### Legitimacy

#### US credibility is collapsing due to detention policy

David Welsh 11, J.D. from the University of Utah, “Procedural Justice Post-9/11: The Effects of Procedurally Unfair Treatment of Detainees on Perceptions of Global Legitimacy”, http://law.unh.edu/assets/images/uploads/publications/unh-law-review-vol-09-no2-welsh.pdf

The Global War on Terror 1 has been

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perspective of legitimacy in the context of detention.

#### A U.S. commitment to the war power authority to detain without trial destroy’s U.S. dimplomatic credibility

Atwood and ten other foreign diplomats 9

BRIEF OF FORMER UNITED STATES DIPLOMATS

J. Brian Atwood is the dean of

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safefree/almarri\_formerdiplomats\_20090128.pdf

¶ We, the amici curiae lending our

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time promoting ¶ democracy and human rights.19

#### The plan’s external oversight on detention maintains heg---legitimacy is the vital internal link to global stability

Robert Knowles 9, Acting Assistant Professor, New York University School of Law, Spring, “Article: American Hegemony and the Foreign Affairs Constitution”, 41 Ariz. St. L.J. 87, Lexis

The hegemonic model also reduces the need for

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deference gap" between foreign and domestic cases.

#### Nuclear war

Zhang and Shi 11 Yuhan Zhang is a researcher at the Carnegie Endowment for International Peace, Washington, D.C.; Lin Shi is from Columbia University. She also serves as an independent consultant for the Eurasia Group and a consultant for the World Bank in Washington, D.C., 1/22, “America’s decline: A harbinger of conflict and rivalry”, http://www.eastasiaforum.org/2011/01/22/americas-decline-a-harbinger-of-conflict-and-rivalry/

This does not necessarily mean that the US

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will inevitably be devoid of unrivalled US primacy.

#### Material power’s irrelevant---lack of legitimacy makes heg ineffective

Barak Mendelsohn 10, assistant professor of political science at Haverford College and a senior fellow of FPRI. Author of Combating Jihadism: American Hegemony and Interstate Cooperation in the War on Terrorism, June 2010, “The Question of International Cooperation in the War on Terrorism”, http://www.fpri.org/enotes/201006.mendelsohn.cooperationwarterror.html

Going against common conceptions, I argue that

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actions and prevents the uninhibited exercise of power.

#### US credibility is key to multilateral terror cooperation

Terkel 4 - researcher @ the Center for American Progress

(Amanda, http://www.americanprogress

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/2004/08/b165288.html)

Our credibility at home and abroad has never

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we need our credibility intact to secure it.

#### Assuring trials is key to defeating Al-Qaeda

Hathaway et al 13

Oona Hathaway, Samuel Adelsberg, Spencer Amdur, Philip Levitz, Freya Pitts and Sirine Shebaya+¶ BIO: + Oona Hathaway is the Gerard C. and Bernice Latrobe Smith Professor of International Law, Yale Law School. Samuel Adelsberg, Spencer Amdur, and Freya Pitts are J.D. candidates at Yale Law School. Philip Levitz and Sirine Shebaya received their J.D.s from Yale Law School in 2012, The Power To Detain: Detention of Terrorism Suspects After 9/11, The Yale Journal of International Law¶ Winter, 2013¶ The Yale Journal of International Law¶ 38 Yale J. Int'l L. 123

