### 1NC

#### A. Interpretation – Judicial restrictions must directly prohibit activities currently under the president’s war powers authority – this excludes regulation or oversight

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

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

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

#### B. Vote Neg –

#### 1. Limits – Oversight of authority allows a litany of new affs in each area – justifies indirect effects of judicial review and affs that don’t alter presidential authority – undermines prep and clash

#### 2. Ground – Restriction ground is the locus of neg prep – their interpretation jacks all core disads – judicial deference, court politics, presidential powers, and any area based disad because an aff doesn’t have to prevent the president from doing anything

### 1NC

#### Plan causes a compensatory shift to drone strikes – that’s worse

RT, 13 (5/3, “US targeted drone killings used as alternative to Guantanamo Bay - Bush lawyer.” http://rt.com/usa/obama-using-drones-avoid-gitmo-747/)

A lawyer who was influential in the United States’ adoption of unmanned aircraft has spoken out against the Obama administration for what he perceives as using drones as an alternative to capturing suspects and sending them to Guantanamo Bay prison camp. John Bellinger, the Bush administration attorney who drafted the initial legal specifications regarding drone killings after the September 11, 2001 terrorist attacks, said that Bush’s successor has abused the framework, skirting international law for political points. “This government has decided that instead of detaining members of Al-Qaeda [at Guantanamo Bay prison camp in Cuba] they are going to kill them,” Bellinger told a conference at the Bipartisan Policy Center, as quoted by The Guardian. Earlier this week Obama promised to reignite efforts to close Guantanamo Bay, where prisoners have gone on a hunger strike to protest human rights violations and wrongful incarcerations. They were his first in-depth remarks on the subject since 2009, when Obama had just recently been elected to office after campaigning on a promise to close the facility. But international law is equally suspect of drone strikes. Almost 5,000 people are thought to have been killed by roughly 300 US attacks in four countries, according to The Guardian. Bellinger maintained that the government has justified strikes throughout Pakistan and Yemen by using the 'War on Terror' as an excuse. “We are about the only country in the world that thinks we are in an armed conflict with Al-Qaeda,” he said. “We really need to get on top of this and explain to our allies why it is legal and why it is permissible under international law." “These drone strikes are causing us great damage in the world, but on the other hand if you are the president and you do nothing to stop another 9/11 then you also have a problem,” he added. Of the 166 detainees at Guantanamo Bay, 86 have been cleared for release by a commission made up of officials from the Department of Homeland Security, Joint Chiefs of Staff and other influential government divisions. White House officials have justified the use of unmanned aircraft by saying the US is at war with Al-Qaeda and that those targeted in drone attacks were planning attacks on America. In the future, experts say, future countries could use the same rationale to explain their own attacks. “Countries under attack are the ones that get to decide whether or not they are at war,” said Philip Zelikow, a member of the White House Intelligence Advisory Board. While the conversation around drones is certainly a sign of things to come, Hina Shamsi of the American Civil Liberties Union encouraged Americans to think about the human rights issues posed by the new technology. It could be another long process, if the Guantanamo Bay handling is any indication. “The use of this technology is spreading and we have to think about what we would say if other countries used drones for targeted killing programs,” Shamsi said. “Few things are more likely to undermine our legitimacy than the perception that we are not abiding by the rule of law or are indifferent to civilian casualties.”

#### Increased drone use sets a precedent that causes South China Sea conflict

Roberts 13 (Kristen, News Editor at National Journal, “When the Whole World Has Drones”, 3/22/13, <http://www.nationaljournal.com/magazine/when-the-whole-world-has-drones-20130321>)

And that’s a NATO ally seeking the capability to conduct missions that would run afoul of U.S. interests in Iraq and the broader Middle East. Already, Beijing says it considered a strike in Myanmar to kill a drug lord wanted in the deaths of Chinese sailors. What happens if China arms one of its remote-piloted planes and strikes Philippine or Indian trawlers in the South China Sea? Or if India uses the aircraft to strike Lashkar-e-Taiba militants near Kashmir? “We don’t like other states using lethal force outside their borders. It’s destabilizing. It can lead to a sort of wider escalation of violence between two states,” said Micah Zenko, a security policy and drone expert at the Council on Foreign Relations. “So the proliferation of drones is not just about the protection of the United States. It’s primarily about the likelihood that other states will increasingly use lethal force outside of their borders.” LOWERING THE BAR Governments have covertly killed for ages, whether they maintained an official hit list or not. Before the Obama administration’s “disposition matrix,” Israel was among the best-known examples of a state that engaged, and continues to engage, in strikes to eliminate people identified by its intelligence as plotting attacks against it. But Israel certainly is not alone. Turkey has killed Kurds in Northern Iraq. Some American security experts point to Russia as well, although Moscow disputes this. In the 1960s, the U.S. government was involved to differing levels in plots to assassinate leaders in Congo and the Dominican Republic, and, famously, Fidel Castro in Cuba. The Church Committee’s investigation and subsequent 1975 report on those and other suspected plots led to the standing U.S. ban on assassination. So, from 1976 until the start of President George W. Bush’s “war on terror,” the United States did not conduct targeted killings, because it was considered anathema to American foreign policy. (In fact, until as late as 2001, Washington’s stated policy was to oppose Israel’s targeted killings.) When America adopted targeted killing again—first under the Bush administration after the September 11 attacks and then expanded by President Obama—the tools of the trade had changed. No longer was the CIA sending poison, pistols, and toxic cigars to assets overseas to kill enemy leaders. Now it could target people throughout al-Qaida’s hierarchy with accuracy, deliver lethal ordnance literally around the world, and watch the mission’s completion in real time. The United States is smartly using technology to improve combat efficacy, and to make war-fighting more efficient, both in money and manpower. It has been able to conduct more than 400 lethal strikes, killing more than 3,500 people, in Afghanistan, Pakistan, Yemen, Somalia, and North Africa using drones; reducing risk to U.S. personnel; and giving the Pentagon flexibility to use special-forces units elsewhere. And, no matter what human-rights groups say, it’s clear that drone use has reduced the number of civilians killed in combat relative to earlier conflicts. Washington would be foolish not to exploit unmanned aircraft in its long fight against terrorism. In fact, defense hawks and spendthrifts alike would criticize it if it did not. “If you believe that these folks are legitimate terrorists who are committing acts of aggressive, potential violent acts against the United States or our allies or our citizens overseas, should it matter how we choose to engage in the self-defense of the United States?” asked Rep. Mike Rogers, R-Mich., chairman of the House Intelligence Committee. “Do we have that debate when a special-forces team goes in? Do we have that debate if a tank round does it? Do we have the debate if an aircraft pilot drops a particular bomb?” But defense analysts argue—and military officials concede—there is a qualitative difference between dropping a team of men into Yemen and green-lighting a Predator flight from Nevada. Drones lower the threshold for military action. That’s why, according to the Council on Foreign Relations, unmanned aircraft have conducted 95 percent of all U.S. targeted killings. Almost certainly, if drones were unavailable, the United States would not have pursued an equivalent number of manned strikes in Pakistan. And what’s true for the United States will be true as well for other countries that own and arm remote piloted aircraft. “The drones—the responsiveness, the persistence, and without putting your personnel at risk—is what makes it a different technology,” Zenko said. “When other states have this technology, if they follow U.S. practice, it will lower the threshold for their uses of lethal force outside their borders. So they will be more likely to conduct targeted killings than they have in the past.” The Obama administration appears to be aware of and concerned about setting precedents through its targeted-strike program. When the development of a disposition matrix to catalog both targets and resources marshaled against the United States was first reported in 2012, officials spoke about it in part as an effort to create a standardized process that would live beyond the current administration, underscoring the long duration of the counterterrorism challenge. Indeed, the president’s legal and security advisers have put considerable effort into establishing rules to govern the program. Most members of the House and Senate Intelligence committees say they are confident the defense and intelligence communities have set an adequate evidentiary bar for determining when a member of al-Qaida or an affiliated group may be added to the target list, for example, and say that the rigor of the process gives them comfort in the level of program oversight within the executive branch. “They’re not drawing names out of a hat here,” Rogers said. “It is very specific intel-gathering and other things that would lead somebody to be subject for an engagement by the United States government.”

#### Extinction

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

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

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#### The aff doesn’t provide real reform – continued crisis discourse allows a re-expansion of executive authority

Scheuerman 12 -- Professor of Political Science and West European Studies at Indiana University (William E., Summer 2012, "Emergencies, Executive Power, and the Uncertain Future of US Presidential Democracy," Law & Social Inquiry 37(3), EBSCO)

