on matters of national security and argues that while the record is far from exemplary, courts have actually been more willing to stand up to the government in this period than in many prior crises. Part IV responds to a recent proposal by [\*2568] two leading scholars that courts and the Constitution ought to play less of a role in assessing emergency measures. n14 Professors Oren Gross and Mark Tushnet have both recently argued that the poor performance of courts during emergency periods and the need for extraordinary emergency powers should impel us to acknowledge explicitly the validity of extraconstitutional emergency measures and leave judgment of such measures to the political rather than the judicial process. In my view, this proposal is fundamentally misguided, both because it fails to acknowledge the valuable role that courts have played, when viewed over time, in constraining emergency powers, and because the alternative of relying on the political process would almost certainly provide even less protection for individual rights than the courts have. To paraphrase Winston Churchill, judicial review is the worst protector of liberty in times of crisis, with the exception of all the others.

#### Executive won’t ignore the court – reputation and popular respect for Court ensure

Wells 4 (Christina, Professor of Law, University of Missouri-Columbia, "Questioning Deference," Fall, 69 Mo. L. Rev. 903, lexis)

To improve decision making, the decision maker must perceive that the audience to which she is accountable has a legitimate reason to inquire into [\*946] her judgment. Accountability perceived as illegitimate -- i.e., intrusive or insulting -- has no beneficial effect and may even backfire. n225 Important factors here may include that the audience be as or more powerful than the decision maker and that the audience be well-informed. n226¶ The judicial system is a powerful institution. In the context of resolving constitutional issues, many people, the Court included, believe that the judicial system has the final (and, thus, most powerful) say. n227 To be sure, executive officials, past and present, have asserted that national security matters are particularly within the executive branch's ambit, suggesting that they do not share this view of the Court's legitimacy. n228 Even so, executive officials rarely flout the Court's authority, instead preferring to enlist the Court's support (which the Court often willingly provides). Executive officials might prove more willing to deny the Court's authority if it engaged in more rigorous review of executive decisions regarding national security. However, popular support for the institution of judicial review would likely preclude outright executive defiance n229 and could eventually spur acceptance. This might be especially true if the Court's constitutional standards of review focused more explicitly on decision-making processes, thus avoiding the impression that the Court was substituting its judgment for the executive's. n230¶ The Court is also well-informed within the meaning of accountability literature. Importantly, being well-informed does not require expert knowledge on particular issues but simply that the audience be not easily tricked. n231 Thus, judges need simply be able to inform themselves to the point where they understand generally the issues involved. Briefs, oral argument, and other evidentiary devices already aid courts in educating themselves and should be able to do so for accountability purposes as well. [\*947]

### Rendition

#### Plan’s precedent solves—deference is the legal justification of rendition

Richards 06 [Nelson, JD Cand @ Berkeley, “The Bricker Amendment and Congress’s Failure to Check the Inflation of the Executive’s Foreign Affairs Powers,” 94 Calif. L. Rev. 175, January, LN//uwyo-ajl]

H. Jefferson Powell has posited that the Supreme Court has all but ceded the creation of a foreign affairs and national security legal framework to the OLC. Indeed, he goes so far as to assert that OLC legal opinions, not Supreme Court opinions, are the first sources the executive branch looks to when researching foreign affairs and national security law. Another set of John Yoo's writings support the validity of Powell's claim: the infamous memos declaring enemy combatants outside the protection of the Geneva Conventions. These, combined with the "Torture Memos," the expanding practice of "extraordinary rendition," and the current Administration's blase response to the Supreme Court's ruling that prisoners held at Guantanamo Bay are entitled to judicial access, have brought peculiar focus to the weight and seriousness of the OLC's legal authority. In the realm of foreign affairs, the Court has written off its obligation, claimed in Marbury, as the authoritative interpreter of the Constitution. While it may have reviewed some of the legal premises put forth in the above-mentioned OLC opinions, it has not curbed the OLC's claim to power over foreign affairs. The Court is more than capable of challenging the President. It has the power to send messages to the President, but it has done so only in two narrow contexts: when U.S. citizens are labeled enemy combatants (Hamdi v. Rumsfeld ) and when prisoners are held in U.S. facilities (Rasul v. Bush). The Hamdi and Rasul decisions, which amount to piecemeal restraints on the President's freedom to act, accord with the Court's general failure to check the executive's use of power abroad.

### 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

#### Drone arms race inevitable

USA Today 13

(1/9, http://www.usatoday.com/story/news/world/2013/01/08/experts-drones-basis-for-new-global-arms-race/1819091/, “Experts: Drones basis for new global arms race”, AB)

The success of U.S. drones in Iraq and Afghanistan has triggered a global arms race, raising concerns the remotely piloted aircraft could fall into unfriendly hands, military experts say. The number of countries that have acquired or developed drones expanded to more than 75, up from about 40 in 2005, according to the Government Accountability Office, the investigative arm of Congress. Iran and China are among the countries that have fielded their own systems. "People have seen the successes we've had," said Lt. Gen. Larry James, the Air Force's deputy chief of staff for intelligence, surveillance and reconnaissance. The U.S. military has used drones extensively in Afghanistan, primarily to watch over enemy targets. Armed drones have been used to target terrorist leaders with missiles that are fired from miles away.

## Terror

### 2AC Release Link

#### Seriously the risk of this link is 5 thousandths of a percent

Eppinger 13 (Monica-Assistant Professor, Saint Louis University School of Law and Department of Sociology and Anthropology; J.D., Yale Law School; Ph.D. Anthropology, University of California Berkeley, Winter, “REALITY CHECK: DETENTION IN THE WAR ON TERROR”, Catholic University Law Review-Lexis)

Second, serious consideration should be given to the low rates of recidivism by those held in preventive detention in Afghanistan. In 2010, Vice Admiral Harward, U.S./ISAF commander of detainee operations in Afghanistan, said that of a detainee population numbering over 3,000 in all the years of conflict in Afghanistan, he had documented only seventeen cases in which those released from preventive detention returned to the battlefield. 219 That is a recidivism rate of roughly one-half of one percent. Reasons for that astonishingly low rate of battlefield recapture need to be investigated and analyzed. Is the low rate because of treatment or training that took place during detention? Is it related to community guarantees extracted at the time of release? Is it because too many were detained in the first place, including wrong place/wrong time non-combatants? Or is the figure a result of under-reporting, understandably missing, in the fog of war, released detainees who did return to the battlefield? Reasons for the low rate of recidivism or, in the case of the wrongly detained, first-time fighting by released detainees should be carefully analyzed and lessons extracted for future conduct.

### 2AC Intel Link

#### Prosecution helps with intel gathering

Human Rights First 09 (March 2009, non-profit, nonpartisan international human rights organization based in New York and Washington D.C., "The Case Against A Special Terrorism Court" Human Rights First) www.humanrightsfirst.org/wp-content/uploads/pdf/090323-LS-nsc-policy-paper.pdf

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

#### Guantanamo doesn’t provide intel to stop terror but it does increase the chances of it

Greenberg 7 (Karen- Director of the Center on National Security and permanent member of the Council on Foreign Relations while Research for this article was contributed by Center on Law and Security Research Fellow Francesca Laguardia, February, “8 Reasons to Close GUANTANAMO NOW”, lexis)

#5 It undermines intelligence efforts¶ Despite the tens of thousands of hours of interrogation that have taken place at Guantanamo, very little worthwhile intelligence has been extracted. What information is left is now five years old, and it is doubtful that any Guantanamo prisoner has knowledge of a ticking bomb or a current plot.¶ And while the government maintains that detainees can provide a primer on jihad networks and al-Qaeda's strategic goals, at this point, the information is likely out of date. Besides, what can be extracted from individuals who, for the most part, were the wrong people to imprison in the first place.¶ According to a report by Seton Hall School of Law, 86 percent of detainees were arrested by Pakistan or the Northern Alliance and "handed over to the United States at a time when the United States offered large bounties for capture of suspected enemies."¶ Moreover, Guantanamo's very existence has alienated potential inside sources of information. Two years ago, at a Center on Law and Security conference in Florence, Italy, two of Europe's leading terrorism magistrates pointed out that attempts to infiltrate terrorist cells had become much more difficult in the wake of rising public anger over Guantanamo.¶ ¶ #6 It creates new enemies¶ Guantanamo has fomented that which it was created to combat -- anti-American extremism and jihad. Guantanamo is just the public face of a global network of "ghost prisons." According to Human Rights First (formerly the Lawyers' Committee for Human Rights), the United States has acknowledged 20 detention centers in Afghanistan, in addition to the bases at Bagram and Kandahar; as a prison near the Afghan borde

ases 2, 8, 12, 19, 23, 30, 42), all were nothing more than **wild fantasies,** far beyond the plotters’ capacities however much they may have been encouraged in some instances by FBI operatives. Indeed, in many of the cases, target selection is effectively a random process, lacking guile and careful planning. Often, it seems, targets have been chosen almost capriciously and simply for their convenience. For example, a would-be bomber targeted a mall in Rockford, Illinois, because it was nearby (case 21). Terrorist plotters in Los Angeles in 2005 drew up a list of targets that were all within a 20-mile radius of their shr in Kohat, Pakistan; and the al Jafr prison in Jordan. This suggests that Guantanamo may have been a smokescreen for more inhumane, less legal incarceration and interrogation practices elsewhere.¶ According to Armando Spataro, a senior Italian prosecutor known for his work on global terrorism, Guantanamo and the U.S. renditions policy "is extremely damaging to all our efforts to integrate our Muslim communities." Muslims around the world are asking why there is so little international opposition to the U.S. policy of imprisonment without due process. The collateral damage of Guantanamo -- the incarceration of nearly 800 individuals who are denied legal rights, who regularly report being abused and who face a lifetime of imprisonment -- is incalculable. It breeds new angers and resentments, and thus new enemies.