The United States is still actively engaged in hostilities with global terrorist organizations, but there are indications that "we're within reach of strategically defeating al-Qaeda." n227 This development, combined with the growing distance from the national trauma of September 11, has reinvigorated the debate surrounding the detention and prosecution of suspected terrorists both outside of and within the United States. Even though Congress has recently expanded military detention and prosecution, n228 prosecution in federal court offers several key advantages over law-of-war detention, including predictability, legitimacy, greater cooperation by defendants and international partners, and flexibility. n229 These advantages have led a diverse set of actors - from current Department of Defense and counterterrorism officials, n230 to [\*162] former Bush Administration officials, n231 to the Washington Post editorial board n232 - to support the prosecution and detention of individuals through the federal courts, despite Congress's recently expressed preference for law-of-war detention.¶ In some cases, prosecution in federal court is the only available option for prosecuting an accused terrorist. Federal antiterrorism statutes are extensive and provide statutory authority to prosecute individuals who are part of or supporting terrorist groups without direct ties to forces associated with al-Qaeda or the Taliban (and therefore outside the scope of the 2001 AUMF or the NDAA), n233 and independently operating terrorists who are inspired by, but are not part of or associated with, al-Qaeda or the Taliban. n234 These statutes also reach persons or citizens who, because they are apprehended in the United States, cannot be tried under the MCA. The following sections discuss the contours and limitations of such criminal prosecution and detention in the terrorism context.¶ Even where detention under the law of war is available, the criminal justice system offers some key advantages for the detention and prosecution of suspected terrorists. We thus aim here to offer a correction to the recent trend toward favoring law-of-war detention over criminal prosecution and detention. In the vast majority of cases, criminal prosecution and detention is the most effective and legitimate way to address the terrorist threat.¶ We begin this Part by discussing the specific advantages of criminal prosecution and detention, including predictability, legitimacy, and strategic [\*163] advantages. Next, we respond to critics of criminal prosecution and detention, considering the three chief concerns that have been raised regarding criminal prosecution of terrorism suspects in federal court. Finally, we conclude by acknowledging the limits of criminal prosecution and detention in the terrorism context.¶ A. The Advantages of Criminal Prosecution and Detention¶ ¶ The least contested bases for detention authority in any context are post-conviction criminal detention and pre-verdict detention for those who pose a risk of flight. It is often assumed that such criminal detention is ill-suited to terrorists. However, with very little fanfare, federal district court dockets have been flush with terrorism cases over the past decade. Strikingly, efforts to measure the conviction rate in these cases place it between 86 and 91 percent. n235 Far from being ineffective, then, trying suspected terrorists in criminal courts is remarkably effective. It also offers the advantages of predictability, legitimacy, and strategic benefits in the fight against terrorism.¶ 1. Predictability¶ ¶ Post-conviction detention of terrorists after prosecution in federal court provides predictability that is currently absent in the military commission system. Federal district courts have years of experience trying complex cases and convicting dangerous criminals, including international terrorists, and the rules are well established and understood. The current military commission system, on the other hand, is a comparatively untested adjudicatory regime. n236¶ As already noted, conviction rates in terrorism trials have been close to ninety percent since 2001, and those rates have remained steady in the face of large increases in the number of prosecutions. The military commissions, by contrast, have - as of this writing - convicted seven people since 2001, five of whom pled guilty. n237 Charges have been dropped against several defendants, n238 [\*164] and other defendants have been charged but not tried. n239 The commission procedures have been challenged at every stage, and it is unclear what final form they will ultimately take. Even their substantive jurisdiction remains unsettled. In October 2012, the Court of Appeals for the D.C. Circuit overturned Salim Hamdan's military commission conviction for providing material support to terrorism. n240 The Court held that the Military Commissions Act of 2006, which made material support for terrorism a war crime that could be prosecuted in the commissions, was not retroactively applicable to Hamdan's conduct prior to enactment of the statute. n241 Moreover, the Court explained that material support for terrorism was not a recognized war crime under international law. n242 As a result, his conviction for material support for terrorism in the commission