IV. REFORMISM'S LIMITS Bruce Ackerman, one of our country's most observant analysts of its clunky constitutional machinery, is similarly impatient with the "comforting notion that our heroic ancestors" created an ideal constitutional and political system (2010, 10). He even agrees that the US model increasingly seems to overlap with Schmitt's dreary vision of executive-centered plebiscitarianism motored by endless crises and emergencies (2010, 82). In sharp contrast to Posner and Vermeule, however, he not only worries deeply about this trend, but he also discards the unrealistic possibility that it might be successfully countered without recourse to legal and constitutional devices. Although Madison's original tripartite separation of powers is ill-adjusted to the realities of the modern administrative state, we need to reinvigorate both liberal legalism and checks and balances. Unless we can succeed in doing so, US citizens are likely to experience a "quantum leap in the presidency's destructive capacities" in the new century (2010, 119). Despite its alarmist tenor, for which he has been—in my view—unfairly criticized,'' Ackerman's position is grounded in a blunt acknowledgment of the comparative disadvantages of the US constitutional system. More clearly than any of the other authors discussed in this article, he breaks cleanly with the intellectual and constitutional provincialism that continues to plague so much legal and political science research on the United States. In part because as "late developers" they learned from institutional mistakes in the United States and elsewhere, more recently designed liberal democracies often do a better job than our Model T version at guaranteeing both policy effectiveness and the rule of law (2010, 120-22). Following the path-breaking work of his colleague Juan Linz, Ackerman offers a critical assessment of our presidential version of liberal democracy, where an independently elected executive regularly finds itself facing off against a potentially obstructionist Congress, which very well may seek to bury "one major presidential initiative after another" (2010, 5; see also Linz 1994). In the context of either real or imagined crises, executives facing strict temporal restraints (i.e., an upcoming election), while claiming to be the people's best protector against so-called special interests, will typically face widespread calls for swift (as well as legally dubious) action. "Crisis talk," in part endogenously generated by a flawed political system prone to gridlock rather than effective policy making, "prepares the ground for a grudging acceptance of presidential unilateralism" (2010, 6). Executives everywhere have much to gain from crisis scenarios. Yet incentives for declaring and perpetuating emergencies may be especially pronounced in our presidential system. The combination of temporal rigidity (i.e., fixed elections and terms of office) and "dual democratic legitimacy" (with both Congress and the president claiming to speak for "we the people") poses severe challenges to law-based government (Linz 1994). Criticizing US scholarship for remaining imprisoned in the anachronistic binary contrast of "US presidentialism vs. Westminster parliamentarism," Ackerman recommends that we pay closer attention to recent innovations achieved by what he describes as "constrained parliamentarism," basically a modified parliamentary system that circumvents the worst design mistakes of both Westminster parliamentarism and US presidentialism. As he has argued previously in a lengthy Harvard Law Review article, constrained parliamentarism—as found, for example, in recent democracies like Germany and Spain—locates law making in a Westminster-style popular assembly. But in contrast to the UK model, "legislative output is constrained by a higher lawmaking process" (2000, 666). The German Eederal Republic, for example, rests on a written constitution (e.g., the Basic Law) and has a powerful constitutional court. In Ackerman's view, constrained parliamentarism lacks many of the institutional components driving the growth of executive-dominated emergency govemment. Not surprisingly, he posits, it suffers to a reduced degree from many of the institutional pathologies plaguing US-style presidentialism. Ackerman argues that, in contrast, US-style presidential models have regularly collapsed elsewhere (e.g., in Latin and South American countries, where US-style presidentialism has been widely imitated [Linz and Valenzuela 1994]), devolving on occasion into unabated authoritarianism (2000, 646). Ackerman now seems genuinely concerned that a similar fate might soon befall its original version. Even if his most recent book repeats some earlier worries, he has now identified additional perils that he thinks deserve immediate attention. Not surprisingly, perhaps, his anxiety level has noticeably increased. Even Schmitt's unattractive vision of presidential authoritarianism appears "a little old-fashioned," given some ominous recent trends (2010, 82). To an extent unfathomable in Schmitt's day, the executive can exploit quasi-scientific polling data in order to gauge the public pulse. Presidents now employ a small but growing army of media gurus and consultants who allow them to craft their messages in astonishingly well-skilled—and potentially manipulative—ways. Especially during crisis moments, an overheated political environment can quickly play into the hands of a "White House propaganda machine generating a stream of sound bites" (2010, 33). Pundits and opinion makers already tend to blur the crucial divide between polling "numbers" and actual votes, with polls in both elite and popular consciousness tending not only to supplement but increasingly displace election results.'^ The decline of the print media and serious joumalism—about which Ackerman is understandably distressed—means that even the most fantastic views are taken seriously. Thus far, the Internet has failed to pick up the slack; it tends to polarize public opinion. Meanwhile, our primary system favors candidates who successfully appeal to an energized partisan base, meaning that those best able to exploit public opinion polling and the mass media, but out of sync with the median voter, generally gain the party nomination. Linz earlier pointed out that presidentialism favors political outsiders; Ackerman worries that in our emerging presidential model, the outsiders will tend to be extremists. Polling and media-savvy, charismatic, and relatively extreme figures will colonize the White House. In addition, the president's control over the massive administrative apparatus provides the executive with a daunting array of institutional weapons, while the Office of Legal Counsel (OLC) and Office of Counsel to the President offer hyperpoliticized sites from which distinctly executive-centered legal and constitutional views now are rapidly disseminated. Ackerman raises some tough questions for those who deem the OLC and related executive organs fundamentally sound institutions that somehow went haywire under David Addington and John Yoo. In his view, their excesses represent a logical result of basic structural trends currently transforming both the executive and political system as whole. OLC's partisan and sometimes quasi-authoritarian legal pronouncements are now being eagerly studied by law students and cited by federal courts (2010, 93). Notwithstanding an admirable tradition of executive deference to the Supreme Court, presidents are better positioned than ever to claim higher political legitimacy and neutralize political rivals. Backed by eager partisan followers, adept at the media game, and well armed with clever legal arguments constructed by some of the best lawyers in the country, prospective presidents may conceivably stop deferring to the Court (2010, 89). Ackerman's most unsettling amendment to his previous views is probably his discussion of the increasingly politicized character of the military—an administrative realm, by the way, ignored by other writers here, despite its huge role in modern US politics. Here again, the basic enigma is that the traditional eighteenth-century tripartite separation of powers meshes poorly with twenty-first-century trends: powerful military leaders can now regularly play different branches of govemment against one another in ways that undermine meaningful civilian oversight. Top officers possess far-reaching opportunities "to become an independent political force—allowing them to tip the balance of political support in one direction, then another," as the competing branches struggle for power (2010, 49). For Ackerman, the emergence of nationally prominent and media-savvy figures such as Colin Powell and David Petraeus, who at crucial junctures have communicated controversial policy positions to a broader public,'^ suggests that this long-standing structural flaw has recently gotten worse. The Goldwater-Nichols Act of 1996, for example, transformed the chair of the Joint Chiefs of Staff from a mediator for the competing services into the military's principal—and hugely influential—spokesperson within the National Security Council (2010, 50). Not only does the military constitute a hugely significant segment of the administrative machinery, but it is now embodied—both in govemment and the public eye—in a single leader whose views carry tremendous weight. The fact that opinion surveys show that the officer corps is increasingly conservative in its partisan orientation, Ackerman notes, only adds to the dangers. Americans need not fear an imminent military putsch, along the lines that destroyed other presidential regimes elsewhere. Nonetheless, we would do well not to be "lulled into a false sense of security" (2010, 87). Having painted a foreboding portrait of institutional trends, Ackerman points to paths we might take to ward off the worst. In light of the obvious seriousness of the illness he has diagnosed, however, his antidotes tend to disappoint: he proposes that we treat cancer with some useful but limited home remedies. Like Shane, Ackerman wants to improve popular deliberation by reforming the mass media and institutionalizing "Deliberation Day" (2010, 125-40). Yet how such otherwise potentially appealing initiatives might counteract the symbiotic relationship between presidentialism and crisis government remains ambiguous. A modernized electoral college, for example, might simply engender executives better positioned to claim to stand in for "we the people" than their historical predecessors. Given Ackerman's own worries about plebiscitarianism, this reform might compound rather than alleviate our problems. More innovatively, Ackerman endorses the idea of a quasi-judicial check within the executive branch, a "Supreme Executive Tribunal" given the task of expeditiously determining the legality of proposed executive action, whose members would be appointed to staggered terms and subject to Senate confirmation. Forced to gain a seal of approval from jurists relatively insulated from sitting presidents, the executive tribunal would act more quickly than an ordinary court and thereby help put a "brake on the presidential dynamic before it can gather steam" (2010,143). Before the president could take the first political move and potentially alter the playing field, he or she might first have to clear the move with a body of legal experts, a requirement that presumably over time would work to undergird the executive branch's commitment to legality. The proposed tribunal could allow the president and Congress to resolve many of their standoffs more expeditiously than is typical today (2010, 146). Congressional representatives, for example, might rely on the tribunal to challenge executive signing statements. Existing exemptions for a significant number of major executive-level actors (e.g., the president's National Security Advisor) from Senate confirmation also need to be abandoned, while the military should promulgate a new Canon of Military Ethics, aimed at clarifying what civilian control means in contemporary real-life settings, in order to counteract its ongoing politicization. Goldwater-Nichols could be revised so as better to guarantee the subordination of military leaders to the Secretary of Defense (2010, 153-65). Ackerman also repeats his previous calls for creating an explicit legal framework for executive emergency action: Congress could temporarily grant the president broad discretionary emergency powers while maintaining effective authority to revoke them if the executive proved unable to gain ever more substantial support from the legislature (2010, 165-70; see also Ackerman 2006). Each of these suggestions demands more careful scrutiny than possible here. Nonetheless, even if many of them seem potentially useful, room for skepticism remains. Why, for example, would the proposed executive tribunal not become yet another site for potentially explosive standoffs between presidents and Congress? Might not highlevel political conflicts end up simply taking the forms of destructive (and misleadingly legalistic) duels? To the extent that one of the tribunal's goals is to decelerate executive decision making, its creation would perhaps leave our already sluggish and slow-moving political system even less able than at the present to deal with fast-paced challenges. Faced with time constraints and the need to gain popular support, executives might then feel even more pressed than at present to circumvent legality. As Ackerman knows, even as it presently operates, the Senate confirmation process is a mess. His proposal to extend its scope might simply end up reproducing at least some familiar problems. Last but not least, given the perils he so alarmingly describes, his proposed military reforms seem unsatisfying. Why not instead simply cut our bloated military apparatus and abandon US imperial pretensions? The obvious Achilles heel is that none of the proposals really deals head-on with what Ackerman himself conceives as the fundamental root of executive-centered government: an independently elected president strictly separated from legislative bodies with which he periodically clashes in potentially destructive ways. Despite Ackerman's ambition, his proposals do not provide structural reform: he concludes that US-based reformers should "take the independently elected presidency as a fixture" (2010, 124). Thus, presidential government is here to stay; reformers can also forget about significantly altering our flawed system of presidential primaries, activist government, and powerful military that intervenes frequently abroad (2010, 124). Given contemporary political developments, one can certainly appreciate why Ackerman is skeptical that the US system might finally be ripe for a productive institutional overhaul. Nonetheless, this just makes an already rather bleak book look even bleaker. His book's title. The Decline and Fall of the Arnerican Republic, is out of step with the somewhat upbeat reformist proposals detailed in its final chapters. Regretfully, the title better captures his core message. Only Ackerman's ultimately disturbing book both adeptly rejects the tendency among recent students of executive power to revert to constitutional nostalgia while forthrightly identifying the very real dangers posed by recent institutional trends. In an age of permanent or at least seemingly endless emergencies, where the very attempt to cleanly distinguish dire crises from "normal" political and social challenges becomes exceedingly difficult, the executive threatens to become an even more predominant— and potentially lawless—institutional player Unfortunately, US-style presidential democracy may be particularly vulnerable to this trend. Ackerman proves more successful than the other authors discussed here because he is best attuned to a rich body of comparative constitutional and political science scholarship that has raised legitimate doubts about the alleged virtues of US-style liberal democracy. Not surprisingly, some of his own reform ideas—for example, his proposed system of emergency law making—draw heavily on foreign examples, including Canada and new democracies such as South Africa. He convincingly argues that we might at least ameliorate the widespread tendency among presidents to manipulate crises for narrow partisan reasons, for example, by relying on the clever idea of a supermajoritarian escalator, which would require every legislative renewal of executive emergency authority to rest on ever more numerous supermajorities (2006). Ackerman is right to suggest that the United States needs to look abroad in order to improve our rather deficient system of emergency rule (Scheuerman 2006, 2008). Our system is broken; it is time to see what can be learned from others. Ackerman's latest book's overly cautious reformism thus seems especially peculiar in light of his own powerful and indeed enthusiastic defense of constrained parliamentarism, which he quite plausibly describes as potentially offering a superior approach to emergency government. The key point is not that we can be absolutely sure that the "grass is greener" in new democracies such as postwar Germany or post-Franco Spain; existing empirical evidence offers, frankly, a mixed picture. Contemporary Germany, for example, has certainly experienced its own fair share of emergency executive excesses (Frankenberg 2010). Scholars have criticized not only the empirical thesis that presidentialism and a strict separation of powers can help explain the substantial growth of executive discretion (Carolan 2009; Gross and Ni Aolain 2006), but also more farreaching assertions about their alleged structural disadvantages (Cheibub 2006). Still others argue that parliamentary regimes even of the "old type" (i.e., the UK Westminster model) have done relatively well in maintaining the rule of law during serious crises (Ewing and Gearty 2000; Bellamy 2007, 249-53). Unfortunately, we still lack wellconceived empirical studies comparing constrained parliamentarism with US-style presidentialism. Too much existing scholarship focuses on single countries, or relies on "foreign" cases but only in a highly selective and anecdotal fashion. Until we have more properly designed comparative studies, however, it seems inaccurate to assume a priori that core institutional features of US presidential democracy are well equipped to tackle the many challenges at hand. As I have tried to argue here, a great deal of initial evidence suggests that this simply is not the case. Admittedly, every variety of liberal democracy confronts structural tendencies favoring the augmentation of executive power: many of the social and economic roots (e.g., social acceleration) of executive-centered crisis govemment represent more-or-less universal phenomena, likely to rattle even well-designed constitutional systems. One can also easily imagine that in decades to come, extreme "natural" catastrophes— increasingly misnamed, because of their links to human-based climate change— justifying declarations of martial law or states of emergency will proliferate, providing novel possibilities for executives to expand their authority.^° So it would be naive to expect any easy constitutional or political-institutional fix. However, this sobering reality should not lead us to abandon creative institutional thinking. On the contrary, it arguably requires of us that we try to come up with new institutional models, distinct both from existing US-style presidentialism and parliamentarism, constrained or otherwise.

#### Causes global destruction

**Der Derian 98** (James, Professor of Political Science – University of Massachusetts, On Security, Ed. Lipschutz, p. 24-25)

No other concept in international relations packs the metaphysical punch, nor commands the disciplinary power of "security." In its name, peoples have alienated their fears, rights and powers to gods, emperors, and most recently, sovereign states, all to protect themselves from the vicissitudes of nature--as well as from other gods, emperors, and sovereign states. In its name, weapons of mass destruction have been developed which have transfigured national interest into a security dilemma based on a suicide pact. And, less often noted in international relations, in its name billions have been made and millions killed while scientific knowledge has been furthered and intellectual dissent muted. We have inherited an ontotheology of security, that is, an a priori  argument that proves the existence and necessity of only one form of security because there currently happens to be a widespread, metaphysical belief in it. Indeed, within the concept of security lurks the entire history of western metaphysics, which was best described by Derrida "as a series of substitutions of center for center" in a perpetual search for the "transcendental signified." Continues... [7](http://libcat1.cc.emory.edu:32888/20050307122932441313c0=www.ciaonet.org:80/book/lipschutz/lipschutz12.html#note7) In this case, Walt cites IR scholar Robert Keohane on the hazards of "reflectivism," to warn off anyone who by inclination or error might wander into the foreign camp: "As Robert Keohane has noted, until these writers `have delineated . . . a research program and shown . . . that it can illuminate important issues in world politics, they will remain on the margins of the field.' " [8](http://libcat1.cc.emory.edu:32888/20050307122932441313c0=www.ciaonet.org:80/book/lipschutz/lipschutz12.html#note8) By the end of the essay, one is left with the suspicion that the rapid changes in world politics have triggered a "security crisis" in security studies that requires extensive theoretical damage control. What if we leave the desire for mastery to the insecure and instead imagine a new dialogue of security, not in the pursuit of a utopian end but in recognition of the world as it is, other than us ? What might such a dialogue sound like? Any attempt at an answer requires a genealogy: to understand the discursive power of the concept, to remember its forgotten meanings, to assess its economy of use in the present, to reinterpret--and possibly construct through the reinterpretation--a late modern security comfortable with a plurality of centers, multiple meanings, and fluid identities. The steps I take here in this direction are tentative and preliminary. I first undertake a brief history of the concept itself. Second, I present the "originary" form of security that has so dominated our conception of international relations, the Hobbesian episteme of realism. Third, I consider the impact of two major challenges to the Hobbesian episteme, that of Marx and Nietzsche. And finally, I suggest that Baudrillard provides the best, if most nullifying, analysis of security in late modernity. In short, I retell the story of realism as an historic encounter of fear and danger with power and order that produced four realist forms of security: epistemic, social, interpretive, and hyperreal. To preempt a predictable criticism, I wish to make it clear that I am not in search of an "alternative security." An easy defense is to invoke Heidegger, who declared that "questioning is the piety of thought." Foucault, however, gives the more powerful reason for a genealogy of security: I am not looking for an alternative; you can't find the solution of a problem in the solution of another problem raised at another moment by other people. You see, what I want to do is not the history of solutions, and that's the reason why I don't accept the word alternative. My point is not that everything is bad, but that everything is dangerous, then we always have something to do. The hope is that in the interpretation of the most pressing dangers of late modernity we might be able to construct a form of security based on the appreciation and articulation rather than the normalization or extirpation of difference. Nietzsche transvalues both Hobbes's and Marx's interpretations of security through a genealogy of modes of being. His method is not to uncover some deep meaning or value for security, but to destabilize the intolerable fictional identities of the past which have been created out of fear, and to affirm the creative differences which might yield new values for the future. Originating in the paradoxical relationship of a contingent life and a certain death, the history of security reads for Nietzsche as an abnegation, a resentment and, finally, a transcendence of this paradox. In brief, the history is one of individuals seeking an impossible security from the most radical "other" of life, the terror of death which, once generalized and nationalized, triggers a futile cycle of collective identities seeking security from alien others--who are seeking similarly impossible guarantees. It is a story of differences taking on the otherness of death, and identities calcifying into a fearful sameness.

#### The alternative is to reject dominant security discourse – no one policy solves every problem – good theory now drives better policies later

Bruce 96 (Robert, Associate Professor in Social Science – Curtin University and Graeme Cheeseman, Senior Lecturer – University of New South Wales, Discourses of Danger and Dread Frontiers, p. 5-9)

This goal is pursued in ways which are still unconventional in the intellectual milieu of international relations in Australia, even though they are gaining influence worldwide as traditional modes of theory and practice are rendered inadequate by global trends that defy comprehension, let alone policy. The inability to give meaning to global changes reflects partly the enclosed, elitist world of professional security analysts and bureaucratic experts, where entry is gained by learning and accepting to speak a particular, exclusionary language. The contributors to this book are familiar with the discourse, but accord no privileged place to its ‘knowledge form as reality’ in debates on defence and security. Indeed, they believe that debate will be furthered only through a long overdue critical re-evaluation of elite perspectives. Pluralistic, democratically-oriented perspectives on Australia’s identity are both required and essential if Australia’s thinking on defence and security is to be invigorated. This is not a conventional policy book; nor should it be, in the sense of offering policy-makers and their academic counterparts sets of neat alternative solutions, in familiar language and format, to problems they pose. This expectation is in itself a considerable part of the problem to be analysed. It is, however, a book about policy, one that questions how problems are framed by policy-makers. It challenges the proposition that irreducible bodies of real knowledge on defence and security exist independently of their ‘context in the world’, and it demonstrates how security policy is articulated authoritatively by the elite keepers of that knowledge, experts trained to recognize enduring, universal wisdom. All others, from this perspective, must accept such wisdom or remain outside the expert domain, tainted by their inability to comply with the ‘rightness’ of the official line. But it is precisely the official line, or at least its image of the world, that needs to be problematised. If the critic responds directly to the demand for policy alternatives, without addressing this image, he or she is tacitly endorsing it. Before engaging in the policy debate the critics need to reframe the basic terms of reference. This book, then, reflects and underlines the importance of Antonio Gramsci and Edward Said’s ‘critical intellectuals’.15 The demand, tacit or otherwise, that the policy-maker’s frame of reference be accepted as the only basis for discussion and analysis ignores a three thousand year old tradition commonly associated with Socrates and purportedly integral to the Western tradition of democratic dialogue. More immediately, it ignores post-seventeenth century democratic traditions which insist that a good society must have within it some way of critically assessing its knowledge and the decisions based upon that knowledge which impact upon citizens of such a society. This is a tradition with a slightly different connotation in contemporary liberal democracies which, during the Cold War, were proclaimed different and superior to the totalitarian enemy precisely because there were institutional checks and balances upon power. In short, one of the major differences between ‘open societies’ and their (closed) counterparts behind the Iron Curtain was that the former encouraged the critical testing of the knowledge and decisions of the powerful and assessing them against liberal democratic principles. The latter tolerated criticism only on rare and limited occasions. For some, this represented the triumph of rational-scientific methods of inquiry and techniques of falsification. For others, especially since positivism and rationalism have lost much of their allure, it meant that for society to become open and liberal, sectors of the population must be independent of the state and free to question its knowledge and power. Though we do not expect this position to be accepted by every reader, contributors to this book believe that critical dialogue is long overdue in Australia and needs to be listened to. For all its liberal democratic trappings, Australia’s security community continues to invoke closed monological narratives on defence and security. This book also questions the distinctions between policy practice and academic theory that inform conventional accounts of Australian security. One of its major concerns, particularly in chapters 1 and 2, is to illustrate how theory is integral to the practice of security analysis and policy prescription. The book also calls on policy-makers, academics and students of defence and security to think critically about what they are reading, writing and saying; to begin to ask, of their work and study, difficult and searching questions raised in other disciplines; to recognise, no matter how uncomfortable it feels, that what is involved in theory and practice is not the ability to identify a replacement for failed models, but a realisation that terms and concepts – state sovereignty, balance of power, security, and so on – are contested and problematic, and that the world is indeterminate, always becoming what is written about it. Critical analysis which shows how particular kinds of theoretical presumptions can effectively exclude vital areas of political life from analysis has direct practical implications for policy-makers, academics and citizens who face the daunting task of steering Australia through some potentially choppy international waters over the next few years. There is also much of interest in the chapters for those struggling to give meaning to a world where so much that has long been taken for granted now demands imaginative, incisive reappraisal. The contributors, too, have struggled to find meaning, often despairing at the terrible human costs of international violence. This is why readers will find no single, fully formed panacea for the world’s ills in general, or Australia’s security in particular. There are none. Every chapter, however, in its own way, offers something more than is found in orthodox literature, often by exposing ritualistic Cold War defence and security mind-sets that are dressed up as new thinking. Chapters 7 and 9, for example, present alternative ways of engaging in security and defence practice. Others (chapters 3, 4, 5, 6 and 8) seek to alert policy-makers, academics and students to alternative theoretical possibilities which might better serve an Australian community pursuing security and prosperity in an uncertain world. All chapters confront the policy community and its counterparts in the academy with a deep awareness of the intellectual and material constraints imposed by dominant traditions of realism, but they avoid dismissive and exclusionary terms which often in the past characterized exchanges between policy-makers and their critics. This is because, as noted earlier, attention needs to be paid to the words and the thought processes of those being criticized. A close reading of this kind draws attention to underlying assumptions, showing they need to be recognized and questioned. A sense of doubt (in place of confident certainty) is a necessary prelude to a genuine search for alternative policies. First comes an awareness of the need for new perspectives, then specific policies may follow. As Jim George argues in the following chapter, we need to look not so much at contending policies as they are made for us but at challenging ‘the discursive process which gives [favoured interpretations of “reality”] their meaning and which direct [Australia’s] policy/analytical/military responses’. This process is not restricted to the small, official defence and security establishment huddled around the US-Australian War Memorial in Canberra. It also encompasses much of Australia’s academic defence and security community located primarily though not exclusively within the Australian National University and the University College of the University of New South Wales. These discursive processes are examined in detail in subsequent chapters as authors attempt to make sense of a politics of exclusion and closure which exercises disciplinary power over Australia’s security community. They also question the discourse of ‘regional security’, ‘security cooperation’, ‘peacekeeping’ and ‘alliance politics’ that are central to Australia’s official and academic security agenda in the 1990s. This is seen as an important task especially when, as is revealed, the disciplines of International Relations and Strategic Studies are under challenge from critical and theoretical debates ranging across the social sciences and humanities; debates that are nowhere to be found in Australian defence and security studies. The chapters graphically illustrate how Australia’s public policies on defence and security are informed, underpinned and legitimised by a narrowly-based intellectual enterprise which draws strength from contested concepts of realism and liberalism, which in turn seek legitimacy through policy-making processes. Contributors ask whether Australia’s policy-makers and their academic advisors are unaware of broader intellectual debates, or resistant to them, or choose not to understand them, and why?