### 2ac Overview Zhang Short

#### Heg is Good –

#### Only heg solves global stability and prevents conflicts from escalation – that’s Zhang and Shi – and any redistribution makes global conflict inevitable

And the transition goes nuclear

Posen and Ross 97

[Barry Posen, Professor of Political Science in the Defense and Arms Control Studies Program at MIT, Andrew Ross, Professor of National Security Studies at the Naval War College, International Security, Winter 1997]

The United States can, more easily than most, go it alone. Yet we do not find the arguments of the neo-isolationists compelling. Their strategy serves U.S. interests only if they are narrowly construed. First, though the neo-isolationists have a strong case in their argument that the United States is currently quite secure, disengagement is unlikely to make the United States more secure, and would probably make it less secure. The disappearance of the United States from the world stage would likely precipitate a good deal of competition abroad for security. Without a U.S. presence, aspiring regional hegemons would see more opportunities. States formerly defended by the United States would have to look to their own military power; local arms competitions are to be expected. Proliferation of nuclear weapons would intensify if the U.S. nuclear guarantee were withdrawn. Some states would seek weapons of mass destruction because they were simply unable to compete conventionally with their neighbors. This new flurry of competitive behavior would probably energize many hypothesized immediate causes of war, including preemptive motives, preventive motives, economic motives, and the propensity for miscalculation**. There would** like **be more war. W**eapons of **m**ass **d**estruction **might be used in** some of **the wars**, with unpleasant effects even for those not directly involved.

### 2ac Overview vs. Heg Bad

#### 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

## Proliferation does not escalate to war. It de-escalates conflicts

**Tepperman**, 9/7/**2009** (John - journalist based in New York Cuty, Why obama should learn to love the bomb, Newsweek, p.lexis)

**A growing and compelling body of research** suggests that nuclear weapons may not, in fact, make the world more dangerous, as Obama and most people assume. The bomb may actually make us safer. In this era of rogue states and transnational terrorists, that idea sounds so obviously wrongheaded that few politicians or policymakers are willing to entertain it. But that's a mistake. Knowing the truth about nukes would have a profound impact on government policy. Obama's idealistic campaign, so out of character for a pragmatic administration, may be unlikely to get far (past presidents have tried and failed). But it's not even clear he should make the effort. There are more important measures the U.S. government can and should take to make the real world safer, and these mustn't be ignored in the name of a dreamy ideal (a nuke-free planet) that's both unrealistic and possibly undesirable. The argument that nuclear weapons can be agents of peace as well as destruction rests on two deceptively simple observations. First, nuclear weapons have not been used since 1945. Second, there's never been a nuclear, or even a nonnuclear, war between two states that possess them. Just stop for a second and think about that: it's hard to overstate how remarkable it is, especially given the singular viciousness of the 20th century. As Kenneth Waltz, the leading "nuclear optimist" and a professor emeritus of political science at UC Berkeley puts it, "We now have 64 years of experience since Hiroshima. It's striking and against all historical precedent that for that substantial period, there has not been any war among nuclear states." To understand why--and why the next 64 years are likely to play out the same way--you need to start by recognizing that all states are **rational on some basic level**. Their leaders may be stupid, petty, venal, even evil, but they tend to do things only when they're **pretty sure they can get away with them**. Take war: a country will start a fight only when it's almost certain it can get what it wants at an acceptable price. **Not even Hitler or Saddam** waged wars they didn't think they could win. The problem historically has been that leaders often make the **wrong gamble and underestimate** the other side--and millions of innocents pay the price. Nuclear weapons change all that by making the costs of war **obvious**, inevitable, **and unacceptable**. Suddenly, when both sides have the ability to turn the other to ashes with the push of a button--and everybody knows it--the basic math shifts. Even the **craziest tin-pot dictator** is forced to accept that war with a nuclear state is **unwinnable** and thus not worth the effort. As Waltz puts it, "**Why fight if you can't win and might lose everything**?"

Why indeed? The iron logic of deterrence and mutually assured destruction is so compelling, it's led to what's known as the nuclear peace: the virtually unprecedented stretch since the end of World War II in which all the world's major powers have avoided coming to blows. They did fight proxy wars, ranging from Korea to Vietnam to Angola to Latin America. But these never matched the furious destruction of full-on, great-power war (World War II alone was responsible for some 50 million to 70 million deaths). And since the end of the Cold War, such bloodshed has declined precipitously. Meanwhile, the nuclear powers have scrupulously avoided direct combat, and there's very good reason to think they always will. There have been some near misses, but a close look at these cases is fundamentally reassuring--because in each instance, very different **leaders all came to the same safe conclusion**. Take the mother of all nuclear standoffs: the Cuban missile crisis. For 13 days in October 1962, the United States and the Soviet Union each threatened the other with destruction. But both countries soon stepped back from the brink when they recognized that a war would have **meant curtains** for everyone. As important as the fact that they did is the reason why: Soviet leader Nikita Khrushchev's aide Fyodor Burlatsky said later on, "It is impossible to win a nuclear war, and both sides realized that, maybe for the first time." The record since then shows the same pattern repeating: nuclear-armed enemies slide toward war, **then pull back**, always for the same reasons. The best recent example is India and Pakistan, which fought three bloody wars after independence before acquiring their own nukes in 1998. Getting their hands on weapons of mass destruction didn't do anything to lessen their animosity. But it did **dramatically mellow their behavior**. Since acquiring atomic weapons, the two sides have never fought another war, **despite severe provocations** (like Pakistani-based terrorist attacks on India in 2001 and 2008). They have skirmished once. But during that flare-up, in Kashmir in 1999, both countries were careful to keep the fighting limited and to avoid threatening the other's vital interests. Sumit Ganguly, an Indiana University professor and coauthor of the forthcoming India, Pakistan, and the Bomb, has found that on both sides, officials' thinking was strikingly similar to that of the Russians and Americans in 1962. The prospect of war brought Delhi and Islamabad face to face with a nuclear holocaust, and leaders in each country did what they had to do to avoid it.

## Venezuela

## Off

### Legalism

#### No risk of endless warfare

Gray 7—Director of the Centre for Strategic Studies and Professor of International Relations and Strategic Studies at the University of Reading, graduate of the Universities of Manchester and Oxford, Founder and Senior Associate to the National Institute for Public Policy, formerly with the International Institute for Strategic Studies and the Hudson Institute (Colin, July, “The Implications of Preemptive and Preventive War Doctrines: A Reconsideration”, <http://www.ciaonet.org/wps/ssi10561/ssi10561.pdf>)

7. A policy that favors preventive warfare expresses a futile quest for absolute security. It could do so. Most controversial policies contain within them the possibility of misuse. In the hands of a paranoid or boundlessly ambitious political leader, prevention could be a policy for endless warfare. However, the American political system, with its checks and balances, was designed explicitly for the purpose of constraining the executive from excessive folly. Both the Vietnam and the contemporary Iraqi experiences reveal clearly that although the conduct of war is an executive prerogative, in practice that authority is disciplined by public attitudes. Clausewitz made this point superbly with his designation of the passion, the sentiments, of the people as a vital component of his trinitarian theory of war. 51 It is true to claim that power can be, and indeed is often, abused, both personally and nationally. It is possible that a state could acquire a taste for the apparent swift decisiveness of preventive warfare and overuse the option. One might argue that the easy success achieved against Taliban Afghanistan in 2001, provided fuel for the urge to seek a similarly rapid success against Saddam Hussein’s Iraq. In other words, the delights of military success can be habit forming. On balance, claim seven is not persuasive, though it certainly contains a germ of truth. A country with unmatched wealth and power, unused to physical insecurity at home—notwithstanding 42 years of nuclear danger, and a high level of gun crime—is vulnerable to demands for policies that supposedly can restore security. But we ought not to endorse the argument that the United States should eschew the preventive war option because it could lead to a futile, endless search for absolute security. One might as well argue that the United States should adopt a defense policy and develop capabilities shaped strictly for homeland security approached in a narrowly geographical sense. Since a president might misuse a military instrument that had a global reach, why not deny the White House even the possibility of such misuse? In other words, constrain policy ends by limiting policy’s military means. This argument has circulated for many decades and, it must be admitted, it does have a certain elementary logic. It is the opinion of this enquiry, however, that the claim that a policy which includes the preventive option might lead to a search for total security is **not at all convincing**. Of course, folly in high places is always possible, which is one of the many reasons why popular democracy is the superior form of government. It would be absurd to permit the fear of a futile and dangerous quest for absolute security to preclude prevention as a policy option. Despite its absurdity, this rhetorical charge against prevention is a stock favorite among prevention’s critics. It should be recognized and dismissed for what it is, a debating point with little pragmatic merit. And strategy, though not always policy, **must be nothing if not pragmatic**.