could not stand. n243 It is uncertain how this will affect other trials of detainees, but this decision clearly illustrates the unsettled nature of the commissions. n244¶ 2. Legitimacy¶ ¶ Federal courts are also generally considered more legitimate than military commissions. The stringent procedural protections reduce the risk of error and generate trust and legitimacy. n245 The federal courts, for example, provide more robust hearsay protections than the commissions. n246 In addition, jurors are [\*165] ordinary citizens, not U.S. military personnel. Indeed, some of the weakest procedural protections in the military commission system have been successfully challenged as unconstitutional. n247 Congress and the Executive have responded to these legal challenges - and to criticism of the commissions from around the globe - by significantly strengthening the commissions' procedural protections. Yet the remaining gaps - along with what many regard as a tainted history - continue to raise doubts about the fairness and legitimacy of the commissions. The current commissions, moreover, have been active for only a short period - too brief a period for doubts to be confirmed or put to rest. n248 Federal criminal procedure, on the other hand, is well-established and widely regarded as legitimate.¶ Legitimacy of the trial process is important not only to the individuals charged but also to the fight against terrorism. As several successful habeas corpus petitions have demonstrated, insufficient procedural protections create a real danger of erroneous imprisonment for extended periods. n249 Such errors can generate resentment and distrust of the United States that undermine the effectiveness of counterterrorism efforts. Indeed, evidence suggests that populations are more likely to cooperate in policing when they believe they have been treated fairly. n250 The understanding that a more legitimate detention regime will be a more effective one is reflected in recent statements from the Department of Defense and the White House. n251¶ 3. Strategic Advantages¶ ¶ There is clear evidence that other countries recognize and respond to the difference in legitimacy between civilian and military courts and that they are, indeed, more willing to cooperate with U.S. counterterrorism efforts when terrorism suspects are tried in the criminal justice system. Increased international cooperation is therefore another advantage of criminal prosecution.¶ Many key U.S. allies have been unwilling to cooperate in cases involving law-of-war detention or prosecution but have cooperated in criminal [\*166] prosecutions. In fact, many U.S. extradition treaties, including those with allies such as India and Germany, forbid extradition when the defendant will not be tried in a criminal court. n252 This issue has played out in practice several times. An al-Shabaab operative was extradited from the Netherlands only after assurances from the United States that he would be prosecuted in criminal court. n253 Two similar cases arose in 2007. n254 In perhaps the most striking example, five terrorism suspects - including Abu Hamza al-Masr, who is accused of providing material support to al-Qaeda by trying to set up a training camp in Oregon and of organizing support for the Taliban in Afghanistan - were extradited to the United States by the United Kingdom in October 2012. n255 The extradition was made on the express condition that they would be tried in civilian federal criminal courts rather than in the military commissions. n256 And, indeed, both the European Court of Human Rights and the British courts allowed the extradition to proceed after assessing the protections offered by the U.S. federal criminal justice system and finding they fully met all relevant standards. n257 An insistence on using military commissions may thus hinder extradition and other kinds of international prosecutorial cooperation, such as the sharing of testimony and evidence.¶ Finally, the criminal justice system is simply a more agile and versatile prosecution forum. Federal jurisdiction offers an extensive variety of antiterrorism statutes that can be marshaled to prosecute terrorist activity committed outside the United States, and subsequently to detain those who are convicted. n258 This greater variety of offenses - military commissions can only [\*167] punish an increasingly narrow set of traditional offenses against the laws of war n259 - offers prosecutors important flexibility. For instance, it might be very difficult to prove al-Qaeda membership in an MCA prosecution or a law-of-war habeas proceeding; but if the defendant has received training at a terrorist camp or participated in a specific terrorist act, federal prosecutors may convict under various statutes tailored to more specific criminal behavior. n260 In addition, military commissions can no longer hear prosecutions for material support committed before 2006. n261 Due in part to the established track record of the federal courts, the federal criminal justice system also allows for more flexible interactions between prosecutors and defendants. Proffer and plea agreements are powerful incentives for defendants to cooperate, and often lead to valuable intelligence-gathering, producing more intelligence over the course of prosecution. n262