### 1NC

#### Text: The United States federal government should substantially enact statutory restrictions on the war powers authority of the President of the United States to use indefinite detention without criminal trial.

#### Solves the case better

Rooney, 6 – J.D. Candidate, Drake University Law School; B.A., Evangel University (Heather L., Spring. “NOTE: PARLAYING PRISONER PROTECTIONS: A LOOK AT THE INTERNATIONAL LAW AND SUPREME COURT DECISIONS THAT SHOULD BE GOVERNING OUR TREATMENT OF GUANTANAMO DETAINEES.” 54 Drake L. Rev. 679. Lexis.)

The Supreme Court decisions pertaining to detainees provide a very general framework of rights that the United States government must extend to prisoners being held at Guantanamo Bay; however, questions about the exact protections that must be provided cannot be effectively answered by the Court on a case-by-case basis. The judiciary's interpretive process would take too long and each holding would likely be seen as confined to the facts of the particular case. Moreover, the international community remains apprehensive as to how the United States is going to approach international law in general - an apprehension that is quickly affecting rapport, even with our allies. The international community wants to know whether the United States is going to ignore international treaties, including those governing human rights, whenever it determines that doing so is in the interest of national security. As the leading and most powerful nation in the world, the United States needs to step up - and the quickest, cleanest, and least controversial way of reaching a consensus on this issue is for Congress to act. **[433](http://www.lexis.com/research/retrieve?_m=f9db1e8bd4f173e7f0d8d5885e30e8bd&csvc=bl&cform=2758.-2&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=5bd57aaa6927fbda851267871792d6a8" \l "n433" \t "_self)** [\*747] Legislation should be passed that adequately addresses the "complex mass of questions" posed by the (1) potentially lifelong detention (2) of foreign nationals (3) who are being detained on a military base (4) that is outside the total sovereignty of the United States (5) during an open-ended war. **[434](http://www.lexis.com/research/retrieve?_m=f9db1e8bd4f173e7f0d8d5885e30e8bd&csvc=bl&cform=2758.-2&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=5bd57aaa6927fbda851267871792d6a8" \l "n434" \t "_self)** [\*748] [\*749] Congressional legislation would provide the best possible blueprint of the American public's opinion on how and even whether the United States [\*750] should protect terrorists. **[435](http://www.lexis.com/research/retrieve?_m=f9db1e8bd4f173e7f0d8d5885e30e8bd&csvc=bl&cform=2758.-2&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=5bd57aaa6927fbda851267871792d6a8" \l "n435" \t "_self)** It would also provide the international community with a long-awaited answer as to whether the United States agrees that international human rights laws are applicable to detainees. [436](http://www.lexis.com/research/retrieve?_m=f9db1e8bd4f173e7f0d8d5885e30e8bd&csvc=bl&cform=2758.-2&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=5bd57aaa6927fbda851267871792d6a8" \l "n436" \t "_self) Congress must legislate so that the United States can emerge from its current state of "legal fog" [437](http://www.lexis.com/research/retrieve?_m=f9db1e8bd4f173e7f0d8d5885e30e8bd&csvc=bl&cform=2758.-2&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAW&_md5=5bd57aaa6927fbda851267871792d6a8" \l "n437" \t "_self) with a national consensus on the appropriate treatment of detainees that will build confidence and cooperation both at home and abroad.

### 1NC

#### The court will strike down aggregate limits now – it’ll be close

Chemerinsky, 8-12 (Erwin, American lawyer and law professor. He is a prominent scholar in United States constitutional law and federal civil procedure. He is the current and founding dean of the University of California, Irvine School of Law, “Symposium: The distinction between contribution limits and expenditure limits,” http://www.scotusblog.com/2013/08/symposium-the-distinction-between-contribution-limits-and-expenditure-limits/)

For almost forty years, since Buckley v. Valeo in 1976, campaign finance law has been based on the distinction between contribution limits and expenditure limits. In Buckley, the Court held that contribution limits – restrictions on the amount that a person gives to a candidate or a committee – are generally constitutional. But expenditure limits – restrictions on what a person spends overall – are unconstitutional. Citizens United v. Federal Elections Commission in 2010 applied this distinction and held that limits on independent expenditures by corporations violate the First Amendment.¶ McCutcheon v. Federal Election Commission provides the Supreme Court with an occasion to reconsider this distinction. The issue in McCutcheon is whether aggregate limits on contributions are constitutional. Specifically, the plaintiffs are challenging the Bipartisan Campaign Reform Act’s $74,600 two-year ceiling on contributions to non-candidate committees and the $48,600 two-year ceiling on donations to candidate organizations.¶ Options: The Court could say . . .¶ The Court certainly could rule on this, even declaring it unconstitutional, without calling into question the constitutionality of all contribution limits. In fact, in Randall v. Sorrell (2006), the Court found Vermont’s limits on contributions to be so restrictive as to violate the First Amendment without reconsidering the basic distinction between limits on contributions and limits on expenditures. Vermont law restricted contributions so that the amount that any single individual could contribute to the campaign of a candidate for state office during a “two-year general election cycle” was $400 for governor, lieutenant governor, and other statewide offices; $300 for state senator; and $200 for state representative. The Court noted that the contribution limits in the Vermont law were lower than those upheld in Buckley or in any other Supreme Court decision, that they were the lowest in the country, and that they were not indexed to keep pace with inflation.¶ The aggregate contribution limits being challenged in McCutcheon are much higher and the Court therefore could distinguish Randall, follow Buckley, and uphold them. Or the Court could strike them down, invalidating aggregate limits as a violation of the First Amendment, but without calling into question all contribution limits. Buckley was based, in part, on the view that large contributions to candidates risk corruption and the appearance of corruption. The Court explained that “[t]o the extent that large contributions are given to secure a political quid pro quo from current and potential office holders, the integrity of our system of representative democracy is undermined. . . . Of almost equal concern as the danger of actual quid pro quo arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions.’’¶ The Court in McCutcheon could say that aggregate limits on the amount that can be contributed do not help to prevent such corruption or appearance of corruption. The Court could say that aggregate limits on contributions are really much more akin to expenditure limits and therefore unconstitutional. The Court could say that the real purpose of aggregate limits is to equalize political influence, a justification for campaign finance laws that the Court expressly rejected in Citizens United. Or the Court could distinguish aggregate limits to candidate committees from those to non-candidate committees, such as political parties.¶ Five votes to reconsider Buckley?¶ Underlying McCutcheon, though, is the question of whether the five conservative Justices want to reconsider Buckley’s holding that contribution limits are generally constitutional. In assessing this, it is important to note that three of these Justices – Antonin Scalia, Anthony Kennedy, and Clarence Thomas – have already called for the distinction between contribution and expenditure limits to be overruled. In his separate opinion in Colorado Republican Federal Campaign Committee v. Federal Election Commission, Justice Thomas declared: “I would reject the framework established by Buckley v. Valeo. . . . Instead, I begin with the premise that there is no constitutionally significant difference between campaign contributions and expenditures: both forms of speech are central to the First Amendment.’’¶ In Nixon v. Shrink Missouri Government PAC (2000), the Supreme Court reaffirmed Buckley’s distinction between contributions and expenditures, but four Justices sharply disagreed. Three Justices – Kennedy, Scalia, and Thomas – expressly declared their desire to overrule Buckley’s approval of contribution limits. Justice Kennedy wrote a strong dissent in which he lamented that ‘‘[t]he Court’s decision has lasting consequences for political speech in the course of elections, the speech upon which democracy depends.’’ He accused the Court of being “almost indifferent’’ to freedom of speech and said that he would overrule Buckley. Justice Thomas, joined by Justice Scalia, wrote a lengthier dissent, which began by declaring: “In the process of ratifying Missouri’s sweeping repression of political speech, the Court today adopts the analytical fallacies of our flawed decision in Buckley v. Valeo….Under the guise of applying Buckley, the Court proceeds to weaken the already enfeebled constitutional protection that Buckley afforded campaign contributions. As I indicated [previously], our decision in Buckley was in error, and I would overrule it.”¶ Therefore, it is likely that Justices Scalia, Kennedy, and Thomas are votes to strike down the aggregate contribution limits in McCutcheon and more generally to find contribution limits to violate the First Amendment. The crucial question in McCutcheon will be whether Chief Justice John Roberts and Justice Samuel Alito will join them and how far they are willing to go in reconsidering the distinction between contributions and expenditures.¶ The Chief Justice and Justice Alito were with Justices Scalia, Kennedy, and Thomas in Citizens United in its strong endorsement of the view that spending of money in election campaigns is political speech protected by the First Amendment and in invalidating limits on independent corporate political expenditures. Roberts and Alito also were with Scalia, Kennedy, and Thomas in Davis v. Federal Election Commission (2008), in declaring unconstitutional the “millionaire’s provision” of the Bipartisan Campaign Finance Reform Act unconstitutional. This provision increased contribution limits for opponents of a candidate who spent more than $350,000 of his or her personal funds. Most recently, in Arizona Free Enterprise Club’s Freedom Club PAC v. Bennett (2011), these five Justices were in the majority to declare unconstitutional a public funding system that increased the contribution and spending limits for those not taking public money based on the amount spent by opponents.¶ By contrast, Justices Ruth Bader Ginsburg, Stephen Breyer, and Sonia Sotomayor strongly dissented in Citizens United, and Justice Elena Kagan, who as Solicitor General argued for the constitutionality of the law in Citizens United, wrote the dissent in Arizona Free Enterprise Club. They are obviously much more likely to uphold the challenged provisions in McCutcheon and to adhere to Buckley’s distinction between contributions and expenditures.¶ What seems absent on the current Court is any Justice who takes the position espoused by Justice John Paul Stevens, that there is no meaningful distinction between contribution and expenditure limits and that expenditure limits should be constitutional. This long has been my view. Elected officials can be influenced by who spends money on their behalf, just as they can be influenced by who directly contributes money to them. The perception of corruption might be generated by large expenditures for a candidate, just as it can be caused by large contributions. Moreover, I agree with Justice Stevens’s statement in his concurrence in Nixon v. Shrink that “[m]oney is property; it is not speech. . . . These property rights are not entitled to the same protection as the right to say what one pleases.’’¶ Prediction¶ Predicting Supreme Court decisions is always tempting and always dangerous. But for what it’s worth, my prediction is that the Court will vote five-four to strike down the aggregate contribution limits being challenged in McCutcheon and that it will do so without overruling the distinction between contributions and expenditures that is at the core of Buckley. When faced to confront the question in some future case, I fear that the Chief Justice and Justice Alito will join Justices Scalia, Kennedy, and Thomas in rejecting this distinction and they well might signal this in McCutcheon.

