**1AC**

**1AC: Blowback**

**Contention 1 is Blowback:**

**US legitimacy has been severely damaged by detention—ending use of military commissions is key to reh3verse negative perceptions**

**Carson 10** (Carlissa, Judge Advocate, US Army Reserves; former US Army Military Intelligence Officer. J.D., Emory University School of Law, Spring 2010, "Yes We Can Revise the Current Military Commission System, but Why?" Connecticut Journal of International Law, Lexis)

Conclusion President Obama recently has taken a step towards the preservation of human rights through deciding to revise some provisions of the 2006 MCA and to use federal courts to try some detainees (e.g., Khalid Sheikh Mohammad). **Given that current military commissions still fail to address all of the human rights violations present in previous commissions, the US has not yet reached its final destination.** Even though the US Constitution allows our President broad war-making powers, the US is not immune to the provisions and prohibitions set forth in international treaties and customary international law. Customary international law and the treaties the US has signed and ratified undoubtedly bind the nation. n326 Even the Supreme Court has consistently held that international law is an important part of US law. n327 **The US failure to adhere to international law is detrimental in several respects. This is especially true today given the US's increasingly negative reputation in the international community. One can look to the widening political gap between the US and Europe** as an example. **n328 As the US's reputation diminishes,** so does its power **to negotiate and garner much needed support from other nations.** Moreover, **the presence of contrasting definitions and applications of the law governing detention and trial of detainees worldwide is dangerous. If the US, as the most powerful nation in the world, does not adhere to international law, what states will?** [\*430] In short, **failure to adhere to international law, especially concerning human rights, may provide fertile ground for the development of** permanent blemishes **on the US's** reputation as a leader in the realm of human rights. **Given that the use of military commissions is unnecessarily unfair and unlawful, their use should cease.** The US, while fighting terrorism, must not forget that it is not helpful to ignore international law and succumb to using the techniques implemented by our enemies, the terrorists. **The very reason we are fighting terrorism is to preserve rights such as human dignity, which should be inherent in a democratic society. The US must adopt detention and trial procedures that are in accordance with both domestic US and international bodies of law**, for these are the foundation upon which the US stands. "This is the destiny of democracy-it does not see all means as acceptable, and the ways of its enemies are not always open before it." n329 **Use of courts-martial and/or regularly constituted courts,** while imperfect, nonetheless **would bring the US into conformity with the principles of international law.** Perhaps if current procedures are brought into conformity with international law, UN Special Rapporteur Martin Scheinin will no longer have reason to wear a frown on flights back from Guantanamo Bay.

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

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

**American unipolarity has created a challenge for realists. Unipolarity was thought to be inherently unstable because other nations, seeking to protect their own security**, form alliances to counter-balance the leading state. n322 **But no nation or group of nations has yet attempted to challenge America's military predominance**. n323 Although some realists predict that [\*140] counter-balancing will occur or is already in some ways occurring, n324 William Wohlforth has offered a compelling explanation for why true counter-balancing, in the traditional realist sense, will probably not happen for decades. n325 American unipolarity is unprecedented. n326 First, **the United States is geographically isolated from other potential rivals**, who are located near one another in Eurasia. n327 **This mutes the security threat that the U.S. seems to pose while increasing the threats that potential rivals seem to pose to one another**. n328 Second, **the U.S. far exceeds the capabilities of all other states in every aspect of power** - military, economic, technological, and in terms of what is known as "soft power." **This advantage "is larger now than any analogous gap in the history of the modern state system."** n329 Third, **unipolarity is entrenched as the status quo** for the first time since the seventeenth century, multiplying free rider problems for potential rivals and rendering less relevant all modern previous experience with balancing. n330 Finally, the potential rivals' possession of nuclear weapons makes the concentration of power in the United States appear less threatening. A war between great powers in today's world is very unlikely. n331 These factors make the current system much more stable, peaceful and durable than the past multi-polar and bipolar systems in which the United States operated for all of its history until 1991. **The lack of balancing means that the U**nited **S**tates, **and by extension the executive branch, faces** much **weaker external constraints on its exercise of power** than in the past. n332 Therefore, **the internal processes of the U.S. matter now more than any other nations' have in history**. n333 And **it is these internal processes**, as much as external developments, **that will determine the durability of American unipolarity. As one realist scholar has argued, the U.S. can best ensure the [\*141] stability of this unipolar order by ensuring that its predominance appears legitimate**. n334 **Hegemonic orders take on hierarchical characteristics**, with the preeminent power having denser political ties with other nations than in a unipolar order. n335 **Stability in hegemonic orders is maintained in part through security guarantees and trade relationships that result in economic specialization** among nations. n336 For example, if Nation X's security is supplied by Hegemon Y, Nation X can de-emphasize military power and focus on economic power. In a hegemonic system, **the preeminent state has "the power to shape the rules of international politics according to its own interests."** n337 **The hegemon**, in return, **provides public goods for the system as a whole**. n338 **The hegemon possesses** not only superior command of military and economic resources but "**soft" power, the ability to guide other states' preferences and interests.** n339 **The durability and stability of hegemonic orders depends on other states' acceptance of the hegemon's role. The hegemon's leadership must be seen as legitimate.** n340 [\*142] **The U**nited **S**tates **qualifies as a global hegemon**. In many ways, **the U.S. acts as a world government**. n341 **It provides public goods for the world**, such as security guarantees, the protection of sea lanes, and support for open markets. n342 After World War II, the U.S. forged a system of military alliances and transnational economic and political institutions - such as the United Nations, NATO, the International Monetary Fund, and the World Bank - that remain in place today. The U.S. provides security for allies such as Japan and Germany by maintaining a strong military presence in Asia and Europe. n343 Because of its overwhelming military might, the U.S. possesses what amounts to a "quasi-monopoly" on the use of force. n344 This prevents other nations from launching wars that would tend to be truly destabilizing. Similarly, **the United States provides a public good through its efforts to combat terrorism** and confront - even through regime change - rogue states. n345 **The U**nited **S**tates also **provides a public good through its promulgation and enforcement of international norms. It exercises a dominant influence on the definition of international law because it is the largest "consumer" of such law and the only nation capable of enforcing it on a global scale.** n346 The U.S. was the primary driver behind the establishment of the United Nations system and the development of contemporary treaties and institutional regimes to effectuate those treaties in both public and private international law. n347

Moreover, **controlling international norms are** [\*143] sometimes **embodied in the U.S. Constitution and domestic law rather than in treaties or customary international law.** For example, **whether terrorist threats will be countered effectively depends "in large part on U.S. law regarding armed conflict, from rules that define the circumstances under which the President can use force to those that define the proper treatment of enemy combatants.**" n348 **These public goods provided by the United States stabilize the system by legitimizing it and decreasing resistance to it.** **The transnational** political and economic **institutions created by the U**nited **S**tates **provide other countries with informal access to policymaking and tend to reduce resistance to American hegemony, encouraging others to "bandwagon"** with the U.S. rather than seek to create alternative centers of power. n349 American hegemony also coincided with the rise of globalization - the increasing integration and standardization of markets and cultures - which tends to stabilize the global system and reduce conflict. n350 **The legitimacy of American hegemony is strengthened and sustained by the democratic and accessible nature of the U.S. government. The American constitutional separation of powers is an international public good. The risk that it will hinder the ability of the U.S. to act swiftly, coherently or decisively** in foreign affairs **is counter-balanced by the benefits it provides in permitting foreigners multiple points of access to the government**. n351 Foreign nations and citizens lobby Congress and executive branch agencies in the State, Treasury, Defense, and Commerce Departments, where foreign policy is made. n352 They use the media to broadcast their point of view in an effort to influence the opinion of decision-makers. n353 Because the United States is a nation of immigrants, many American citizens have a specific interest in the fates of particular countries and form "ethnic lobbies" for the purpose of affecting foreign policy. n354 **The courts,** too, **are accessible to foreign nations and non-citizens. The Alien Tort Statute is emerging as an** [\*144] **important vehicle for adjudicating tort claims among non-citizens in U.S. courts.** n355 Empires are more complex than unipolar or hegemonic systems. Empires consist of a "rimless-hub-and-spoke structure," with an imperial core - the preeminent state - ruling the periphery through intermediaries. n356 The core institutionalizes its control through distinct, asymmetrical bargains (heterogeneous contracting) with each part of the periphery. n357 Ties among peripheries (the spokes) are thin, creating firewalls against the spread of resistance to imperial rule from one part of the empire to the other. n358 The success of imperial governance depends on the lack of a "rim." n359 Stability in imperial orders is maintained through "divide and rule," preventing the formation of countervailing alliances in the periphery by exploiting differences among potential challengers. n360 Divide-and-rule strategies include using resources from one part of the empire against challengers in another part and multi-vocal communication - legitimating imperial rule by signaling "different identities ... to different audiences." n361 Although the U.S. has often been labeled an empire, the term applies only in limited respects and in certain situations. Many foreign relations scholars question the comparison. n362 However, the U.S. does exercise informal imperial rule when it has routine and consistent influence over the foreign policies of other nations, who risk losing "crucial military, economic, or political support" if they refuse to comply. n363 The "Status of Force Agreements" ("SOFAs") that govern legal rights and responsibilities of U.S. military personnel and others on U.S. bases throughout the world are typically one-sided. n364 And the U.S. occupations in Iraq and Afghanistan had a strong imperial dynamic because those regimes depended on American support. n365 [\*145] But the management of empire is increasingly difficult in the era of globalization. Heterogeneous contracting and divide-and-rule strategies tend to fail when peripheries can communicate with one another. The U.S. is less able control "the flow of information ... about its bargains and activities around the world." n366 In late 2008, negotiations on the Status of Force Agreement between the U.S. and Iraq were the subject of intense media scrutiny and became an issue in the presidential campaign. n367 Another classic imperial tactic - the use of brutal, overwhelming force to eliminate resistance to imperial rule - is also unlikely to be effective today. The success of counterinsurgency operations depends on winning a battle of ideas, and collateral damage is used by violent extremists, through the Internet and satellite media, to "create widespread sympathy for their cause." n368 The abuses at Abu Ghraib, once public, harmed America's "brand" and diminished support for U.S. policy abroad. n369 Imperial rule, like hegemony, depends on maintaining legitimacy.B. Constructing a Hegemonic Model International relations scholars are still struggling to define the current era. The U.S.-led international order is unipolar, hegemonic, and, in some instances, imperial. In any event, this order diverges from traditional realist assumptions in important respects. It is unipolar, but stable. It is more hierarchical. The U.S. is not the same as other states; it performs unique functions in the world and has a government open and accessible to foreigners. And the stability and legitimacy of the system depends more on successful functioning of the U.S. government as a whole than it does on balancing alliances crafted by elite statesmen practicing realpolitik. "World power politics are shaped primarily not by the structure created by interstate anarchy but by the foreign policy developed in Washington." n370 These differences require a new model for assessing the institutional competences of the executive and judicial branches in foreign affairs. [\*146] One approach would be to adapt an institutional competence model using insights from a major alternative theory of international relations - liberalism. Liberal IR theory generally holds that internal characteristics of states - in particular, the form of government - dictate states' behavior, and that democracies do not go to war against one another. n371 Liberalists also regard economic interdependence and international institutions as important for maintaining peace and stability in the world. n372 Dean Anne-Marie Slaughter has proposed a binary model that distinguishes between liberal, democratic states and non-democratic states. n373 Because domestic and foreign issues are "most convergent" among liberal democracies, Slaughter reasons, the courts should decide issues concerning the scope of the political branches' powers. n374 With respect to non-liberal states, the position of the U.S. is more "realist," and courts should deploy a high level of deference. n375 One strength of this binary approach is that it would tend to reduce the uncertainty in foreign affairs adjudication. Professor Nzelibe has observed that it would put courts in the difficult position of determining which countries are liberal democracies. n376 But even if courts are capable of making these determinations, they would still face the same dilemmas adjudicating controversies regarding non-liberal states. Where is the appropriate boundary between foreign affairs and domestic matters? How much discretion should be afforded the executive when individual rights and accountability values are at stake? To resolve these dilemmas, an institutional competence model should be applicable to foreign affairs adjudication across the board. In constructing a new realist model, it is worth recalling that the functional justifications for special deference are aimed at addressing problems of a particular sort of role effectiveness - which allocation of power among the branches will best achieve general governmental effectiveness in foreign affairs. In the twenty-first century, **America's global role has changed, and the best means of achieving effectiveness in foreign affairs have changed as well. The international realm remains highly political** - if not as much as in the past - but **it is American politics that matters most.** If the U.S. is truly an empire - [\*147] and in some respects it is - the problems of imperial management will be far different from the problems of managing relations with one other great power or many great powers. Similarly, **the management of hegemony or unipolarity requires a different set of competences.** Although American predominance is recognized as a salient fact, there is no consensus among realists about the precise nature of the current international order. n377 The hegemonic model I offer here adopts common insights from the three IR frameworks - unipolar, hegemonic, and imperial - described above. First, the "hybrid" hegemonic model assumes that the goal of U.S. foreign affairs should be the preservation of American hegemony, which is more stable, more peaceful, and better for America's security and prosperity, than the alternatives. **If the United States were to withdraw from its global leadership role, no other nation would be capable of taking its place. n378 The result would be radical instability and a greater risk of major war**. n379 In addition, the United States would no longer benefit from the public goods it had formerly produced; as the largest consumer, it would suffer the most. Second, the hegemonic model assumes that **American hegemony is unusually stable and durable**. n380 As noted above, **other nations have many incentives to continue to tolerate the current order**. n381 And although other nations or groups of nations - China, the European Union, and India are often mentioned - may eventually overtake the United States in certain areas, such as manufacturing, **the U.S. will remain dominant in most measures of capability for decades.** According to 2007 estimates, the U.S. economy was projected to be twice the size of China's in 2025. n382 **The U.S. accounted for half of the world's military spending in 2007 and holds enormous advantages in defense technology that far outstrip would-be competitors. n383 Predictions of American decline are not new, and they have thus far proved premature.** n384 [\*148] Third, **the hegemonic model assumes that preservation of American hegemony depends not just on power, but legitimacy. n385 All three IR frameworks for describing predominant states - although unipolarity less than hegemony or empire - suggest that legitimacy is crucial to the stability and durability of the system.** **Although empires and predominant states in unipolar systems can conceivably maintain their position through the use of force, this is much more likely to exhaust the resources of the predominant state and to lead to counter-balancing or the loss of control. n386 Legitimacy as a method of maintaining predominance is far more efficient.** The hegemonic model generally values courts' institutional competences more than the anarchic realist model. **The courts' strengths in offering a stable interpretation of the law, relative insulation from political pressure, and power to bestow legitimacy are important for realizing the functional constitutional goal of effective U.S. foreign policy.** This means that courts' treatment of deference in foreign affairs will, in most respects, resemble its treatment of domestic affairs. Given the amorphous quality of foreign affairs deference, this "domestication" reduces uncertainty. **The increasing boundary problems caused by the proliferation of treaties and the infiltration of domestic law by foreign affairs issues are lessened by reducing the deference gap**. And **the dilemma caused by the need to weigh different functional considerations** - liberty, accountability, and effectiveness - **against one another is made less intractable because it becomes part of the same project that the courts constantly grapple with in adjudicating domestic disputes.**

**Hegemony solves conflicts that cause extinction**

Thomas P.M. **Barnett,** chief analyst, Wikistrat, “The New Rules: Leadership Fatigue Puts U.S. and Globalization, at Crossroads,” WORLD POLITICS REVIEW, 3—7—**11**, www.worldpoliticsreview.com/articles/8099/the-new-rules-leadership-fatigue-puts-u-s-and-globalization-at-crossroads

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

**Indefinite detention increases terrorism—multiple mechanisms**

Martin **Scheinin**, Professor, International Law, “Should Human Rights Take a Back Seat in Wartime?” REAL CLEAR WORLD, interviewed by Casey L. Coombs, 1—11—**12**, www.realclearworld.com/articles/2012/01/11/national\_defense\_authorization\_act\_scheinin\_interview-full.html, accessed 8-21-13.

CLC: As a world leader and active promoter of universal human rights, **the practice of indefinite detention without charge would** seem to **clash with U.S. ideals**. Could you comment on this contradiction? MS: **One of the main lessons learned in the** international **fight against terrorism is that counter-terrorism professionals** have gradually **come to learn and admit that human rights violations are not an acceptable shortcut** in an effective fight against terrorism. **Such measures** tend to **backfire in multiple ways**. **They** result in legal problems by **hamper**ing **prosecution, trial and punishment**. **The use of torture is a clear example** here. **They** also tend to **alienate** the **communities with which authorities should be working** in order **to** detect and **prevent terrorism**. And **they add to causes of terrorism,** both **by perpetuating "root causes" that involve the alienation of communities and by providing "triggering causes" through which bitter individuals** make the morally inexcusable decision to **turn to** methods of **terrorism.** The NDAA is just one more step in the wrong direction, by aggravating the counterproductive effects of human rights violating measures put in place in the name of countering terrorism. CLC: Does the NDAA afford the U.S. a practical advantage in the fight against terrorism? Or might the law undermine its global credibility? MS: **It is hard to see any practical advantage gained through the NDAA**. It is just another form of what I call symbolic legislation, enacted because the legislators want to be seen as being "tough" or as "doing something." The law is written as just affirming existing powers and practices and hence not providing any meaningful new tools in the combat of terrorism. By constraining the choices by the executive, **it** nevertheless **hampers e**ffective counter-terrorism work, including criminal investigation and prosecution, as well as **international counter-terrorism cooperation**, markedly in the issue of closing the Guantanamo Bay detention facility. Hence, **it carries the risk of distancing** the **U**nited **S**tates **from its closest allies and the international community generally**. And of course **these kinds of** legal **provisions are** always **open for bad faith copying by repressive governments that will use them for their own political purposes**.