#### Ending the war on terror eliminates the threat of Al Qaeda—no resources or motivation

Gordon 7

Philip, Senior Fellow for U.S

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war-on-terror-be-won

The world beyond the war on terror will

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critical issues on which the nation’s welfare depends.¶

#### The availability of new technological makes a bioweapons attack leading to extinction highly probable

Myhrvold 13

Bynathan Myhrvold, former Chief Technology Officer at Microsoft, MA and PhD from Princeton University, he held a postdoctoral fellowship at the University of Cambridge working under Stephen Hawking¶ Strategic Terrorism a Call to Action, The Lawfare Research Paper Series¶ research paper no. 2 – 2013¶ July 2013¶ <http://www.lawfareblog.com/wp-content/uploads/2013/07/Strategic-Terrorism-Myhrvold-7-3-2013.pdf>

¶ As horrible as this would be, such a pandemic is by ¶ no means the worst attack one can imagine, for several ¶ reasons. First, most of the classic bioweapons are based ¶ on 1960s and 1970s technology because the 1972 treaty ¶ halted bioweapons development efforts in the United ¶ states and most other Western countries. Second, the Russians, although solidly committed to biological weapons ¶ long after the treaty deadline, were never on the cutting ¶ edge of biological research. Third and most important, the ¶ science and technology of molecular biology have made ¶ enormous advances, utterly transforming the field in the ¶ last few decades. High school biology students routinely ¶ perform molecular-biology manipulations that would have ¶ been impossible even for the best superpower-funded program back in the heyday of biological-weapons research. ¶ The biowarfare methods of the 1960s and 1970s are now ¶ as antiquated as the lumbering mainframe computers of ¶ that era. tomorrow’s terrorists will have vastly more deadly bugs to choose from.¶ Consider this sobering development: in 2001, Australian researchers working on mousepox, a nonlethal ¶ virus that infects mice (as chickenpox does in humans), ¶ accidentally discovered that a simple genetic modification transformed the virus.10, 11 Instead of producing mild ¶ symptoms, the new virus killed 60% of even those mice ¶ already immune to the naturally occurring strains of ¶ mousepox. The new virus, moreover, was unaffected ¶ by any existing vaccine or antiviral drug. A team of ¶ researchers at Saint Louis University led by mark Buller ¶ picked up on that work and, by late 2003, found a way to ¶ improve on it: Buller’s variation on mousepox was 100% ¶ lethal, although his team of investigators also devised ¶ combination vaccine and antiviral therapies that were ¶ partially effective in protecting animals from the ¶ engineered strain.12, 13 Another saving grace is that ¶ the genetically altered virus is no longer contagious. ¶ of course, it is quite possible that future tinkering ¶ with the virus will change that property, too.¶ Strong reasons exist to believe that the genetic modifications Buller made to mousepox would work for other ¶ poxviruses and possibly for other classes of viruses as well. ¶ Might the same techniques allow chickenpox or another ¶ poxvirus that infects humans to be turned into a 100% lethal bioweapon, perhaps one that is resistant to any known ¶ antiviral therapy? I’ve asked this question of experts many ¶ times, and no one has yet replied that such a manipulation ¶ couldn’t be done.¶ This case is just one example. Many more are pouring out of scientific journals and conferences every year. ¶ Just last year, the journal Nature published a controversial ¶ study done at the University of Wisconsin–madison in ¶ which virologists enumerated the changes one would need ¶ to make to a highly lethal strain of bird flu to make it easily ¶ transmitted from one mammal to another.14¶ Biotechnology is advancing so rapidly that it is hard to keep track of all the new potential threats. Nor is it clear ¶ that anyone is even trying. In addition to lethality and drug ¶ resistance, many other parameters can be played with, ¶ given that the infectious power of an epidemic depends on ¶ many properties, including the length of the latency period ¶ during which a person is contagious but asymptomatic. ¶ Delaying the onset of serious symptoms allows each new ¶ case to spread to more people and thus makes the virus ¶ harder to stop.¶ This dynamic is perhaps best illustrated by HIV, which ¶ is very difficult to transmit compared with smallpox and ¶ many other viruses. Intimate contact is needed, and even¶ then, the infection rate is low. The balancing factor is that ¶ hiv can take years to progress to aids, which can then ¶ take many more years to kill the victim. What makes hiv¶ so dangerous is that infected people have lots of opportunities to infect others. This property has allowed hiv to ¶ claim more than 30 million lives so far, and approximately ¶ 34 million people are now living with this virus and facing ¶ a highly uncertain future.15¶ A virus genetically engineered to infect its host quickly, ¶ to generate symptoms slowly—say, only after weeks or ¶ months—and to spread easily through the air or by casual ¶ contact would be vastly more devastating than hiv. It ¶ could silently penetrate the population to unleash its deadly effects suddenly. This type of epidemic would be almost ¶ impossible to combat because most of the infections would ¶ occur before the epidemic became obvious.¶ A technologically sophisticated terrorist group could develop such a virus and kill a large part of humanity with ¶ it. Indeed, terrorists may not have to develop it themselves: ¶ some scientist may do so first and publish the details.¶ given the rate at which biologists are making discoveries about viruses and the immune system, at some point in ¶ the near future, someone may create artificial pathogens ¶ that could drive the human race to extinction. Indeed, a ¶ detailed species-elimination plan of this nature was openly ¶ proposed in a scientific journal.¶ The ostensible purpose of that particular research was ¶ to suggest a way to extirpate the malaria mosquito, but ¶ similar techniques could be directed toward humans.16 ¶ When I’ve talked to molecular biologists about this method, they are quick to point out that it is slow and easily ¶ detectable and could be fought with biotech remedies. If ¶ you challenge them to come up with improvements to the ¶ suggested attack plan, however, they have plenty of ideas.¶ Modern biotechnology will soon be capable, if it is not ¶ already, of bringing about the demise of the human race—¶ or at least of killing a sufficient number of people to end ¶ high-tech civilization and set humanity back 1,000 years or ¶ more. That terrorist groups could achieve this level of technological sophistication may seem far-fetched, but keep in ¶ mind that it takes only a handful of individuals to accomplish these tasks. Never has lethal power of this potency ¶ been accessible to so few, so easily. Even more dramatically ¶ than nuclear proliferation, modern biological science has ¶ frighteningly undermined the correlation between the lethality of a weapon and its cost, a fundamentally stabilizing ¶ mechanism throughout history. Access to extremely lethal agents—lethal enough to exterminate Homo sapiens—will be available to anybody with a solid background in biology terrorists included.¶ The 9/11 attacks involved at least four pilots, each of whom had sufficient education to enroll in flight schools and complete several years of training. Bin laden had a degree in civil engineering. Mohammed Atta attended a german university, where he earned a master’s degree in urban ¶ planning—not a field he likely chose for its relevance to ¶ terrorism. A future set of terrorists could just as easily be students of molecular biology who enter their studies innocently enough but later put their skills to homicidal use. ¶ Hundreds of universities in Europe and Asia have curricula sufficient to train people in the skills necessary to make a sophisticated biological weapon, and hundreds more in the ¶ United states accept students from all over the world. ¶ Thus it seems likely that sometime in the near future a ¶ small band of terrorists, or even a single misanthropic individual, will overcome our best defenses and do something ¶ truly terrible, such as fashion a bioweapon that could kill ¶ millions or even billions of people. Indeed, the creation of ¶ such weapons within the next 20 years seems to be a virtual ¶ certainty. The repercussions of their use are hard to estimate. One approach is to look at how the scale of destruction they may cause compares with that of other calamities ¶ that the human race has faced.

### Democracy

#### Democratic liberalism is backsliding now---the US model of an unrestrained executive causes collapse

Larry Diamond 9, Professor of Political Science and Sociology @ Stanford, “The Impact of the Global Financial Crisis on Democracy”, Presented to the SAIS-CGD Conference on New Ideas in Development after the Financial Crisis, Conference Paper that can be found on his Vita

Concern about the future of democracy is further

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of democracy in countries like Thailand and Nepal.