#### Capital key to strike down aggregate limits --- Citizens United proves

Gora 8-15 (Joel, professor of law at Brooklyn Law School, “Symposium: McCutcheon v. FEC and the fork in the road,” http://www.scotusblog.com/2013/08/symposium-mccutcheon-v-fec-and-the-fork-in-the-road/#more-168568)

The future of Buckley? Will the McCutcheon case disturb that Buckley equilibrium and call into question the continued validity of contribution limits in general, as some fear? The challengers say it is not necessary to reach that question because, even viewed as contribution limits under the Buckley framework (which they contend requires a much more probing analysis than commonly thought), the aggregate limits are clearly unconstitutional. The aggregate candidate limits are not required to prevent quid pro quo corruption because every separate contribution to a candidate is within the legal base limit. And the aggregate committee caps, claimed to be anti-circumvention safeguards, are constitutionally unnecessary and defective because of all the other statutory and regulatory safeguards in place to insure that the base contribution amount that any one contributor can give to any one party committee cannot be used as a conduit for corruption.¶ But the challengers also contend that the aggregate limits really operate like expenditure limits – i.e., limiting the donor’s overall ability to support a message they endorse, and controlling not just how much can be contributed, but how many candidates and committees the contributor can express support for. Given that, strict scrutiny is the standard of review. To the extent that some of the briefs supporting the law fret that eliminating those aggregate limits will give the wealthy too much political influence and sway, they seem to underscore that these can be viewed as questionable expenditure limits designed to “level the playing field” – the kiss of death for any campaign finance law. Either way, the challengers say, whether viewed as contribution controls or expenditure limits, a careful analysis of the interlocking statutory protections against corruption will show that the aggregate limits fail strict or even close scrutiny and must be struck down.¶ Enter the Roberts Court Of course, the $64,000 question is how the Roberts Court is likely to view these issues. The Court has certainly developed a decided track record on campaign finance issues. Five cases, five decisions striking down various campaign finance mechanisms as violating the First Amendment. Pervading these cases is the application of real strict scrutiny to campaign finance laws, measuring the burdens they impose on candidates, parties and groups, carefully probing in great detail the weight of the justifications offered for the mechanism at issue and showing a deep distrust and a severe skepticism of those justifications. Chief Justice John Roberts wrote a very muscular decision in the Arizona public financing case striking down a scheme that merely gave publicly funded candidates more government financing to counter spending by privately funded candidates. Even that was too much of a burden on the right of the privately funded candidate to spend their own money on their campaign. Here the restrictions are direct and potent and tell the contributor: You’ve expressed enough support for the candidates and party of your choice.¶ As is so often the case, the disposition may come down to Justice Anthony Kennedy. He, of course, is the author of the notorious Citizens United v. Federal Elections Commission (2010) decision, for which, despite its support in some quarters as a proper vindication of core First Amendment rights of all groups and individuals, the Court has taken a brutal battering in the court of public opinion.¶ Many are already raising the specter of the McCutcheon case being another Citizens United, this time dramatically changing the basic law on contribution limits. But McCutcheon and the RNC are not making that argument and are not challenging the validity of the base limits on contributions to candidates or parties. They think they can win within the traditional Buckley framework that permits contribution regulation, but only if properly justified. And Justice Kennedy in Citizens United went out of the way to say that the case involved independent expenditures only, with no direct impact on the validity of contribution limits. But one of the linchpins of his decision was that the only compelling interest that justifies campaign finance limitations is preventing direct quid pro quo corruption. To the extent the supporters of the law seem to be claiming that contributors like McCutcheon might have greater access to and influence on Republican elected officials, these days that does not seem to be much of a winning argument in the Supreme Court.¶ Finally, a win for McCutcheon and the RNC would have one other positive effect. It might give parties and candidates more financial wherewithal to counter the recent rise of “super PACs,” as exaggerated as their electoral impact seemed to be.

#### The plan forces a trade off --- massively spends court capital

McGinnis and Rappaport ’02 (John O., Prof of Law @ Cardozo Law, and Michael B., Prof of Law @ University of San Diego Law, “Our Supermajoritarian Constitution,” 80 Tex. L. Rev. 703)

Significantly, the Supreme Court has not declared these substitutions unconstitutional. In fact, the Court has upheld certain exercises of presidential authority to conclude international agreements that had binding effect [\*768] under domestic law. n276 While the causes of the Court's behavior are complex, the most important reason of the Court's failure to police the treaty clause appears to be its historic deference to the other branches regarding foreign affairs. n277 The consequences of the Court's failure thus underscore that supermajority rules, like other constitutional restraints, often require judicial enforcement.¶ Nevertheless, judicial enforcement of supermajority rules in this area would bump up against the strong institutional reasons that lead courts to defer in foreign affairs. A decision, even if correct as a matter of law, may have dramatically unfortunate consequences that could erode the Court's prestige. n278 For this reason, one may suspect that a Court with many other duties it finds more palatable, like protecting individual rights, might be reluctant to enforce strictly supermajority rules in this area even if clearly given the responsibility to do so. n279 Thus, the enforcement of a supermajority rule in foreign affairs may be more difficult than in the domestic arena, because of the nature of the subject matter.¶ n278. See John O. McGinnis, Constitutional Review by the Executive in Foreign Affairs and War Powers: A Consequence of Rational Choice in the Separation of Powers, 56 Law & Contemp. Probs., Autumn 1993, at 293, 306-07 (contemplating that judicial decisions concerning foreign affairs would jeopardize the political capital of the Court).

#### McCutcheon win strengthens political parties relative to Super PACs

Boschma ’13 (Janie, “Capital Eye Opener, Feb. 27: Lobbyists Worry About SCOTUS Case, Club for Growth Ranks Congress,” http://www.opensecrets.org/news/2013/02/capital-eye-opener-feb-27-1.html)

LOBBYISTS WORRY ABOUT SCOTUS CASE: As we wrote earlier this week, the Supreme Court has agreed to weigh in on whether to remove caps on the total amount an individual can give to candidates and political parties in McCutcheon vs. the Federal Election Commission.¶ Who's most worried about the possible removal of the caps? Lobbyists. They say they actually like the current limit on overall contributions, because it relieves some of the pressure of going to so many fundraisers, especially if they max out early and are no longer legally able to give, according to The Hill. Without a cap, they might be expected to keep attending -- and keep writing checks.¶ As our Research Director Sarah Bryner told The Hill, “Eliminating limits would provide more opportunities for lobbyists to speak with their money, given that they tend to support candidates and parties than super-PACs."¶ And because lobbyists do tend to support parties, getting rid of the cap could give political parties more power to compete with super PACs, which can accept unlimited corporate contributions. Without an overall spending cap, in theory any donor could give the maximum permissible $32,400 to a number of parties or even max out to every congressional or presidential candidate.¶ That could be why the Republican National Committee joined Alabama GOP donor Shaun McCutcheon as a plaintiff in the case. Not only could donors give more overall to a number of committees, national party committees would also not be as limited in how much they can give to candidates. ¶ If the Supreme Court sides with McCutcheon and the RNC (a decision is expected by June), McCutcheon and other big donors like him will be able to contribute to the maximum amount in each category and wouldn't be held back by the overall biennial limits -- currently $123,200, of which a total of $48,600 can go to candidates and $74,600 to PACs and parties.

#### That checks Republican extremism

Weisbrot ’12 (David, Professor of Legal Policy at the United States Studies Centre and Professor of Law and Governance at Macquarie University, “SuperPACs and bags of cash fail to halt Obama's ground game,” http://uselectionwatch12.com/news-room/SuperPACs-and-bags-of-cash-fail-to-halt-Obamas-ground-game)

Obviously, the most worrying aspect of the SuperPAC phenomenon is the disproportionately large voice — and presumably outsized influence — afforded to a small number of extremely wealthy donors. Half of all SuperPAC funding this year was provided by only 22 individuals and corporations. The top 100 donors represented less than four percent of all contributors, but accounted for over 80% of the total funds raised.¶ For the Republican camp, the major contributors included casino mogul Sheldon Adelson (over $60 million); billionaire oil and gas tycoons David and Charles Koch, the principal funders of the Tea Party movement; and Wall Street financiers — 16 of Romney’s top 20, despite the industry having been controversially bailed out by President Obama post-GFC. Left-leaning SuperPACs were best supported by Hollywood and large trade unions — such as the United Auto Workers, the National Education Association and the Service Employees International Union, although Obama has famously raised enormous amounts by accumulating large numbers of small donations, driven by effective use of social media.¶ But was it money well spent? The jury is still out on whether these riches ultimately provided some electoral advantage for candidates and a “return” for donors in the form of added influence, or whether all or most of this money was squandered in screening the relentless negative attack ads that bombarded voters in key swing states. What we know for certain is that after burning through $6billion, the election more or less restored the status quo, with President Obama re-elected, Democrats continuing to control the Senate and Republicans continuing to control the House of Representatives.¶ This masks some churn below the surface, however. The fact that a significant part of the conservative spend was controlled by SuperPACs and true believers, rather than by more pragmatic GOP operatives, helped contribute to the selection of some extreme and unattractive candidates and for the Republican message to skew even more sharply to the right.¶ Party discipline is difficult to maintain when it is divorced from the allocation of precious resources. For example, the GOP tried to distance itself from Missouri Senate candidate Todd Aikin after his infamous “legitimate rape” remarks, but outside money allowed him to remain in the race, and to be defeated in an otherwise very winnable Senate seat for the Republicans.

#### That jacks US/Russian relations – domestic politics key

Sokov 13 (Nicholas – Senior Fellow at the Vienna Center for Disarmament and Non-Proliferation (VCDNP), “US-Russian Relations: Beyond the Reset”, 1/29, http://www.europeanleadershipnetwork.org/us-russian-relations-beyond-the-reset\_459.html)

Looking into the future, most observers of US-Russian relations tend to concentrate on arms control and disarmament – a new treaty to replace New START, missile defense, tactical nuclear weapons and other similar issues. Others pay attention to the human and political rights issues, including first of all the conservative wave that is sweeping through Russia. It is quite sad that nuclear disarmament and political rights dominate the agenda. This only shows that the relationship lacks depth. More than twenty years after the end of the Cold War, trade and investment remain at an extremely low level. They cannot serve as a stabilizer of the relationship (in sharp contrast to Russia’s relations with Europe) and their absence allows other, more volatile and more adversarial issues to top the agenda. Two features are likely to dominate the future of the US-Russian relationship and both will have a negative effect: domestic politics and the political transition in the Middle East and Northern Africa which is commonly known as the “Arab Spring.” Contrary to common opinion, there are very few truly difficult issues on the bilateral agenda that cannot be resolved through negotiation. The increasingly conflictual nature of the relationship results from domestic politics in both countries rather than from strategic, economic, or political differences. A good illustration is the well-known controversy over missile defense. Any decent diplomat could find a solution in a matter of months. Russian concerns concentrate on the fourth – and the last – phase of the American plan (known as the Phased Adaptive Approach), which foresees deployment of systems theoretically capable of intercepting strategic missiles. The solution proposed by Russian military leaders is to limit the capability of the fourth-phase system (for example, through limits on the number of interceptors and the areas of their deployment) so that it does not undermine the existing US-Russian strategic balance while preserving the ability of the American system to intercept a small number of long-range missiles, i.e., to limit the system to its officially proclaimed purpose. In the end, this is about the predictability of the American missile defense capability. The prospect of reaching agreement, however, is barred by the Republican Party, especially its Tea Party wing, which regards any limits whatsoever as anathema. Missile defense is an article of faith. This is not about plans or capabilities: this is about a deeply ideological commitment to unrestricted unilateralism. The increasingly tough and vocal (even shrill) Russian rhetoric also stems from domestic politics. Implementation of phase four of PAA is supposed to begin in the end of this decade and it may be another five to seven years, if not longer, until it begins to affect Russian strategic capability. There is plenty of time to negotiate. However, the rhetoric of the Russian government suggests that the threat is imminent. It is safe to assume that is simply the familiar “rally-around-the-flag” tactic of consolidating the public around the government.

#### Russia relations solve global nuclear war

Allison 11 (Graham, Director – Belfer Center for Science and International Affairs at Harvard’s Kennedy School, and Former Assistant Secretary of Defense, and Robert D. Blackwill, Senior Fellow – Council on Foreign Relations, “10 Reasons Why Russia Still Matters”, Politico, 2011, http://dyn.politico.com/printstory.cfm?uuid=161EF282-72F9-4D48-8B9C-C5B3396CA0E6)

That central point is that Russia matters a great deal to a U.S. government seeking to defend and advance its national interests. Prime Minister Vladimir Putin’s decision to return next year as president makes it all the more critical for Washington to manage its relationship with Russia through coherent, realistic policies. No one denies that Russia is a dangerous, difficult, often disappointing state to do business with. We should not overlook its many human rights and legal failures. Nonetheless, Russia is a player whose choices affect our vital interests in nuclear security and energy. It is key to supplying 100,000 U.S. troops fighting in Afghanistan and preventing Iran from acquiring nuclear weapons. Ten realities require U.S. policymakers to advance our nation’s interests by engaging and working with Moscow. First, Russia remains the only nation that can erase the United States from the map in 30 minutes. As every president since John F. Kennedy has recognized, Russia’s cooperation is critical to averting nuclear war. Second, Russia is our most consequential partner in preventing nuclear terrorism. Through a combination of more than $11 billion in U.S. aid, provided through the Nunn-Lugar Cooperative Threat Reduction program, and impressive Russian professionalism, two decades after the collapse of the “evil empire,” not one nuclear weapon has been found loose. Third, Russia plays an essential role in preventing the proliferation of nuclear weapons and missile-delivery systems. As Washington seeks to stop Iran’s drive toward nuclear weapons, Russian choices to sell or withhold sensitive technologies are the difference between failure and the possibility of success. Fourth, Russian support in sharing intelligence and cooperating in operations remains essential to the U.S. war to destroy Al Qaeda and combat other transnational terrorist groups. Fifth, Russia provides a vital supply line to 100,000 U.S. troops fighting in Afghanistan. As U.S. relations with Pakistan have deteriorated, the Russian lifeline has grown ever more important and now accounts for half all daily deliveries. Sixth, Russia is the world’s largest oil producer and second largest gas producer. Over the past decade, Russia has added more oil and gas exports to world energy markets than any other nation. Most major energy transport routes from Eurasia start in Russia or cross its nine time zones. As citizens of a country that imports two of every three of the 20 million barrels of oil that fuel U.S. cars daily, Americans feel Russia’s impact at our gas pumps. Seventh, Moscow is an important player in today’s international system. It is no accident that Russia is one of the five veto-wielding, permanent members of the U.N. Security Council, as well as a member of the G-8 and G-20. A Moscow more closely aligned with U.S. goals would be significant in the balance of power to shape an environment in which China can emerge as a global power without overturning the existing order. Eighth, Russia is the largest country on Earth by land area, abutting China on the East, Poland in the West and the United States across the Arctic. This territory provides transit corridors for supplies to global markets whose stability is vital to the U.S. economy. Ninth, Russia’s brainpower is reflected in the fact that it has won more Nobel Prizes for science than all of Asia, places first in most math competitions and dominates the world chess masters list. The only way U.S. astronauts can now travel to and from the International Space Station is to hitch a ride on Russian rockets. The co-founder of the most advanced digital company in the world, Google, is Russian-born Sergei Brin. Tenth, Russia’s potential as a spoiler is difficult to exaggerate. Consider what a Russian president intent on frustrating U.S. international objectives could do — from stopping the supply flow to Afghanistan to selling S-300 air defense missiles to Tehran to joining China in preventing U.N. Security Council resolutions.

### 1NC

#### Detainment court rulings cause stripping

Reinhardt 6 (Stephen – Judge, U.S. Court of Appeals for the Ninth Circuit, “THE ROLE OF THE JUDGE IN THE TWENTY-FIRST CENTURY: THE JUDICIAL ROLE IN NATIONAL SECURITY”, 2006, 86 B.U.L. Rev. 1309, lexis)

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." n2 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. n3 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. n4 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. n5 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, n6 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. n7 The administration's position in the initial round of Guantanamo cases was that no court anywhere had any jurisdiction to consider [\*1311] 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. n8 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.

#### Stripping sends a signal that undermines global democracy

Gerhardt 5 (Michael J. Gerhardt, William & Mary School of Law Professor, Lewis & Clark Review, "THE CONSTITUTIONAL LIMITS TO COURT-STRIPPING," 9 Lewis & Clark L. Rev. 347, lexis)

Beyond the constitutional defects with the Act, n40 it may not be good policy. It may send the wrong signals to the American people and to people around the world. It expresses hostility to our Article III courts, in spite of their special function in upholding constitutional rights and enforcing and interpreting federal law. If a branch of our government demonstrates a lack of respect for federal courts, our citizens and citizens in other countries may have a hard time figuring out why they should do otherwise. Rejecting proposals to exclude all federal jurisdiction or inferior court jurisdiction for some constitutional claims extends an admirable tradition within Congress and reminds the world of our hard-won, justifiable confidence in the special role performed by Article III courts throughout our history in vindicating the rule of law.