### Generic Legalism K – 2AC

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

#### Net benefits-

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

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

#### 2. 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.

#### 3. 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.

#### 4. Perm do both

#### 5. True constraints are possible – court rulings are binding – past decisions prove

#### 6. External checks are effective

Aziz Z. Huq 12, Assistant Professor of Law, University of Chicago Law School, "Binding the Executive (by Law or by Politics)", May 25, www.law.uchicago.edu/files/file/400-ah-binding.pdf

Paulson ’ s genuflection and Obama ’ s reticence, I will contend here, are symptomatic of our political system ’ s operation rather than being aberration al . It is generally the case that even in the heart of crisis, and even on matters where executive competence is supposedly at an acme , legislators employ formal institutional powers not only to delay executive initiatives but also affirmatively to end presidential policies. 20 Numerous examples from recent events illustrate the point. Congressional adversaries of Obama, for instance, cut off his policy of emptying Guantánamo Bay via appropriations riders. 21 Deficit hawks spent 2011 resisting the President’s solutions to federal debt, while the President declined to short - circuit negotiations with unilateral action. 22 Even in military matters, a growing body of empirical research suggests Congress often successfully influences the course of overseas engagements to a greater degree than legal scholars have discerned or acknowledged. 23¶ That work suggests that the failure of absolute congressional control over military matters cannot be taken as evidence of “the inability of law to constrain the executive ” in more subtle ways (p 5). The conventional narrative of executive dominance , in other words, is at best incomplete a

nd demands supplementing .¶ This Review uses The Executive Unbound as a platform to explore how the boundaries of discretionary executive action are established. As the controversial national security policies of the Bush administration recede in time, the issue of executive power becomes ripe for reconsideration. Arguments for or against binding the executive are starting to lose their partisan coloration. There is more room to investigate the dynamics of executive power in a purely positive fashion without the impinging taint of ideological coloration.¶ Notwithstanding this emerging space for analys i s, t here is still surprising inattention to evidence of whether the executive is constrained and to the positive question of how constraint works. The Executive Unbound is a significant advance because it takes seriously this second “ mechanism question. ” Future studies of the executive branch will ignore its i mportant and trenchant analysis at their peril. 24 Following PV ’ s lead, I focus on the descriptive , positive question of how the executive is constrained . I do speak briefly and in concluding to normative matters . B ut f irst and foremost, my arguments should be understood as positive and not normative in nature unless otherwise noted.¶ Articulating and answering the question “ W hat binds the executive ?” , The Executive Unbound draws a sharp line between legal and political constraints on discretion — a distinction between laws and institutions on the one hand, and the incentives created by political competition on the other hand . While legal constraints usually fail, it argues, political constraints can prevail. PV thus postulate what I call a “strong law/ politics dichotomy. ” My central claim in this Review is that this strong law/politics dichotomy cannot withstand scrutiny. While doctrinal scholars exaggerate law ’s autonomy, I contend, the realists PV underestimate the extent to which legal rules and institutions play a pivotal role in the production of executive constraint. Further, the political mechanisms they identify as substitutes for legal checks cannot alone do the work of regulating executive discretion. Diverging from both legalist and realist positions, I suggest that law and politics do not operate as substitutes in the regulation of executive authority. 25 They instead work as interlocking complements. An account of the borders of executive discretion must focus on the interaction of partisan and electoral forces on the one hand and legal rules. It must specify the conditions under which the interaction of political actors’ exertions and legal rules will prove effective in limiting such discretion.

#### **7.** Even if they aren’t – the president will go along with them anyway – takes out the impact

Bradley and Morrison 13

[Curtis, William Van Alstyne Professor of Law, Duke Law School. and Trevor, Liviu Librescu Professor of Law, Columbia Law School, Presidential Power, Historical Practice, And Legal Constraint, 2013 Directors of The Columbia Law Review Association, Inc. Columbia Law Review May, 2013, L/N]

Insisting on a sharp distinction between the law governing presidential authority that is subject to judicial review and the law that is not also takes for granted a phenomenon that merits attention - that Presidents follow judicial decisions. n118 That assumption is generally accurate in the United States today. To take one relatively recent example, despite disagreeing with the Supreme Court's determination in Hamdan v. Rumsfeld that Common Article 3 of the Geneva Conventions applies to the war on terror, the Bush Administration quickly accepted it. n119 But the reason why Presidents abide by court decisions has a connection to the broader issue [\*1131] of the constraining effect of law. An executive obligation to comply with judicial decisions is itself part of the practice-based constitutional law of the United States, so presidential compliance with this obligation may demonstrate that such law can in fact constrain the President. This is true, as we explain further in Part III, even if the effect on presidential behavior is motivated by concerns about external political perceptions rather than an internal sense of fidelity to law (or judicial review). n120

#### 8. No impact

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

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

#### 9. Venezuela is an impact turn – legalism is necessary to spur action – that’s Yammamoto

#### 10. Liberalism is inevitable

Sparer ‘84

[Ed, Prof. Law and Soc Welfare @ Pennsylvania, “Fundamental Human Rights, Legal Entitlements, and the Social Struggle: A Friendly Critique of the Critical Legal Studies Movement,” 36 Stan. L. Rev. 509, January, ln//uwyo-ajl]

The thrust of CLS critique is devoted, in turn, to the exposure of the contradictions in liberal philosophy and law. This strand of the Critical legal critique is quite powerful and makes a much-needed contribution. In my view, however, it suffers from two general problems. First, the critique lends itself to exaggeration. This observation may be appreciated by considering what happens when Critical legal theorists themselves make tentative gestures at the social direction in which we should move. Such gestures, even from the most vigorous critics of liberalism, do not escape from liberalism and, indeed, liberal rights theory. Nevertheless, those gestures have great merit, particularly because of their use of liberal rights. For example, Frug, while expounding his vision of the city as a site of localized power and participatory democracy, attacks liberal theory and its dualities as an obstacle to his vision. n19 At the same time, without [\*518] acknowledging the significance of what he is doing, Frug relies on the liberal image of law and rights to defend the potential of his vision. He writes: It should be emphasized that participatory democracy on the local level need not mean the tyranny of the majority over the minority. Cities are units within states, not the state itself; cities, like all individuals and entities within the state, could be subject to state-created legal restraints that protect individual rights. Nor does participatory democracy necessitate the frustration of national political objectives by local protectionism; participatory institutions, like others in society, could still remain subject to general regulation to achieve national goals. The liberal image of law as mediating between the need to protect the individual from communal coercion and the need to achieve communal goals could thus be retained even in the model of participatory democracy. n20

#### 11. Alt Can’t solve --Appeals for institutional restrain are a crucial supplement to political resistance to executive power.

David COLE Law @ Georgetown ’12 “The Politics of the Rule of Law: The Role of Civil Society in the Surprising Resilience of Human Rights in the Decade after 9/11” http://www.law.uchicago.edu/files/files/Cole%201.12.12.pdf p. 51-53