#### US action determines the global separation of powers—status quo trends towards expansive executive authority get modeled—strong judicial assertion is critical to check

Flaherty 11, Professor of International Law

[2011, Martin S. Flaherty is a Leitner Professor of International Law, Fordham Law School; Visiting Professor, Woodrow Wilson School of Public and International Affairs, Princeton University, “Judicial Foreign Relations Authority After 9/11”, 56 N.Y.L. Sch. L. Rev. 119]

That "old-time" separation of powers should be enough to turn back any trend toward deference. The balance of this essay, however, offers one more interpretation, which is at once more original and potentially the most powerful. Call this separation of powers in a global context--or "global separation of powers" for short. The premise is straightforward. It assumes, first, that globalization generally has resulted in a net gain in power not for judiciaries, but for the "political" branches--and above all, for executives--within domestic legal systems. In other words, the growth of globalized transnational government networks has yielded an imbalance among the three (to four) major branches of government in terms of separation of powers. Such an imbalance, among other things, poses a significant and growing threat for the protection of individual rights by domestic courts, whether on the basis of international or national norms. [\*139] Yet if separation of powers analysis helps identify the problem, it also suggests the solution. If globalization has comparatively empowered executives in particular, it follows that fostering, rather than prohibiting, judicial globalization provides a parallel approach to help restore the balance. In this way, judicial separation of powers justifies judicial borrowing on both non-democratic and democratic grounds. From a non democratic perspective, transnational judicial dialogue with reference to international law and parallel comparative questions gives national judiciaries a unique expertise on aspects of foreign affairs, and so is a further exception to the usual presumption that the judiciary is the least qualified branch of government for the purposes of foreign affairs. More importantly, from a democratic point of view, restoring the balance that separation of powers seeks has the effect of promoting self-government to the extent that separation of powers is itself seen as a predicate for any well-ordered form of democratic self-government. A. Globalization and Imbalance Globalization, and the corollary erosion of sovereignty, may not yet be cliches, but they are hardly news. As any human rights lawyer would be quick to point out, the post-World War II emergence of international human rights law represents one of the most profound assaults on the notion that state sovereigns are the irreducible, impermeable building blocks of foreign affairs. n123 But the nation-state model has been eroding no less profoundly in less formal ways. Central, here, is the insight that governments today no longer simply interact state to state, through heads of state, foreign ministers, ambassadors, and consuls. Increasingly, if not already predominantly, there is interaction through global networks in which subunits of governments deal directly with one another. In separation of powers terms, executive branches at all levels interact less as the sole representative of the nation, than as partners in education ministries, intelligence agencies, or health and education initiatives. Likewise, though lagging, legislators and committees from different jurisdictions meet to share approaches and discuss common ways forward. Last, and least powerful if not least dangerous, judges from different nations share approaches in conference, teaching abroad programs, and of course, formally citing to one another in their opinions. Only recently has pioneering work by Anne-Marie Slaughter, among others, given a comprehensive picture of this facet of globalization. n124 That work, in turn, suggests that among the results of this process has been a net shift of domestic power in any given state toward the executive and away from the judiciary and the protection of fundamental rights. [\*140] 1. Executive Globalization Where international human rights lawyers seek to directly pierce the veil of state sovereignty, international relations experts have chronicled the no less significant desegregation of state sovereignty through the emergence of sub-governmental networks. Nowhere has this process been more greatly marked than with regard to the interaction of various levels of regulators within the executive branches--in parliamentary systems, the "governments" n125--of individual nations. Starting with pioneering work by Robert Koehane and Joseph Nye, n126 and more recently enhanced and consolidated by Slaughter, current scholarship offers a multifaceted picture of what may be termed "executive globalization." That said, much work remains to be done on how the "Global War on Terror" post-9/11 has accelerated this process with regard to security agencies. Nor, on a more general level, has significant work been done as to what the net effects of executive networking have been in separation of powers terms. The following reviews what has been done and suggests the likely answers to the questions that arise. Slaughter, somewhat consciously overstating, terms government regulators who associate with their counterparts abroad "the new diplomats." n127 This characterization immediately raises the question of who they are and in what contexts they operate. Perhaps ironically, desegregation begins at the top when presidents, prime ministers, and heads of state gather in settings such as the G-8, not only as the representatives of their states but as chief executives with common problems, which may include dealing with other branches of their respective governments. Moving down the ladder come an array of different specialists