**Democracy’s on the brink --- consolidation solves global WMD conflict**

**Halperin 11** (Morton H., Senior Advisor – Open Society Institute and Senior Vice President of the Center for American Progress, “Unconventional Wisdom – Democracy is Still Worth Fighting For”, Foreign Policy, January / February, http://www.foreignpolicy.com/articles/2011/01/02/unconventional\_wisdom?page=0,11)

As the United States struggles to wind down two wars and recover from a humbling financial crisis, realism is enjoying a renaissance. Afghanistan and Iraq bear scant resemblance to the democracies we were promised. The Treasury is broke. And America has a president, Barack Obama, who once compared his foreign-policy philosophy to the realism of theologian Reinhold Niebuhr: "There's serious evil in the world, and hardship and pain," Obama said during his 2008 campaign. "And we should be humble and modest in our belief we can eliminate those things." But one can take such words of wisdom to the extreme-as realists like former Secretary of State Henry Kissinger and writer Robert Kaplan sometimes do, arguing that the United States can't afford the risks inherent in supporting democracy and human rights around the world. Others, such as cultural historian Jacques Barzun, go even further, saying that America can't export democracy at all, "because it is not an ideology but a wayward historical development." Taken too far, such realist absolutism can be just as dangerous, and wrong, as neoconservative hubris. For there is one thing the neocons get right: As I argue in *The Democracy Advantage*, democratic governments are more likely than autocratic regimes to engage in conduct that advances U.S. interests and avoids situations that pose a threat to peace and security. Democratic states are more likely to develop and to avoid famines and economic collapse. They are also less likely to become failed states or suffer a civil war. Democratic states are also more likely to cooperate in dealing with security issues, such as terrorism and proliferation of weapons of mass destruction. As the bloody aftermath of the Iraq invasion painfully shows, democracy cannot be imposed from the outside by force or coercion. It must come from the people of a nation working to get on the path of democracy and then adopting the policies necessary to remain on that path. But we should be careful about overlearning the lessons of Iraq. In fact, the outside world can make an enormous difference in whether such efforts succeed. There are numerous examples-starting with Spain and Portugal and spreading to Eastern Europe, Latin America, and Asia-in which the struggle to establish democracy and advance human rights received critical support from multilateral bodies, including the United Nations, as well as from regional organizations, democratic governments, and private groups. It is very much in America's interest to provide such assistance now to new democracies, such as Indonesia, Liberia, and Nepal, and to stand with those advocating democracy in countries such as Belarus, Burma, and China. It will still be true that the United States will sometimes need to work with a nondemocratic regime to secure an immediate objective, such as use of a military base to support the U.S. mission in Afghanistan, or in the case of Russia, to sign an arms-control treaty. None of that, however, should come at the expense of speaking out in support of those struggling for their rights. Nor should we doubt that America would be more secure if they succeed.

## 1NC Cred

### 1NC A2 Legitimacy Advantage

#### The aff results in shipping enemy combatants overseas – makes us look worse

Umansky, 5 – senior editor at ProPublica (Eric, 6/17. “Closing Guantanamo prison may not be the best option.” http://onlineathens.com/stories/061805/opi\_20050618001.shtml)

Closing the U.S. prison at Guantanamo Bay has suddenly become a hot topic. Since Sen. Joseph R. Biden Jr., D-Del., broached the idea, the notion has been gaining steam. Last weekend, Sen. Mel Martinez, R-Fla., added the first Republican voice to the chorus, and there were Senate hearings Wednesday on detainee issues. Even President Bush seems to be hinting that he's game. Asked during a television interview whether Gitmo should be shut, the president said, "We're exploring all alternatives as to how best to do the main objective, which is to protect America." Gitmo has come to represent the lack of accountability and the extralegal aspects of the war on terrorism. Shuttering it would be a grand gesture. The symbolism would be important and could help improve the U.S. image. But if that is all that is done, a closure risks obscuring a more important issue and could even be counterproductive: If the U.S. is to really regain its standing as a defender of human rights, it needs to do more than mothball a single jail; it needs to change its policies. If the prison were to close, what would happen to the detainees? Most of them were judged by former commanders at Guantanamo to be merely Taliban foot soldiers. Some, presumably, would simply be released. Others might face military tribunals, and some would most likely be shipped off, to be held by other countries. The last two possibilities are not a welcome scenario from either a moral or public relations perspective. Consider the tribunals. Heavily stacked against defendants, they've been condemned by such groups as the American Bar Association and military defense lawyers, who actually sued the government over the lack of prisoners' rights. Shipping terror suspects to other countries, even their own countries, could be worse. The U.S. has been practicing a form of this: "extraordinary rendition," in which prisoners are picked up in one locale - "snatched" in CIA parlance - and find themselves incarcerated elsewhere, in countries such as Syria or Uzbekistan. A United States military boat patrols in front of Camp Delta in this 2002 file photo, in Guantanamo Bay, Cuba. The legal process in such cases isn't just flawed, it doesn't exist. Detainees get no trials or hearings before a judge. The U.S. gets pro forma promises that prisoners won't be tortured, but there is no known monitoring. And Uzbekistan, for instance, has gained some renown for reports of political prisoners being boiled alive. Rendition hasn't generated the headlines or the level of outrage as Guantanamo Bay. But stories from rendered detainees have made it out, and they do little for the U.S. image. One Australian citizen who was rendered to Egypt was reportedly hung from a wall and given electric shock. In something of a reprieve, he was transferred to Guantanamo Bay. He arrived without most of his fingernails. There's also a perverse possibility intrinsic in **closing Gitmo**: It **could end up making the U.S. less accountable. With the visible symbol of unfair treatment swept away, pressure for wider change might dissipate**. It's important to remember that Gitmo is only one of a group of U.S. prisons around the globe set up to hold "enemy combatants" captured in the war on terrorism. Far less is known about the other jails, which are reportedly run by the CIA. There's one at Bagram Air Base in Afghanistan, called the Salt Pits. As The New York Times reported, two detainees have been killed at Bagram. More obscure is the reported facility at a base in Diego Garcia in the Indian Ocean. Unlike at Guantanamo Bay, no reporters have been allowed to visit these jails.

#### Single policy changes don’t spill over

MacDonald and Parent, 11 – Assistant Professor of Political Science at Williams College and Assistant Professor of Political Science at the University of Miami (Paul K. and Joseph M., Spring. “Graceful Decline?: The Surprising Success of Great Power Retrenchment,” International Security, Vol. 35, No. 4, p. 7-44.)

Second, pessimists overstate the extent to which a policy of retrenchment can damage a great power's capabilities or prestige. Gilpin, in particular, assumes that a great power's commitments are on equal footing and interdependent. In practice, however, great powers make commitments of varying degrees that are functionally independent of one another. Concession in one area need not be seen as influencing a commitment in another area.25 Far from being perceived as interdependent, great power commitments are often seen as being rivalrous, so that abandoning commitments in one area may actually bolster the strength of a commitment in another area. During the Korean War, for instance, President Harry Truman's administration explicitly backed away from total victory on the peninsula to strengthen deterrence in Europe.26 Retreat in an area of lesser importance freed up resources and signaled a strong commitment to an area of greater significance.

#### Signals are irrelevant – capability outweighs credibility

Chapman, 13 – columnist and editorial writer for the Chicago Tribune (Steve, 9/5. “War in Syria: The Endless Quest for Credibility,” <http://reason.com/archives/2013/09/05/war-in-syria-the-endless-quest-for-credi>)

The United States boasts the most powerful military on Earth. We have 1.4 million active-duty personnel, thousands of tanks, ships and planes, and 5,000 nuclear warheads. We spend more on defense than the next 13 countries combined. Yet we are told we have to bomb Syria to preserve our credibility in world affairs.¶ Really? You'd think it would be every other country that would need to confirm its seriousness. Since 1991, notes University of Chicago security scholar John Mearsheimer, the U.S. has been at war in two out of every three years. If we haven't secured our reputation by now, it's hard to imagine we ever could.¶ On the surface, American credibility resembles a mammoth fortress, impervious to anything an enemy could inflict. But to crusading internationalists, both liberal and conservative, it's a house of cards: The tiniest wrong move, and it collapses.¶ In a sense, though, they're right. The U.S. government doesn't have to impress the rest of the world with its willingness to defend against actual attacks or direct threats. But it does have to continually persuade everyone that we will lavish blood and treasure for purposes that are irrelevant to our security.¶ Syria illustrates the problem. Most governments don't fight unless they are attacked or have dreams of conquest and expansion. War is often expensive and debilitating even for the winners, and it's usually catastrophic for losers. Most leaders do their best to avoid it.¶ So even though the Syrian government is a vicious, repressive dictatorship with a serious grudge against Israel, it has mostly steered clear of military conflict. Not since 1982 has it dared to challenge Israel on the battlefield. When Israeli warplanes vaporized a Syrian nuclear reactor in 2007, Bashar al-Assad did nothing. The risks of responding were too dire.¶ But the U.S. never faces such sobering considerations. We are more secure than any country in the history of the world. What almost all of our recent military interventions have in common is that they involved countries that had not attacked us: Libya, Iraq, Serbia, Haiti, Somalia, Panama, Grenada and North Vietnam.¶ With the notable exception of the Afghanistan invasion, we don't fight wars of necessity. We fight wars of choice.¶ That's why we have such an insatiable hunger for credibility. In our case, it connotes an undisputed commitment to go into harm's way even when -- especially when -- we have no compelling need to do so. But it's a sale we can never quite close.¶ Using force in Iraq or Libya provides no guarantee we'll do the same in Syria or Iran or Lower Slobbovia. Because we always have the option of staying out, there's no way to make everyone totally believe we'll jump into the next crisis.¶ The parallel claim of Washington hawks is that we have to punish Assad for using nerve gas, because otherwise Iran will conclude it can acquire nuclear weapons. Again, our credibility is at stake. But how could the Tehran regime draw any certain conclusions based on what happens in Syria?¶ Two American presidents let a troublesome Saddam Hussein stay in power, but a third one decided to take him out. George W. Bush tolerated Moammar Gadhafi, but Barack Obama didn't. Ronald Reagan let us be chased out of Lebanon, only to turn around and invade Grenada. If you've seen one U.S. intervention, you've seen one.¶ What should be plain to Iran is that Washington sees nuclear proliferation as a unique threat to its security, which Syria's chemical weapons are not. Just because we might let Assad get away with gassing his people doesn't mean we will let Iran acquire weapons of mass destruction that would be used only against other countries. Heck, we not only let Saddam get away with using chemical weapons against Iran -- we took his side.¶ Figuring out the U.S. government's future impulses is hard even for Americans. There's no real rhyme or reason. But because we're so powerful, other governments can ill afford to be wrong. What foreigners have to keep in the front of their minds is not our inclination to act but our capacity to act -- which remains unparalleled whatever we do in Syria.¶ Credibility is overrated. Sure, it's possible for hostile governments to watch us squabble over Syria and conclude that they can safely do things we regard as dangerous. But there are graveyards full of people who made that bet.

### AT Multilat

#### Multilat fails

Naim 13 -- Senior Associate of International Economics Program @ Carnegie Endowment for Peace (Moises, 2/15/2013, "The G20 is a Sad Sign of Our Uncooperative World," http://carnegieendowment.org/2013/02/15/g20-is-sad-sign-of-our-uncooperative-world/fgvs)

The changing landscape of global politics also plays a role. As the number and the interests of those sitting at the tables where agreements are negotiated have increased, the opportunities for consensus and concerted action have shrunk. Emerging powers such as the Brics (Brazil, Russia, India, China and South Africa), new international coalitions, and influential nongovernmental players are now demanding a say in the way the world handles its collective problems. Inevitably, when all these disparate and often conflicting interests need to be incorporated into any agreement, the resulting solutions fall short of what is needed to solve the problem. This is why global multilateral agreements in which a large number of countries deliver on co-ordinated commitments have become increasingly rare. When was the last time you heard that an agreement with concrete consequences was reached by a large majority of the world’s nations? I think it was 13 years ago – the Millennium Development Goals. Since then, almost all international summits have yielded meager results, most visibly those seeking to advance the global agendas on trade liberalisation and curbing global warming.

#### US won’t exert effective diplomacy

Walt 3/4 -- American professor of international affairs at Harvard University's John F. Kennedy School of Government, previously taught at Princeton University and the University of Chicago (Stephen, 2013, "Is this any way to run U.S. foreign policy?" walt.foreignpolicy.com/posts/2013/03/04/is\_this\_any\_way\_to\_run\_us\_foreign\_policy)

Watching the musical chairs taking place in the first months of Obama's second term reminds me of how fundamentally unserious America's approach to foreign affairs really is. Kerry and Hagel are now in, but apparently Biden's star is ascending too, while all sorts of other folks are rotating to new jobs, unpacking their offices, or heading back to private life to pen memoirs. You might think this was a great opportunity for fresh thinking and renewed energy, but what it really reveals is how our approach to staffing foreign affairs may be the worst of all possible worlds. For starters, the United States has a relatively small civil service. Compared with other countries, a relatively large percentage of top government jobs are held by presidential appointees. The result: top jobs in the State Department and Pentagon are handled not by career foreign service officers or experienced bureaucrats, but by partisan appointees who rarely last more than a couple of years and then return to private life. Not only does this mean tremendous turnover whenever the White House changes hands, it means we are constantly bringing in people who lack experience or who are not up to speed on current issues. Next, the appointments process itself has gone completely off the rails. Candidates have to go through elaborate vetting procedures that would daunt a saint, and then they also face a Senate confirmation process that is slow, arbitrary, and leaves lots of positions unfilled for months if not years. And sometimes you get an embarrassing circus like the recent Hagel confirmation hearings, which revealed the GOP members of the Armed Services Committee to be spiteful and factually challenged hacks and no doubt confirmed many foreigners' dubious views of America's overall political competence. Third, we are so afraid that our career diplomats will "go native" or develop "localitis," that we discourage them from developing deep regional expertise and instead rotate them around the globe on a frequent basis. There is something to be said for gaining a global perspective, of course, but it also means that unlike some of our rivals, we won't have many diplomats with deep linguistic expertise or lots of in-depth experience in the societies in which they are operating. Yet we then expect them to hold their own against their local counterparts, or against diplomats from other countries whose knowledge and training in particular areas is more extensive. To make matters worse, the United States has a four-year presidential term and a campaign cycle that lasts well over a year. This latter period is far longer than the election periods in any other advanced democracy, and the endless parade of primaries and other forms of electoral hoopla eat up lots of bandwith in our national discourse. The result? The country, the incumbent administration, and the president's various rivals are all distracted for more than 25 percent of each president's term, and less able to make hard political choices. And then there's the question of resources. When there was a Cold War to win, American taxpayers were willing to devote one percent of GDP to non-military international affairs spending (e.g., on development, diplomacy, and things like that). Today, we spend about only 0.2 percent of GDP in this area, which tells you all you need to know about the real priority that Americans place on non-military tools of international influence. None of this would matter if the United States had a less ambitious foreign policy. But instead, we're trying to be the "indispensable power" on the cheap. The results, I am sorry to say, speak for themselves.