As I have shown above, **while political forces played a significant role in checking** President **Bush**, what was significant was the particular substantive content of that politics; **it was not just any political pressure**, **but pressure to maintain** fidelity to **the rule of law**. **Politics standing alone is as likely to fuel as to deter executive abuse; consider the lynch mob, the Nazi Party** in Germany, or **xenophobia** more generally. **What we need if we are to check abuses of executive power is a politics that champions the rule of law.** Unlike the politics Posner and Vermeule imagine, **this** type of **politics cannot be segregated neatly from the law**. On the contrary, **it will often coalesce around a distinctly legal challenge, objecting to departures from distinctly legal norms**, heard in a court case, as we saw with Guantanamo. **Congress’s actions make clear that had Guantanamo been left to the political process, there would have been few if any advances**. **The litigation generated and concentrated political pressure on claims for a restoration of the values of legality,** and, as discussed above, **that pressure then played a critical role in the litigation’s outcome, which in turn affected the political pressure for reform. T**here is, to be sure, something paradoxical about this assessment. The rule of law, the separation of powers, and human rights are designed to discipline and constrain politics, out of a concern that pure majoritarian politics, focused on the short term, is likely to discount the long-term values of these principles. Yet without a critical mass of political support for these legal principles, they are unlikely to be effective checks on abuse, for many of the reasons Posner andVermeule identify. **The answer, however, is not to abandon the rule of law for politics, but to develop and nurture a political culture that values the rule of law itself.** **Civil society organizations devoted to such values**, **such as Human Rights Watch, the Center for Constitutional Rights, and the American Civil Liberties Union, play a central role in facilitating, informing, and generating that politics**. Indeed, **they have no alternative.** Unlike governmental institutions, civil society groups have no formal authority to impose the limits of law themselves. Their recourse to the law’s limits is necessarily indirect: they can file lawsuits seeking judicial enforcement, lobby Congress for statutory reform or other legislative responses, or seek to influence the executive branch. **But they necessarily and simultaneously pursue these goals through political avenues – by appealing to the public for support, educating the public, exposing abuses, and engaging in public advocacy around rule-of-law values**. Unlike ordinary politics, which tends to focus on the preferences of the moment, **the politics of the rule of law is committed to a set of long-term principles.** **Civil society organizations are uniquely situated to bring these long-term interests to bear on the public debate.** Much like a constitution itself, civil society groups are institutionally designed to emphasize and reinforce our long-term interests. When the ordinary political process is consumed by the heat of a crisis, organizations like the ACLU, Human Rights First, and the Center for Constitutional Rights, designed to protect the rule of law, are therefore especially important. While Congress and the courts were at best compromised and at worst complicit in the abuses of the post-9/11 period, civil society performed admirably. The Center for Constitutional Rights brought the first lawsuit seeking habeas review at Guantanamo, and went on to coordinate a nationwide network of volunteer attorneys who represented Guantanamo habeas petitioners. The ACLU filed important lawsuits challenging secrecy and government excesses, and succeeded in disclosing many details about the government’s illegal interrogation program. Both the ACLU and CCR filed lawsuits and engaged in public advocacy on behalf of torture and rendition victims, and challenging warrantless wiretapping. Human Rights Watch and Human Rights First wrote important reports on detention, torture, and Guantanamo, and Human Rights First organized former military generals and admirals to speak out in defense of humanitarian law and human rights. These efforts are but a small subset of the broader activities of civil society, at home and abroad, that helped to bring to public attention the Bush administration’s most questionable initiatives, and to portray the initiatives as contrary to the rule of law. At their best, civil society organizations help forge a politics of the rule of law, in which **there is a symbiotic relationship between politics and law**: **the appeal to law informs a particular politics, and that politics reinforces the law’s appeal, in a mutually reinforcing relation**. **Posner and Vermeule understand the importance of politics as a checking force in the modern world, but fail to see the critical qualification that the politics must be organized around a commitment to fundamental principles of liberty, equality, due process, and the separation of powers** – in short, the rule of law. Margulies and Metcalf recognize that politics as much as law determines the reality of rights protections, but fail to identify the unique role that civil society organizations play in that process**. It is not that the “rule of politics” has replaced the “rule of law,” but that, properly understood, a politics of law is a critical supplement to the rule of law.** We cannot survive as a constitutional democracy true to our principles without both. And our survival turns, not only on a vibrant constitution, but on a vibrant civil society dedicated to reinforcing and defending constitutional values.

#### 12. Can’t result in the aff – 1AC Babcock says legal checks are key – political action is insufficient

### Condo

#### 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

### OLC CP – 2AC

#### Perm do both – solves the links

#### The President of the United States should request his Counsel and the Office of Legal Counsel for coordination over his war powers authority and the United States federal judiciary should rule that the President of the United States lacks the authority to detain individuals indefinitely.

#### [Perm do the plan and the first plank]

#### 2. Can’t solve the case –

#### OLC fails at executive restraint

Posner 11 -- Kirkland & Ellis Professor, University of Chicago Law School (Eric, 9/22/2011, "DEFERENCE TO THE EXECUTIVE IN THE UNITED STATES AFTER 9/11:CONGRESS, THE COURTS AND THE OFFICE OF LEGAL COUNSEL," http://www.law.uchicago.edu/files/file/363-eap-deference.pdf)

The medical protocol analogy does not provi de any reason for doubting the deference thesis. Rules are valuable in many settings, in cluding emergencies; but it does not follow from that observation that courts and legislatures rather than the ex ecutive should create and enforce the rules. Each institution has specific advantag es; the executive’s advant ages are salient during emergencies. The notion that the executive can be constr ained by its own components is a paradoxical idea, and has little to recommend it. In the end, someone must have discretion to respond to unforeseen events, and in the U.S. system that ro le has been given to the president. The theory that OLC or some similar office within the exec utive branch could constrain the president rests on a confusion between rational self-binding, which presidents may (albeit with difficulty) engage in, and external constraint, which pres idents resist. OLC may serve as a device for rational self-binding, which extends the executive power; it is highly unlik ely, however, that it can serve as a constraint.

#### CP gets overruled and circumvented---data goes aff

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

The problem is confirmed by Morrison’s very useful data analysis, which shows that only thirteen percent of OLC opinions have provided a more- or- less clear “no” to the White House during the past generation.34 Morrison’s data- set doesn’t include OLC’s unpublished opinions — which typically involve confidential matters involving national security. Since OLC is almost- certainly more deferential to the White House in these sensitive areas, the percentage of “no’s” would likely sink into the single- digits if these secret opinions could be included in Morrison’s data set.35 And remember, quantitative data can’t take into account the occasions on which the White House is especially exigent in its telephonic demands.36 ¶ \*\*\*TO FOOTNOTES\*\*\*¶ 36 Morrison is undoubtedly right in suggesting that stare decisis plays a restraining role in garden-variety cases. But he also notes that the OLC overrules (or substantially modifies) its own decisions in more than five percent of the opinions in his sample. See Alarmism, supra note P, at NTOP n.NPN. This is a significant percentage, given my focus on the likely way the OLC will function in high-stress situations. It indicates that stare decisis is by no means a rigid rule, and that the OLC cannot credibly claim that its hands are tied when the White House is pressuring it to overrule existing case- law to vindicate a high-priority presidential initiative. ¶ Similarly, Morrison is undoubtedly correct in suggesting that his data fails to reflect the fact that the OLC sometimes informally deflects the White House from a legally problematic initiative. See Alarmism, supra note P, at NTNV. But on high-priority initiatives, the White House won’t easily take an informal “no” for an answer — it will either push the OLC to write a formal opinion saying “yes” or it will withdraw the issue from its jurisdiction and rely on the WHC to uphold the legality of the President’s plan. As a consequence, I believe that Morrison’s data provides an overestimate, not an under-estimate, of likely OLC resistance: it fails to count unreported national security opinions (on which the OLC is probably extremely deferential), and this failure is not mitigated by its additional failure to detect informal modes of OLC resistance.

#### No compliance

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

To see why, consider that the relationship between the WHC and the OLC is utterly mysterious to most lawyers, let alone to most Americans. So imagine the scene when some future White House Counsel issues a legal opinion, rubberstamping the President’s latest power- grab, with the peroration: “Ever since Lloyd Cutler assumed the position as White House Counsel in NVTV, this office has, from to time, taken the lead in explaining the constitutional foundations for major presidential initiatives . . . .” ¶ Given pervasive ignorance dealing with Beltway arcana, this famous precedent will go a long way toward legitimating the White House decision to cut out the OLC. Instead of conceding impropriety, our hypothetical Counsel can summon up the great spirit of Lloyd Cutler in support of his leading role. After establishing his distinguished pedigree, Counsel can reinforce his claim to authority with a host of additional arguments: After all, there’s nothing in the Constitution that requires the President to prefer the OLC to the WHC. Article II simply tells the President to “take Care that the Laws be faithfully executed”69 — it doesn’t tell him where to get his legal advice. Moreover, as Morrison acknowledges, the OLC’s traditional role is principally based on executive order, not Congressional statutes.70 If the President prefers to treat his Counsel as a modern-day Cutler, there can be no question that the bureaucracy and military will follow his lead — at least until the courts enter into the field. ¶ Undoubtedly, the Cutler precedent won’t stifle all grumbling from Beltway cognoscenti.71 But it will make it much tougher to convince the generality of lawyerdom, as well as the broader public, that they are witnessing a dreadful act of legal usurpation — even if that’s precisely what is happening.72

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

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

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

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

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

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

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

#### Doesn’t solve Venezuela –

#### signals of judicial independence are uniquely key to Venezuelan stability because they prevent overcentralization of Maduro’s power – that’s Yammamoto

#### Venezuela is responding only to the human rights council – this is court based

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

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

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

#### 4. Counterplan is a voter

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

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

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

#### 5. **CP is misconstrued**

Hilbert 12 (Sarah – J.D. Candidate, William & Mary Law School, “A Legislative Solution to Environmental Protection in Military Action Overseas”, 2012, 37 Wm. & Mary Envtl. L. & Pol'y Rev. 263, lexis)

IV. Call to Action Judicial action through liability for the government and government contractors in the courts is not a viable solution for the environmental degradation and human health problems that result from military action overseas because the burdens that plaintiffs must overcome are too heavy to result in consistent decisions, or in any decisions at all. n180 Executive action through an executive order would not cause the kind of change in military behavior that is needed at this point, and Executive Orders have been ineffective in the past because the DoD was able to [\*287] misconstrue each Order through its own interpretations. n181 Legislative action provides the best option for a long-term solution that will apply to all military action, will have the intent of many federal statutes that already apply within United States borders, will hold military leaders accountable to a rigid set of procedures and standards, and will effectuate the change our country needs. n182