who meet across borders with one another both formally and informally: central bankers, finance ministers, environmental regulators, health officials, government educators, prosecutors, and--today perhaps most importantly--military, security, and intelligence officials. The frameworks in which these horizontal groups associate are various. One type of setting might be transnational organizations under the aegis of the United Nations, the European Union, NATO, or the WTO. Another framework can be networks that meet within the structure of executive agreements, such as the Transatlantic Economic Partnership of 1998. Other groups meet outside governmental frameworks, at least to begin with, with examples ranging from the Basel Committee to the Financial Crime Enforcement Network. n128 As important as which executive officials currently cross borders is what they actually do. The activities that make up executive transgovernmentalism may be sliced in various ways. n129 One breakdown divides the phenomenon into: (a) [\*141] information networks; (b) harmonization networks; and (c) enforcement networks. n130 An obvious yet vital activity, many government regulatory networks interact simply to exchange relevant information and expertise. Such exchanges include brainstorming on common problems, sharing information on identified challenges, banding together to collect new information, and reviewing how one another's agencies perform. n131 Harmonization networks, which usually arise in settings such as the European Union or the North American Free Trade Agreement (NAFTA), entail relevant administrators working together to fulfill the mandate of common regulations pursuant to the relevant international instrument. n132 For present purposes, however, enforcement networks most greatly implicate separation of powers concerns precisely because they involve police and security agencies sharing intelligence in specific cases, and, more generally, in capacity building and training. In the context of Northern Ireland, the Royal Ulster Constabulary (RUC) maintained "numerous links with other police services, particularly with those in Britain, but also with North American agencies and others elsewhere in the world . . . [including] the Federal Bureau of Investigation . . . ." n133 In a relatively benign vein, the Independent Police Commission charged with reforming the RUC recommended further international contact, in part because "the globalisation of crime requires police services around the world to collaborate with each other more effectively and also because the exchange of best practice ideas between police services will help the effectiveness of domestic policing." n134 It is exactly at this point, moreover, that 9/11-era concerns render the enforcement aspect of executive globalization ever more salient, and often more ominous. To take one example, consider the shadowy practice of "extraordinary renditions," that is, when the security forces of one country capture a person and send him or her to another country where rough interrogation practices are likely to take place--all outside the usual mechanisms of extradition. n135 To this extent, transnational executive cooperation moves from general, mutual bolstering to the expansion of one another's jurisdiction in the most direct and concrete fashion possible. All this, in turn, suggests a profound shift in power to the executives in any given nation state. At least in the United States, the conventional wisdom holds that the executive branch has grown in power relative to Congress or the courts, not even [\*142] counting the rise of administrative and regulatory agencies, even in purely domestic terms. n136 Add to the specter of enlarged executives worldwide who are enhancing one another's power, through information and enforcement networks in particular, and the conclusion becomes presumptive. Add further the cooperation of executives in light of 9/11, and the pro-executive implications of government globalization become more troubling still. 2. Legislative Globalization This pro-executive conclusion becomes even harder to resist given the slowness with which national legislators have been interacting with their counterparts. Several factors account for the slower pace of legislative globalization. Membership in a legislature almost by definition entails not just representation but representation keyed to national and subnational units. The turnover among legislators typically outpaces either executive officials or, for that matter, judges. In further contrast to legislators, regulators need to be specialists, and specialization facilitates cross-border interaction if only because it is easier to identify counterparts and focus upon common challenges. n137 Transnational legislative networks exist nonetheless and are growing. To take one example, national legislators have begun to work with one another in the context of such international organizations as NATO, the Organization for Security and Co-operation in Europe (OSCE), and the Association of Southeast Asian Nations (ASEAN). To take another example, independent legislative networks have begun to emerge, such as the Inter-Parliamentary Union and Parliamentarians for Global Action. n138 Yet even were national legislators to "catch up" to their executive counterparts in any meaningful way, the result would not necessarily be more robust or adequate protection of fundamental rights in times of perceived danger or the protection of minority rights at any time. Human rights organizations around the world are all too familiar with the democratic pathology of draconian statutes hastily enacted in response to actual attacks or perceived threats, including the Prevention of Terrorism Act in the United Kingdom, the USA PATRIOT Act in the United States, and the Internal Security Act in Malaysia. n139 It is for this reason that the essential player in the matter of rights protection must remain the courts. [\*143]