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

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

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

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

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

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

**Risk of nuclear terrorism is real and high now**

**Matthew, et al, 10/2/13** [ Bunn, Matthew, Valentin Kuznetsov, Martin B. Malin, Yuri Morozov, Simon Saradzhyan, William H. Tobey, Viktor I. Yesin, and Pavel S. Zolotarev. "Steps to Prevent Nuclear Terrorism." Paper, Belfer Center for Science and International Affairs, Harvard Kennedy School, October 2, 2013, Matthew Bunn. Professor of the Practice of Public Policy at Harvard Kennedy School andCo-Principal Investigator of Project on Managing the Atom at Harvard University’s Belfer Center for Science and International Affairs. • Vice Admiral Valentin Kuznetsov (retired Russian Navy). Senior research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, Senior Military Representative of the Russian Ministry of Defense to NATO from 2002 to 2008. • Martin Malin. Executive Director of the Project on Managing the Atom at the Belfer Center for Science and International Affairs. • Colonel Yuri Morozov (retired Russian Armed Forces). Professor of the Russian Academy of Military Sciences and senior research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, chief of department at the Center for Military-Strategic Studies at the General Staff of the Russian Armed Forces from 1995 to 2000. • Simon Saradzhyan. Fellow at Harvard University’s Belfer Center for Science and International Affairs, Moscow-based defense and security expert and writer from 1993 to 2008. • William Tobey. Senior fellow at Harvard University’s Belfer Center for Science and International Affairs and director of the U.S.-Russia Initiative to Prevent Nuclear Terrorism, deputy administrator for Defense Nuclear Nonproliferation at the U.S. National Nuclear Security Administration from 2006 to 2009. • Colonel General Viktor Yesin (retired Russian Armed Forces). Leading research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences and advisor to commander of the Strategic Missile Forces of Russia, chief of staff of the Strategic Missile Forces from 1994 to 1996. • Major General Pavel Zolotarev (retired Russian Armed Forces). Deputy director of the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, head of the Information and Analysis Center of the Russian Ministry of Defense from1993 to 1997, section head - deputy chief of staff of the Defense Council of Russia from 1997 to 1998.<http://belfercenter.ksg.harvard.edu/publication/23430/steps_to_prevent_nuclear_terrorism.html>]

I. Introduction **In 2011, Harvard’s Belfer Center** for Science and International Affairs **and the Russian Academy** **of Sciences’** Institute for U.S. and Canadian Studies **published “The U.S. – Russia Joint Threat** **Assessment** on Nuclear Terrorism.” **The assessment analyzed the means, motives, and access of would-be nuclear terrorists**, **and concluded that the threat of nuclear terrorism is urgent and real**. **The Washington and Seoul Nuclear Security Summits in 2010 and 2012 established and demonstrated** a **consensus** **among political leaders from around the world that nuclear terrorism poses** **a serious threat to the peace**, security, and prosperity **of our planet**. **For any country, a terrorist** **attack** **with a nuclear device would be an immediate and catastrophic disaster**, **and** the negative effects **would reverberate around the world far beyond the location and moment of the detonation.** Preventing a nuclear terrorist attack requires international cooperation to secure nuclear materials, especially among those states producing nuclear materials and weapons. As the world’s two greatest nuclear powers, the United States and Russia have the greatest//xperience and capabilities in securing nuclear materials and plants and, therefore, share a special responsibility to lead international efforts to prevent terrorists from seizing such materials and plants. The depth of convergence between U.S. and Russian vital national interests on the issue of nuclear security is best illustrated by the fact that bilateral cooperation on this issue has continued uninterrupted for more than two decades, even when relations between the two countries occasionally became frosty, as in the aftermath of the August 2008 war in Georgia. Russia and the United States have strong incentives to forge a close and trusting partnership to prevent nuclear terrorism and have made enormous progress in securing fissile material both at home and in partnership with other countries. However, to meet the evolving threat posed by those individuals intent upon using nuclear weapons for terrorist purposes, the United States and Russia need to deepen and broaden their cooperation. The 2011 “U.S. - Russia Joint Threat Assessment” offered both specific conclusions about the nature of the threat and general observations about how it might be addressed. This report builds on that foundation and analyzes the existing framework for action, cites gaps and deficiencies, and makes specific recommendations for improvement. “The U.S. – Russia Joint Threat Assessment on Nuclear Terrorism” (The 2011 report executive summary): • **Nuclear terrorism is a real and urgent threat**. Urgent actions are required to reduce the risk. **The risk is driven by the rise of terrorists who seek to inflict unlimited damage, many of whom have sought justification for their plans in radical interpretations of Islam**; **by the spread of information about the decades-old technology of nuclear weapons**; **by the increased availability of weapons-usable nuclear materials; and by globalization, which makes it easier to move people, technologies, and materials across the world.** • **Making a crude nuclear bomb** would not be easy, but **is potentially within the capabilities of a technically sophisticated terrorist group**, **as numerous government studies have confirmed**. Detonating a stolen nuclear weapon would likely be difficult for terrorists to accomplish, if the weapon was equipped with modern technical safeguards (such as the electronic locks known as Permissive Action Links, or PALs). **Terrorists could**, however, **cut open a stolen** **nuclear weapon and make use of its nuclear material for a bomb of their own**. • **The nuclear material for a bomb is small and difficult to detect, making it a major challenge to stop nuclear smuggling or to recover nuclear material after it has been stolen**. Hence, a primary focus in reducing the risk must be to keep nuclear material and nuclear weapons from being stolen by continually improving their security, as agreed at the Nuclear Security Summit in Washington in April 2010. • **Al-Qaeda has sought nuclear weapons for almost two decades**. **The group has repeatedly attempted to purchase stolen nuclear material or nuclear weapons, and has repeatedly attempted to recruit nuclear expertise**. **Al-Qaeda reportedly conducted tests of conventional explosives for its nuclear program in the desert in Afghanistan**. The group’s nuclear ambitions continued after its dispersal following the fall of the Taliban regime in Afghanistan. **Recent writings from top al-Qaeda leadership are focused on justifying the mass slaughter of civilians, including the use of weapons of mass destruction, and are in all likelihood intended to provide a formal religious justification for nuclear use.** While there are significant gaps in coverage of the group’s activities, al-Qaeda appears to have been frustrated thus far in acquiring a nuclear capability; it is unclear whether the the group has acquired weapons-usable nuclear material or the expertise needed to make such material into a bomb. Furthermore, pressure from a broad range of counter-terrorist actions probably has reduced the group’s ability to manage large, complex projects, but has not eliminated the danger. However, **there is no sign the group has abandoned its nuclear ambitions.** On the contrary, **leadership statements as recently as 2008 indicate that the intention to acquire and use nuclear weapons is as strong as ever.**

**Nuke terror causes extinction—equals a full-scale nuclear war**

Owen B. **Toon 7**, chair of the Department of Atmospheric and Oceanic Sciences at CU-Boulder, et al., April 19, 2007, “Atmospheric effects and societal consequences of regional scale nuclear conflicts and acts of individual nuclear terrorism,” online: http://climate.envsci.rutgers.edu/pdf/acp-7-1973-2007.pdf

To an increasing extent, **people are congregating in the world’s great urban centers, creating megacities with populations exceeding 10 million individuals**. At the same time, **advanced technology has designed nuclear explosives of such small size they can be easily transported in a car**, small plane or boat **to the heart of a city**. We demonstrate here that **a single detonation in the 15 kiloton range can produce urban fatalities approaching one million** in some cases, **and casualties exceeding one million**. Thousands of small weapons still exist in the arsenals of the U.S. and Russia, and there are at least six other countries with substantial nuclear weapons inventories. In all, thirty-three countries control sufficient amounts of highly enriched uranium or plutonium to assemble nuclear explosives. A conflict between any of these countries involving 50-100 weapons with yields of 15 kt has the potential to create fatalities rivaling those of the Second World War. Moreover, **even a single surface nuclear explosion**, or an air burst in rainy conditions, **in a city center is likely to cause the entire metropolitan area to be abandoned at least for decades** owing to infrastructure damage and radioactive contamination. As the aftermath of hurricane Katrina in Louisiana suggests, **the economic consequences of even a localized nuclear catastrophe would most likely have severe national and international economic consequences**. Striking effects result even from relatively small nuclear attacks because low yield detonations are most effective against city centers where business and social activity as well as population are concentrated. Rogue nations and **terrorists would be most likely to strike there**. Accordingly, an organized **attack on the U.S. by a small nuclear state, or terrorists** supported by such a state, **could generate casualties comparable to those** once **predicted for a full-scale nuclear “counterforce” exchange in a superpower conflict**. Remarkably, the **estimated quantities of smoke generated by attacks totaling about one megaton of nuclear explosives could lead to significant global climate perturbations** (Robock et al., 2007). While we did not extend our casualty and damage predictions to include potential medical, social or economic impacts following the initial explosions, such analyses have been performed in the past for large-scale nuclear war scenarios (Harwell and Hutchinson, 1985). Such a study should be carried out as well for the present scenarios and physical outcomes.

**Russia’s rule of law deficit undermines cooperation and internal stability—plan is key to restoring our credibility to deal with this issue**

Sarah E. **Mendelson**, Director, Human Rights and Security Initiative, Center for Strategic and International Studies, “U.S.-Russian Relations and the Democracy and Rule of Law Deficit,” CENTURY FOUNDATION REPORT, 20**09**, p. 3-4.