#### 6. Perm do the CP – its an example of the president complying with the plans’ restriction

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

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

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

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

#### No institutional memory

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

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

### Iran Prolif 2AC

**Obama has already been checked on his war powers credibility in terms of indefinite detention – their card**

**Their cards are talking about diplomatic flexibility, not war powers flexibility – not saying at all what they say it does. Also, their internal link ev just says that Congress will need to be selective in its agenda and need to get on board but nothing about why the aff specifically changes anything about that**

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

Rothkopf 13

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

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

**Iran already perceives Obama as weak and negotiations can’t solve prolif**

**Bolton 10/1**

[John Bolton, a senior fellow at the American Enterprise Institute, First Syria, now Iran; Obama being played for a fool, 10/1/13, <http://www.theaustralian.com.au/news/world/first-syria-now-iran-obama-being-played-for-a-fool/story-e6frg6ux-1226730266947>]

Obama is inverting Dean Acheson's maxim that Washington should only negotiate from strength. Even if there were some prospect that Iran could be talked out of its nuclear-weapons program, **which there is not,** the White House approach is the **wrong way** to start discussions. Given the President's palpable **unwillingness to use the military** to enforce his Syria red line - let alone to answer last year's September 11 Benghazi terrorist attack - and his **paucity of domestic political support,** Iran's ayatollahs know that the President's "all options on the table" incantation regarding their nuclear program **carries no weight.** Iran undoubtedly wants relief from international sanctions, which have exacerbated decades of incompetent economic policy. But there is no evidence that the sanctions have impaired Iran's nuclear- or ballistic-missile programs. Instead, Tehran has increased its financial and military assistance to Assad and Hezbollah in Syria. Rowhani's strategy is clear: lower the rhetorical temperature about the nuclear issue; make temporary, **cosmetic concessions**, such as allowing inspections by the International Atomic Energy Agency at already-declared nuclear sites; and gain Western acceptance of its "reactor-grade" uranium enrichment. Once that goal is attained, Iran's path to nuclear weapons will be **unobstructed**. Iran will demand in return that international sanctions be eased, focusing first on obtaining small reductions to signal Western "good faith". Obama and Europe already seem eager to comply. Western diplomats will assert defensively that these concessions are merely a matter of "sequencing", and that they expect substantive Iranian concessions. They will wait a long time. Rowhani fully understands that once sanctions start rolling back, restoring them will be hard, perhaps **impossible**. Rowhani will not supply a major provocation. Instead, he will continue making on-again, off-again gestures seducing the West into protracted negotiations. Meanwhile, Iran's nuclear-weapons and ballistic-missile programs will proceed **unimpeded** in unknown, undisclosed locations. This was his 2003-05 playbook.

**No Iran negotiations – hardliners and distrust**

**Schwirtz and Sanger 13**

[Michael and David, NYT, Dueling Narratives in Iran Over U.S. Relations, 9/29/13, <http://www.nytimes.com/2013/09/30/world/middleeast/dueling-narratives-in-iran-after-breakthrough-in-us-relations.html>]

Iran’s foreign minister said on Sunday that there was a “real chance” to reach an agreement with the United States over his country’s nuclear program, as long as Washington was prepared to end sanctions and recognize Tehran’s right to peaceful nuclear enrichment. Even as the country’s American-educated foreign minister, Mohammad Javad Zarif, was making his comments on ABC’s “This Week,” his deputy in Iran, seeking to **reassure hard-liners** there, said Tehran would never fully trust the United States. The dueling narratives underscored the **complexity of any rapprochement** between the two countries, despite a series of unexpected public and private exchanges in recent weeks culminating in a historic phone call Friday between President Obama and Iran’s president, Hassan Rouhani. While Mr. Zarif is widely believed to have the backing of the country’s supreme leader to at least give negotiations a try, hard-liners among the Iranian leadership are watching warily and **could try to derail an agreement**. With both the United States and Iran staking out their positions ahead of new negotiations scheduled for mid-October in Geneva, Mr. Zarif said the nuclear issue was a crucial impediment to improved relations between Iran and the United States. But he added that the “first steps” toward resolving it had been taken. “The resolution of that issue will be a first step, a necessary first step toward removing the tensions and doubts and misgivings that the two sides have had about each other for the last 30-some years,” he said. But even as Mr. Zarif expressed cautious optimism, the points of possible conflict between the two countries were made clear again Sunday. A crucial demand of Iran, he said, was the removal of the international sanctions that have damaged the country’s economy. In exchange, he said, Iran would be willing to open its nuclear facilities to inspections. He did not address the sequence in which the actions would need to be taken, or the **reluctance of both nations** to seem to be making the first major move. On a different talk show, “Fareed Zakaria GPS” on CNN, Susan Rice, the national security adviser, said sanctions would remain until the United States and its allies were convinced Iran was not pursuing nuclear weapons. But like Mr. Zarif, she did not discuss how a lifting of sanctions could be conducted or how much of its nuclear infrastructure Iran would have to dismantle. In his comments on Sunday, Mr. Zarif signaled that Iran would be prepared to allow inspections, including unannounced ones, so long as they did not come in the form of demands from the United States. “We are willing to engage in negotiations,” he said. “Of course, the United States also needs to do certain things very rapidly.” His statement that Iran’s “right to enrich is **nonnegotiable**” also pointed toward a difference with the U.S. that is more than merely semantic. So far the United States has said only that the Iranians have a right to nuclear energy. The Iranians say that implies a right to enrich uranium; the West has previously negotiated deals, which ultimately fell apart, to provide Iran with nuclear fuel in a form that would be more difficult to weaponize. In Tehran, Iran’s deputy foreign minister, Abbas Araghchi, sought to assure conservative factions that Iran remained skeptical of Washington and **would not rush headlong into a deal**. “Definitely, **a history of high tensions between Tehran and Washington will not go back to normal relations due to a phone call**, **meeting or negotiation**,” Mr. Araghchi was quoted as saying by the semiofficial Fars news agency. “We never trust America 100 percent,” he added. “And, in the future, **we will remain on the same path**.” The tensions over the recent breakthroughs were evident in Iran over the weekend. On Saturday, dozens of protesters threw eggs and a shoe at Mr. Rouhani upon his return from an annual gathering of world leaders at the United Nations in New York. At the protest in Tehran, hard-liners surrounded Mr. Rouhani’s car, shouting, “Our people are awake and hate America!”

**No prolif and long timeframe**

**Kahl ’12** (Colin H. Kahl 12, security studies prof at Georgetown, senior fellow at the Center for a New American Security, was Deputy Assistant Secretary of Defense for the Middle East, “Not Time to Attack Iran”, January 17, <http://www.foreignaffairs.com/articles/137031/colin-h-kahl/not-time-to-attack-iran?page=show>

Kroenig argues that there is an urgent need to attack Iran's nuclear infrastructure soon, since Tehran could "produce its first nuclear weapon within six months of deciding to do so." Yet that last phrase is crucial. The International Atomic Energy Agency (IAEA) has documented Iranian efforts to achieve the capacity to develop nuclear weapons at some point, but there is no hard evidence that Supreme Leader Ayatollah Ali Khamenei has yet made the final decision to develop them. In arguing for a six-month horizon,Kroenig also misleadingly conflates hypothetical timelines to produce weapons-grade uranium with the time actually required to construct a bomb. According to 2010 Senate testimony by James Cartwright, then vice chairman of the U.S. Joint Chiefs of Staff, and recent statements by the former heads of Israel's national intelligence and defense intelligence agencies, even if Iran could produce enough weapons-grade uranium for a bomb in six months, it would take it at least a year to produce a testable nuclear deviceand considerably longer to make a deliverable weapon. And David Albright, president of the Institute for Science and International Security (and the source of Kroenig's six-month estimate), recently told Agence France-Presse that there is a "low probability" that the Iranians would actually develop a bomb over the next year even if they had the capability to do so. Because there is no evidence that Iran has built additional covert enrichment plants since the Natanz and Qom sites were outed in 2002 and 2009, respectively, any near-term move by Tehran to produce weapons-grade uranium would have to rely on its declared facilities. The IAEA would thus detect such activity with sufficient time for the international community to mount a forceful response. As a result, the Iranians are unlikely to commit to building nuclear weapons until they can do so much more quickly or out of sight, which could be years off.