#### Detention policy is key – perception of a strong judiciary is key to prevent backsliding

CJA 4, Center for Justice and Accountability

[2004, The Center for Justice &

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A STRONG, INDEPENDENT JUDICIARY IS ESSENTIAL TO

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the globe seek to ensure for their peoples.

#### Democratic backsliding causes great power war

Azar Gat 11, the Ezer Weizman Professor of National Security at Tel Aviv University, 2011, “The Changing Character of War,” in The Changing Character of War, ed. Hew Strachan and Sibylle Scheipers, p. 30-32

Since 1945, the decline of major great

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than seemed likely only a short while ago.

#### Democracy solves war – norms spread through the judiciary cause global peace

Kersch 6, Assistant Professor of Politics

[2006, Ken I. Kersch, Assistant Professor of Politics, Princeton University. B.A., Williams; J.D., Northwestern; Ph.D., Cornell. Thanks to the Social Philosophy and Policy Center at Bowling Green State University, where I was a visiting research scholar in the fall of 2005, and to the organizers of, and my fellow participants in, the Albany Law School Symposium, Albany Law School, “The Supreme Court and international relations theory.”, http://www.thefreelibrary.com/The+Supreme+Court+and+international+relations+theory.-a0151714294]

Liberal theories of international relations hold that international peace and prosperity are advanced to the degree that the world’s sovereign states converge on the model of government anchored in the twin commitment to democracy and the rule of law.52 Liberal “democratic peace” theorists hold that liberal democratic states anchored in rule of law commitments are less aggressive and more transparent than other types of states.53 When compared with non-liberal states, they are thus much better at cooperating with one another in the international arena.54 Because they share a market-oriented economic model, moreover, international relations liberals believe that liberal states hewing to the rule of law will become increasingly interdependent economically.55 As they do so, they will come to share a common set of interests and ideas, which also enhances the likelihood of cooperation.56 Many foreign policy liberals—sometimes referred to as “liberal internationalists”—emphasize the role that effective multilateral institutions, designed by a club or community of liberal-democratic states, play in facilitating that cooperation and in anchoring a peaceful and prosperous liberal world order.57 The liberal foreign policy outlook is moralized, evolutionary, and progressive. Unlike realists, who make no real distinctions between democratic and non-democratic states in their analysis of international affairs, liberals take a clear normative position in favor of democracy and the rule of law.58 Liberals envisage the spread of liberal democracy around the world, and they seek to advance the world down that path.59 Part of advancing the cause of liberal peace and prosperity involves encouraging the spread of liberal democratic institutions within nations where they are currently absent or weak.60 Furthermore, although not all liberals are institutionalists, most liberals believe that effective multilateral institutions play an important role in encouraging those developments.61 To be sure, problems of inequities in power between stronger and weaker states will exist, inevitably, within a liberal framework.62 “But international institutions can nonetheless help coordinate outcomes that are in the long-term mutual interest of both the hegemon and the weaker states.”63 Many foreign policy liberals have emphasized the importance of the judiciary in helping to bring about an increasingly liberal world order. To be sure, the importance of an independent judiciary to the establishment of the rule of law within sovereign states has long been at the core of liberal theory.64 Foreign policy liberalism, however, commonly emphasizes the role that judicial globalization can play in promoting democratic rule of law values throughout the world.65 Post-communist and post-colonial developing states commonly have weak commitments to and little experience with liberal democracy, and with living according to the rule of law, as enforced by a (relatively) apolitical, independent judiciary.66 In these emerging liberal democracies, judges are often subjected to intense political pressures.67 International and transnational support can be a life-line for these judges. It can encourage their professionalization, enhance their prestige and reputations, and draw unfavorable attention to efforts to challenge their independence.68 In some cases, support from foreign and international sources may represent the most important hope that these judges can maintain any sort of institutional power—a power essential to the establishment within the developing sovereign state of a liberal democratic regime, the establishment of which liberal theorists assume to be in the best interests of both that state and the wider world community.69 Looked at from this liberal international relations perspective, judicial globalization seems an unalloyed good. To many, it will appear to be an imperative.70 When judges from well-established, advanced western democracies enter into conversations with their counterparts in emerging liberal democracies, they help enhance the status and prestige of judges from these countries. This is not, from the perspective of either side, an affront to the sovereignty of the developing nation, or to the independence of its judiciary. It is a win-win situation which actually strengthens the authority of the judiciary in the developing state.71 In doing so, it works to strengthen the authority of the liberal constitutional state itself. Viewed in this way, judicial globalization is a way of strengthening national sovereignty, not limiting it: it is part of a state-building initiative in a broader, liberal international order.72 A liberal foreign policy outlook will look favorably on travel by domestic judges to conferences abroad (and here in the United States) where judges from around the world can meet and talk.73 It will not view these conferences as “junkets” or pointless “hobnobbing.” These meetings may very well encourage judges from around the world to increasingly cite foreign precedent in arriving at their decisions. Judges in emerging democracies will use these foreign precedents to help shore up their domestic status and independence. They will also avail themselves of these precedents to lend authority to basic, liberal rule-of-law values for which, given their relative youth, there is little useful history to appeal to within their domestic constitutional systems. Judges in established democracies, on the other hand, can do their part to enhance the status and authority of independent judiciaries in these emerging liberal democratic states by showing, in their own rulings, that they read and respect the rulings of these fledgling foreign judges and their courts (even if they do not follow those rulings as binding precedent).74 They can do so by according these judges and courts some form of co-equal status in transnational “court to court” conversations.75 It is worth noting that mainstream liberal international relations scholars are increasingly referring to the liberal democratic international order (both as it is moving today, and indeed, as read backward to the post-War order embodied in the international institutions and arrangements of NATO, Bretton Woods, the International Monetary Fund, the World Bank, and others) as a “constitutional order,” and, in some cases, as a “world constitution.”76 No less a figure than Justice Breyer—in a classic articulation of a liberal foreign policy vision—has suggested that one of the primary questions for American judges in the future will involve precisely the question of how to integrate the domestic constitutional order with the emerging international one.77 If they look at judicial globalization from within a liberal foreign policy framework (whether or not they have read any actual academic articles on liberal theories of foreign policy), criticisms of “foreign influences” on these judges, and of their “globe-trotting” will fall on deaf ears. They will be heard as empty ranting by those who don’t really understand the role of the judge in the post-1989 world. These judges will not understand themselves to be undermining American sovereignty domestically by alluding to foreign practices and precedents. And they will not understand themselves as (in other than a relatively small-time and benign way) as undermining the sovereignty of other nations. They will see the pay-off-to-benefit ratio of simply talking to other judges across borders, and to citing and alluding to foreign preferences (when appropriate, and in non-binding ways) as high. They will, moreover, see themselves as making a small and modest contribution to progress around the world, with progress defined in a way that is thoroughly consistent with the core commitments of American values and American constitutionalism. And they will be spurred on by a sense that the progress they are witnessing (and, they hope, participating in) will prove of epochal historical significance. Even if they are criticized for it in the short-term, these liberal internationalist judges will have a vision of the future which suggests that, ultimately, their actions will be vindicated by history. The liberal foreign policy outlook will thus fortify them against contemporary criticism.