Since the collapse of the Soviet Union in 1991, every U.S. administration has considered Russia’s political trajectory a national security concern. Based on campaign statements and President Barack Obama’s early personnel choices, this perspective likely will affect policy toward Russia in some way for the foreseeable future. **While** the **Obama** administration **plans to cooperate with Moscow** on a number of issues, **it will find that Russia’s** current **deficit in** the areas of **democracy and the rule of law complicate the relationship and** may, in some cases, **undermine** attempts at **engagement.** The organizers of the Century Foundation Russia Working Group have labeled this policy problem “coping with creeping authoritarianism.” Results from nearly a dozen large, random sample **surveys** in Russia since 2001 that examine the views and experiences of literally thousands of Russians, combined with other research and newspaper reporting, all s**uggest the current democracy and rule of law deficit is** rather **stark**. The deficit does not diminish the importance of Russia in international affairs, nor is it meant to suggest the situation is unique to Russia. The internal conditions of many states have negative international security implications. As Europeans repeatedly pointed out during the administration of George W. Bush, **U.S. departures from the rule of law made the** **U**nited **S**tates **increasingly problematic as a global partner**, whether through the use of force in Iraq or the manner in which the United States pursued and handled terrorist suspects. In fact, **coping with authoritarian trends in Russia** (and elsewhere) **will involve changes in U.S. policies** that have, on the surface, nothing to do with Russia. Bush administration **counterterrorism policies that authorized torture, indefinite detention** of terrorist suspects, and the rendering of detainees to secret prisons and Guantánamo **have had numerous negative unintended consequences** for U.S. national security, **including serving as a recruitment tool** for al Qaeda and insurgents in Iraq. Less often recognized, **these policies also have undercut** whatever **leverage the** **U**nited **S**tates **had, as well as limited the effectiveness of American decision-makers, to push back on authoritarian policies adopted by,** among others, the **Putin** administration. At its worst, **American departures from the rule of law** may **have enabled abuse inside Russia.** These departures certainly left human rights defenders isolated. **Repairing the damage to U.S. soft power and reversing the departure from human rights norms** that characterized the Bush administration’s counterterrorism policies **will provide the** Obama **administration strategic and moral authority and improve the ability of the United States to work with allies. It also can have positive consequences for Obama’s Russia policy.** The **changes** that **need to be made in U.S.** counterterrorism **policies**, however politically sensitive, **are** somewhat more **straightforward** than the adjustments that must be made to respond to the complex issues concerning Russia. The Obama administration must determine how best to engage Russian leaders and the population on issues of importance to the United States, given Russia’s poor governance structures, the stark drop in oil prices, Russia’s continued aspirations for great power status, and the rather serious resentment by Russians concerning American dominance and prior policies. The policy puzzle, therefore, is how to do all this without, at the same time, sacrificing our values and undercutting (yet again) U.S. soft power. This report assesses the political dynamics that have shaped Russia’s authoritarian drift, briefly addresses a few of the ways in which they matter for U.S. policy, and suggests several organizing principles to help the Obama administration manage this critical relationship. Possible approaches include working closely with Europe on a joint approach to Russia, accurately anticipating the unintended consequences of U.S. policy in one realm (such as Kosovo) for Russia policy, and embracing the rights of states to choose their own security alliances. A final important principle relates to U.S. engagement with Russians beyond the Kremlin. President Obama should speak directly to the Russian people, engaging in a manner that respects their interests and desires, but also reflects the core values of the Obama administration; that is, “reject[s] as false the choice between our safety and our ideals.”6 The Obama administration also should endorse a platform and a process for a renewed dialogue between U.S. and Russian civil society. the VIew from the KremlIn Two interactive dynamics over the past several years have shaped the dominant approach by the Russian government to the outside world: the United States declined as a world power, and at the same time, the Russian state accumulated massive wealth from high gas and oil prices. Following what many in the Russian elite view as the “humiliation” of the 1990s, by 2008, Russia was no longer a status quo power. Instead, revisionist in nature, Russian authorities focused on the restoration of great power status.7 Fueled by petrodollars, the government tackled this project in numerous ways, including military exercises around the globe, soft power projects such as a twenty-four-hour-a-day English language cable news station, “think tanks” in New York and Paris, and perhaps most important, gas and oil distribution systems meant to make Russia a central player in energy security for decades to come.8 This restoration project undoubtedly will be slowed by the current financial crisis and drop in oil revenues, but the building blocks remain in place. As the restoration project evolved, the Putin administration increasingly challenged aspects of the post–World War II and post–cold war legal, security, and economic architecture, and suggested the need for new arrangements. Many in the Russian elite seemed to view the changes that have occurred in Europe over the past twenty years, such as the enlargement of the North Atlantic Treaty Organization (NATO) and the European Union (EU), as illegitimate, driven not by the choices of local governments or populations, but by the will of Washington. Nostalgia for the Soviet era, a related sentiment, is widely shared, and is an important source of former president and now Prime Minister Vladimir Putin’s popularity.9 Some experts even suggest that many in Russia’s governing structures believe that Europe whole and free—that is, post–cold war Europe—is not in the security interest of Russia. The Carnegie Moscow Center’s Lilya Shevtsova has labeled this view “great power nationalism” and observes that the “Putin-Medvedev-Lavrov doctrine” derives from the premise that Russia seeks to contain the West—while the West is busy trying not to offend Russia.10 Some other studies suggest that Russian policymakers have attempted, in fact, to divide the United States from Europe, and generally have preferred bilateral to multilateral engagement.11 At the United Nations, Russia, together with China, repeatedly has challenged international responses to gross human rights violations in Burma, Darfur, and Zimbabwe, and it has engaged in systematic efforts to undermine the Organization for Security and Co-operation in Europe’s (OSCE) election monitoring efforts and the Council of Europe’s human rights monitoring.12 Meanwhile, Russian leaders seem to believe the current European security arrangements are soft commitments, ripe for renegotiation and restructuring. President Dmitri Medvedev has, in fact, called for a new “collective security arrangement,” at the same time reintroducing the concept of spheres of influence.13 All of these actions taken together, along with the decline in U.S. soft power, have looked at times as if some in the Russian government were trying to reset the table on human rights and international law, exporting its democracy and rule of law deficit abroad. How best can the United States, together with Europe, respond to this situation? Two additional dynamics are relevant: Russian internal weaknesses, both political and economic, but also the degree to which the Russian authorities’ assessment of the condition of the international system is correct. For example, in August 2008, Russian government officials fecklessly deployed human rights and international law rhetoric to justify the Russian use of force in South Ossetia—was that just a murky reflection of the current deeply inconsistent international order?14 Will that calculation be challenged by the Obama administration? How can it do so effectively? Will we see a new era of more robust international organizations, underpinned by respect for human rights and international law? If not, will we be in for a period of serious instability in Europe, along Russia’s borders? russIa’s democracy and rule oflaw defIcIt What makes these questions so pressing is the reality that American and European political strategy dating back to the early 1990s of integrating Russia into the Euro-Atlantic community and thus encouraging democratic development has largely failed. By 2009, Vladimir Putin’s policies have systematically closed off nearly all legitimate structures for voicing opposition. Many nongovernmental organizations are under daily pressure from the authorities.15 The parliament is dominated by a government-run party, United Russia, and outcomes of local and national elections are controlled by the authorities. The government controls national television. The few critically minded journalists that exist routinely are threatened or are under constant surveillance by the authorities, and twenty murders of journalists since 2000 have gone unsolved.16 One small newspaper known for its criticism of Kremlin policies has seen four of its journalists killed in recent years. At a minimum, the authorities have presided over an era of impunity, and at worst, some fear government authorities may have been directly involved in these deaths.17 Meanwhile, the democratic political opposition is extremely marginal and dysfunctional—irrespective of whatever government pressures are brought to bear on it. Russia has no leading liberal figures that might emerge as national leaders at present. In years past, the fighting among liberal parties was legendary, and led to multiple fratricidal losses in single-mandate districts, as liberal parties ran against one another—back when there were competitive elections for parliamentary seats.18 Today, it is unclear when or how the democratic opposition will repair itself. Yet, as political space has shrunk steadily in the past ten years, the majority of Russians do not appear to mind. In terms of the younger generation, the conventional wisdom that wealth would lead to a demand for democracy has not been borne out; only about 10 percent of survey respondents could be considered strongly supportive of democracy, while most are ambivalent. In the early 1990s, many in the West assumed that the older Soviet generation would be replaced eventually by a younger, pro-Western, pro-democratic generation. Experts and policymakers alike assumed this succession would be a natural course of events, like gravity. A similar conventional wisdom about the younger generation in Russia continues. It holds that iPods, lattes, skateboards, and other artifacts of Western consumer culture will translate into a desire for independent media, justice, and human rights. In 2005 and 2007, in an environment of steadily shrinking political space, a study based at the Center for Strategic and International Studies (CSIS) explored how young Russians viewed Soviet history and Stalin. Our nationally representative surveys of 16-to- 29-year-old Russians suggested that, despite economic prosperity, most young people gravitated enthusiastically to Vladimir Putin’s ideological platform of revisionist history and nostalgia. The narrative advanced by the government concerning recent history quite simply resonated with this younger generation. In both surveys, a majority believed that Stalin did more good than bad and that the collapse of the Soviet Union was the greatest geopolitical catastrophe of the twentieth century. These findings undoubtedly reflected coordinated strategic communications efforts by government authorities, including support of a teacher’s guide rewriting Soviet history, downplaying the deaths of millions of citizens, and effacing historical memory. These actions facilitated Russia’s authoritarian trend.19 In sum, the Russian middle class and support for authoritarian governance coexist. The tacit bargain of the past decade, however, in which dissenters were punished but Russians’ pocketbooks grew, may now be threatened by the international economic crisis. Oil prices plunged from a high of $147 a barrel in July 2008 to about $40 a barrel in December 2008. If the price of oil stays low, the lubricating effect of oil and gas revenues may well dry up, laying bare Russia’s dysfunctional state institutions and challenging the authorities’ ability to govern. Economic hardship and poor governance seem, at least anecdotally, to correlate with an increase in public protest and nervousness on the part of the ruling authorities.20 Perhaps, in the long run, the mix of economic hard times and poor governance will stimulate a greater demand for democracy and the rule of law in Russia, as citizens grow unhappy with state institutions that do not function and link that dysfunction to poor governance. In the near term, we can expect growth in nationalism and xenophobia. 21 To be sure, the democracy and rule of law deficit and the growth in nationalism pose problems primarily for Russians. In the twenty-first century, independent investigative journalism and the legitimate use of courts for prosecution are necessary to fight corruption. Today, Russia is plagued by corruption, and the Russian authorities dominate both television and court decisions.22 Independent newspapers and Internet sites exist, but journalists who have engaged in investigative journalism have been killed or live under threat.23 In a state where the rule of man predominates, the population experiences the police as predatory rather than protective. Torture in police stations is said to be common and police officers who have been rotated through Chechnya are said to be especially abusive.24 In a 2004 CSIS survey of 2,400 Russians ages 16 to 65, 41 percent of respondents feared arbitrary arrest by the police.25 In a 2007 CSIS survey of 2,000 Russians ages 16 to 29, 62 percent of respondents fully or partially distrusted the police.26 While one cannot make direct comparisons for methodological reasons, it is worth bearing in mind a recent study of attitudes toward police in China, where only 25 percent reported distrust.27 Undoubtedly, the democracy and rule of law deficit varies regionally, but it is particularly worrisome in the southern regions of Russia. The government’s approach to what it perceives as widespread radical Islamic sentiment in the North Caucasus has increased violence rather than contained it. Between May 1 and August 31, 2008, there were at least 282 incidents, and between September 1 and December 31, 2008 there were at least 333.28 When the situation is at its most dire, the Russian government appears not to control this part of its territory. Many experts worry that there will be war in the North Caucasus in 2009, or possibly that, south of the border, a Russian-Georgia war will break out again.29 That prognosis may be overly gloomy, but violence is clearly on the rise and the socioeconomic conditions in the region are dire. why It matters What does any of this have to do with the Obama administration? The democracy and rule of law deficit in Russia has a range of security and human rights implications for the United States and our allies in Europe. For example, the Obama administration comes to office with a number of arms control goals. These plans may be complicated by the absence of Russian military reform that, in turn, correlates with abuse inside the army. (They are also complicated by continued government reliance on nonconventional forces: in September 2008, President Medvedev committed to modernizing the nuclear arsenal.30) Serious, joint counterterrorism efforts with the United States, Europe, and Russia are likely to remain illusive as long as the police and security services are corrupt and abusive, and the media, a potential source to expose that corruption, is largely controlled by the government. Even at the nongovernmental, track-two level, it is now difficult to have the sort of transatlantic policy dialogue on terrorism that has been common among other nations and societies since 2001.31 The most dire evidence suggests that security service personnel or contractors have been deployed abroad, in European cities, to eliminate Kremlin enemies. In the most famous example, British authorities have sought the extradition from Moscow of former KGB bodyguard and current Duma member Andrew Lugovoi for the murder by Polonium poisoning of Alexander Litvinenko in London in November 2006.32 Kremlin proxies, such as Chechnya’s Ramzan Kadyrov, may have agents doing the same on his behalf on the streets of Austria, also with apparent impunity.33 At a minimum, the Russian authorities seem to have drawn a red line at additional enlargement of Euro-Atlantic organizations. Instead of allowing states and societies to decide for themselves what alliances and security or economic arrangements they want, Russian officials speak of “zones of interest” and “neutral” spaces—presumably such as Ukraine. In the worst case scenario, the Kremlin might decide to probe the resolve of existing NATO and EU security commitments. Presumably, this realization led General James Craddock to request that NATO begin defense planning for the Baltic states.34 Some believe, although the evidence is not clear, that the May 2007 cyber attack on Estonian government agencies, banks, newspapers, and other organizations was a first probe by the Russian government.35 In the August 2008 war in Georgia, for which all sides deserve some blame, experts saw evidence of additional Russian government cyber attacks and a prime example of blatant disregard for international law as the Russian government sought to change an internationally recognized border by force.36 Meanwhile, existing Euro-Atlantic organizations are negatively and directly affected by Russia’s democracy and rule of law deficit. In recent years, the European Court of Human Rights has heard far more cases from Russia than any other country, effectively substituting for Russia’s domestic judiciary. Some European human rights lawyers argue that this situation is severely undermining the court’s efficacy and ability to handle cases from a broad range of countries. Moreover, the Russian government increasingly has failed to compensate victims or their families, apparently now risking its expulsion from the Council of Europe.37 According to numerous OSCE officials, the Kremlin has waged a systematic campaign to undercut the organization’s various monitoring efforts.38 The emergent norm of international election observation has been undermined by the Kremlin’s attempts to legitimize fraudulent elections at home and in neighboring states, supporting a wave of authoritarian governments in this region.39 an obama strategy The unprecedented economic crisis and wars in Iraq and Afghanistan dominate the initial agenda of the Obama administration. Worries over another Israeli Palestinian war, relations with Iran, nuclear proliferation, and the status of al Qaeda are somewhere next on the list of serious security challenges. Russia is, of course, on the list, as was made clear by Vice President Joseph Biden’s speech in Munich, Secretary of State Hillary Clinton’s meeting with Foreign Minister Sergei Lavrov in Geneva, the April London meeting and the July Moscow summit with President Obama and President Medvedev. The Obama administration appears keen not to let U.S.-Russia policy drift as it did in the Bush administration, and the Obama team is moving quickly to establish the organizing principles that would drive policy and guide how it copes with the political realities of Russia today, and seeking opportunities to change the relationship. As a guide to coping with creeping authoritarianism, and for planning purposes, **the Obama administration** reasonably **can** (1) assume that Russia will continue, in the near term, on an authoritarian trajectory while at the same time, try to **encourage** President **Medvedev toward more openness and engagement**; (2) consider that Russia’s political regime may grow more brittle and thus potentially more fragile, rather than more robust and invulnerable; (3) propose and prepare for joint cooperation with Moscow on a number of issues, but anticipate that these plans could be overwhelmed by internal dynamics in Russia; and (4) understand and prepare for that which is difficult to anticipate, such as the depth and length of the economic crisis, and the potential divisions within Russian leadership that might emerge over a range of issues such as whether and how to cooperate with the United States and how to address the effects of the crisis, including the use of force against civilians to stop public protest.40 The ability of any U.S. administration to shape what happens inside Russia has long been exaggerated and misunderstood. The impact of foreign assistance clearly matters to those individuals who receive funds and technical training, but recent evidence suggests that **how the U**nited **S**tates **conducts itself in the world has far more weight in terms of its ability to bolster or undermine democracy, human rights and the rule of law in other countries.**41 For example, **U.S. noncompliance with human rights norms and laws has enabled**, although not caused, **Russia’s authoritarian drift. Therefore, a robust and comprehensive effort to opt back in to international legal frameworks will have important knock-on effects for our relations with Russia, in addition to bolstering our ability to work with allies. The United States needs to shape the larger policy context in a positive, rather than a negative, way. 42 An array of** **new U.S. policies unrelated to Russia (such as** **closing Guantánamo, ending detention without charge**, and halting unlawful interrogation of terror suspects) **can help restore U.S. soft power, as well as repair the international architecture that Russia** (correctly) **views as weak and that it** (regrettably) **seeks to replace. If the United States once again is associated with justice** instead of injustice, **it will do much to shore up human rights activists inside Russia. It will also challenge core assumptions that have taken hold within the Russian elite about the hypocrisy and weakness of democracy and human rights norms within the international system.**

**Continued human rights violations risk a Russian revolution**

Harlan **Ullman**, senior advisor, Atlantic Council, “The Third Russian Revolution,” UPI, 6—12—**13**, www.upi.com/Top\_News/Analysis/Outside-View/2013/06/12/Outside-View-The-third-Russian-Revolution/UPI-84461371009900/, accessed 8-7-13.

**Make no mistake: On the current trajectory, Russia won't be immune to** many of the **forces that provoked** the so-called colored **revolutions in** adjacent states and even **the** misnomered **Arab Awakening. A third Russian revolution is unfolding.** The only questions are when will that revolution reach a critical mass and, most importantly, will the forces of autocracy or pluralism carry the day? Russia, of course, experienced two revolutions in the 20th century. The Kaiser's Germany provoked the first by sending Lenin from Switzerland to Russia in the famous sealed train in 1917. That led to the undoing of the tsar and the Kerensky government as well as the Treaty of Brest-Litovsk that ended the war with Germany and allowed the Bolsheviks to sweep away the opposition. The second revolution came about in some seven decades later. The causes were a corrupt and fundamentally dishonest political system kept in place by a disciplined central leadership and dictatorship of the party. But that required able or at least competent leadership. Instead, the ruling Politburo became a genitocracy headed by sick, old men. Leonid Brezhnev took years to die and was replaced by two even less well general secretaries. In the mid-1970s, CIA Director William Colby repeatedly predicted Brezhnev's pending demise. It wasn't until 1982 that Colby's forecast came true. In the succession process, a few younger members were elevated to the Politburo. Because of the succession of antiquated leaders, Mikhail Gorbachev found himself moving from post to post from his appointment to the Politburo in 1979. In each post, he realized that the Soviet Union was an empty shell and each department was grossly mismanaged and underperforming. Six years later, when he became general secretary, Gorbachev was determined to save the Soviet Union and modernize the failing system. Gorbachev's tools were glasnost (openness) and perestroika (restructuring). The floodgates of reform were fully opened and the old and unworkable system couldn't resist them. By 1991, the Soviet Union was no more. In the two decades since, Vladimir **Putin has emerged as the Ironman of Russia.** In the process, **Russia has been** described and **viewed by many as a kleptocracy ruled by the few who have pillaged national wealth** for their own benefits. Under what Republicans and Democrats alike in the United States see as a government of and by thugs, **human rights have been violated; dissidents and members of the media arrested; and opponents of the Kremlin subjected to purges and show trials leading to long prison sentences.** Russia's immediate neighbors are fearful of the return of the aggressive Russian bear anxious to spread its influence through manipulating its oil and natural gas reserves for political purposes and through military maneuvers designed to intimidate. Further, cyberattacks, principally against Estonia, reinforce this perception of a neo-Soviet Union under the leadership of former KGB Colonel Putin. And Putin's commitment to far greater military spending as well as unwillingness to accept NATO's missile defenses raises sinister possibilities. **Within Russia, discontent** on the part of many Russians **is waxing. Outright theft on the part of oligarchs has gone too far. Persecution** of political **opposition is particularly vexing**. And **the health and longevity of a declining population** reflects more than excesses of consumption of vodka and harsh winters. Indeed, as a buffer to Putin's intent to ramp up his military, the Kremlin faces a very limiting factor: 90 percent of all Russian youth are unfit for military service. Unfortunately, the West in general and the United States in particular have never been very good at Kremlinology (or indeed in understanding many foreign cultures). **Whether Putin is aware of the ticking time bomb over which he presides or not, Russia is still very important to Western interests**. Syria and Iran are two major crises where Russian support could be important.

**That causes miscalc and nuclear war**

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

**Russian internal troubles**—such as a leadership crisis, coup, or civil war—**could aggravate Russia’s fears of foreign aggression and lead to a miscalculation of U.S. intentions and to nuclear overreaction**. While this may sound like a complicated and improbable chain of events, **Russia’s story** in the 1990s **is one long series of domestic crises that have all too often been the source of nuclear close calls.** The war scares of August 1991 and October 1993 arose out of coup attempts. The civil war in Chechnya caused a leadership crisis in Moscow, which contributed to the nuclear false alarm during Norway’s launch of a meteorological rocket in January 1995. Nuclear war arising from Russian domestic crises is a threat the West did not face, or at least faced to a much lesser extent, during the Cold War. **The** Russian **military’s continued fixation on surprise-attack scenarios into the 1990s, combined with Russia’s deepening internal problems, has created a situation in which the U**nited **S**tates **might find itself the victim of a preemptive strike for no other reason than a war scare born of Russian domestic troubles.** At least in nuclear confrontations of the 1950s–1970s—during the Berlin crisis, Cuban missile crisis, and 1973 Middle East war—both sides knew they were on the nuclear brink. There was opportunity to avoid conflict through negotiation or deescalation. The nuclear war scares of the 1980s and 1990s have been one-sided Russian affairs, with the West ignorant that it was in grave peril.

**Leaves earth uninhabitable**

**Starr 10**—Director of Clinical Laboratory Science Program @ University of Missouri [Steven Starr (Senior scientist @ Physicians for Social Responsibility.), “The climatic consequences of nuclear war,” *Bulletin of the Atomic Scientists*, 12 March 2010, Pg. http://www.thebulletin.org/web-edition/op-eds/the-climatic-consequences-of-nuclear-war]

This isn't a question to be avoided. Recent **scientific studies have found that a war** fought **with** the deployed **U.S. and Russian nuclear arsenals would leave Earth** virtually **uninhabitable**. In fact, **NASA computer models have shown that** **even a "successful" first strike** **by Washington or Moscow would inflict catastrophic environmental damage that would make agriculture impossible** and cause mass starvation. Similarly, in the January Scientific American, Alan Robock and Brian Toon, the foremost experts on the climatic impact of nuclear war, warn that the environmental consequences of a "regional" nuclear war would cause a global famine that could kill one billion people.