### 2AC CIR

#### Food shortage doesn’t cause war – best studies

Allouche 11, research Fellow – water supply and sanitation @ Institute for Development Studies, frmr professor – MIT, ’11 (Jeremy, “The sustainability and resilience of global water and food systems: Political analysis of the interplay between security, resource scarcity, political systems and global trade,” Food Policy, Vol. 36 Supplement 1, p. S3-S8, January)

The question of resource scarcity has led to many debates on whether scarcity (whether of food or water) will lead to conflict and war. The underlining reasoning behind most of these discourses over food and water wars comes from the Malthusian belief that there is an imbalance between the economic availability of natural resources and population growth since while food production grows linearly, population increases exponentially. Following this reasoning, neo-Malthusians claim that finite natural resources place a strict limit on the growth of human population and aggregate consumption; if these limits are exceeded, social breakdown, conflict and wars result. Nonetheless, it seems that most empirical studies do not support any of these neo-Malthusian arguments. Technological change and greater inputs of capital have dramatically increased labour productivity in agriculture. More generally, the neo-Malthusian view has suffered because during the last two centuries humankind has breached many resource barriers that seemed unchallengeable. Lessons from history: alarmist scenarios, resource wars and international relations In a so-called age of uncertainty, a number of alarmist scenarios have linked the increasing use of water resources and food insecurity with wars. The idea of water wars (perhaps more than food wars) is a dominant discourse in the media (see for example Smith, 2009), NGOs (International Alert, 2007) and within international organizations (UNEP, 2007). In 2007, UN Secretary General Ban Ki-moon declared that ‘water scarcity threatens economic and social gains and is a potent fuel for wars and conflict’ (Lewis, 2007). Of course, this type of discourse has an instrumental purpose; security and conflict are here used for raising water/food as key policy priorities at the international level. In the Middle East, presidents, prime ministers and foreign ministers have also used this bellicose rhetoric. Boutrous Boutros-Gali said; ‘the next war in the Middle East will be over water, not politics’ (Boutros Boutros-Gali in Butts, 1997, p. 65). The question is not whether the sharing of transboundary water sparks political tension and alarmist declaration, but rather to what extent water has been a principal factor in international conflicts. The evidence seems quite weak. Whether by president Sadat in Egypt or King Hussein in Jordan, none of these declarations have been followed up by military action. The governance of transboundary water has gained increased attention these last decades. This has a direct impact on the global food system as water allocation agreements determine the amount of water that can used for irrigated agriculture. The likelihood of conflicts over water is an important parameter to consider in assessing the stability, sustainability and resilience of global food systems. None of the various and extensive databases on the causes of war show water as a casus belli. Using the International Crisis Behavior (ICB) data set and supplementary data from the University of Alabama on water conflicts, Hewitt, Wolf and Hammer found only seven disputes where water seems to have been at least a partial cause for conflict (Wolf, 1998, p. 251). In fact, about 80% of the incidents relating to water were limited purely to governmental rhetoric intended for the electorate (Otchet, 2001, p. 18). As shown in The Basins At Risk (BAR) water event database, more than two-thirds of over 1800 water-related ‘events’ fall on the ‘cooperative’ scale (Yoffe et al., 2003). Indeed, if one takes into account a much longer period, the following figures clearly demonstrate this argument. According to studies by the United Nations Food and Agriculture Organization (FAO), organized political bodies signed between the year 805 and 1984 more than 3600 water-related treaties, and approximately 300 treaties dealing with water management or allocations in international basins have been negotiated since 1945 (FAO, 1978 and FAO, 1984). The fear around water wars have been driven by a Malthusian outlook which equates scarcity with violence, conflict and war. There is however no direct correlation between water scarcity and transboundary conflict. Most specialists now tend to agree that the major issue is not scarcity per se but rather the allocation of water resources between the different riparian states (see for example Allouche, 2005, Allouche, 2007 and [Rouyer, 2000] ). Water rich countries have been involved in a number of disputes with other relatively water rich countries (see for example India/Pakistan or Brazil/Argentina). The perception of each state’s estimated water needs really constitutes the core issue in transboundary water relations. Indeed, whether this scarcity exists or not in reality, perceptions of the amount of available water shapes people’s attitude towards the environment (Ohlsson, 1999). In fact, some water experts have argued that scarcity drives the process of co-operation among riparians (Dinar and Dinar, 2005 and Brochmann and Gleditsch, 2006). In terms of international relations, the threat of water wars due to increasing scarcity does not make much sense in the light of the recent historical record. Overall, the water war rationale expects conflict to occur over water, and appears to suggest that violence is a viable means of securing national water supplies, an argument which is highly contestable. The debates over the likely impacts of climate change have again popularised the idea of water wars. The argument runs that climate change will precipitate worsening ecological conditions contributing to resource scarcities, social breakdown, institutional failure, mass migrations and in turn cause greater political instability and conflict (Brauch, 2002 and Pervis and Busby, 2004). In a report for the US Department of Defense, Schwartz and Randall (2003) speculate about the consequences of a worst-case climate change scenario arguing that water shortages will lead to aggressive wars (Schwartz and Randall, 2003, p. 15). Despite growing concern that climate change will lead to instability and violent conflict, the evidence base to substantiate the connections is thin ( [Barnett and Adger, 2007] and Kevane and Gray, 2008).

#### Immigration reform won’t pass and capital not key – no chance House takes up immigration, no conservative support for action, crowded legislative calendar, debt battle killed goodwill

Berman 10/25/13 (Russell, The Hill, "GOP comfortable ignoring Obama pleas for vote on immigration bill," http://thehill.com/homenews/house/330527-gop-comfortable-ignoring-obama-pleas-to-move-to-immigration-reform)

For President Obama and advocates hoping for a House vote on immigration reform this year, the reality is simple: Fat chance. ¶ Since the shutdown, Obama has repeatedly sought to turn the nation’s focus to immigration reform and pressure Republicans to take up the Senate’s bill, or something similar.¶ But there are no signs that Republicans are feeling any pressure.¶ Speaker John Boehner (R-Ohio) has repeatedly ruled out taking up the comprehensive Senate bill, and senior Republicans say it is unlikely that the party, bruised from its internal battle over the government shutdown, would pivot quickly to an issue that has long rankled conservatives.¶ Rep. Tom Cole (R-Okla.), a leadership ally, told reporters Wednesday there is virtually no chance the party would take up immigration reform before the next round of budget and debt-ceiling fights are settled. While that could happen by December if a budget conference committee strikes an agreement, that fight is more likely to drag on well into 2014: The next deadline for lifting the debt ceiling, for example, is not until Feb. 7.¶ “I don’t even think we’ll get to that point until we get these other problems solved,” Cole said.¶ He said it was unrealistic to expect the House to be able to tackle what he called the “divisive and difficult issue” of immigration when it can barely handle the most basic task of keeping the government’s lights on.¶ “We’re not sure we can chew gum, let alone walk and chew gum, so let’s just chew gum for a while,” Cole said.¶ In a colloquy on the House floor, Minority Whip Steny Hoyer (D-Md.) asked Majority Leader Eric Cantor (R-Va.) to outline the GOP's agenda between now and the end of 2013.¶ Cantor rattled off a handful of issues — finishing a farm bill, energy legislation, more efforts to go after ObamaCare — but immigration reform was notably absent.¶ When Hoyer asked Cantor directly on the House floor for an update on immigration efforts, the majority leader was similarly vague.¶ “There are plenty of bipartisan efforts underway and in discussion between members on both sides of the aisle to try and address what is broken about our immigration system,” Cantor said. “The committees are still working on this issue, and I expect us to move forward this year in trying to address reform and what is broken about our system.”¶ Immigration reform advocates in both parties have long set the end of the year as a soft deadline for enacting an overhaul because of the assumption that it would be impossible to pass such contentious legislation in an election year.¶ Aides say party leaders have not ruled out bringing up immigration reform in the next two months, but there is no current plan to do so.¶ The legislative calendar is also quite limited; because of holidays and recesses, the House is scheduled to be in session for just five weeks for the remainder of the year. ¶ In recent weeks, however, some advocates have held out hope that the issue would remain viable for the first few months of 2014, before the midterm congressional campaigns heat up.¶ Democrats and immigration reform activists have long vowed to punish Republicans in 2014 if they stymie reform efforts, and the issue is expected to play prominently in districts with a significant percentage of Hispanic voters next year.¶ With the shutdown having sent the GOP’s approval rating plummeting, Democrats have appealed to Republicans to use immigration reform as a chance to demonstrate to voters that the two parties can work together and that Congress can do more than simply careen from crisis to crisis.¶ “Rather than create problems, let’s prove to the American people that Washington can actually solve some problems,” Obama said Thursday in his latest effort to spur the issue on.¶ But Republicans largely dismiss that line of thinking and say the two-week shutdown damaged what little trust between the GOP and Obama there was at the outset.¶ “There is a sincere desire to get it done, but there is also very little goodwill after the president spent the last two months refusing to work with us,” a House GOP leadership aide said. “In that way, his approach in the fiscal fights was very short-sighted: It made his achieving his real priorities much more difficult.”