#### Rule of Law deficits fuels authoritarian crackdowns in Russia---destroys US-Russia cooperation.

Sarah Mendelson 9, director, Human Rights and Security Initiative, CSIS, "U.S.-Russian Relations and the Democracy and Rule of Law Deficit" tcf.org/assets/downloads/tcf-russiarelations.pdf

Since the collapse of the Soviet Union in

AND

again) U.S. soft power.

#### Now is key---bolstering democratic reform in Russia prevents violent revolution

Freeland and Gutterman 12 Chrystia and Steve, Writers for Reuters, January 17, 2012, “Russia faces violent revolution if it doesn’t embrace democracy, billionaire Putin challenger declares”, <http://news.nationalpost.com/2012/01/17/russia-faces-violent-revolution-if-it-doesnt-embrace-democracy-billionaire-putin-challenger-declares/>

MOSCOW — Mikhail Prokhorov, a super-

AND

, want to live in a democratic country.”

#### That causes miscalculation and nuclear war

Peter Vincent Pry 99, Former US Intelligence Operative, War Scare: U.S.-Russia on the Nuclear Brink, netlibrary

Russian internal troubles—such as a leadership

AND

West ignorant that it was in grave peril.

#### US-Russia relations key to solve extinction

Graham Allison 11, Director of the Belfer Center for Science and International Affairs at Harvard’s Kennedy School of Government, 10-30-11, “10 reasons why Russia still matters,” <http://dyn.politico.com/printstory.cfm?uuid=161EF282-72F9-4D48-8B9C-C5B3396CA0E6>

That central point is that Russia matters a

AND

preventing U.N. Security Council resolutions.

### Plan

**The United States Federal Government should grant Article**

**AND**

**jurisdiction over the United States’ indefinite detention policy.**

### Solvency

#### Federal courts are critical to resolving US legitimacy abroad

Hathaway et al 13, Oona Hathaway, Gerard C. and Bernice Latrobe Smith Professor of International Law, Yale Law School, Samuel Adelsberg, Spencer Amdur, and Freya Pitts, J.D. candidates at Yale Law School, Philip Levitz and Sirine Shebaya J.D.s Yale Law School (2012), Winter, "Article: The Power To Detain: Detention of Terrorism Suspects After 9/11," The Yale Journal of International Law, 38 Yale J. Int'l L. 123, Lexis

2. Legitimacy ¶ Federal courts are also

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countries recognize and respond to the difference in legitimacy

between civilian and military courts and that they

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such as the sharing of testimony and evidence.

#### Disregard solvency deficits – Article 3 courts have worked for 2 centuries through a series of emergencies and legal changes

Dratel 10 – Criminal defense attorney, New York City, B.A., 1978, magna cum laude, Columbia College, J.D., 1981, Harvard Law School.

(Joshua, “RESPONSES TO THE TEN QUESTIONS,” William Mitchell Law Review, 36.5)

(4) Any such set of rules

AND

S. national security, but diminish it.

#### Federal courts are the most effective method---critics are fear-mongers

Dianne Feinstein 10, U.S. Senator from California and former chairman of the Senate Intelligence Committee, April 5, "Civilian Courts Can Prosecute Terrorists," The Wall Street Journal, ProQuest

Anyone who says America's federal courts can't bring

AND

his life in federal prison. Case closed.

#### Any DA is to criminal courts is empirically denied

Colson 9 - Acting Director, Law & Security Program @ HR First

(Deborah, Prepared the following report:

AND

-nsc-policy-paper.pdf)

Terrorist suspects should be prosecuted in the federal

AND

cooperation may result in shorter prison ¶ sentences.

#### Federal courts key to legitimacy and allied cooperation – Makes detention effective

Hathaway et al 12

Oona Hathaway; Gerard C. and Bernice

AND

9/11, Yale Journal of International Law

Federal courts are also fairer and more legitimate

AND

Department of Defense and the White House.246