**1AC: Judiciary**

**Boumediene upheld the deference doctrine—by failing to specify a remedy, the courts have cemented executive power**

**Scheppele 12** (Kim, Professor of Sociology and Public Affairs in the Woodrow Wilson School, Director of the Program in Law and Public Affairs, Princeton University, January 2012, "The New Judicial Deference" Boston University Law Review, Lexis)

The majority in Boumediene had indeed found that the political branches had designed a system that violated the Constitution. **The majority in Boumediene hardly looked deferential**, at least when one examines the reasoning. **But the signature element of the new judicial deference is that the Court does not defer in principle; it defers in practice.** The petitioners won the right to have a regular court hear their habeas petitions. But what should such a court say about the Guantanamo detentions after this case? The majority frankly admitted that "our opinion does not address the content of the law that governs petitioners' detention. That is a matter yet to be determined." n294 So, **while the Court appeared to take seriously the years of delay in granting the petitioners any independent review of the bases for their detention, the Court would still not explain when and by what evidentiary standard detention would be permissible. That required more litigation. And that process would require more time, which would in turn allow the executive to detain the petitioners longer.**

**Problems in civil-military relations are likely to reach crisis proportions in 2014—now is key to reverse the trend**

**Munson 12** (Peter, Marine officer, author, and Middle East specialist, 11-12-12, "A Caution on Civil-Military Relations" Small Wars Journal) smallwarsjournal.com/jrnl/art/a-caution-on-civil-military-relations

This brief post represents only a few quickly dashed thoughts in the hope of getting something on paper that might morph into a longer and more useful essay on civil-military relations. I believe that **civil-military relations in the U**nited **S**tates **are deeply troubled.** The issues are lurking mostly in the background right now. On the surface, our leadership—civilian and military—has been able to negotiate some relatively complex rapids without any of the major drama that has cropped up in the past. The falling out between Truman and MacArthur comes to mind. Nonetheless, there are serious background **issues that will only get worse in 2014** and beyond. There are several reasons for concern. The all-volunteer force has fought two brutal wars for over a decade while a (guilty or thankful) American population has stood by with very little involvement. There have been no war bonds, no victory gardens, no bandage wrapping drives, no air raid drills—nothing to make them feel a part of the conflict other than the human interest stories about killed and wounded veterans and the once-nightly footage of shattered HMMWVs and burning convoys. This has created an inequality in experience and sacrifice that the public has generally attempted to repay through extreme deference and ever-multiplying shows of thankfulness, the likes of which have never been seen in American society. Part of this is as a corrective to the disgraceful treatment of our Vietnam veterans, to be sure, but it has consequences nonetheless. In the face of such an inequality of experience and service and in such a deferential environment, **public criticism of the military is all too easily dismissed as unpatriotic.** Not only is this foil used to deflect criticism, but its threat deters many from bringing up much needed commentary and dissent. Likewise, **unquestioning support of the military** plays no small factor in **mak**ing **any discussion of rationalizing military budgets and targeting wasteful military spending difficult, if not impossible.** Late addition: This dynamic plays out in media coverage of the military, as well, leading to an insufficient criticality, or at least a lack of perspective, in much coverage. At worst, the media becomes a propaganda arm or engages in a cult of hero worship that perpetuates the dynamics above. As this coverage creates narratives that impact critical national security decisions, it likewise skews civil-military relations. The media is a central part of any civil-military dynamic in a democracy, providing the information that informs public discourse and shapes the decision-making space. If the media is incapable of being a relatively objective arbiter, this contributes to a flawed civil-military dynamic. The military, itself, has internalized much of this adulation. When ushered to the front of boarding lines at the airport, offered discounts at a myriad of establishments, proffered all sorts of swag at any number of appreciation venues, and even venerated daily on cable news with the incredibly self-centered practice of surprise homecomings, it is difficult for members **of the military not to fall victim to a culture of creeping narcissism.** Faced with lengthy, rapid fire deployments that placed some military members away from the stabilizing influences of family and normality for years of their lives, the military itself had to play up a narrative of sacrifice and exceptionalism to help keep the trains running. This narrative was drummed into the military and reinforced by its members who saw themselves deploying again and again as society stayed home and placed them on a pedestal. This is not to say that the sacrifice was insignificant, but to acknowledge that there were second order effects of the adulation. Even within the military, there was a significant inequality in hardships faced, from “FOBbits” with daily access to all the comforts of home to infantrymen living in squalor and under the constant threat of not only death, but horrific dismemberment. This additional dynamic, as an aside, has led to a significant insecurity on the part of some (but surely not most or all) of those servicemembers who operated in support roles. You can see it in those who make cryptic references to their “special operations” background or play up training that they never rightfully received. You see, even within the military there is a distinct hierarchy of who has truly “been there and done that” and those who feel they must insinuate that they did. I may be wrong, but I get the sense that the post-WWII culture just assumed that everyone had done their part and little need be said about it. In all, **this adds up to a military that** at least in part **feels it has earned entitlement, that it deserves the deferential treatment** it receives, and that America needs to sacrifice to provide for the military—whether that be benefits or budget outlays. **This is an incredibly dangerous cultural artifact**, especially in light of the coming period of adjustment. **As America’s involvement in Afghanistan winds down and as the nation is forced to adjust to new fiscal realities, the military will face a time of significant adjustment and** likely **austerity. A military with an entitled culture and** an **inability to countenance searing introspection will be unable to properly adjust** to these new realities and will fail to make the necessary reforms, corrections, and resets that the strategic situation demands. More critically, the prospects for **an unfavorable outcome in Afghanistan, coupled with significant budget cuts, will open the door for a “knife in the back” narrative that might argue that the civilian politicians and the American public “lost” the conflict** by giving up on the great sacrifice and heroic efforts of the American military there and, furthermore, the government then slashed the military budget (and perhaps restructured some entitlements) betraying a military charged with facing a plethora of threats around the world. **Such a narrative would be** dangerous—**poisonous—for civil-military relations**. In this it is important to recognize that our political institutions are undergoing a crisis of their own. Trust in government is at its lowest ebb in recent history. Political polarization is at its highest mark since the Great Depression. **Demographic and economic pressures will multiply in coming years** not only on the US, but more significantly on its key allies in Europe. The world will see a significant transformation of its power structure in the coming decades, all of **which will put great strain on the country’s civil-military relations. Thus, it is of critical importance that we** discuss, address, and **correct any flaws in this dynamic now before they reach crisis proportions in the years to come.**

**Judicial deference is responsible for the split—a less deferential role for the courts is necessary to restore balance in civil-military relations**

**Mazur 10** (Diane, Professor of Law, University of Florida Levin College of Law, "A More Perfect Military: How the Constitution Can Make Our Military Stronger" Oxford University Press, Print)

One of the ways the doctrine of **judicial deference has left a scar on civil-military relations** is **by changing how civilian government manages the military advice it receives**. I don't meant to suggest this is a new problem for civilian control of the military—President Harry Truman certainly struggled to manage the military advice offered by General Douglas MacArthur during the Korean War1—but **judicial deference has contributed to a more pervasive problem broadly affecting the way civilians engage with information from military sources.** Strictly speaking, judicial deference in military affairs applies only when constitutional or legal issues are in play. When the question is whether a particular military policy or plan of action is a wise or prudent thing to do, and not whether it is constitutional or lawful, courts have no role in answering the question and judicial deference is irrelevant. However, **because judicial deference has expanded beyond an abstract legal theory into a more general way of thinking** about military affairs, **it has come to have an** indirect **effect on all forms of military decision making by civilian officials. Deference in a strictly legal sense is only a part of the broad cultural deference on military issues we have adopted since the end of the Vietnam War. We** consistently **discourage civilians from serious engagement with military issues**. Wc assume most civilians arc incapable of understanding the military and have little to add to the conversation. We suspect they have not earned the right to speak about military affairs, even though at some level we must know civilian engagement is necessary in a system built on civilian control of the military. There is always a risk that asking too many questions will be interpreted as a lack of support for the military, and so the easier path is often to endorse whatever appears to be the consensus "military" position on an issue, whether or not the consensus position is actually helpful to the military. **Our inclination toward deference in matters involving the military is so strong that military advice can sometimes carry the power of a military veto when the advice becomes part of public debate. Few government officials want to be in the position of asking for the military's viewpoint on an issue and then choosing a policy direction inconsistent with that viewpoint.** As a result, civilians may package or present military advice in a way that mis-lcadingly removes any conflict with civilian policy preference, ensuring at least the appearance of a deferential attitude. The "Don't Ask, Don't Tell" debate offered a good example of this phenomenon. Congress put on what were essentially "show hearings" to create the appearance of unified military opposition to gay citizens in military service. I don't doubt that in 1993 military opposition outweighed military support, but the hearings were carefully scrubbed of any military expertise from the minority viewpoint. The military's increasing political partisanship also plays an important role in how we characterize and respond to military advice, and there may be no better example of why political partisanship is damaging to military professionalism. At the same time civilians have an incentive to package military opinion selectively for favorable effect, the military may also feel an obligation to shape the advice it gives (or to withhold contrary opinions) in an effort to be loyal to a particular political interest. Political partisanship within the military imposes great pressure on military professionals to produce advice supportive of its political allegiance. At the very least, there will always be an air of uncertainty as to whether military advice has been tainted by a desire to either support or undercut the commander in chief or the Congress. Even the general public responds to military advice differently depending on whether the advice matches expectations about the military's presumed political allegiance. When military officials were uncooperative to the point of being insubordinate and refused to seriously consider how to implement President Clinton's proposal to end sexual orientation discrimination in the military, most people believed they were simply following their professional obligation to give civilian leaders candid military advice. We are so comfortable with the idea of military testimony running counter to policy preferences of the Democratic Party that no one objected when General Colin Powell gave a speech at the Naval Academy encouraging midshipmen to resign if they believed they could not morally serve in a military that also permitted gay people to serve." That's not advice, that's insubordination. On the other hand, when military advice upsets the careful civil-military consensus we usually construct for public consumption and also runs counter to the military's expected political allegiances, people take notice and ask whether the military has violated its ethical obligation of subordination to civilian control. The recent example of note occurred when General Eric Shinseki, the Army chief of staff, responded to a question during a Senate hearing asking how large a force would be necessary to maintain public order in Iraq following an invasion. This was information Congress needed to know in order to carry out its constitutional responsibilities to declare war and fund military operations. Shinseki responded with a significantly higher number than the administration's party line, and it began a debate among civil-military experts that continues today. A scries of essays in the professional journal Armed Forces and Society examined the controversy,5 and one author seriously argued Shinseki had a professional obligation to answer in a way that would protect the president from the perception he might be acting against military advice, or at least without a consensus military opinion.'1 Our system of civilian control of the military included, according to this argument, an obligation on the part of military professionals to adjust their advice to shore up civilian policy preferences. I have a feeling, however, the same ethical argument would not have been made on behalf of a Democratic Party commander in chief. The solution is both simple to understand and difficult to achieve. **If we were more comfortable with open engagement and conversation about military advice—if we were more comfortable with robust, messy debate about military issues—it would not be so important to shape or distort military advice to match civilian preferences. If we were more comfortable with military viewpoints, and believed we could invite them, consider them, weigh their strengths and weaknesses, balance them against other nonmilitary concerns, and then, if necessary, make a decision inconsistent with those viewpoints, our civil-military relations would be much healthier.** This is the same dynamic that inhibits a healthy civil-military exchange in judicial settings. We believe the system cannot tolerate the complexity or the inconvenience of real information, and so we construct a system specifically designed to generate a false consensus—the doctrine of judicial deference—so we can all feel better about making military decisions.

**Civilian control key to military effectiveness—solves array of existential threats**

Dr. Mackubin Thomas **Owens**, Professor, National Security Affairs, “What Military Officers Need to Know About Civil-Military Relations,” NAVAL WAR COLLEGE REVIEW v. 65 n. 2, Spring 20**12**, p. 81-82.

The combination of **c**ivil-**m**ilitary **r**elations patterns and service doctrines **affect military effectiveness**. In essence, the ultimate test of a civil-military relations pattern is how well it contributes to the effectiveness of a state's military, especially at the level of strategic assessment and strategy making. (50) However, Richard **Kohn** has explicitly called into question the effectiveness of the American military in this realm, especially with regard to the planning and conduct of operations other than those associated with large-scale conventional war. "Nearly twenty years after the end of the Cold War, the American military, financed by more money than the entire rest of the world spends on its armed forces, failed to defeat insurgencies or fully suppress sectarian civil wars in two crucial countries, each with less than a tenth of the U.S. population, after overthrowing those nations' governments in a matter of weeks." (51) He **attributes** this **lack of effectiveness to** a **decline in** the **military**'s professional **competence** with regard to strategic planning. "In effect, in the most important area of professional expertise--the connecting of war to policy, of operations to achieving the objectives of the nation--the American military has been found wanting. The excellence of the American military in operations, logistics tactics, , weaponry, and battle has been manifest for a generation or more. Not so with strategy." (52) This phenomenon manifests itself, he argues, **in** recent **failure to adapt to a** changing **security environment in which** the **challenges to global stability are** "less from massed armies than from **terrorism; economic** and particularly financial **instability; failed states; resource scarcity** (particularly **oil and** potable **water**); pandemic **disease; climate change**; and international crime in the form of piracy, smuggling, narcotics trafficking, and other forms of organized lawlessness." He observes that this decline in strategic competence has occurred during a time in which the U.S. military exercises enormous influence in the making of foreign and national security policies. He echoes the claim of Colin Gray: "All too often, **there is a black hole where** American **strategy ought to reside**." (53) Is there something inherent in **current U.S. civil-military affairs** that **accounts for this failure** of strategy? The failure of American civil-military relations to generate strategy can be attributed to the confluence of three factors. The first of these is the continued dominance within the American system of what Eliot Cohen has called the "normal" theory of civil-military relations, the belief that there is **a clear line of demarcation** between civilians who determine the goals of the war and the uniformed military who then conduct the actual fighting. Until President George W. Bush abandoned it when he overruled his commanders and embraced the "surge" in Iraq, the normal theory has been the default position of most presidents since the Vietnam War. Its longevity is based on the idea that the failure of Lyndon Johnson and Robert McNamara to defer to an autonomous military realm was the cause of American defeat in Vietnam. The normal theory can be traced to Samuel Huntington's The Soldier and the State, in which he sought a solution to the dilemma that lies at **the heart of civil-military relations**--**how to guarantee civilian control** of the military while still ensuring the ability of the uniformed military to provide security. His solution was a mechanism for creating and maintaining a professional, apolitical military establishment, which he called "objective control." Such a professional military would focus on defending the United States but avoid threatening civilian control. (54) But as Cohen has pointed out, the normal theory of civil-military relations often has not held in practice. Indeed, such storied democratic war leaders as Winston Churchill and Abraham Lincoln "trespassed" on the military's turf as a matter of course, influencing not only strategy and operations but also tactics. The **reason that civilian leaders cannot simply leave the military to its own devices** during war **is that war is an iterative process** involving the interplay of active wills. What appears to be the case at the outset of the war may change as the war continues, modifying the relationship between political goals and military means. The fact remains that wars are not fought for their own purposes but to achieve policy goals set by the political leadership of the state. The second factor, strongly reinforced by the normal theory of civil-military relations, is the influence of the uniformed services' organizational cultures. Each military service is built around a "strategic concept" that, according to Samuel Huntington, constitutes "the fundamental element of a military service," the basic "statement of [its] role ... or purpose in implementing national policy." (55) A clear strategic concept is critical to the ability of a service to organize and employ the resources that Congress allocates to it. It also largely determines a service's organizational culture. Some years ago, the late Carl Builder of the RAND Corporation wrote The Masks of War, in which he demonstrated the importance of the organizational cultures of the various military services in creating their differing "personalities," identities, and behaviors. His point was that each service possesses a preferred way of fighting and that "the unique service identities ... are likely to persist for a very long time." (56)

**Judicial deference justifies military medical and bioweapons research**

**Parasidis 12** (Efthimios, Assistant Professor of Law, Center for Health Law Studies, Saint Louis University School of Law, 2012, "Justice and Beneficence in Military Medicine and Research" Ohio State Law School, Lexis)

The military has long nurtured a culture and identity that is fundamentally distinct from civil society, n522 and **the U.S.** **government has a history of bending** [\*792] **and breaking the law during times of war.** n523 **While the military has traditionally enjoyed great deference from civilian courts** in the United States, n524 military discipline and **national security interests should not grant government officials carte blanche to violate fundamental human rights.** n525 To the contrary, Congress and the courts should work to ensure that military and intelligence agencies remain subordinate to the democratic rule of law. n526 The motto of the American military physician is "to conserve the fighting force," yet **the last decade has seen a notable shift in emphasis to enhancing the fighting force through novel applications of biomedical enhancements.** n527 The nefarious **conduct of military officials during** the course of the **mustard gas, radiation, biological warfare, and psychotropic drug experiments provides ample evidence of the "lies** and half-truths" that **the DoD has utilized in the name of national security.** n528 Indeed, the Army Inspector General has acknowledged the "inadequacy of the Army's institutional memory" regarding experimental research. n529 **When one considers socio-economic dimensions of the armed forces, this history of neglect has served to further societal inequalities.** n530 As a judge on the Sixth Circuit, and former Commander in Chief [\*793] of the Ohio National Guard explains, "in a democracy **we have far more to fear from the lack of military accountability than from the lack of military** discipline **or aggressiveness**." n531

**That risks bioweapons use—theft, arms racing, tradeoff**

H. Patricia **Hynes**, retired Professor, Environmental Health, Boston University, “Biological Weapons: Bargaining with the Devil,” TRUTHOUT, 8—18—**11**, http://www.truth-out.org/news/item/2693:biological-weapons-bargaining-with-the-devil

The bullish climate of the "war on terrorism" set off a massive flow of federal funding for research on live, virulent bioweapons' organisms (also referred to as biodefense, bioterrorism and biosafety organisms) to federal, university and private laboratories in rural, suburban and urban areas. Among the federal agencies building or expanding biodefense laboratories are the Departments of Defense (DoD), Homeland Security, State and Agriculture; the Environmental Protection Agency; and the National Institutes of Health (NIH). A new network, comprised of two large national biowarfare laboratories at BU and University of Texas, Galveston medical centers, more than a dozen small regional laboratories and ten Regional Centers of Excellence for Biodefense and Emerging Infectious Diseases Research, was designed for funding by the National Institute for Allergy and Infectious Diseases, a division of NIH. The validation offered by the federal health research agency for ramped-up biological warfare research is the dual use of the research results: "better vaccines, diagnostics and therapeutics against bioterrorist agents but also for coping with naturally occurring disease." Today, in dozens of newly sprung laboratories, **research on the most lethal** bacteria and **viruses** with no known cure **is being conducted in an atmosphere of secrecy**, with hand-picked internal review boards and little, if any, public oversight or accountability. Fort Detrick, Maryland, a longstanding military base and major government research facility, is the site of the largest biodefense lab being built in the United States. Here, **biowarfare pathogens will be created**, including new genetically engineered viruses and bacteria, in order **to simulate** potential **bioweapons attacks** by terrorist groups. Novel, lethal organisms and methods of delivery in biowarfare will be tested, all rationalized by the national security need to study them and develop a figurative bioshield against them. In fact, Fort Detrick's research agenda - modifying and dispersing lethal and genetically modified organisms - has "unmistakable hallmarks of an offensive weapons program" ... "in essence **creating new threats that we're going to have to defend ourselves against" - threats from accidents, theft of organisms and stimulus of a bioarms race**.(3) Between 2002 and 2009, approximately 400 facilities and 15,000 people were handling biological weapons agents in sites throughout the country, in many cases unbeknownst to the local community. The marathon to spend nearly $60 billion since 2002 on biological weapons research has raised serious concerns for numerous scientists and informed public critics. Among these are: runaway biodefense research without an assessment of biowarfare threat and the need for this research; (See the Sunshine Project web site for the most comprehensive map of biodefense research sites through 2008 in the United States ) militarization of biological research and the risk of provoking a biological arms race; neglect of vital public health research as a tradeoff for enhanced biodefense research; lack of standardized safety and security procedures for high-risk laboratories; increased risk of accident and intentional release of lethal organisms with the proliferation of facilities and researchers in residential communities; lack of transparency and citizen participation in the decision-making process; and vulnerability of environmental justice (i.e., low income and minority) communities to being selected for the location of these high-risk facilities. Is this federal research agenda "the biological equivalent of our misadventure in Iraq?" An expert on biological weapons at the University of California Davis, Mark Wheelis, contends that a "mass-casualty bioterrorist attack" is unlikely and that "**plastering the country" with bioweapons laboratories leaves the country with a weakened public health research infrastructure and,** thus, **less secure. The** Government Accounting Office (GAO) and many others have drawn the same conclusion. In May 2009, a study of security in DoD biodefense laboratories determined that the **security systems of high biocontainment laboratories cannot protect against theft of bioweapons agents**. Soon after, a Washington Post story revealed that an inventory of potentially deadly pathogens at the government's premier bioweapons research laboratory at Fort Detrick, Maryland, uncovered that more than 9,000 vials were missing. In testimony to a House Committee hearing on the proliferation of bioweapons laboratories, Nancy Kingsbury of the GAO revealed that expansion of bioweapons laboratories has been "so uncoordinated that no federal agency knows how many exist"; nor, she added, is there any sense among federal agencies of how many are needed, of their operational safety and of the cumulative risks they pose to the public. Keith Rhodes, the GAO's chief technologist, testified in the same October 2007 Congressional hearing "'we are at greater risk today' of an infectious disease epidemic because of the great increase in biolaboratories and the absence of oversight they receive." As many have gravely observed, the biodefense build-up means a huge number of people has access to extremely lethal material.