#### No link – the plan affirms a lower court ruling – that’s fundamentally different from the broad overruling of precedent neg evidence assumes

#### Capital fails on immigration - GOP won't respond to political muscle - YOUR UNIQUENESS AUTHOR

Nowicki 10/20/13 (Dan, Arizona Republic, "Hopes dim for immigration reform," http://www.azcentral.com/news/politics/articles/20130923immigration-reform-hopes-dim.html)

The impact of the past several weeks of partisan bitterness on the immigration-reform dynamics remains unclear, with some House Republicans harboring hard feelings toward Obama and others seeing a positive post-shutdown opportunity to govern “and show the country that we can do our jobs,” said Tamar Jacoby, president of ImmigrationWorks USA, a national coalition of business groups that backs immigration reform. Which House GOP faction wins out in the short term remains to be seen, although the bruised egos represent a fresh challenge for reform supporters.¶ “House Republicans will not do this if they see it as ‘the president just beat us and now he’s going to shove this down our throats,’ ” Jacoby said. “That is just not a way to get it done. What could potentially make it doable is if people see it as good for the country, good for the party and something that is basically framed as a conservative reform, which is the opposite of doing something because President Obama is muscling them.”

#### Plan’s announced in June

The Hill 13 (6/9, Staffwriter Sam Baker “Decision on gay marriage highlights Supreme Court’s term” <http://thehill.com/homenews/news/304225-decision-on-gay-marriage-highlights-supreme-courts-summer-term#ixzz2gJR8Vkpt>)

The marriage rulings will likely be the last ones released before the justices leave town for summer vacations and teaching positions, although the specific timing is hard to predict. The court doesn’t announce when specific decisions are coming, or even set a fixed end date by which all decisions will be released. But the last rulings, which are usually the most controversial, tend to come out at the end of June. (The court’s ruling on ObamaCare, for example, was released June 28.)

#### No link – the plan is a form of stealth overruling that avoids public scrutiny

Friedman 10 (Barry, Prof of Law @ NYU, "The Wages of Stealth Overruling (With Particular

Attention to Miranda v. Arizona), http://georgetownlawjournal.org/files/pdf/99-1/Friedman.pdf)

There is one quite persuasive—perhaps even obvious—explanation that remains for why Justices engage in stealth overruling: avoiding the publicity¶ attendant explicit overruling.185Although public opinion is not often given as a¶ basis for the Court’s decisions, it has played a role with regard to stare decisis.¶ As we have seen, part of the concern about overruling in constitutional cases is¶ the way the public will perceive the decision, especially if it appears fueled by¶ little else but a membership change on the Court.186 This point was poignantly¶ made in Planned Parenthood of Southeastern Pennsylvania v. Casey.¶ 187 The¶ joint opinion of Justices Kennedy, O’Connor, and Souter dwelt in somewhat¶ agonized terms with the crisis of legitimacy the Court would experience if it¶ overruled Roe; they concluded that a “terrible price would be paid for overruling.”188 Although the analysis was somewhat muddled, the conclusion was¶ almost certainly correct. Casey was a case of extremely high salience, and the¶ Justices had seen ample evidence of the uproar that would attend a decision to¶ overrule Roe v. Wade.¶ 185. See Peters,supra note 8, at 1090 (noting public scrutiny provides an “incentive for the Court to¶ overrule precedents it believes to be wrong without being seen to do so”).¶ 186. See supra note 142 and accompanying text.¶ 187. 505 U.S. 833 (1992).¶ 188. Id. at 864; see also Moragne v. States Marine Lines, Inc., 398 U.S. 375, 403 (1970) (favoring¶ respect for precedent given “the necessity of maintaining public faith in the judiciary as a source of¶ impersonal and reasoned judgments”).

#### No link – Obama isn’t going to push actions that *limit* his powers

#### Aff allows Obama to shift blame onto the court

Whittington 5 (Keith E., Cromwell Professor of Politics – Princeton University, ““Interpose Your Friendly Hand”: Political Supports for the Exercise of Judicial Review by the United States Supreme Court”, American Political Science Review, 99(4), November, p. 585, 591-592)

Political leaders in such a situation will have reason to support or, at minimum, tolerate the active exercise of judicial review. In the American context, the presidency is a particularly useful site for locating such behavior. The Constitution gives the president a powerful role in selecting and speaking to federal judges. As national party leaders, presidents and presidential candidates are both conscious of the fragmented nature of American political parties and sensitive to policy goals that will not be shared by all of the president’s putative partisan allies in Congress. We would expect political support for judicial review to make itself apparent in any of four fields of activity: (1) in the selection of “activist” judges, (2) in the encouragement of specific judicial action consistent with the political needs of coalition leaders, (3) in the congenial reception of judicial action after it has been taken, and (4) in the public expression of generalized support for judicial supremacy in the articulation of constitutional commitments. Although it might sometimes be the case that judges and elected officials act in more-or-less explicit concert to shift the politically appropriate decisions into the judicial arena for resolution, it is also the case that judges might act independently of elected officials but nonetheless in ways that elected officials find congenial to their own interests and are willing and able to accommodate. Although Attorney General Richard Olney and perhaps President Grover Cleveland thought the 1894 federal income tax was politically unwise and socially unjust, they did not necessarily therefore think judicial intervention was appropriate in the case considered in more detail later (Eggert 1974, 101– 14). If a majority of the justices and Cleveland-allies in and around the administration had more serious doubts about the constitutionality of the tax, however, the White House would hardly feel aggrieved. We should be equally interested in how judges might exploit the political space open to them to render controversial decisions and in how elected officials might anticipate the utility of future acts of judicial review to their own interests.

[CONTINUES]

There are some issues that politicians cannot easily handle. For individual legislators, their constituents may be sharply divided on a given issue or overwhelmingly hostile to a policy that the legislator would nonetheless like to see adopted. Party leaders, including presidents and legislative leaders, must similarly sometimes manage deeply divided or cross-pressured coalitions. When faced with such issues, elected officials may actively seek to turn over controversial political questions to the courts so as to circumvent a paralyzed legislature and avoid the political fallout that would come with taking direct action themselves. As Mark Graber (1993) has detailed in cases such as slavery and abortion, elected officials may prefer judicial resolution of disruptive political issues to direct legislative action, especially when the courts are believed to be sympathetic to the politician’s own substantive preferences but even when the attitude of the courts is uncertain or unfavorable (see also, Lovell 2003). Even when politicians do not invite judicial intervention, strategically minded courts will take into account not only the policy preferences of well-positioned policymakers but also the willingness of those potential policymakers to act if doing so means that they must assume responsibility for policy outcomes. For cross-pressured politicians and coalition leaders, shifting blame for controversial decisions to the Court and obscuring their own relationship to those decisions may preserve electoral support and coalition unity without threatening active judicial review (Arnold 1990; Fiorina 1986; Weaver 1986). The conditions for the exercise of judicial review may be relatively favorable when judicial invalidations of legislative policy can be managed to the electoral benefit of most legislators. In the cases considered previously, fractious coalitions produced legislation that presidents and party leaders deplored but were unwilling to block. Divisions within the governing coalition can also prevent legislative action that political leaders want taken, as illustrated in the following case.

#### Not intrinsic – no reason a logical decision maker couldn’t do both

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

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

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

#### Farm bill thumps the DA – first order of business

Wasson 10/20/13 (Erik, The Hill, "Lawmakers seek truce with farm bill," http://thehill.com/blogs/on-the-money/agriculture/329413-lawmakers-seek-truce-with-farm-bill)

The $1 trillion farm bill will serve as the first test of how deeply the shutdown fight has damaged relations in Washington.¶ Congress has made the legislation its first order of business as it pivots away from the battles over government funding and the debt ceiling.¶ The leaders of the agriculture committees in Congress and K Street lobbyists are eager to put the finishing touches on the bill, which could get wrapped into a year-end budget deal that replaces automatic sequestration cuts.¶ But some fear Speaker John Boehner (R-Ohio), who has vowed to complete the legislation, might be too wounded by the fiscal battle to finish the job.¶ The same conservative groups that thwarted Boehner’s plans during the shutdown fight — including Heritage Action — could be opposed to the farm bill if there is any compromise on food stamp cuts.¶ Supporters of the legislation also fear the raw relations between the White House and congressional Republicans will make bipartisan legislating difficult.¶ The renewed push for the farm bill didn’t get off to an auspicious start¶ President Obama on Thursday named the farm subsidy and food stamp bill one of his top three near-term priorities, along with a budget deal and immigration reform.¶ But he erroneously accused the House of having failed to pass its version of the legislation, drawing a rebuke from the House Agriculture Committee.