### 1NC A2: Terrorism Advantage

#### Detention not key to recruitment – al Qaeda messages prove

Joscelyn, 10 – senior fellow at the Foundation for Defense of Democracies (Thomas, 12/27. “Gitmo Is Not Al Qaeda's 'Number One Recruitment Tool'.” http://www.weeklystandard.com/blogs/gitmo-not-al-qaedas-number-one-recruitment-tool\_524997.html?page=2)

THE WEEKLY STANDARD has reviewed translations of 34 messages and interviews delivered by top al Qaeda leaders operating in Pakistan and Afghanistan (“Al Qaeda Central”), including Osama bin Laden and Ayman al Zawahiri, since January 2009. The translations were [published online](http://nefafoundation.org/index.cfm?pageID=44) by the NEFA Foundation. Guantanamo is mentioned in only 3 of the 34 messages. The other 31 messages contain no reference to Guantanamo. And even in the three messages in which al Qaeda mentions the detention facility it is not a prominent theme.¶ Instead, al Qaeda’s leaders repeatedly focus on a narrative that has dominated their propaganda for the better part of two decades. According to bin Laden, Zawahiri, and other al Qaeda chieftains, there is a Zionist-Crusader conspiracy against Muslims. Relying on this deeply paranoid and conspiratorial worldview, al Qaeda routinely calls upon Muslims to take up arms against Jews and Christians, as well as any Muslims rulers who refuse to fight this imaginary coalition. ¶ This theme forms the backbone of al Qaeda’s messaging – not Guantanamo. ¶ To illustrate this point, consider the results of some basic keyword searches. Guantanamo is mentioned a mere 7 times in the 34 messages we reviewed. (Again, all 7 of those references appear in just 3 of the 34 messages.) ¶ By way of comparison, all of the following keywords are mentioned far more frequently: Israel/Israeli/Israelis (98 mentions), Jew/Jews (129), Zionist(s) (94), Palestine/Palestinian (200), Gaza (131), and Crusader(s) (322). (Note: Zionist is often paired with Crusader in al Qaeda’s rhetoric.)¶ Naturally, al Qaeda’s leaders also focus on the wars in Afghanistan (333 mentions) and Iraq (157). Pakistan (331), which is home to the jihadist hydra, is featured prominently, too. Al Qaeda has designs on each of these three nations and implores willing recruits to fight America and her allies there. Keywords related to other jihadist hotspots also feature more prominently than Gitmo, including Somalia (67 mentions), Yemen (18) and Chechnya (15). ¶ Simply put, there is no evidence in the 34 messages we reviewed that al Qaeda’s leaders are using Guantanamo as a recruiting tool. Undoubtedly, “Al Qaeda Central” has released other messages during the past two years that are not included in our sample. Some of those messages may refer to Guantanamo. And some of the al Qaeda messages provided by NEFA, which does a remarkable job collecting and translating al Qaeda’s statements and interviews, may be only partial translations of longer texts. ¶ However, the messages we reviewed also surely include most of what al Qaeda’s honchos have said publicly since January 2009. These messages do not support the president’s claim. A closer look at the 3 out of 34 messages in which “Al Qaeda Central” actually referred to Guantanamo reveals just how weak the president’s argument is. Even in these messages al Qaeda is far more interested in other themes.¶ In a February 17, 2010 message entitled, “[The Way to Save the Earth](http://nefafoundation.org/file/nefa_ublwaytosaveearth0210.pdf),” Osama bin Laden made an offhand reference to Guantanamo. But it is hardly a prominent feature of the terror master’s message. As bin Laden makes clear in the opening lines, his main concern is climate change.¶ “This is a message to the whole world about those who cause climate change and its dangers – intentionally or unintentionally – and what we must do,” bin Laden said. Bin Laden blames the “greedy heads of major corporations” and “senior capitalists” who are “characterized by wickedness and hardheartedness” for the supposed deleterious effects of global warming.¶ Bin Laden does refer to Guantanamo, but it is brief and in the context of a rambling passage. In the surrounding sentences, bin Laden criticizes America for waging war in Iraq for oil, incorrectly claims that America and her allies have “killed, wounded, orphaned, widowed and displaced more than 10 million Iraqis,” and calls President Obama’s acceptance of the Nobel Peace Prize “an extreme example of the deception and humiliation of humanity.” ¶ If bin Laden’s February 17th message is evidence that al Qaeda is using Guantanamo as a recruiting tool, then it is also evidence that al Qaeda is using climate change and President Obama’s Nobel to earn new recruits.¶ The other two messages in our sample that refer to Guantanamo do not fare much better when any amount of scrutiny is applied.

#### Can’t solve – prosecution fails

Walen, 11 – Professor of Law at Rutgers School of Law (Alec, 6/22. “A Unified Theory of Detention, with Application to Preventive Detention for Suspected Terrorists.” Maryland Law Review, Volume 70, Issue 4.

<http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=3466&context=mlr>)

\* ST=Suspected Terrorist, LTPD=long-term preventive detention)

A more legitimate concern is that it may be particularly difficult to bring a successful prosecution against an ST. Matthew Waxman wrote: [I]nformation used to identify terrorists and their plots includes extremely sensitive intelligence sources and methods, the disclosure of which during trial would undermine or even negate counterterrorism operations; [and] the conditions under which some suspected terrorists are captured, especially in faraway combat zones or ungoverned regions, make it impossible to prove criminal cases using normal evidentiary rules . . . . 74 The first reason—that the relevant information is highly sensitive—presumably applies primarily to prosecutions based on foreign detentions in which the activities of the CIA or the cooperation of foreign states is at issue. 75 The Guantanamo Review Task Force, however, concluded: [T]he principal obstacles to prosecution in the cases deemed infeasible . . . typically did not stem from concerns over protecting sensitive sources or methods from disclosure, or concerns that the evidence against the detainee was tainted. While such concerns were present in some cases, most detainees were deemed infeasible for prosecution based on more fundamental evidentiary and jurisdictional limitations tied to the demands of a criminal forum . . . . 76 In other words, the problems with prosecuting detainees at Guant ́ anamo were primarily based on Waxman’s second concern and jurisdictional limitations, such as that the federal material support laws, 18 U.S.C. §§ 2339A and 2339B, “were not amended to expressly apply extraterritorially to non-U.S. persons until October 2001 and December 2004, respectively.” 77

### 1NC Terrorism Turns

#### We’re walking the right line on executive flexibility now – detention’s key to solve terror – multiple internal links

Tomatz and Graham, 13 – Colonel, B.A., University of Houston, J.D., University of Texas, LL.M., The Army Judge Advocate General Legal Center and School (2002); serves as the Chief of Operations and Information Operations Law in the Pentagon; and J.D., University of South Carolina, serves as the Senior Individual Mobilization Augmentee to The Judge Advocate Senior United States Senator from South Carolina (Michael and Lindsey O. “NDAA 2012: CONGRESS AND CONSENSUS ON ENEMY DETENTION.” Air Force Law Review, 69 A.F. L. Rev. 1. Lexis.)

President Obama signed the NDAA "despite having serious reservations with certain provisions that regulate the detention, interrogation, and prosecution of suspected terrorists." n114 While the Administration voiced concerns throughout the legislative process, those concerns were addressed and ultimately resulted in a bill that preserves the flexibility needed to adapt to changing circumstances and upholds America's values. The President reiterated his support for language in Section 1021 making clear that the new legislation does not limit or expand the scope of Presidential authority under the AUMF or affect existing authorities "relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States." n115¶ The President underscored his Administration "will not authorize the indefinite military detention without trial of American citizens" and will ensure any authorized detention "complies with the Constitution, the laws of war, and all other applicable law." n116 Yet understanding fully the Administration's position requires recourse to its prior insistence that the Senate Armed Services Committee remove language in the original bill which provided that U.S. citizens and lawful resident aliens captured in the United States would not be subject to Section 1021. n117 There appears to be a balancing process at work here. On the one hand, the Administration is in lock-step with Congress that the NDAA should neither expand nor diminish the President's detention authority. On the other hand, policy considerations led the President to express an intention to narrowly exercise this detention authority over American citizens.¶ The overriding point is that the legislation preserves the full breadth and depth of detention authority existent in the AUMF, to include the detention of American citizens who join forces with Al Qaida. This is a dynamic and changing conflict. If a home-grown terrorist destroys a U.S. target, the FBI gathers the evidence, and a U.S. Attorney prosecutes, traditional civilian criminal laws govern, and the military detention authority resident in the NDAA need never come into play. This is a reasonable and expected outcome in many cases. The pending strike on rail targets posited in this paper's introduction, where intelligence sources reveal an inchoate attack involving American and foreign nationals operating overseas and at home, however, may be precisely the type of scenario where military detention is not only preferred but vital to thwarting the attack, conducting interrogations about known and hidden dangers, and preventing terrorists from continuing the fight.

#### Perception of weakness increases terrorism – history votes neg

D'Souza 7 (Dinesh, fellow at the Hoover Institution at Stanford University, “How the left led us into 9/11,” LA Times, 1/18, lexis)

Clinton's policies also helped to provoke 9/11. After the Cold War, leading Islamic radicals returned to their home countries. Bin Laden left Afghanistan and went back to Saudi Arabia; Ayman Zawahiri returned to Egypt. They focused on fighting their own rulers -- what they termed the "near enemy" -- in order to establish states under Islamic law. But in the mid- to late 1990s, these radicals shifted strategy. They decided to stop fighting the near enemy and to attack the "far enemy," the U.S.¶ The world's sole superpower would seem to be much more formidable than local Muslim rulers such as Hosni Mubarak in Egypt or the Saudi royal family. Bin Laden argued, however, that the far enemy was actually weaker and more vulnerable. He was confident that when kicked in their vital organs, Americans would pack up and run. Just like in Vietnam. Just like in Mogadishu.¶ **Bin Laden saw his theory of American weakness vindicated during the Clinton era** . In 1993, Islamic radicals bombed the World Trade Center. The Clinton administration did little. In 1996, Muslim terrorists attacked the Khobar Towers facility on a U.S. base in Saudi Arabia. No response. In 1998, Al Qaeda bombed two U.S. embassies in Africa. Clinton responded with a few perfunctory strikes in Sudan and Afghanistan. These did no real harm to Al Qaeda and only strengthened the perception of American ineptitude. In 2000, Islamic radicals bombed the U.S. destroyer Cole. Again, the Clinton team failed to act. By his own admission, **Bin Laden concluded that his suspicion of American pusillanimity and weakness was correct. He became emboldened to plot the 9/11 attacks** .¶ Still, the 2001 attacks might have been averted had the Clinton administration launched an effective strike against Bin Laden in the years leading up to them. Clinton has said he made every effort to get Bin Laden during his second term. Yet former CIA agent Michael Scheuer estimates that there were about 10 chances to capture or kill Bin Laden during this period and that the Clinton people failed to capitalize on any of them.¶ Between 1996 and mid-2000, Bin Laden was not in deep hiding. He gave sermons in Kandahar's largest mosque. He talked openly on his satellite phone. He also granted a number of media interviews: in 1996, with author Robert Fisk; in 1997, with Peter Arnett of CNN; in 1998, with John Miller of ABC News; in 1999, with a journalist affiliated with Time magazine. Isn't it strange that all these people could find Bin Laden but the Clinton administration couldn't?¶ Two lessons can be drawn from these sorry episodes. The first one, derived from Carter's actions, is: In getting rid of the bad regime, make sure that you don't get a worse one. This happened in Iran and could happen again, in Iraq, if leading Democrats in Congress have their way. The second lesson, derived from Clinton's inaction, is that **the perception of weakness emboldens our enemies.** If the Muslim insurgents and terrorists believe that the U.S. is divided and squeamish about winning the war on terror**,** they are likely to escalate their attacks **on Americans** abroad and at home. In that case, 9/11 will be only the beginning.

#### The aff prevents effective intel-sharing by allies – they’ll fear sensitive info will get out

**McCarthy, 4** (Andrew, former federal prosecutor, National Review Online, ‘Abu Ghraib & Enemy Combatants”, 5/11, <http://www.nationalreview.com/mccarthy/mccarthy200405110832.asp>)

First, as long as we are in active hostilities, searching judicial proceedings to probe the detentions would not only interrupt interrogations to gather new intelligence but also inform the enemy of our current state of information; further, they would discourage our allies from sharing strategic and tactical intelligence with us for fear that it might be revealed in court. All of these factors would inevitably cause combat casualties to American and allied forces that would not otherwise have happened. Second, our forces are frequently in a position where the options on the battlefield include killing and capturing. The prospect of adversarial judicial proceedings would incentivize our forces to choose killing over the merciful alternative of capture-and-detention, necessarily resulting in more widespread loss of life than would otherwise have happened.

### 1NC No Bioterrorism

#### No impact – tons of examples vote neg

Dove, 12 – PhD in Microbiology, science journalist and former Adjunct Professor at New York University (Alan, 1/24. “Who’s Afraid of the Big, Bad Bioterrorist?” http://alandove.com/content/2012/01/whos-afraid-of-the-big-bad-bioterrorist/)

The second problem is much more serious. Eliminating the toxins, we’re left with a list of infectious bacteria and viruses. With a single exception, these organisms are probably near-useless as weapons, and history proves it.¶ There have been at least three well-documented military-style deployments of infectious agents from the list, plus one deployment of an agent that’s not on the list. I’m focusing entirely on the modern era, by the way. There are historical reports of armies catapulting plague-ridden corpses over city walls and conquistadors trying to inoculate blankets with Variola (smallpox), but it’s not clear those “attacks” were effective. Those diseases tended to spread like, well, plagues, so there’s no telling whether the targets really caught the diseases from the bodies and blankets, or simply picked them up through casual contact with their enemies.¶ Of the four modern biowarfare incidents, two have been fatal. The first was the 1979 Sverdlovsk anthrax incident, which killed an estimated 100 people. In that case, a Soviet-built biological weapons lab accidentally released a large plume of weaponized Bacillus anthracis (anthrax) over a major city. Soviet authorities tried to blame the resulting fatalities on “bad meat,” but in the 1990s Western investigators were finally able to piece together the real story. The second fatal incident also involved anthrax from a government-run lab: the 2001 “Amerithrax” attacks. That time, a rogue employee (or perhaps employees) of the government’s main bioweapons lab sent weaponized, powdered anthrax through the US postal service. Five people died.¶ That gives us a grand total of around 105 deaths, entirely from agents that were grown and weaponized in officially-sanctioned and funded bioweapons research labs. Remember that.¶ Terrorist groups have also deployed biological weapons twice, and these cases are very instructive. The first was the 1984 Rajneeshee bioterror attack, in which members of a cult in Oregon inoculated restaurant salad bars with Salmonella bacteria (an agent that’s not on the “select” list). 751 people got sick, but nobody died. Public health authorities handled it as a conventional foodborne Salmonella outbreak, identified the sources and contained them. Nobody even would have known it was a deliberate attack if a member of the cult hadn’t come forward afterward with a confession. Lesson: our existing public health infrastructure was entirely adequate to respond to a major bioterrorist attack.¶ The second genuine bioterrorist attack took place in 1993. Members of the Aum Shinrikyo cult successfully isolated and grew a large stock of anthrax bacteria, then sprayed it as an aerosol from the roof of a building in downtown Tokyo. The cult was well-financed, and had many highly educated members, so this release over the world’s largest city really represented a worst-case scenario.¶ Nobody got sick or died. From the cult’s perspective, it was a complete and utter failure. Again, the only reason we even found out about it was a post-hoc confession. Aum members later demonstrated their lab skills by producing Sarin nerve gas, with far deadlier results. Lesson: one of the top “select agents” is extremely hard to grow and deploy even for relatively skilled non-state groups. It’s a really crappy bioterrorist weapon.¶ Taken together, these events point to an uncomfortable but inevitable conclusion: our biodefense industry is a far greater threat to us than any actual bioterrorists.