**Bioweapons cause extinction**

Anders **Sandberg** et al., James Martin Research Fellow, Future of Humanity Institute, Oxford University, "How Can We Reduce the Risk of Human Extinction?" BULLETIN OF THE ATOMIC SCIENTISTS, 9-9-**08**, http://www.thebulletin.org/web-edition/features/how-can-we-reduce-the-risk-of-human-extinction, accessed 5-2-10.

The risks from anthropogenic hazards appear at present larger than those from natural ones. Although great progress has been made in reducing the number of nuclear weapons in the world, humanity is still threatened by the possibility of a global thermonuclear war and a resulting nuclear winter. We may face even greater risks from emerging technologies. **Advances in synthetic biology might make it possible to engineer pathogens capable of extinction-level pandemics**. **The knowledge, equipment, and materials needed to engineer pathogens are more accessible than those needed to build nuclear weapons. And unlike other weapons, pathogens are self-replicating, allowing a small arsenal to become exponentially destructive. Pathogens have been implicated in the extinctions of many wild species**. Although most pandemics "fade out" by reducing the density of susceptible populations, pathogens with wide host ranges in multiple species can reach even isolated individuals**. The intentional or unintentional release of engineered pathogens with high transmissibility, latency, and lethality might be capable of causing human extinction**. While such an event seems unlikely today, the likelihood may increase as biotechnologies continue to improve at a rate rivaling Moore's Law.

**Court action on detention is key to challenge the deference doctrine**

**Masur 05** (Jonathan, Law clerk for Posner, JD from Harvard, "A Hard Look or a Blind Eye: Administrative Law and Military Deference" Hastings Law Journal, Lexis)

In evidence is a court that instinctively views military action as judicially incomprehensible and legally untouchable. To the Fourth Circuit, law cannot bend the exigent realities of war to its constraining will because it cannot extract necessary factual clarity from amidst the "murkiness and chaos"; courts would thus be well-advised to remain outside the fray. n320 It is this judicial predilection that necessitates firm proof of dissimilitude between military and criminal detention. **When military operations assume the form and function of typical law enforcement acts, courts become hard-pressed to justify their abstention** from the rule-of-law constitutional questions that form the core of their juridical task. Despitea body of Supreme Court administrative law doctrine counseling judicial intervention into areas of executive expertise, and despite the principle that courts must act to vindicate the rule of law even [\*519] in fields of overwhelming executive or legislative authority, **Article III courts have come to view military questions as a taxonomic grouping they are simply incapable of navigating. Yet in this legal area** (as in most others), **doctrinal facts ought to drive psychological attitudes. Military cases do not always hold the threat of substantially greater national peril, nor offer more pressing exigencies, nor present more intractable** fact or policy **questions** than do typical administrative law adjudications. **Courts that remain unafraid to pass on the factual rationality of highway safety regulations** that may affect tens of thousands of lives each year **should hold no** particular impressionistic **aversion towards inquiring into the legality of detentions** or secretive hearings. There, the danger of a judicial misstep remains speculative precisely because courts have refused to put the Administration to its proofs. Moreover, **courts** themselves **possess responsibility for enforcing the legal limitations that exist to bind administrative actors. To leave wartime cases exclusively in the hands of the Executive Branch in the name of** "comity" or "**deference" would be to reduce fundamental constitutional guarantees to mere precatory language,** slaves to the vicissitudes of the executive expediency they were meant to curb. Lower courts need not shrink from validating the rule of law in cases that bear such resemblance to the administrative law doctrines with which they are familiar. If they continue to do so, **the Supreme Court must act to reconstitute wartime doctrine** along existing precedential lines, **lest the U**nited **S**tates **reap the consequences of this** unfortunate, self-conscious **judicial hand-washing.** Conclusion **Over the past three years, the "War on Terror" has become as much a legal strategy as a military operation.** Incursions abroad have been matched by informational blackouts at home. International manhunts for suspected terrorists are coupled with detention of American citizens. Constitutional rights have been eroded by a torrent of ostensibly security-enhancing measures, and aggrieved individuals have turned to the courts for redress, just as they did six decades ago when the Japanese population of the West Coast was interned in the name of national defense. Yet **courts have behaved solicitously** not towards claims of constitutional deprivations, but rather **towards governmental declarations of necessity and authority** over the lives and rights of the citizenry in wartime. In particular, **courts have overwhelmingly deferred to the executive branch** regarding the assertions of fact that form the factual predicates for governmental actions. Deference has come according to two rationales: first, the President's unique constitutional role as guarantor of national security, and second, the Executive's [\*520] superior institutional expertise in wartime matters. **In awarding deference** on these grounds, **the judiciary has ignored the operation of the Constitution** and laws as contemporaneous structural constraints on executive military action. The President and the military hold only the authority vested in them by the Constitution or by law. Action outside of those legal boundaries is by definition unconstitutional and unauthorized. Similarly, the Bill of Rights enshrines individual freedoms that executive action, even if otherwise lawful, cannot infringe. Moreover, **many cases implicating national security turn on issues of individual statutory and constitutional rights - such as the lawfulness of detention** or free speech rights such as access to information - that form the archetypal bailiwick of civilian tribunals. Thus, **even in wartime circumstances there is often constitutional and statutory law to apply, law to which courts must hold the Executive** and the legislature. As courts have nearly unanimously recognized, **it is emphatically the province of the judiciary to vindicate the rule of law by demanding that government bodies remain within circumscribed boundaries.** It is in this respect that administrative law can usefully inform the adjudication of wartime cases. Administrative law jurisprudence developed to address the particular problems presented by executive branch agencies possessing tremendous institutional expertise and resources and specially empowered by Congress to manage technically difficult subject matter. So-called "military" cases come to Article III courts within precisely the same jurisprudential framework as civilian administrative ones: courts must determine the degree to which they should defer to the legal or factual allegations of an expert, empowered executive branch organization. Despite the obvious considerations favoring substantial administrative deference, the Supreme Court's modern administrative law jurisprudence stands for the principle that adherence to the rule of law demands that courts meaningfully scrutinize administrative determinations of fact. The Court has recognized that enforcement of a legal stricture is toothless without a concomitant inquiry into that stricture's factual predicate. It has therefore insisted upon "substantial evidence" in support of agency judgments before affirming them and required courts to perform "rationality review" of agency policy decisions to ensure that agencies have considered all available alternatives and reached logical conclusions from available information. The rule-of-law principles that motivate judicial scrutiny of administrative determinations compel similar treatment for the claims of fact proffered by the military in the interest of surmounting constitutional restraints. The reasons that courts advance in defense of their acquiescence in wartime circumstances are logically unconvincing. [\*521] **The military matters that have come before the judiciary are neither more judicially inscrutable nor more legally intractable than the administrative issues upon which hard look and substantial evidence review were founded. If military cases present greater national dangers - a question that can hardly be answered accurately without judicial review in the first instance - than their civilian counterparts, they also threaten more dramatic erosions of civil and constitutional rights**. Courts cannot continue to invoke "national security" as a shibboleth absolving them from their responsibility, exemplified within the principles of administrative law, to examine especially those actions taken by broadly empowered, highly experienced executive bodies. On September 22, 2004, almost three years after Yaser Esam Hamdi was taken into custody by American forces in Afghanistan, and nearly three months after the Supreme Court had ruled that he could not be held indefinitely without some nature of adjudicative process, the United States Department of Justice decided that Hamdi's "intelligence value had been exhausted" and agreed to release him, provided he never again set foot in the United States. n321 Nineteen days later, Hamdi was placed on a flight bound for Saudi Arabia. n322 What justification the United States military believed it possessed for holding Hamdi may never be known; one can only presume that it would not have withstood even the limited scrutiny the Supreme Court had prescribed. Hamdi's release completed the military's circular narrative: it was the executive branch that chose to incarcerate Hamdi; it was the executive branch that unilaterally chose to release him; and it appears that the executive branch never ceased believing that it alone held the authority to make these decisions. Yaser **Hamdi**, Jose **Padilla, and** all American **citizens** bearing constitutional rights **are entitled to a government that operates by law and logic, not by executive fiat. Courts must act to vindicate the rule of law if such a government is to persevere.**

**Plan is key to domestic and international rule of law—modeling**

Michael P. **Scharf** et al., Counsel of Record, Brief of the Public International Law & Policy Group as Amicus Curiae in Support of the Petitioners, Jamal Kiyemba, et. Al., v. Barack H. Obama, et al., SCOTUS, No. 08-1234, 12—**09**, p. 3-8.

**The precedent of this Court has a significant impact on rule of law in foreign states**. **Foreign governments, in particular foreign judiciaries, notice and follow the example set by the U.S. in upholding the rule of law**. **As foreign** governments and **judiciaries grapple with** new and challenging issues associated with **upholding the rule of law during times of conflict, U.S. leadership on the primacy of law during the war on terror is particularly important**. **Recent decisions of this Court have reaffirmed the primacy of rule of law** in the U.S. during the war on terror. As relates to the present case, a number of this Court’s decisions, most notably **Boumediene** v. Bush, 128 S.Ct. 2229 (2008**), have established clear precedent that** Guantanamo detainees **have a right to** petition for **habeas corpus relief. Despite a clear holding** from this Court in Boumediene, the **Court of Appeals sought** in Kiyemba v. Obama **to narrow Boumediene** **to such a degree as to render this Court’s ruling hollow**. 555 F.3d 1022 (D.C. Cir. 2009). **The** present **case is** thus **a test of both the substance of the right granted in Boumediene and the role of this Court in ensuring faithful implementation of its prior decisions**. Although this Court’s rulings only have the force of law in the U.S., **foreign governments will take note of the decision** in the present case **and use the precedent set by this Court to guide their actions in times of conflic**t. PILPG has advised over two dozen foreign states on peace negotiations and post-conflict constitution drafting, as well as all of the international war crimes tribunals. Through providing pro bono legal assistance to foreign governments and judiciaries, **PILPG has observed the important role this Court and U.S. precedent serve in promoting rule of law in foreign states.** In Uganda, for example, the precedent established by this Court in Hamdan v. Rumsfeld, 548 U.S. 557 (2006), and Boumediene, influenced judges and legislators to incorporate the principles of judicial review and enforceability in their domestic war crimes bill. In Nepal, this Court has served as a model for the nascent judiciary. In Somaliland, the government relied heavily on U.S. terrorism legislation when drafting terrorism legislation for the region. And in the South Sudan peace process, the Sudan People’s Liberation Movement/Army (SPLM/A), the leading political party in the Government of Southern Sudan, relied on U.S. precedent to argue for the primacy of law and the importance of enforceability of previous adjudicative decisions in the Abyei Arbitration, one of the most important and contentious issues in the ongoing implementation of the peace agreement**. Foreign judges also follow the work of this Court closely**. In a number of the judicial training programs PILPG has conducted, **foreign judges have asked PILPG detailed questions about the role of this Court in upholding rule of law during the war on terror**. **A review of foreign precedent confirms how closely foreign judges follow this Court**. **In numerous foreign states, and in the international war crimes tribunals, judges regularly cite the precedent of this Court to establish their own legitimacy, to shore up judicial authority against overreaching by powerful executives, and to develop a strong rule of law within their own legal systems.** **Given the significant influence of this Court on foreign governments and judiciaries**, a decision in Kiyemba **implementing Boumediene will reaffirm this Court’s leadership in upholding the rule of law and promote respect for rule of law in foreign states during times of conflict**. ARGUMENT I. KIYEMBA v. OBAMA IS A TEST OF SUPREME COURT LEADERSHIP IN UPHOLDING RULE OF LAW IN TIMES OF CONFLICT **The precedent set by the Supreme Court** in the present case **will have a significant impact on the development of rule of law in foreign states. Foreign judicial, executive, and parliamentary bodies closely follow the work of this Court, and this Court’s previous decisions related to the war on terror have shaped how foreign states uphold the rule of law** in times of conflict. **Foreign governments and judiciaries** will **review** this Court’s **decision** in the present case in light of those previous decisions. **A decision** in the present case **implementing previous decisions of this Court granting habeas rights to Guantanamo detainees is an opportunity for this Court to reaffirm to foreign governments that the U.S. is a leader and role model in upholding the rule of law during times of conflict**. **Recent Supreme Court precedent established a clear role for the primacy of law in the U.S. war on terror**. In particular, this Court’s landmark decision in **Boumediene highlighted the critical role of the judiciary in a system dedicated to the rule of law, as well as the “indispensable” role of habeas corpus as a “time tested” safeguard of liberty.** Boumediene v. Bush, 128 S.Ct. 2229, 2247, 2259 (2008). **Around the globe, courts and governments took note of this Court’s** stirring **words:** “**Security subsists, too**, in **fidelity to freedom’s first principles. Chief among these are freedom from arbitrary and unlawful restraint** and the personal liberty **that is secured by adherence to the separation of powers**. It is from these principles that the judicial authority to consider petitions for habeas corpus relief derives.” Id. at 2277. In contrast to the maxim silent enim leges inter arma (in times of conflict the law must be silent), this Court affirmed in Boumediene that “[t]**he laws and Constitution are designed to survive, and remain in force, in extraordinary times. Liberty and security can be reconciled**, and in our system they are reconciled within the framework of the law.” Id. Boumediene held that the detainees in the military prison at Guantanamo Bay are “entitled to the privilege of habeas corpus to challenge the legality of their detentions.” Id. at 2262. Inherent in that privilege is the right to a remedy if the detention is found to be unlawful. In the present case, the Petitioners, who had been found not to be enemy combatants, sought to exercise their privilege of habeas corpus. The Executive Branch conceded that there was no legal basis to continue to detain the Petitioners, that years of diligent effort to resettle them elsewhere had failed, and that there was no foreseeable path of release. The District Court implemented Boumediene, ordering that the Petitioners be brought to the courtroom to impose conditions of release. In re Guantanamo Bay Detainee Litigation, 581 F. Supp. 2d 33, 42-43 (D.C. Cir. 2008). The Court of Appeals reversed, with the majority concluding that the judiciary had no “power to require anything more” than the Executive’s representations that it was continuing efforts to find a foreign country willing to admit Petitioners. Kiyemba v. Obama, 555 F.3d 1022, 1029 (D.C. Cir. 2009). **The Court of Appeals’ decision effectively narrowed Boumediene to such a degree that it rendered the ruling hollow**. Circuit Judge Rogers recognized this in her dissent, opining that the majority’s analysis “was not faithful to Boumediene.” Id. at 1032 (Roberts, J., dissenting). Given the Court of Appeals’ attempt to narrow Boumediene, Kiyemba v. Obama is a test of this Court’s role in upholding the primacy of law in times of conflict. A decision in favor of the Petitioners in Kiyemba will reaffirm this Court’s leadership in upholding the rule of law and promote respect for rule of law in foreign states during times of conflict.