#### No internal link – any fight would happen after the DA were resolved

#### No pol cap now – Syria, Snowden, weak econ, health care uncertainty, bombings all tank his popularity and clout with Congress

CNN 9/27/13 ("Obama's Support Slips; Controversies, Sluggish Economy Cited," http://www.ozarksfirst.com/story/obamas-support-slips-controversies-sluggish-economy-cited/d/story/yvahHcmFK0K6RGTbdfCHKQ)

WASHINGTON, D.C. -- As he battles with congressional Republicans over the budget and the debt ceiling, and as a key component of his health care law kicks in, new polling suggests that President Barack Obama's standing among Americans continues to deteriorate.¶ The president's approval rating stands at 45%, according to a CNN average of four national polls conducted over the past week and a half. And a CNN Poll of Polls compiled and released Thursday also indicates that Obama's disapproval rating at 49%.¶ In the afterglow of his re-election and second inauguration, the percentage of those approving of Obama's job performance hovered in the low 50s as the year began, according to CNN Poll of Poll averages.¶ But his numbers slipped to the upper 40s by spring and now have edged down to the mid 40s. At the same time, his disapproval numbers have edged up from the low 40s to right around the 50% mark.¶ Anxiety and skepticism over the Affordable Care Act, better known as Obamacare, continuing concerns over the sluggish economy, and a drop in the president's approval on foreign policy -- once his ace in the hole -- all appear to be contributing to the slide of Obama's general approval rating.¶ "Not a precipitous drop, but more like a continued erosion in the president's numbers," says CNN Chief Political Correspondent Candy Crowley. "The Boston Marathon bombings, Edward Snowden's 'big brother' revelations, the 'non-coup' in Egypt, the 'now we bomb, now we don't' policy in Syria, an economic recovery that remains disappointing, the uncertainty of how/what will change under the new health care system, shall I go on?"¶ "It all adds up to an awful lot of uncertainty and unfairly or not, uncertainty tends to breed lower poll numbers for the guy in charge," added Crowley, anchor of CNN's "State of the Union."¶ Besides being the main indicator of a president's standing with the public, a presidential approval rating is a good gauge of his clout in dealing with Congress.

# 1AR

### Status

#### Status seeking is inevitable --- heg is key to solve war

Wohlforth 9 – professor of government at Dartmouth (William, “Unipolarity, Status Competition, and Great Power War,” World Affairs, January, project muse)

The upshot is a near scholarly consensus that unpolarity’s consequences for great power conflict are indeterminate and that a power shift resulting in a return to bipolarity or multipolarity will not raise the specter of great power war. This article questions the consensus on two counts. First, I show that it depends crucially on a dubious assumption about human motivation. Prominent theories of war are based on the assumption that people are mainly motivated by the instrumental pursuit of tangible ends such as physical security and material prosperity. This is why such theories seem irrelevant to interactions among great powers in an international environment that diminishes the utility of war for the pursuit of such ends. Yet we know that people are motivated by a great many noninstrumental motives, not least by concerns regarding their social status. 3 As John Harsanyi noted, “Apart from economic payoffs, social status (social rank) seems to be the most important incentive and motivating force of social behavior.”4 This proposition rests on much firmer scientific ground now than when Harsanyi expressed it a generation ago, as cumulating research shows that humans appear to be hardwired for sensitivity to status and that relative standing is a powerful and independent motivator of behavior.5 [End Page 29] Second, I question the dominant view that status quo evaluations are relatively independent of the distribution of capabilities. If the status of states depends in some measure on their relative capabilities, and if states derive utility from status, then different distributions of capabilities may affect levels of satisfaction, just as different income distributions may affect levels of status competition in domestic settings. 6 Building on research in psychology and sociology, I argue that even capabilities distributions among major powers foster ambiguous status hierarchies, which generate more dissatisfaction and clashes over the status quo. And the more stratified the distribution of capabilities, the less likely such status competition is. Unipolarity thus generates far fewer incentives than either bipolarity or multipolarity for direct great power positional competition over status. Elites in the other major powers continue to prefer higher status, but in a unipolar system they face comparatively weak incentives to translate that preference into costly action. And the absence of such incentives matters because social status is a positional good—something whose value depends on how much one has in relation to others.7 “If everyone has high status,” Randall Schweller notes, “no one does.”8 While one actor might increase its status, all cannot simultaneously do so. High status is thus inherently scarce, and competitions for status tend to be zero sum.9

### China

#### Heg deters china war

**Lieber ‘5**

(Robert J., Professor of Government and International Affairs at Georgetown University, The American Era: Power and Strategy for the 21st Century, (p. 158))

Parallels between America's role in East Asia and its involvements in Europe might seem far-fetched. Asia's geography and history are enormously different, there is no regional organization in any way comparable to the European Union, the area is not a zone of peace, conflict among its leading states remains a potential risk, and there is nothing remotely resembling NATO as a formal multilateral alliance binding the United States to the region's security and the regional states to one another. Yet, as in Europe, the United States plays a unique stabilizing role in Asia that no other country or organization is capable of playing. Far from being a source of tension or instability, this presence tends to reduce competition among regional powers and to deter armed conflict. Disengagement, as urged by some critics of American primacy, would probably lead to more dangerous competition or power-balancing among the principal countries of Asia as well as to a more unstable security environment and the spread of nuclear weapons. As a consequence, even China acquiesces in America's regional role despite the fact that it is the one country with the long-term potential to emerge as a true major power competitor

#### 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.

### AT: Macdonald/Parent

#### Your study is wrong

MacDonald and Parent, your author, 2011 (Paul K. and Joseph M., Assistant Professor of Political Science at Williams College, Assistant Professor of Political Science at the University of Miami, International Security, Graceful Decline?; The Surprising Success of Great Power Retrenchment, Spring, lexis)//moxley

There are also empirical benifits to expanding the analysis. To begin with, **there are relatively few historical cases of hegemonic transition.** **Only one of our eighteen cases of acute relative decline since 1870, for example, involves a hegemon**. In addition, cases of acute relative decline vary considerably from one another. Some great powers suffer a rapid and sizable collapse in relative power, whereas others experience a slow, incremental decline. Categorizing relative decline into static categories of “hegemonic” and “nonhegemonic” ob- scures important differences within these categories. As we argue below, the response of a great power to acute relative decline depends more on the rate of its fall than on its ordinal position among the great powers.

### Court

#### Courts shield the link – allow Obama to preserve PC by letting the courts do the dirty work

Stimson, 9 –senior legal fellow at the Heritage Foundation and an instructor at the Naval Justice School former American career appointee at the Pentagon (Cully, 9/25. “Punting National Security To The Judiciary.” <http://blog.heritage.org/2009/09/25/punting-national-security-to-the-judiciary/>)

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

### 2NC Food Shortages

#### No food shortages – empirical studies prove that capital is increasing productivity in all areas. Reject their claims because they’re alarmist – 80% of all incidents were actually just rhetoric. That’s Allouche who specializes in resource management.

#### No food scarcity

Jalsevac 4 (Paul, Life site news a division of Interim Publishing, “The Inherent Racism of Population Control”, <http://www.lifesite.net/waronfamily/Population_Control/Inherentracism.pdf>)

The pattern continues today. Economist Dennis Avery explained in 1995 that, food production was more than keeping pace with population growth since the world had, “more than doubled world food output in the past 30 years. We have raised food supplies per person by 25 percent in the populous Third World.”4 The United Nations Food and Agriculture Organization (UNFAO) also dispelled fears of shortages in the food supply when, in preparation for the World Food Summit in Rome in November of 1995 it reported that, “Globally food supplies have more than doubled in the last 40 years…at a global level, there is probably no obstacle to food production rising to meet demand.”5 The UNFAO also later estimated that, simply with the present available technologies fully employed, the world could feed 30 to 35 billion people, i.e. roughly six times the present world population.6 It also reported that the number of people considered malnourished has declined from 36 percent in 1961-1970 to 20 percent in 1988-90 and later proclaimed that “earlier fears of chronic food shortages over much of the world proved unfounded.”7 The World Bank joined in to predict in 1993 that the improvement in the world food supply would continue, while pointing out that in developing countries grain production has grown at a faster rate than population since 1985. Grain production has slowed in the United States, but that is because stocks have grown so large that additional production could not be stored.8 A further wealth of evidence is available to remove any concerns about resource shortage in the modern world.

#### Agriculture is resilient

PW 9 [Property Wire, “Farmland shows resilience to recession,” 2/10, http://www.propertywire.com/news/company-news/farmland-resilience-recession-200902102589.html]

Farmland has outperformed most alternative assets during the past three years recording total annual returns of more than 20% as well as being a good hedge in times of economic uncertainty. Last year, according to the latest edition of Savills Agricultural Land Market Survey investment was cited as the primary reason for buying in 29% of all transactions, up from 16% in 2007. This additional interest from investors helped to push average arable land values up by 15.5% and average pasture values up to 28.4% although most of this growth was confined to the first half of the year. Ian Bailey Savills research comments, "The period of exceptional growth in values appears to have stalled for the time being but historically farmland has remained fairly resilient to recession with any fall in values limited". Forecasts for 2009 We expect average values to stabilise this year, dipping during the first half by up to 5% and regaining lost ground in the second half. Debt, as a reason to sell, is unlikely to be a significant factor; interest rates are likely to stay low and although profitability may dip it should remain above 2006 levels. A more distinct two-tier market is expected with good quality, well equipped, well located and commercially viable farms commanding the higher prices. We see no reason for the supply of farmland to change significantly from the volumes recorded during the past few years; an average of 186,000 acres have been publicly marketed each year for the past three years, though we expect a later market. Overseas buyers will continue to be a significant and important source of demand. Their presence in the market this year will be further enhanced by the weak performance of sterling against other currencies.¶ Christopher Miles comments, "In the East we have kicked off the New Year with renewed interest in farms from UK and overseas investors but with very little land available compared to this time last year demand is building. I remain positive for the outlook for prices of good arable and with the prospect of a late market it may be a case of the early bird catching the worm".