#### Zero impact – no acquisition.

Leitenberg 6 (Milton, Senior research scholar at the University of Maryland, Trained as a Scientist and Moved into the Field of Arms Control in 1966, First American Recruited to Work at the Stockholm International Peace Research Institute, Affiliated with the Swedish Institute of International Affairs and the Center for International Studies Peace Program at Cornell University, Senior Fellow at CISSM, http://www.commondreams.org/views06/0217-27.htm)

So what substantiates the alarm and the massive federal spending on bioterrorism? There are two main sources of bioterrorism threats: first, from **countries developing bioweapons**, and second, from terrorist groups that might **buy**, **steal** or **manufacture** them. The first threat is **declining**. U.S. intelligence estimates say the number of countries that conduct offensive bioweapons programs has fallen in the last 15 years from **13 to nine**, as South Africa, Libya, Iraq and Cuba were dropped. There is no publicly available evidence that even the most hostile of the nine remaining countries — Syria and Iran — are ramping up their programs. And, despite the fear that a hostile nation could help terrorists get biological weapons, **no country** has ever done so — even nations known to have trained terrorists. It's more difficult to assess the risk of terrorists using bioweapons, especially because the perpetrators of the anthrax mailings have not been identified. If the perpetrators did not have access to assistance, materials or knowledge derived from the U.S. biodefense program, but had developed such sophistication independently, that would change our view of what a terrorist group might be capable of. So far, however, the **history** of terrorist experimentation with bioweapons has shown that **killing large numbers** of people isn't as easy as we've been led to believe. Followers of Bhagwan Shree Rajneesh succeeded in culturing and distributing salmonella in Oregon in 1984, sickening 751 people. Aum Shinrikyo failed in its attempts to obtain, produce and disperse anthrax and botulinum toxin between 1990 and 1994. Al Qaeda tried to develop bioweapons from 1997 until the U.S. invasion of Afghanistan in 2001, but declassified documents found by U.S. forces outside Kandahar indicate the group never obtained the necessary pathogens. At a conference in Tokyo this week, bioterrorism experts called for new programs to counter the possibility that terrorists could genetically engineer new pathogens. Yet three of the **leading scientists** in the field have said there is no likelihood at this time that a terrorist group could perform such a feat. The real problem is that a decade of widely broadcast discussion of what it takes to produce a bioweapon has provided terrorists with at least a rough roadmap. Until now, no terrorist group has had professionals with the skills to exploit the information — but the publicity may make it easier in the future. There is no military or strategic justification for imputing to real-world terrorist groups capabilities that they do not possess. Yet no risk analysis was conducted before the $33 billion was spent. Some scientists and politicians privately acknowledge that the threat of bioterror attacks is **exaggerated**, but they argue that spending on bioterrorism prevention and response would be inadequate without it. But the persistent hype is not benign. It is almost certainly the single major factor in provoking interest in bioweapons among terrorist groups. Bin Laden's deputy, the Egyptian doctor Ayman Zawahiri, wrote on a captured floppy disk that "we only became aware of (bioweapons) when the enemy drew our attention to them by repeatedly expressing concerns that they can be produced simply with easily available materials." We are creating our worst nightmare.

## 1NC Pakistan

### Pakistan – 1NC

#### Pakistan modeling fails – no clarity and destructive decisions

Khan 11 (Amjad Mahmood, Senior Litigation Associate – Latham & Watkins LLP, Postgraduate Research Fellow – Harvard Law School, JD – Harvard Law School, “Misuse and Abuse of Legal Argument by Analogy in Transjudicial Communication: the Case of Zaheeruddin v. State,” Richmond Journal of Global Law & Business, 10(4), http://muslimwriters.org/wp-content/uploads/2012/06/khan\_10-4-2.pdf)

This article explores the risks and limits of transjudicial communication. In particular, I critique the scholarly contention that transjudicial communication can be built upon commonly accepted methods of legal reasoning. I argue that transnational courts do not uniformly understand or apply commonly accepted methods of legal reasoning, especially legal argument by analogy. As a result, transnational courts that utilize transjudicial communication can and do render specious, even destructive, judicial opinions. I analyze the case of Zaheeruddin v. State—a controversial decision by the Supreme Court of Pakistan that upheld the constitutionality of Pakistan’s antiblasphemy ordinances. The Supreme Court of Pakistan poorly analogized to numerous U.S. Supreme Court authorities to bolster and legitimize its deeply flawed decision.

#### Military dominance prevents a strong judiciary

Kalhan 13 (Anil – Associate Professor of Law, Drexel University, “"Gray Zone" Constitutionalism and the Dilemma of Judicial Independence in Pakistan”, Vanderbilt Journal of Transnational Law, January, 46 Vand. J. Transnat'l L. 1, lexis)

[\*9] However, scholarship on constitutionalism and the judiciary in Pakistan has not fully addressed these issues. A significant body of work addresses how the military has used the judiciary to facilitate direct seizures of power. n20 Important consideration has also been given to aspects of the judiciary's role during periods of civilian rule. n21 Recent literature on Pakistan, however, largely has not considered the implications of the relationship between periods of military and civilian rule for constitutionalism and judicial independence, or the conception of judicial independence best suited to reinforce democracy and constitutionalism. This gap is striking in the wake of the anti-Musharraf movement - which itself is only beginning to draw scholarly attention n22 - and given the relevance of Pakistan's experiences to other countries in this gray zone. [\*10] In this Article, I argue that Pakistan's evolution through alternating periods of military and civilian rule has contributed to an enduring imbalance or disequilibrium n23 between the judiciary and other institutions, which in turn has helped to strengthen Pakistan's unelected state institutions at the expense of its comparatively weak representative institutions. This institutional imbalance has hindered Pakistan's constitutional development and long-term prospects for democratic consolidation. In Part II, I explain how Pakistan's military, which has seized power in several coups, has engaged in a recurring, iterative process of transformative preservation, n24 by which its own power and that of its affiliated interests have been extended and entrenched into periods of civilian rule. Historically, law and courts have been central to this process. When the military has seized power, the judiciary has validated those interventions, enabling constitutional shifts that preserve the military's dominance. But even when civilian rule has formally returned, the judiciary has played a comparable role in facilitating the military's continued political influence. The result has been a persistent institutional disequilibrium: a politicized judiciary periodically has been empowered to assert its autonomy from weak representative institutions, but simultaneously has remained largely vulnerable to [\*11] constraints by a dominant military and its affiliated interests, which collectively comprise what I refer to as Pakistan's deep state. During the period of civilian rule in the 1990s - which Husain Haqqani aptly describes as "military rule by other means" n25 - that pattern of institutional relationships led to clashes between Parliament and the judiciary that weakened both institutions, facilitating the military's ability to again seize direct control in 1999 and further extend the reach of its power.

### 1NC Indo-Pak War

#### They're moving towards a resolution

Gidvani 12 -- 2008 graduate of The University of Iowa College of Law and currently practices law in Las Vegas, Nevada (ND, 2/22, "The Peaceful Resolution of Kashmir: A United Nations Led Effort for Successful International Mediation and a Permanent Resolution to the India-Pakistan Conflict," TRANSNATIONAL LAW & CONTEMPORARY PROBLEMS, Vol. 18:721, http://www.muntr.org/v4/wp-content/uploads/2012/02/The\_Peaceful.pdf)

However, the removal of President Musharraf from power in a landslide election on September 6, 2008 marks the beginning of Asif Ali Zardari’s second rise to power and a new era of Pakistani leadership. 166 At the time of this Note’s writing, Zardari has yet to state his official policy toward India and resolving the Kashmir conflict, but Haider Mullick, War on Terror political analyst, is optimistic.167 Mullick argues that the interdependence of the two nations will be enough to continue the march toward a peaceful resolution, replacing Pakistan’s old policy of “flexing military muscle.”168 The current trend and commitment toward a peaceful resolution reasonably indicates that a successful resolution can be reached sooner rather than later.

#### -- No India/Pakistan war –

#### A) Deterrence

Giorgio et al 10 (Maia Juel, Tina Søndergaard Madsen, Jakob Wigersma, Mark Westh, “Nuclear Deterrence in South Asia: An Assessment of Deterrence and Stability in the Indian – Pakistan Conflict,” Global Studies, Autumn, http://dspace.ruc.dk/bitstream/1800/6041/1/Project%20GS-BA%2c%20Autumn%202010.pdf)

To what extent has nuclear deterrence enhanced stability in the India-Pakistan conflict? Recalling the logical structure of the paper, we here wish to reconcile the three analyses and offer a coherent synthesis of the results in relation to the research question. In order to gather the threads it is beneficial to shortly reflect upon the main results of the three analyses. Firstly, the aim with the thesis was to explore if there is nuclear deterrence between India and Pakistan, based upon Waltz three requirements. After having undertaken this analysis, we can conclude that Waltz’s requirements for effective nuclear deterrence are in fact fulfilled in both countries. Thus, from a neorealist perspective, is it then possible to deduce that stability reigns between India and Pakistan as a result of nuclear deterrence? Taking a point of departure in neorealist assumptions and nuclear deterrence theory, there is indeed stability between India and Pakistan, as no major war has taken place between the countries, and more importantly, nuclear war has been avoided. Nuclear deterrence has thus been successful in creating stability on a higher structural level.

#### B) Economics

Tellis 2 (Ashley, Foreign Policy Research Institute, Orbis, Winter, p. 19)

In any event, the saving grace that mutes the potential for exacerbated competition between both countries remains their relatively strong economic constraints. At the Pakistani end, these constraints are structural: Islamabad simply has no discretionary resources to fritter away on an open-ended arms race, and it could not acquire resources for this purpose without fundamentally transforming the nature of the Pakistani state itself—which transformation, if it occurs successfully, would actually mitigate many of the corrosive forces that currently drive Islamabad’s security competition with India. [21](http://www.sciencedirect.com/science?_ob=ArticleURL&_udi=B6W5V-44R2RMN-3&_user=1111158&_handle=V-WA-A-W-AV-MsSAYVA-UUA-U-AAWWZYDZDV-AAWUWZYVDV-WUAYUYVAZ-AV-U&_fmt=full&_coverDate=10%2F01%2F2002&_rdoc=3&_orig=browse&_srch=%23toc%236580%232002%23999539998%23279210!&_cdi=6580&view=c&_acct=C000051676&_version=1&_urlVersion=0&_userid=1111158&md5=a57af48126ec154c39015e0e91157808" \l "fn22#fn22) At the Indian end, these constraints may be more self-imposed. New Delhi commands a large pool of national resources that could be siphoned off and reallocated to security instruments, but the current weaknesses of the central government’s public finances and its reform program, coupled with its desire to complete the technological modernization programs that have been underway for many decades, prevents it from enlarging the budgetary allocations for strategic acquisitions at will. [22](http://www.sciencedirect.com/science?_ob=ArticleURL&_udi=B6W5V-44R2RMN-3&_user=1111158&_handle=V-WA-A-W-AV-MsSAYVA-UUA-U-AAWWZYDZDV-AAWUWZYVDV-WUAYUYVAZ-AV-U&_fmt=full&_coverDate=10%2F01%2F2002&_rdoc=3&_orig=browse&_srch=%23toc%236580%232002%23999539998%23279210!&_cdi=6580&view=c&_acct=C000051676&_version=1&_urlVersion=0&_userid=1111158&md5=a57af48126ec154c39015e0e91157808" \l "fn23#fn23) With these constraints on both sides, future nuclearization in India and Pakistan is more likely to resemble an "arms crawl" than a genuine Richardson-type "arms race." The strategic capabilities on both sides will increase incrementally but slowly—and in India will have further to go because of its inferior capabilities compared to China’s. This slowness may be the best outcome from the viewpoint both of the two South Asian competitors and the United States.

### AT Causes XTC

#### No extinction – impact is local

Dyer 2 (Gwynne, Ph.D. in War Studies – University of London and Board of Governors – Canada’s Royal Military College, “Nuclear War a Possibility Over Kashmir”, Hamilton Spectator, 5-24, Lexis)

For those who do not live in the subcontinent, the most important fact is that the damage would be **largely** **confined** to the region. The Cold War is over, the strategic understandings that once tied India and Pakistan to the rival alliance systems have all been cancelled, and **no outside powers would be drawn in**to the fighting. The detonation of a hundred or so relatively small nuclear weapons over India and Pakistan would not cause grave harm to the wider world from fallout. People over 40 have already lived through a period when the great powers conducted hundreds of nuclear tests in the atmosphere, and they are mostly still here.

### No Scenario for Terror

**Terror internal link is E/D**

**Riedel ’11** (Bruce Riedel, Senior Fellow at Brookings (9-26-2011, senior fellow at the Saban Center at the Brookings Institution and an adjunct professor at the School for Advanced International Studies of Johns Hopkins University. The Daily Star, September 26, 2011)

**At least twice jihadists have tried to provoke war between India and Pakistan. The first time was in December 2001** with the attack on the Indian Parliament; **then** on Nov. 26, 2008, **with the attack on Mumbai**. **Two Indian prime ministers were too smart to take the bait.**

### Moar Indo Pak D

**No Indo-Pak War**

**Wright ‘13** (Thomas Wright is a fellow at the Brookings Institution in the Managing Global Order project. Previously, he was executive director of studies at the Chicago Council on Global Affairs, a lecturer at the Harris School of Public Policy at the University of Chicago, and senior researcher for the Princeton Project on National Security, "Don’t Expect Worsening of India, Pakistan Ties," <http://blogs.wsj.com/indiarealtime/2013/01/16/dont-expect-worsening-of-india-pakistan-ties/>, January 16, 2013)

There’s no end for now to the hostile rhetoric between India and Pakistan. But that doesn’t necessarily presage anything more drastic. Pakistan claims another of its soldiers died Tuesday night in firing across the Line of Control in Kashmir, the divided Himalayan region claimed by both nations. Indian army chief, Gen. Bikram Singh, on Wednesday, said Pakistan had opened fire and India retaliated. “If any of their people have died, it would have been in retaliation to their firing,” Gen. Singh said. ”When they fire, we also fire.” It was the latest in tit-for-tat recriminations over deaths in Kashmir that began last week. Pakistan claimed one of its soldiers died on Jan. 6. Two days later, India said Pakistani forces killed two of its soldiers and mutilated the bodies. Tuesday night, Indian Prime Minister Manmohan Singh said the mutilations meant it could not be “business as usual” between the countries. That has worried some that peace talks, which have been in train for two years, could be about to break down. Mr. Singh’s comments built on a drumbeat of anger from India. Gen. Singh, Monday called the mutilations “unpardonable” and said India withheld the right to retaliate to Pakistan aggression when and where it chooses. Pakistan Foreign Minister Hina Rabbani Khar, who is in the U.S., Tuesday termed the Indian army chief’s comments as “very hostile.” There are some other worrying signs. India said Tuesday it was delaying the start of a visa-on-arrival program meant to make it easier for some Indians and Pakistanis to visit each other’s countries. The visa program, like talks on opening up bilateral trade, is supposed to pave the way toward broader peace talks that would encompass thornier issues, like how to solve the Kashmir problem. Also Tuesday, nine Pakistani hockey players who had come to participate in a tournament in India were sent home due to fears of protests and violence against them. Still, there’s little benefit for either side to escalate what is now still sporadic firing over the Line of Control, the de facto border in Kashmir. Pakistan is embroiled in its own political meltdown sparked by the Supreme Court’s decision Tuesday to order the arrest of Prime Minister Raja Pervez Ashraf on allegations of corruption. Tens of thousands of protesters Tuesday took to the streets in Islamabad, and remain there today, demanding immediate elections and a greater role for the army and Supreme Court in politics. Pakistan’s military continues to play an important political role, dominating defense and foreign policy. But it has so far shown little sign of mounting a full-blown coup despite persistent rumors of military intervention. Pakistan’s government must hold national elections by May, meaning the next few months are likely to be choppy ones in Pakistan politics. In such an environment, the military is unlikely to want to dial up tensions with India. On § Marked 11:26 § the Indian side, despite Mr. Singh’s unusually strident tone Tuesday, there also will be pause before taking matters to the next level. Mr. Singh has put immense personal political capital into trying to improve ties with Pakistan since he came to power in 2004. Last year, he hosted Pakistan President Asif Ali Zardari in New Delhi and promised a return visit. Such a trip is clearly off the table for now. But India still has put too much into peace talks to throw away the progress made so far on visas, trade and other issues. Even Gen. Singh, India’s army chief, Monday said he did not believe the latest flare-up would lead to a broader escalation in violence and an official end to a 2003 ceasefire agreement in Kashmir. The clashes so far, he noted, have been limited to specific areas of the Line of Control.