**Rule of law solves war—multiple triggers**

**Feldman ‘8** [Noah Feldman, a contributing writer for the magazine, is a law professor at Harvard University and an adjunct senior fellow at the Council on Foreign Relations, “When Judges Make Foreign Policy”, NEW YORK TIMES, 9—25—08, www.nytimes.com/2008/09/28/magazine/28law-t.html]

Looking at today’s problem through the lens of our great constitutional experiment, it emerges that there is no single, enduring answer to which way the Constitution should be oriented, inward or outward. The truth is that we have had an inward- and outward-looking Constitution by turns, depending on the needs of the country and of the world. Neither the text of the Constitution, nor the history of its interpretation, nor the deep values embedded in it justify one answer rather than the other. In the face of such ambiguity, the right question is not simply in what direction does our Constitution look, but where do we need the Constitution to look right now? Answering this requires the Supreme Court to think in terms not only of principle but also of policy: to weigh national and international interests; and to exercise fine judgment about how our Constitution functions and is perceived at home and abroad. The conservative and liberal approaches to legitimacy and the rule of law need to be supplemented with a healthy dose of real-world pragmatism. In effect, the fact that the Constitution affects our relations with the world requires the justices to have a foreign policy of their own. On the surface, it seems as if such inevitably political judgments are not the proper province of the court. If assessments of the state of the world are called for, shouldn’t the court defer to the decisions of the elected president and Congress? Aren’t judgments about the direction of our country the exclusive preserve of the political branches? Indeed, the **Supreme Court** does need to be limited to its proper role. But when it comes to our **engagement with the world,** that role **involves taking a stand, not stepping aside.** The reason for this is straightforward: the court is in charge of interpreting the Constitution, and the Constitution plays a major role in shaping our engagement with the rest of the world. The court therefore has no choice about whether to involve itself in the question of which direction the Constitution will face; it is now unavoidably involved. Even choosing to defer to the other branches of government amounts to a substantive stand on the question. That said, **when the court exercises its own independent political judgment, it** still **does so in a distinctively legal way.**For one thing, the court can act only through deciding the cases that happen to come before it, and the court is limited to using the facts and circumstances of those cases to shape a broader constitutional vision. The court also speaks in the idiom of law — which is to say, of regular rules that apply to everyone across the board. It cannot declare, for instance, that only this or that detainee has rights. It must hold that the same rights extend to every detainee who is similarly situated. **This**, too, **is an effective constraint on the way the court exercises** its policy **judgment.** Indeed, it is this very regularity that gives its decisions legitimacy as the product of judicial logic and reasoning. Why We Need More Law, More Than Ever So what do we need the Constitution to do for us now? The answer, I think, is that the Constitution must be read to help us remember that while the war on terror continues, we are also still in the midst of a period of rapid globalization. An enduring lesson of the Bush years is the extreme difficulty and cost of doing things by ourselves. **We need to build and rebuild alliances — and law has** historically **been** one of **our best tool**s for doing so. In our present precarious situation, **it would be a** terrible **mistake to abandon our** historic **position of leadership in the g**lobal **spread of** the **rule of law. Our leadership matters** for reasons both universal and national. Seen from the perspective of the world, **the fragmentation of power** after the cold war **creates new dangers** of disorder that need to be mitigated by the sense of regularity and predictability **that only the rule of law can provide. Terrorists need to be deterred. Failed states need to be brought under the umbrella of international organizations so they can govern themselves. And economic interdependence demands coordination, so that the collapse of one does not become the collapse of all**. From a national perspective, our interest is less in the inherent value of advancing individual rights than in claiming that our allies are obligated to help us by virtue of legal commitments they have made. The Bush administration’s lawyers often insisted that lawwas a tool of the weak, and that therefore as a strong nation we had no need to engage it. But this notion of “lawfare” as a threat to the United States is based on a misunderstanding of the very essence of how law operates. **Law** comes into being and is sustained not because the weak demand it but because it is a tool of the powerful — as it has been for the United States since World War II at least. The reason those with power prefer law to brute force is that it **regularizes and legitimates the exercise of authority. It is easier and cheaper to get the compliance of weaker** people or **states by promising them rules** and a fair hearing **than by threatening them constantly with force.** After all, if those wielding power really objected to the rule of law, they could abolish it, the way dictators and juntas have often done the world over.

**1AC: Plan**

**Plan: The United States federal judiciary should rule that individuals indefinitely detained under the War Powers authority of the President of the United States must be tried by an existing Article III court, a military court martial, or be released within a reasonable, specified time period.**

**1AC: Solvency**

**Contention 3 is Solvency:**

**Action by the judiciary is key**

**Feldman 13** (Noah, professor of Constitutional and International Law at Harvard, “Obama Can Close Guantanamo: Here’s How,” Bloomberg, May 7, 2013, http://www.bloomberg.com/news/2013-05-07/obama-has-leverage-to-get-his-way-on-guantanamo.html)

**Faced with a standoff between two branches, the system allows an orderly answer: turning to the** third branch, the **courts, to resolve the conflict. Since 2003, the Supreme Court has taken an interest in Guantanamo, deciding on the statutory and constitutional rights extended there, and vetting procedures for detainee hearings and trials.** Along the way, it has shown an equal-opportunity willingness to second-guess the executive -- as when President George W. Bush denied hearings to detainees -- and Congress, which passed a law denying habeas corpus to the prisoners. How could the court get involved? The first step would be for the Obama administration to show some of the legal self-confidence it did in justifying drone strikes against U.S. citizens or in ignoring the War Powers Resolution in the Libya military intervention. Likewise, it could assert a right of control over where the detainees should be held. And if the president’s lawyers are worried about Bush-style assertions of plenary executive power (which, for the record, didn’t concern them when it came to drones or Libya), there is a path they could follow that would hew closer to their favored constitutional style. Geneva Conventions **The reasoning could look like this:** The president’s war power must be exercised pursuant to the laws of war embodied in the Geneva Conventions. And though Guantanamo once conformed to those laws -- as the administration asserted in 2009 -- it no longer does. The conditions are too makeshift to manage the continuing prisoner resistance, and **indefinite detention in an indefinite war with no enemy capable of surrendering is pressing on the bounds of lawful POW detention.** Congress doesn’t have the authority to force the president to violate the laws of war. Yet by blocking Obama from closing Guantanamo, that is just what Congress is doing. What’s more, he has the inherent authority to ensure that we are complying with our treaty obligations. This argument isn’t a certain winner. And there would still be the problem of whether the president could put the detainees in an existing prison. But at least spelling this out would put the fear of God into Congress. Continued congressional resistance would also trigger a court case. The president could have a tough time convincing five justices. According to the framework developed by Justice Robert Jackson in the Truman-era steel seizure case, and used today by the courts, the president’s power is at its “lowest ebb” when Congress has expressly barred him from acting. But even at ebb tide there is still an ocean, and **lots of things Congress can’t stop the president from doing. Complying with** his **legal obligations should surely be at the top of the list.** The Supreme Court might want to duck this controversial issue. But **there is a precedent for the court wading in where Congress is blocking necessary action. In the Cold War, lawful racial segregation in the U.S. became costly as a matter of foreign relations.** President Harry **Truman desegregated the military, but he lacked the authority to overturn state-based discrimination.** The Senate filibuster, originally born of slavery, ensured that Congress wouldn’t pass a civil-rights bill that could have solved the problem. **That left the high court -- which gave us Brown v. Board** of Education. And in that case, the U.S. -- as friend of the court -- quoted Secretary of State Dean Acheson to the effect that segregation was being used as propaganda by the Soviet Union. It is absurd that the commander in chief can’t do what he believes is in the country’s national interests when it comes to detainees. Win, lose or draw, it is time to get around Congress. And if ordinary politics won’t do the trick, **going to the courts may be the best option -- because it is the only one.**

**Mandating release is crucial—any alternative leaves the judiciary powerless and fails to rectify injustice**

**Stanton 10** (Caroline Wells, J.D. at Georgetown Law, Summer 2010, "Rights and Remedies: Meaningful Habeas Corpus in Guantanamo" Georgetown Journal of Legal Ethics, Lexis)

**The** inclusion of the **Suspension Clause** in the Constitution **was meant to preserve the common law tradition of protection against the Executive, and the ability of the petitioner to force the Executive to justify detention** or release the petitioner. **In 2008, the Supreme Court held that these protections had "full effect" in Guantanamo.** n105 **Because the writ of habeas** corpus **is both a statement of the rights of the individual and the means by which he can enforce a remedy, the denial of access to a remedy has resulted in a de facto suspension of the writ at Guantanamo. Without the power to order a remedy, the Court lacks the power to enforce the right, and it becomes no right at all.** **"Without a remedy, judicial decisions are merely advisory opinions, hypothetical undertakings with no practical effect" n106 that are unlikely to present any significant limitation on the government's ability to restrict individual liberty.** **While some argue that our Constitutional system contains instances in which certain rights lack enforceable remedies, it would be anathema to our understandings of judicial review and individual liberty to accept that the executive and the courts can concede that detention is unlawful, but the courts lack the power to grant release.** The Court has deemed the ability to order release the "Constitutionally required remedy," and by denying Guantanamo petitioners a remedy to enforce the writ, **the D.C. Circuit has circumvented Boumediene and denied Guantanamo petitioners full habeas rights.** The Government has simply substituted the plenary power of immigration for MCA § 7--the net effect of which is the same--petitioners are denied release from unlawful detention. **Because rights are only as meaningful as the remedies available to enforce them, extending a right of habeas without also extending the right to order a remedy to end the unlawful imprisonment has resulted in a de facto suspension of the writ.** n107 The extension of habeas to Guantanamo has become meaningless. If the Suspension Clause truly has "full effect" in Guantanamo, the denial of a remedy constitutes a suspension of habeas and the elimination of a fundamental protection to ensure personal liberty. **The Government has raised concerns that permitting the courts to craft remedies directing transfer to particular countries and restricting transfer to others would set a dangerous precedent of allowing the judiciary to direct the executive's foreign relations.** n108 **But appropriately crafting the judicial remedy,** [\*905] **rather than denying it all together, can sufficiently avoid this peril. The courts need not issue detailed release orders; they simply need to issue a traditional habeas order requiring release within a specified time period.** n109 **Such an order would likely "induce" the Executive to quickly effectuate transfer** in almost every case where it was safe. n110 Indeed, the Government has shown that it will respond to judicial pressure to effectuate transfer. In Ali Ahmed v. Obama, the petitioner was abruptly transferred ngs indicated the judge was "losing patience with the delay in complying with her order." n111 The Executive is apt to respond to judicial pressure because if the Government is unable to repatriate detainees within the time period specified, the court could order the release of detainees within the United States, while still permitting the government to transfer detainees as soon as such transfer becomes possible. n112 Notably, the government's success in obtaining resettlement offers for the Kiyemba petitioners did not come until after the Supreme Court granted cert and judicial review appeared imminent. n113 The appropriate remedy in this case is no different than that offered in Clark and Zadvydas: the Government is entitled to a reasonable, specified period of time to effectuate the Court's order, and then the detainee is entitled to release wherever the Executive may accomplish it. Such a remedy would give the Executive fair notice of the potential consequence of failure to transfer, while at the same time protecting the detainee's liberty.

**Prosecution in federal courts solves best—multiple reasons, experts agree**

Oona **Hathaway**, Professor, International Law, Yale Law School, Samuel Adelsberg, Spencer Amdur, Philip Levitz, Freya Pitts and Sirine Shebaya, “The Power to Detain: Detention of Terrorism Suspects after 9/11,” YALE JOURNAL OF INTERNATIONAL LAW v. 38, Winter 20**13**, p. 161-167.

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 U**nited **S**tates, **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.** 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 unconstitutiona**l. 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 U**nited **S**tates **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 U**nited **S**tates, **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

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

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

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

**Plan brings us into complicance with Geneva and restores US legitimacy**

**Glazier 09** (David, Professor of Law, Loyola Law School, December 2009, "PLAYING BY THE RULES: COMBATING AL QAEDA WITHIN THE LAW OF WAR" William and Mary Law Review, Lexis)

**Preventive detention of al Qaeda personnel should be lawful until** the earlier of the time that **they no longer pose an individual threat or the WAQT reaches an end.** Nevertheless, **detention based on a criminal conviction and sentence should be preferable for several reasons. First, "hard-core" individuals might remain willing to use violence against U.S. interests even after al Qaeda has ceased to exist as a recognizable entity or pose a credible threat.** The sentence of a detainee convicted during an armed conflict is unaffected by the end of hostilities, n541 so trial for serious offenses can provide more reliable long-term incapacitation than mere preventive detention. Many Americans consider detainee living conditions mandated by the law of war too good for terrorists and strongly prefer actual [\*1045] imprisonment. n542 **A guilty verdict also attaches substantial moral culpability to the detainee and may help bring closure to victims of terrorist violence.** **Conviction following a criminal trial meeting internationally recognized standards of justice should result in the widest possible acceptance of the validity of any detainee's continued detention.** Criminal trials applying standard American constitutional criminal procedure standards should thus be employed whenever adequate admissible evidence exists to support a good faith conviction. **Federal trials not only enjoy the greatest legitimacy, but they also allow application of the broadest scope of possible charges, including specialized offenses such as providing material support to terrorism and the full range of inchoate offenses recognized under Anglo- American law**. n543 Detainees classified as either civilians or unlawful combatants are subject to prosecution under the full scope of U.S. domestic criminal law, whereas those classified as lawful combatants should at least be subject to trial for violations of the War Crimes Act. n544 **For** those **cases involving either offenses committed in captivity that are properly triable under the UCMJ, or any violations of the law of war that fall outside the scope of crimes triable under the War Crimes Act, trial by regularly convened general courts-martial should be used.** n545 Contrary to frequent public assertions by officials who really should know better, n546 American military justice is no longer the "gold standard." A number of democracies have abolished separate military trials entirely, n547 whereas other heirs of the [\*1046] British military justice system, the U.K. and Canada, have had to eliminate the multiple roles still allowed the convening authority under U.S. practice. n548 Nevertheless, **the fact that trials under national military justice are specifically authorized by Geneva III should effectively mute criticism of detainee trials by actual courts-martial.** But the fact that U.S. military justice no longer measures up to the standards of other leading democracies highlights the desirability of trials by actual federal courts whenever possible. Although the MCA 2009 authorizes the President to try suspected terrorists before military commissions, nothing in the statute requires him to do so. n549 While their early history shows that military commissions can be used to provide "full and fair" trials, the history of their use in the "war on terror" is irreparably flawed, and they should be abandoned. **The Executive Branch has all the authority necessary to try any person over whom statutory jurisdiction can be obtained, either by regular Article III courts or courts-martial.**

**Court involvement key to setting precedent that checks abuses**

**Pearlstein 03** [Deborah N., Deputy Director of the U.S. Law and Security Program at the Lawyers Committee for Human Rights, and a Visiting Fellow at the Stanford University Center for Democracy, Development and the Rule of Law, “The Role of the Courts in Protecting Civil Liberties and Human Rights for the Post-9/11 United States”, 2nd Pugwash Workshop on Terrorism: External and Domestic Consequences of the War on Terrorism, http://www.pugwash.org/reports/nw/terrorism2003-pearlstein.htm]

**In each** of the **historical examples** just given, **the judiciary** **ultimately played a critical role in evaluating the legality of executive action**. In the Civil War case, Lambdin Milligan, who had led armed uprisings against Union forces in Indiana, appealed his military tribunal prosecution to the U.S. Supreme Court. In Ex Parte Milligan (1865), the U.S. Supreme Court held Milligan's military prosecution unconstitutional, holding that as long as the civilian "courts are open and their process unobstructed, . . . they can never be applied to civilians in states which have upheld the authority of the government." In Ex Parte Quirin (1942), the Supreme Court reviewed the military prosecution of the German army spies for violations of the laws of war and concluded that it was within the executive's power**.** Unlike the civilian subject to military justice in Ex Parte Milligan, the Quirin defendants were members of the army of a nation with which the United States was in declared war. And critically, Congress had expressly authorized military commission trials for the offenses for which they were accused. The Supreme Court likewise upheld the exclusion of Japanese-Americans from their homes in Korematsu v. United States (1944), explaining: "Korematsu was not excluded from the military area because of hostility to him or his race. He was excluded because we are at war with the Japanese Empire, because the properly constituted military authorities feared an invasion of our West Coast and felt constrained to take proper security measures, and finally, because Congress, reposing its confidence in this time of war in our military leaders - as inevitably it must - determined that they should have the power to do just this." As these examples demonstrate, the U.S. Supreme Court has not always acted to enforce positive legal protections in favor of the individual against the government's exercise of 'wartime' power. Nonetheless**, the Court's structural involvement conveyed a critical political message that executive power remained subject to the rule of law.** In addition**, the Court's** published majority **opinions clarified the nature of the executive action** taken in response to perceived wartime threats, **providing a basis for comparative analysis of subsequent executive conduct**. In vigorous and public dissenting opinions accompanying each decision, minority justices gave expression to the strong opposing arguments on the resolution of the legal questions presented. Perhaps most important, the judicial decisions provided Congress, legal scholars, and the American public a means for understanding and, in the relative calm of post-war decision-making, for reevaluating the political wisdom of the challenged actions. Thus, for example, a federal court eventually granted a writ of coram nobis in Mr. Korematsu's case as a result of executive misrepresentations. (Korematsu v. United States (N.D. Cal. 1984)). In 1971, to rein in what was by then broadly recognized as executive excesses, Congress passed 18 U.S.C. § 4001(a), providing: "No citizen shall be . . . detained by the United States except pursuant to an Act of Congress." And in 1988, Congress awarded reparations to the remaining survivors and descendants of those interned during World War II as a result of the military exclusion order.

## 2AC

**Heg**

**Heg solves nuclear indo-pak war**

**Brezezinski**(Former Sect. Of State) **04**

[Zbigniew, The Choice: Global Domination or Global Leadership, Perseus, New York // wyo-tjc]

For the time being. **the key US. interest is to prevent a nuclear war from erupting between Pakistan and India and to discourage any further regional proliferation**, especially since there can he little doubt that the once-imperial and nationally ambitious Iran looks with under­standable envy at its nuclear-armed neighbors. Of the two goals, the prevention of a nuclear war may be somewhat easier to pursue because the very possession of nuclear weaponry is forcing both the Indian and the Pakistani militaries to calculate more cautiously the potential con­sequences of their periodic border clashes. Nonetheless, **the unresolved issue of Kashmir is bound to pro­duce repeated collisions, each of which inflames the volatile and reli­giously conflicted Muslim and Hindu masses. Pakistan could then even become a fundamentalist Muslim state (**thus probably determin­ing Afghanistan’s fate as well), while India might be seized by fanatical Hindu passions**. Irrationality might then overwhelm the strategic restraint inherent in the nuclear calculus. Just as the West for years has been relatively indifferent to the unresolved Palestinian issue, so it has also neglected Kashmir**. India has been able to insist formally that there is no Kashmir issue, either between India and Pakistan or for the international community as a whole—that it is an internal matter. Pakistan in turn has relied on thinly camouflaged official support for guerrilla and terrorist actions against India’s control of the province as a way of keeping the issue alive—thereby also precipitating increasingly heavy-handed Indian repression of Kashmiris suspected of disloyalty. Once both countries acquired nuclear weapons, the Kashmir issue inevitably gained wider international significance. The question of Kashmir has now become part of the larger problem of instability in the Global Balkans**. Its peaceful resolution is likely to he at least as difficult as that of the Arab-Israeli conflict**. The conflict involves two major states that jointly have a population approaching 1.2 billion people—roughly one-fifth of the world—and much of that population is still pre-modern, semiliterate, and suscep­tible (even among the elites) to demagogic appeals. **Fostering a compromise in that setting will require sustained outside engagement, considerable international pressure, major political and financial inducements, and a great deal of patience. Here again, political solidarity between the United States and the European Union**, perhaps tangibly backed by Japan, **would make even­tual success more likely. Great Britain,** for historical reasons, **can play an important diplomatic role, especially in concert with the United States**. Both Russia and China may be supportive, since neither would benefit from a nuclear war in its immediate proximity, and each can subtly influence the major purchaser of its arms exports (India in the case of Russia, Pakistan in the case of China). The reality, however, is that a major collective international effort is likely only in the face of an imminent threat of war, with international concern rapidly fading once the threat recedes [P. 76-77]

**Extinction**

**Caldicott** (Founder of Physicians for Social Responsibility) **02**

[Helen, The New Nuclear Danger, 2002, p. xii // wyo-tjc]

**The use of Pakistani nuclear weapons could trigger a chain reaction. Nuclear-armed India**, an ancient enemy, **could respond in kind. China, India's hated foe, could react if India used her nuclear weapons, triggering a nuclear holocaust on the subcontinent. If any of either Russia or America's 2, 250 strategic weapons on hair-trigger alert were launched either accidentally or purposefully in response, nuclear winter would ensue, meaning the end of most life on earth**.

**US pursuit of hegemony inevitable**

**Kagan**, 1/24/20**11**, (Robert Kagan, [American](http://en.wikipedia.org/wiki/United_States)historian, author and foreign policy commentator at the[Brookings Institution](http://en.wikipedia.org/wiki/Brookings_Institution)) ‘The Price of Power: The benefits of U.S. defense spending far outweigh the costs’, VOL. 16, NO. 18, <http://www.weeklystandard.com/articles/price-power_533696.html?page=3>

In theory, the United States could refrain from intervening abroad. But, in practice, will it? Many assume today that the American public has had it with interventions, and Alice Rivlin certainly reflects a strong current of opinion when she says that “much of the public does not believe that we need to go in and take over other people’s countries.” That sentiment has often been heard after interventions, especially those with mixed or dubious results. It was heard after the four-year-long war in the Philippines, which cost 4,000 American lives and untold Filipino casualties. It was heard after Korea and after Vietnam. It was heard after Somalia. Yet **the reality has been that after each intervention, the sentiment against foreign involvement has faded, and the United States has intervened again. Depending on how one chooses to count, the United States has undertaken roughly 25 overseas interventions since 1898**:Cuba, 1898The Philippines, 1898-1902China, 1900Cuba, 1906Nicaragua, 1910 & 1912Mexico, 1914Haiti, 1915Dominican Republic, 1916Mexico, 1917World War I, 1917-1918Nicaragua, 1927World War II, 1941-1945Korea, 1950-1953Lebanon, 1958Vietnam, 1963-1973Dominican Republic, 1965Grenada, 1983Panama, 1989First Persian Gulf war, 1991Somalia, 1992Haiti, 1994Bosnia, 1995Kosovo, 1999Afghanistan, 2001-presentIraq, 2003-presentThat is one intervention every 4.5 years on average. Overall, **the United States has intervened or been engaged in combat somewhere in 52 out of the last 112 years, or roughly 47 percent of the time. Since the end of the Cold War**, it is true, **the rate of U.S. interventions has increased, with an intervention roughly once every 2.5 years and American troops intervening or engaged in combat in 16 out of 22 years, or over 70 percent of the time**, since the fall of the Berlin Wall.The argument for returning to “normal” begs the question: What is normal for the United States? The historical record of the last century suggests that it is not a policy of nonintervention. This record ought to raise doubts about the theory that American behavior these past two decades is the product of certain unique ideological or doctrinal movements, whether “liberal imperialism” or “neoconservatism.” **Allegedly “realist” presidents in this era have been just as likely to order interventions as their more idealistic colleagues**. George H.W. Bush was as profligate an intervener as Bill Clinton. He invaded Panama in 1989, intervened in Somalia in 1992—both on primarily idealistic and humanitarian grounds—which along with the first Persian Gulf war in 1991 made for three interventions in a single four-year term. Since 1898 the list of presidents who ordered armed interventions abroad has included William McKinley, Theodore Roose-velt, William Howard Taft, Woodrow Wilson, Franklin Roosevelt, Harry Truman, Dwight Eisenhower, John F. Kennedy, Ronald Reagan, George H.W. Bush, Bill Clinton, and George W. Bush. **One would be hard-pressed to find a common ideological or doctrinal thread among them—unless it is the doctrine and ideology of a mainstream American foreign policy that leans more toward intervention than many imagine or would care to admit**.Many don’t want to admit it, and **the only thing as consistent as this pattern of American behavior has been the claim by contemporary critics that it is abnormal and a departure from American traditions.** The anti-imperialists of the late 1890s, the isolationists of the 1920s and 1930s, the critics of Korea and Vietnam, and the critics of the first Persian Gulf war, the interventions in the Balkans, and the more recent wars of the Bush years have all insisted that the nation had in those instances behaved unusually or irrationally. And yet the behavior has continued.To note this consistency is not the same as justifying it. The United States may have been wrong for much of the past 112 years. Some critics would endorse the sentiment expressed by the historian Howard K. Beale in the 1950s, that “the men of 1900” had steered the United States onto a disastrous course of world power which for the subsequent half-century had done the United States and the world no end of harm. But **whether one lauds or condemns this past century of American foreign policy—and one can find reasons to do both—the fact of this consistency remains.It would require not just a modest reshaping of American foreign policy priorities but a sharp departure from this tradition to bring about the kinds of changes that would allow the United States to make do with a substantially smaller force structure.**Is such a sharp departure in the offing? It is no doubt true that many Americans are unhappy with the on-going warfare in Afghanistan and to a lesser extent in Iraq, and that, if asked, a majority would say the United States should intervene less frequently in foreign nations, or perhaps not at **all. It may also be true that the effect of long military involvements in Iraq and Afghanistan may cause Americans and their leaders to shun further interventions at least for a few years—as they did for nine years after World War I, five years after World War II, and a decade after Vietnam. This may be further reinforced by the difficult economic times in which Americans are currently suffering. The longest period of nonintervention in the past century was during the 1930s, when unhappy memories of World War I combined with the economic catastrophe of the Great Depression to constrain American interventionism to an unusual degree and produce the first and perhaps only genuinely isolationist period in American history**.So are we back to the mentality of the 1930s? It wouldn’t appear so. There is no great wave of isolationism sweeping the country. There is not even the equivalent of a Patrick Buchanan, who received 3 million votes in the 1992 Republican primaries. Any isolationist tendencies that might exist are severely tempered by continuing fears of terrorist attacks that might be launched from overseas. Nor are the vast majority of Americans suffering from economic calamity to nearly the degree that they did in the Great Depression.Even if we were to repeat the policies of the 1930s, however, **it is worth recalling that the unusual restraint of those years was not sufficient to keep the United States out of war. On the contrary, the United States took actions which ultimately led to the greatest and most costly foreign intervention in its history. Even the most determined and in those years powerful isolationists could not prevent it**.Today there are a number of obvious possible contingencies that might lead the United States to substantial interventions overseas, notwithstanding the preference of the public and its political leaders to avoid them. **Few Americans want a war with Iran, for instance. But it is not implausible that a president—indeed, this president—might find himself in a situation where military conflict at some level is hard to avoid.** The continued success of the international sanctions regime that the Obama administration has so skillfully put into place, for instance, might eventually cause the Iranian government to lash out in some way—perhaps by attempting to close the Strait of Hormuz. Recall that Japan launched its attack on Pearl Harbor in no small part as a response to oil sanctions imposed by a Roosevelt administration that had not the slightest interest or intention of fighting a war against Japan but was merely expressing moral outrage at Japanese behavior on the Chinese mainland. Perhaps in an Iranian contingency, the military actions would stay limited. But perhaps, too, they would escalate. One could well imagine an American public, now so eager to avoid intervention, suddenly demanding that their president retaliate. Then there is the possibility that a military exchange between Israel and Iran, initiated by Israel, could drag the United States into conflict with Iran. Are such scenarios so farfetched that they can be ruled out by Pentagon planners?Other possible contingencies include a war on the Korean Peninsula, where the United States is bound by treaty to come to the aid of its South Korean ally; and possible interventions in Yemen or Somalia, should those states fail even more than they already have and become even more fertile ground for al Qaeda and other terrorist groups. And what about those “humanitarian” interventions that are first on everyone’s list to be avoided? Should another earthquake or some other natural or man-made catastrophe strike, say, Haiti and present the looming prospect of mass starvation and disease and political anarchy just a few hundred miles off U.S. shores, with the possibility of thousands if not hundreds of thousands of refugees, can anyone be confident that an American president will not feel compelled to send an intervention force to help?Some may hope that a smaller U.S. military, compelled by the necessity of budget constraints, would prevent a president from intervening. More likely, however, it would simply prevent a president from intervening effectively. This, after all, was the experience of the Bush administration in Iraq and Afghanistan. Both because of constraints and as a conscious strategic choice, the Bush administration sent too few troops to both countries. The results were lengthy, unsuccessful conflicts, burgeoning counterinsurgencies, and loss of confidence in American will and capacity, as well as large annual expenditures. Would it not have been better, and also cheaper, to have sent larger numbers of forces initially to both places and brought about a more rapid conclusion to the fighting? The point is, it may prove cheaper in the long run to have larger forces that can fight wars quickly and conclusively, as Colin Powell long ago suggested, than to have smaller forces that can’t. Would a defense planner trying to anticipate future American actions be wise to base planned force structure on the assumption that the United States is out of the intervention business? Or would that be the kind of penny-wise, pound-foolish calculation that, in matters of national security, can prove so unfortunate?The debates over whether and how the United States should respond to the world’s strategic challenges will and should continue. Armed interventions overseas should be weighed carefully, as always, with an eye to whether the risk of inaction is greater than the risks of action. And as always, these judgments will be merely that: judgments, made with inadequate information and intelligence and no certainty about the outcomes. No foreign policy doctrine can avoid errors of omission and commission. But **history has provided some lessons, and for the United States the lesson has been fairly clear: The world is better off, and the United States is better off, in the kind of international system that American power has built and defended.**

**No regional cooperation**

**Brzenzinski** (Former Sect. Of State) **04** [Zbigniew, The Choice: Global Domination or Global Leadership, Perseus, New York // wyo-tjc]

In any case, **the eventual end of American hegemony will not involve a restoration of multipolarity among the familiar major pow­ers that dominated world affairs for the last two centuries. Nor will it yield to another dominant hegemon that would displace the United State**s by assuming a similar political, military, economic, technologi­cal, and sociocultural worldwide preeminence. **The familiar powers of the last century are too fatigued or too weak to assume the role the United States now plays.** It is noteworthy that since 1880, in a com­parative ranking of world powers (cumulatively based on their eco­nomic strength, military budgets and assets, populations, etc.), the top five slots at sequential twenty-year intervals have been shared by just seven states: the United States, the United Kingdom, Germany, France, Russia, Japan, and China. Only the United States, however, unambigu­ously earned inclusion among the top five in every one of the twenty- year intervals, and the gap in the year 2000 between the top-ranked United States and the rest was vastly wider than ever before, **The former major European powers**—Great Britain, Germany, and France—**are too weak to step into the breach. In the next two decades, it is quite unlikely that the European Union will become suf­ficiently united politically to muster the popular will to compete with the United States in the politico-military arena, Russia is no longer an imperial power**, and its central challenge is to recover socioeconomi­cally lest it lose its far eastern territories to China. **Japan’s population is aging and its economy has slowed**; the conventional wisdom of the 1980s that Japan is destined to be the next “superstate” now has the ring of historical irony. **China, even if it succeeds in maintaining high rates of economic growth and retains its internal political stability both are far from certain), will at best be a regional power still con­strained by an impoverished population, antiquated infrastructure, and limited appeal worldwide. The same is true of India**, which addition­ally faces uncertainties regarding its long-term national unity. [P. 2-3]

### CP

**trials good**

Daniel R. **Williams**, Associate Professor, Law, Northeastern University, “After the Gold rush—Part II: Hamdi, the Jury Trial, and Our Degraded Public Sphere,” PENN STATE LAW REVIEW v. 113 n. 1, 20**08**, p. 95-105.