**India and Pakistan peaceful now**

Grare 13 -- Director and Senior Associate South Asia Program @ Carnegie Endowment for Peace (Frederic, 1/30/2013, "Is Pakistan’s Behavior Changing?" https://www.carnegieendowment.org/2013/03/01/stalin-puzzle/flpg)

Islamabad has been trying to send signals over the last few months indicating that it is pursuing a new course of action, both internally and externally, that is more in line with international norms. Pakistan has tried to improve its relationship with India. It has also indicated a preference for a negotiated peace in Afghanistan and demonstrated a new attitude toward terrorism. Of course, claims that Pakistan’s policies are changing in one way or another are not new. And in the past, the status quo ante has almost always prevailed. But this could be different. The context is different this time. The looming international troop withdrawal from Afghanistan brings considerable risks for the region in general and for Pakistan in particular. Islamabad fears that, come 2014, it will face an unstable Afghanistan and find itself isolated regionally and globally. For the United States, as new faces enter the Departments of State and Defense, reasonably good relations with Pakistan are a prerequisite for a dignified and safe exit from Afghanistan. Politically, their main challenge will be to work out necessary compromises with Islamabad without risking further deterioration of the regional situation, which could affect Washington’s larger strategic objectives in Asia. In this context, understanding Pakistan’s new policies and their limits is key. Change in Pakistan’s relations with India and Afghanistan and in its sponsorship of terrorism for political purposes is real but does not yet indicate a fundamental shift in strategic thinking. The shift thus far has been prompted by short-term considerations and reflects Pakistan’s weakness and isolation. However, if the tentative changes lead to improvement in the country’s economy and security, a meaningful shift in Pakistan’s strategic character could take hold. The Pakistan-India Normalization Process Relations with India are a good indicator of the reality of any change in Pakistan’s foreign policy. The relationship was notably bad following the 2008 Mumbai terrorist attacks, but it has warmed up since the March 2011 resumption of the so-called composite dialogue on bilateral issues. Later that year, Pakistan announced that it would grant India most-favored-nation trade status by the end of 2012, thus reciprocating India’s gesture of 1996. Interior Ministers Sushil Kumar Shinde and Rehman Malik also agreed on a new visa regime, hailed as another sign of change. But the most-favored-nation decision has not yet been implemented, and the visa regime agreement was put on hold after clashes began on January 6 along the Line of Control that forms India’s border with Pakistan in Kashmir. The two countries seem willing to ease tensions and avoid escalation, but questions about the sustainability of the normalization process are legitimate. They can be partly answered through a careful examination of the motivations behind the rapprochement. Short-term considerations may have played a part. President Asif Ali Zardari needed to show some political achievement in the face of increasing domestic criticism due to the country’s perceived poor economic performance, while the army seemed to be overstretched and in need of a respite on the eastern front so it could focus on its war against militancy in western Pakistan. This has been particularly true because relations with the United States remain complicated and characterized by deep mistrust on both sides. Longer-term, structural factors also contributed to Islamabad’s decisions. As observed by well-known Pakistani analyst Ayesha Siddiqa, peace with India remains the dividing line between the political leadership and the armed forces. A successful peace process would inevitably diminish the political weight of the military and reduce its budget. It is therefore something the civilian government would seek to bolster its own standing. Economic considerations were also important in Pakistan’s decision to change tack. In addition to governance-related problems (widespread blackouts, for example), Chinese goods are now being dumped on the Pakistani market. Small and midsize Pakistani enterprises are struggling to survive. Pakistan can no longer afford the type of triangular trade it has practiced with India in the past, shipping goods through third countries. Such a system costs it several billions of dollars every year. Direct trade with India is becoming a necessity even for basic commodities like electrical power. Under pressure from industrialists and with its significant corporate holdings suffering, the Pakistani military leadership has also lent its support to the current rapprochement with India. As Pakistan is unlikely to bring its economy back on track in the near future, its eagerness to forge closer trading ties with its old rival is likely to endure for some time. The recent clashes between Pakistani and Indian forces in Kashmir, irrespective of which side is responsible for the fighting, indicate that tensions exist within the Pakistani security establishment about Islamabad’s India policy. While occasional incidents are perhaps inevitable in the tense Kashmir environment, the alleged mutilation of the bodies of Indian soldiers could be interpreted as a provocation and an indication that the current course of action remains problematic in some quarters. Moreover, there is no visible sign that the military intends to dismantle militant organizations with a record of attacking India in Kashmir and elsewhere. So long as groups like the Lashkar-e-Taiba persist, hostilities could resume, with or without the consent of the military. However, the fact that no major terrorist attack originating within Pakistan has taken place since the 2008 Mumbai attacks may indicate that Pakistan can control some of its most dangerous jihadi organizations, even if that control is not absolute. The rapprochement with India is therefore fragile. But given the convergence of short- and long-term interests within Pakistan, the normalization could be expected to last. Should it endure, it would also enlarge the political space open to the civilian government, which has always been in favor of better economic relations with India and whose economic interests partly coincide (for once) with those of the military. And if it lasts long enough, a warmer India-Pakistan dynamic could even alter the security establishment’s perception of India. This may not be sufficient to change Pakistan’s India-centric strategic calculations, but it could create an intermediary situation that would eventually permit a more comprehensive shift. That remains, however, purely speculative at this stage.

**CBMs solve**

**Botez ‘11 (**Radu, Writer @ Open Security, a think tank specializing in contemporary conflicts, “ India-Pakistan talks slowly move forward,” June 29, <http://www.opendemocracy.net/opensecurity/security_briefings/290611>,

At the end of last week, foreign secretaries Nirupama Rao of India and Salman Bashir of Pakistan met in Islamabad to discuss security issues and prepare the upcoming meeting of the countries' foreign ministers in India in July. The meeting was the first at foreign secretary level since July 2009. In February, India and Pakistan announced they would resume peace talks that India had broken off following the Mumbai attacks in late 2008. Discussions revolved around the issues of terrorism and the territorial dispute over Kashmir, a divided region claimed by both states in its entirety. India has blamed Pakistan-based terrorist group Lashkar-e-Taiba (LeT) for the Mumbai attacks, supported by elements from ISI, Pakistan's main intelligence agency, according to one of the planners, recently on trial in a Chicago court. It has repeatedly asked Pakistan to act against militants on its territory and bring to trial those involved in plotting the attacks. The surroundings of Osama bin Laden's killing were seen by many in New Delhi as a confirmation of Pakistan providing shelter to terrorists. However, after talks between the states' home secretaries earlier this year, Pakistan agreed to allow Indian investigators to visit Islamabad. Rao and Bashir also said they would look into confidence building measures (CBMs) with regard to their nuclear and conventional weapons capability. On Tuesday, Pakistani defence minister Chaudhry Ahmad Mukhtar said that India had a greater capacity to sustain a war. In May, Pakistan tested a new short-range ballistic missile that could lead to the nuclear threshold being crossed early in the event of a conflict analysts say. According to observers, both parties were cautious in addressing sensitive issues and talks have not led to any major breakthrough. The openSecurity verdict: With the recent meeting, India and Pakistan **have once again indicated their intentions to improve relations**. The most prominent episode of demonstrating goodwill took place when Pakistani prime minister Yusuf Raza Gilani visited India earlier this year to attend the cricket world cup semi-final between the two countries' teams, joined by his Indian counter-part Manmohan Singh. Both leaders engaged in so-called 'cricket diplomacy', spending several hours together on and off the field. As welcome as this may be, it will not help to resolve issues both countries have gone to war over several times in the past.

## Solvency

### 1NC Solvency

#### No viable alternative to detention

Kempton, 13 – professor of political science and vice president for academic affairs at Franciscan University of Steubenville, Ohio (Daniel R, 6/4. “KEMPTON: A drone war over semantics.” http://www.washingtontimes.com/news/2013/jun/4/a-drone-war-over-semantics/)

Finally — and most importantly — the president has failed to develop a realistic alternative to the war paradigm. Rejecting the tribunal system, Mr. Obama promised to end indefinite detention and to bring the prisoners into the traditional criminal justice system. He also repeatedly promised to close Guantanamo Bay. These promises weren’t kept. Mr. Obama failed not because of a lack of effort, but because of the lack of suitable alternatives. His 2009 trial balloon to move the detainees to the Thomson Correctional Center in Illinois failed to gain popular backing and was abandoned. In 2010, the administration dropped its proposal to hold trials for Khalid Shaikh Mohammed and other Sept. 11 conspirators in New York City when it drew anger from citizens and lawmakers alike. Most recently, his call to transfer Guantanamo Bay detainees to their countries of origin lacks congressional backing. Conservatives oppose it largely because of the high recidivism rate, in excess of 30 percent, among those previously returned. Moreover, those remaining at Guantanamo are the most hardened cases. Even some on the left have concerns with the concept. When the Bush administration used extraordinary rendition to send suspected terrorists, such as Abu Omar, back to their country of origin, torture sometimes resulted. In sum, after years of ideologically driven effort, Mr. Obama has failed to produce a practical — or politically viable — alternative to the Bush paradigm of the “global war on terrorism.” Instead, the tribunal system goes unused, indefinite detention continues, and suspected terrorists — even American ones — are killed without due process, or even the benefits of interrogation, enhanced or otherwise. Verbal acrobatics aside, suspending the use of the term hasn’t brought an end to the reality.

#### Evidentiary standards mean trials and habeas hearings will always go against the detainees—means they can’t solve

Ajuha and Tutt 12 [Fall, 2012, Jasmeet K. Ahuja and Andrew Tutt “Evidentiary Rules Governing Guantanamo Habeas Petitions: Their Effects and Consequences”, 31 Yale L. & Pol'y Rev. 185]

Beginning in 2001, the United States began transporting hundreds of persons captured overseas in the "War on Terror" to the U.S. Naval Base at Guantanamo Bay, Cuba. n1 They were kept at Guantanamo specifically to insulate from judicial review the military's decision to detain them. n2 Seven years later, the Supreme Court in Boumediene v. Bush granted Guantanamo detainees the right to petition for the writ of habeas corpus in the Court of Appeals for the D.C. Circuit. n3 The Court held that detainees must have "a meaningful opportunity to demonstrate that [they are] being held pursuant to the erroneous application or interpretation of relevant law." n4 The Court's central concern was with the habeas court's power to admit and consider relevant exculpatory evidence, a power necessary "for the writ of habeas corpus, or its substitute, to function." n5 But while the Court's central preoccupation was with a habeas court's power to independently review the evidence, the Court did not enumerate any specific procedural requirements. The Court - hesitant to place burdens on the military and cognizant of the need to protect classified information - sketched only the broad outlines of what the Constitution requires. n6 In so doing, it left "the extent of the showing required of the Government in these cases ... a matter to be determined" n7 and charged the district courts with the task of balancing the government's legitimate interests against each detainee's right to have a court assess the lawfulness of his detention. n8 [\*187] Since Boumediene, the courts within the D.C. Circuit have heard over sixty habeas petitions from detainees at Guantanamo Bay. n9 At first, many writs were granted. The lower courts applied a functional framework for determining the admissibility, credibility, and probity of evidence, holding the government to the ordinary burden of preponderance of the evidence. n10 However, as the government and detainees began to appeal habeas decisions on the basis of adverse evidentiary rulings, the Court of Appeals announced binding evidentiary rules limiting the district courts' discretion to admit, exclude, weigh, and consider evidence as the district courts saw fit. n11 This Note argues that these evidentiary rules deny detainees a "meaningful opportunity" to contest the factual basis of their detention. n12 The D.C. Circuit maintains that it holds the government to a preponderance standard n13 and has cast its reversals of the District Court's grants of habeas corpus as mere corrections in judging evidentiary probity. n14 However, in substance, the Court of Appeals' evidentiary rules have quietly but significantly eroded the evidentiary burden. [\*188] The way in which the evidentiary standard and the evidentiary rules interact to weaken Boumediene has, for the most part, escaped scrutiny. n15 Many have praised the D.C. Circuit for striking an appropriate balance between the needs of national security and the rights of those wrongfully detained. n16 But this underestimates the combined significance of the D.C. Circuit's evidentiary rulings. Boumediene's central purpose was to withhold from the executive branch the unchecked power to detain whomever it deems a threat. n17 Yet the D.C. Circuit's evidentiary rules have empowered the government to detain upon so little evidence that the habeas hearing no longer serves the checking role the Boumediene Court intended. n18 The D.C. Circuit has tacitly reduced the amount and quality of evidence necessary to establish the lawfulness of detention through three powerful mechanisms: (1) all but eliminating corroboration requirements and restrictions on the admissibility of hearsay evidence, no matter how unreliable; n19 (2) establishing that courts consider the evidence in the "whole record" when determining whether a petitioner meets the requirements for detention - a determination that often reduces to the Court of Appeals' deciding that the District Court [\*189] wrongly refused to credit sufficient government evidence; n20 and (3) developing irrefutable presumptions of detainability in which a single fact once established - such as a stay at an al-Qaeda affiliated guesthouse - is dispositive on the question of detention, even when other facts in the record point strongly in the opposite direction. n21

#### The executive will move detainees around without providing real due process

McNeal, 8 – Visiting Assistant Professor of Law, Pennsylvania State University Dickinson School of Law (Gregory, 8/8. “ARTICLE: BEYOND GUANTANAMO, OBSTACLES AND OPTIONS.” 103 Nw. U. L. Rev. Colloquy 29. Lexis)

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

#### Can’t solve – the DOD will just shift detainment overseas

**Merritt, 2005** (Jeralyn, Criminal Defense Lawyer, J.D. 1973, “Rendition Comes Out of the Closet”, TalkLeft, March 11th, http://talkleft.com/new\_archives/009994.html)

A Feb. 5 memorandum from Defense Secretary Donald H. Rumsfeld calls for broader interagency support for the plan, starting with efforts to work out a significant transfer of prisoners to Afghanistan, the officials said. The proposal is part of a Pentagon effort to cut a Guantánamo population that stands at about 540 detainees by releasing some outright and by transferring others for continued detention elsewhere. What's behind the move to reduce the population at Guantanamo? Is it finally some concern for the due process rights of the detainees? Not a chance. In fact, it's just the opposite. The Pentagon doesn't care for the restrictions the U.S. Courts have placed on their actions, so they want to move the show elsewhere--to foreign countries that won't have such concerns. Defense Department officials said that the adverse court rulings had contributed to their determination to reduce the population at Guantánamo, in part by persuading other countries to bear some of the burden of detaining terrorism suspects.