Habermas’s social ontology illuminates what is at stake in our war on- terror jurisprudence, exemplified by cases like Hamdi. Habermas’s theory of communicative action entails a society with two basic spheres, which he calls the “lifeworld” and “system” spheres.169 The lifeworld sphere—a construct Habermas acquired from Edmund Husserl,170 which roughly correlates with, but broadens, the concept of the public sphere— consists of those domains in life that we experience with our family and friends, our cultural life, our political life outside of organized politics (especially party politics), and our voluntary associations.171 The mass media, when performing independently of government and corporate interests, is part of the lifeworld sphere. Communication, participatory dialogue, and persuasion through reasoned discourse, as opposed to coercion, is the idealized medium of the lifeworld sphere.172 Consensus is the animating feature of the lifeworld sphere, which promotes human bonding, community integration, and value-sharing.173 The communicative action of the lifeworld sphere thus correlates with the “answerability” thesis discussed above, the non-instrumentalist understanding of the criminal trial as a process of rational persuasion, where even the accused, as a Kantian rational agent, is obliged to consent to her own punishment. It is that idealized **integration of the accused with the judgment of the community that gives the criminal adjudicatory process its preeminent moral standing** in our Enlightenment culture— preeminent precisely **because that idealized integration is most difficult in matters of crime and punishment.** So, as I have presented it here, **the criminal adjudicatory process**, in its idealized form, **with trial by jury as the centerpiece to** the paradigm of **how the Sovereign justifies and legitimates** the **detention** of the dangerous, **both exemplifies and nourishes the lifeworld** sphere. **Each time a jury deliberates fairly and reaches an honest verdict, it presents itself as a beacon of the lifeworld** sphere, **where rational persuasion** among free and equal persons **is the bedrock value**. Each fair and honest verdict nourishes the lifeworld sphere by **strengthening our commitment to this mode of communicating with each other, even with those who have breached social norms in the most horrific ways. The more awful the crime, the more powerful is the fair and honest verdict** in nourishing the lifeworld sphere. **This** idea perhaps **explains, in** part, why **a criminal trial is** usually **more healing and more strengthening of a community, and hence more desirable, than a resolution through an administrative** **factfinding tribunal. The power of a fair and robust criminal process to heal and strengthen a community is emblematic of the larger point** being suggested here, **that instrumental rationality cannot bind a people together, but instead, when it predominates** and seeps too deep into the culture, **it ruptures what binds individuals, and leads to a passive consumerist individuality that characterizes modern American life.** Those who are familiar with the doctrinal struggles that take place within criminal procedure will understand that **the criminal adjudicatory process is constantly being** tugged out of the lifeworld sphere (where rights are understood as trumps) and **shoved into the system sphere (where the** barometer of fairness is accurate outcomes and where “rights” must purchase their way into existence by promoting reliable outcomes).174 The system sphere is much more recognizable because of how our capitalist economy developed and because of the particular way in which we have cultivated our Enlightenment heritage. The system sphere is characterized by communicative action motivated and prompted by instrumental reasoning; means-ends discourse is the language of the system world.175 The system sphere is the world of governmentality and bureaucracy, where more rigid role-playing dominates how people interact. This is a sphere where language and meaning are instrumental in nature and where people are regarded as atomistic, self-interested, and consumeristic.176 The medium through which the system sphere operates in the United States is money and power. The more complex the society, and the more administrative and bureaucratic, the more important is the role of the system sphere in maintaining social cohesion.177 If that is true, then the Court’s decision in Hamdi, as a cultural document rather than just a narrow jurisprudential one, ought to warn us about an important danger we face in our culture as we proceed further along towards the darkness that is the so-called war on terror. Kant identified two forms of rationality that roughly correlate with Habermas’s lifeworld and system spheres: instrumental rationality situates the reasoning agent in a particular role with a predetermined end; universal reason (what we typically regard as Kantian rationality) frees the reasoning agent to use reason as an end in itself, which is the sort of reasoning process that undergirds the lifeworld sphere and the jury trial.178 In After the Gold Rush, Part I, I endeavor to show that the Hamdi Court takes on a role within the so-called war on terror—a role that seems so utterly natural, given our pax Americana consciousness, that it is virtually unnoticeable—that conceals how that so-called war exists to hasten the development of Guantanamo-style detention.179 The suggestion here is that this role with a predetermined end (winning the “war on terror,” with no articulation of what “winning” means) propels the Court to use instrumental rationality to undercut the vitalizing expression of Kantian rationality. In this sense, Hamdi illuminates how deeply indeed we are at war with ourselves. The implications are far-reaching. The more reductionist our language and the more reductionist our mode of adjudication, governed by instrumental reasoning alone, then the more mechanistic we become, not only in the legal “system” we use, but in the “system” sphere we inhabit, and thus in the consciousness we ultimately formulate. It is a consciousness in which “whatever does not conform to the rule of computation and utility is suspect.”180 The more mechanistic the consciousness, the more total is the power of the Sovereign, with the endgame being one that the world has already experienced, a systemsphere Nazi regime that embraced “the same kind of mechanistic thinking that, in an outwardly very different form, contributed to what most people would consider the glories of modern science.”181 And lest we comfort ourselves with the view that the Holocaust is sui generis, an aberration in a Western culture imbued with an Enlightenment heritage that assures our essential goodness, we would do well to consider the Scottish poet Edwin Muir’s observation: Think of all the native tribes and peoples, all the simple indigenous forms of life which Britain trampled upon, corrupted, destroyed . . . in the name of commercial progress. All these things, once valuable, once human, are now dead and rotten. The nineteenth century thought that machinery was a moral force and would make men better. How could the steam-engine make men better? Hitler marching into Prague is connected with all this. If I look back over the last hundred years it seems to me that we have lost more than we have gained, that what we have lost was valuable, and that what we have gained is trifling, for what we have lost was old and what we have gained is merely new.182 The true spirit of trial by jury is the resistance against a mechanistic modality where means-ends consciousness is preeminent and where violence to accomplish control and domination, sweetened with nicesounding words (freedom, democracy) that have devolved into mere gestures, is too easily unleashed. The tension in criminal adjudication between this resistance and the attractions of instrumental rationality is no intrinsic feature of 9/11, for that tension permeates, if not defines, the entire enterprise of criminal procedure.183 The more crucial the role of the system sphere in maintaining social cohesion, the more penetrating is that sphere’s influence on human consciousness. The system sphere operates on and produces a consciousness beholden to means-ends thinking. This consciousness is peculiarly well-suited to a consumer culture where people are passive and manipulable by corporate and governmental interests. One might, in a very loose sense, correlate the duality of the lifeworld sphere and the system sphere with Jean-Paul Sartre’s distinction between pour-soi (being-for-itself) and en-soi (being-in-itself)—roughly, human existence versus the existence of things.184 The lifeworld sphere promotes a person’s embrace of his pour-soi character of his existence, his capacity for action, decision, and heightened consciousness. The system sphere tugs in the other direction, towards an en-soi consciousness, which is passive and more thing-like185—a consciousness marred by a repression that leads to self-destruction and aggression.186 The system-sphere consciousness loses the ability to appreciate the sacred in life, the non-instrumental ways of being, producing what Arthur Koestler characterized as a “civilization in a cul de sac,” an “everybody-for-himself civilization,”187 with masses who distract themselves with television and dim-witted movies, who understand and respond to the world amoeba-like as a source of pain and pleasure, and who cast about for cheap self-help recipes as a salve for a desiccated spiritual ennui. Role-players through and through, persons within an encompassing system sphere lose the ability to choose their own ends. That particular ability, the ability to express oneself authentically through the choosing of ones own ends in life, is the most redeeming feature of a healthy lifeworld sphere. Thus, it is here where the entwining relationship of the lifeworld and system spheres becomes crucial in critical theory. Habermas speaks of the system sphere as a product of the lifeworld, for the latter is the locus of energy and meaning-making in a society—things that the “system” needs to function.188 But the “system” sphere, that domain of instrumental reasoning where the impulse to control and dominate always percolates, has a greediness that is hard to contain. It can only be contained within a society that takes seriously the nurturing and empowerment of the lifeworld. Like the struggle between Eros and Thanatos, the struggle between the lifeworld and the system spheres always contains the threat that the latter will override— ”colonialize,” to use Habermas’s locution189—the former. Many observers of American culture have warned against this colonization, which continues largely unabated.190 The mass media, properly in the domain of the lifeworld sphere, has been thoroughly hijacked by corporate power; education no longer serves a democratic culture where critical thinking is the pedagogical aim, but instead aims to produce the human wrenches and pliers, the spare parts, or the disposable accoutrements, of an economic machinery that serves narrower and narrower interests. Students entering college today are said to resort more often to cheating than previous generations,191 which is hardly surprising when the prevailing attitude among parents and students alike is focused on getting the credentials so as not to be on the outside looking in (a quintessential system-sphere consciousness), when almost every student shares the same major—upward mobility. More and more decisions that are vital to our health and well-being are delegated to experts who fill slots within vast bureaucratic apparatuses. More and more of life is removed from democratic control—a symptom of the shrinkage of the lifeworld sphere brought on by the colonization of the system sphere. What we experience, as a culture, is greater and greater anomie and alienation, erosion of social bonds, passivity, drug and alcohol abuse, and violence. The triumph of the system sphere and the withering of the lifeworld sphere manifests itself in the cozy bombshelter consciousness, where we had once accepted as rational the construction of livable bomb shelters as a suitable response to the specter of nuclear annihilation because we abandoned the capacity to critique the irrationality of the Cold War system that produced the threat in the first place.192 101 The democratic project within our Enlightenment heritage insists upon a civic maturation where “the people” have the capacity and the willingness to use their own reasoning powers to govern themselves, as opposed to delegate governance to elites, charismatic charlatans, and socalled experts, all of whom ultimately serve narrower and narrower interests of privilege.193 It is hard to defend the view that American society has moved steadily in the direction of this civic maturation. We seem to be moving away from it, with a populace deeply manipulated by a “public relations industry, whose objective is to engineer consent among consumers of mass culture.”194 So here is the grim message that is intricated in the Hamdi narrative. At the very moment when it was most propitious to fortify a noninstrumentalist foundation for our commitment to trial by jury (and the other procedural rights that are associated with our criminal justice process) the Court does the precise opposite.195 It uses means-ends thinking to place a veil of administrative decency over what most now recognize to be a heinous practice in Guantanamo Bay. It endorses a style of thinking and a form of consciousness that is itself a key source of the problem we now find ourselves facing. If it is true, as Habermas presents it, that Islamic fundamentalism, and the terrorism associated with it, operates in a medium of violence arising from a “communicative pathology”—a “spiral of violence” rooted in a “spiral of distorted communication that leads through the spiral of uncontrolled reciprocal mistrust”196—then our juridical response to it, culminating in opinions like Hamdi, replicates that “breakdown of communication” by bracketing the most crucial institutional embodiment of our commitment to rational and publicly transparent communication within our Enlightenment culture—the jury trial—and thereby sapping it of that significance.197 This reinforcing “communicative pathology” in this so-called Age of Terror presents the most pressing challenge to our crippled democracy. The challenge of a healthy democracy is overcoming the very real danger that the form of consciousness that the system sphere operates on and produces—what I’ll abbreviate as the consumer-consciousness, for that captures the passivity and manipulability of the system-sphere person—squeezes out the participatory-dialogue consciousness that is most congenial to the lifeworld sphere.198 Philosopher Albert Borgmann nicely captures the idea here, describing how the Enlightenment project seemingly placed the individual at the center of its ontology, but somewhere along the way led to the individual becoming “little more than an accomplice to a gigantic and systematic enterprise that, though resting on the consent of most people, was given a shape and momentum of its own.”199 The very power of the Enlightenment to produce magnificent technological prosthetics that “subdued and tamed reality” has reduced the individual self to the status of ignoble “consumer.”200 The “consumer” is but an appendage to the system sphere, a mockery of the ennobled, high-functioning individuals who must populate the lifeworld sphere. The state is too beholden to moneyed interest, or to corporate power, to ally itself with promoting the lifeworld.201 So government is not the solution to our cultural ills, but rather is one source of the problem, as it will do nothing to avert the relentless, inexorable expansion of markets and administration. The so-called war on terror, which in my view can be traced to that expansion, has only fueled the state’s alliance with a system-sphere mentality. This may partly explain why “[s]ome say that ours is a world in which real democracy has become impossible, perhaps even unthinkable.”202 In Habermas’s social ontology, Hamdi falls smack in the middle of the system sphere. Yaser Hamdi struggled unsuccessfully to remain in the lifeworld sphere against the state’s quest to extend the system sphere, a quest to intensify the exertion of sovereign power through executive and administrative powers.203 However, the Court cannot reconcile the Sovereign’s desire to erect a simplistic, life-falsifying ontology that includes enemy combatants within a so-called war on terror with the juridical demand for due process merely by constructing a legal regime from certain conceptual remnants picked out of Mathews v. Eldridge.204 The fact remains that Hamdi endorses and exemplifies the deployment of law to pursue a system-sphere logic—a means-ends rationality—of detecting and detaining bare-life beings who are deemed “dangerous.” The Court repudiates trial by jury, which can only be justified ultimately through a lifeworld logic, at the very moment our commitment to it is most acutely tested. While civil libertarians applauded the Court’s refusal to issue the blank check to the Executive, too many have ignored the sinister displacement of the most important expression of what is sacred in our Enlightenment heritage with a mode of reasoning that expresses that heritage’s threatening dark side.205 We falsify the real force of that displacement by marginalizing it to the realm of some state of exception, as opposed to seeing it as a fortification of a certain global ambition on the part of the United States that continues to be unexamined within the juridical realm, despite the fact that what is supposedly sacred in that realm—an entire framework of rights that serve as genuine limits to governmental power—is precisely what must be protected by our courts.206 It is indeed odd to affirm our commitment to the rule of law through the construction of a legal regime, at the hands of all three branches—which is the basis for some scholarly applause for Hamdi—that is itself prompted by a desire to jettison the very legal regime that is supposed to reflect our commitment to the rule of law. This is law as a shell game.207 One would think that the rule of law contains some limit to the Sovereign’s ability to further confine the domain of a particular legal regime, like the criminal justice system, and erect another. One would think that, before punting the issue of what is sacred within a constitutional democracy to the democratic branches of government— Issacharoff and Pildes’s “process approach”208—the Court would note how far we have moved away from the political environment that the Founders knew, gripped now by partisan politics where political party affiliation is “a much more important variable in predicting the behavior of members of Congress vis-à-vis the President than the fact that these members work in the legislative branch.”209 Gripped, indeed, by something far more frightening and ominous: Our Congress has been hijacked by corporate America and its enforcer, the imperial military machine. . . . We have allowed our institutions to be taken over in the name of a globalized American empire that is totally alien in concept to anything our founders had in mind. I suspect it is far too late in the day for us to restore the republic that we lost a half-century ago.210 One would think that, as part of our self-identity as a nation, our highest Court would confront the most elemental question: by what framework of legality may the Sovereign decide that a United States citizen (or anyone, for that matter) is unworthy of the sort of communicative enterprise that our Enlightenment heritage rightly regards to be the sine qua non of respect for human dignity? Hamdi is but a recent example of the Court’s disinclination to investigate who we are as a nation as part of its obligation to preserve the noble facets of our Enlightenment heritage, all in the name of eschewing the dreaded sin of putting the Good before Liberty.211 And so, rather than exemplify the triumph of the rule of law, Hamdi exposes its emptiness.212

**Military is developing chemical soldiers**

**Parasidis 12** (Efthimios, Assistant Professor of Law, Center for Health Law Studies, Saint Louis University School of Law, 2012, "Justice and Beneficence in Military Medicine and Research" Ohio State Law School, Lexis)

**The U**nited **S**tates **military has a long** and checkered **history of experimental research involving human subjects. It has sponsored** clandestine **projects that examined if race influences** one's **susceptibility to mustard gas**, n1 **the extent to which radiation affects combat effectiveness**, n2 a**nd whether psychotropic drugs could be used to** facilitate interrogations or **develop chemical weapons**. n3 In each of these experiments, the government deliberately violated legal requirements and ethical norms that govern human-subjects research and failed to provide adequate follow-up medical care or compensation for those who suffered adverse health effects. In defending its decisions, **the government argued that the studies** and research methods **were necessary to further the strategic advantage of the U**nited **S**tates. n4 **The military's contemporary research program is motivated by the same rationale. As** the U.S. Defense Advanced Research Projects Agency (**DARPA**) **explains, its goal is to "create strategic surprise for U.S. adversaries by maintaining the technological superiority of the U.S. military.**" n5 **Current research sponsored by** DARPA and **the** U.S. Department of Defense (**DoD**) [\*725] **aims to ensure that soldiers have "no physical, physiological, or cognitive limitations**." n6 The research includes drugs that keep soldiers awake for seventy-two hours or more, a nutraceutical that fulfills a soldier's dietary needs for up to five days, a vaccine that eliminates intense pain within seconds, and sophisticated brain-to-computer interfaces. n7 **The military's emphasis on neuroscience is particularly noteworthy**, with recent annual appropriations of over $ 350 million for cognitive science research. n8 **Projects include novel methods of scanning a soldier's brain to ascertain physical, intellectual, and emotional states, as well as the creation of electrodes that can be implanted into a soldier's brain for purposes of neuroanalysis and neurostimulation**. n9 One of the goals of the research is to create a means by which a soldier's subjective experience can be relayed to a central command center, and, in turn, the command center can respond to the soldier's experience by stimulating brain function for both therapeutic and enhancement purposes. n10 For example, the electrodes can be used to activate brain function that can help heal an injury or keep a soldier alert during difficult moments. n11 Another goal is to create a "connected consciousness" whereby a soldier can interact with machines, access information from the Internet, or communicate with other humans via thought alone. n12

**Chemical soldiers cause extinction and destroy value to life**

**Deubel 13** (Paula, Professor Gabriel has held positions at the Brookings Institution, the Army Intelligence School, the Center for the Study of Intelligence at the CIA, and at the Walter Reed Army Institute of Research, Department of Combat Psychiatry, in Washington. 3-25-13, "The Psychopath Wars: Soldiers of the Future?" Suite 101) suite101.com/article/the-psychopath-wars-soldiers-of-the-future-a366977 \*\*evidence is gender modified\*\*

**According to Dr.** Richard A. **Gabriel** in his fascinating book, No More Heroes, **the sociopathic personality can keep his or her psyche intact even under extremely pathological conditions**, while the sane will eventually break down under guilt, fear, or normal human repulsion. Chemical Soldiers Richard A. **Gabriel** (military historian, retired U.S. army officer and former professor at the U.S. Army War College) **describes socio/psychopaths as people without conscience, intellectually aware of what harm they might do to another living being, but unable to experience corresponding emotions. This realization, Gabriel claims, has led the military** establishments of the world **to discover a drug banishing fear and emotion in the soldier by controlling ~~his~~ [their] brain chemistry. In order for soldiers to** ideally **function in modern war ~~he~~ [they] should first be reconstructed to become what could be defined as mentally ill. “We may be rushing headlong into a long, dark chemical night from which there will be no return,”** warns Gabriel. **If these efforts succeed** (as it appears they can) **a chemically induced zombie would be born, a psychopathic-type being who would function** (at least temporarily) **without any human compassion and whose moral conscience would not exist to take responsibility for his actions.** “Man’s **[Humankind’s] nature would be altered forever,” he adds, “and it would cost** him his **[us our] soul.”** As incredible and futuristic as that sounds, the creation of such a drug is apparently already well underway in the world’s military research labs; Gabriel reports such research centers already exist in the United States, Russia, and Israel. Since all emotions are based in anxiety, it appears the eradication of it (perhaps through a variant of the anti-anxiety medication Busbirone) may create soldiers who become more efficient killing machines. Futuristic Warfare **Gabriel writes further about the possible nightmarish future of modern warfare:** “The standards of normal sane men will be eroded, and **soldiers will no longer die for anything understandable or meaningfu**l in human terms. **They will simply die, and even their own comrades will be incapable of mourning their deaths** […] **The battlefields of the future will witness a clash of truly ignorant armies, armies ignorant of their own emotions and even of the reasons for which they fight.”** (Operation Enduring Valor, Richard A. Gabriel) **This would strip a person of** his **core identity and all** of his **humanity.** Whether or not the soldier would knowingly take part in this experience is unknown, but during the 1991 Persian Gulf War, one could almost easily imagine that this conscience-killing pill had already been swallowed. Psychopathic Behavior During War During the 1991 Iraq war a pilot interviewed on European television callously remarked ambushing Iraqis was “like waiting for the cockroaches to come out so we could kill them." Other U.S. pilots compared killing human beings to “shooting turkey” or like “attacking a farm after someone had opened a sheep stall.” This same lack of empathy can be seen in Iraq’s Abu Graib prison scandal (2004) where U.S. soldiers were shown seemingly to enjoy torture, as well as more recent photos of military men posing with dead Afghans (first published in Germany's Der Spiegel magazine); more gruesome photos were later published in Rolling Stone before the U.S. Army censored all the remaining damning material from public view. No More Heroes warns that modern warfare will become increasingly difficult for sane men to endure. The combat punch of man’s weapons has increased over 600% since World War II. These weapons are highly technical. High Explosive Plastic Tracers (HEP-T) send fragments of metal through enemy tanks and into humans at speeds faster than the speed of sound. The Starlight Scope is able to differentiate between males and females by computing differences in body heat given off by pelvic areas. The Beehive artillery ammunition (filled with three-inch long nail-like steel needles) is capable of pinning victims to trees. **The world has a nightmare arsenal of terrible weapons advanced beyond the evolution of our morality.**

**Security K: 2AC**

**c. Statistically proven that heg prevents war**

**Owen ‘11**

John M. Owen Professor of Politics at University of Virginia PhD from Harvard "DON’T DISCOUNT HEGEMONY" Feb 11 [www.cato-unbound.org/2011/02/11/john-owen/dont-discount-hegemony/](http://www.cato-unbound.org/2011/02/11/john-owen/dont-discount-hegemony/)

Andrew **Mack and his colleagues** at the Human Security Report Project are to be congratulated. Not only do they **present a study with a striking conclusion, driven by data, free of theoretical or ideological bias**, but they also do something quite unfashionable: they bear good news. **Social scientists** really are not supposed to do that. Our j**ob** is, if not to be Malthusians, then at least **to point out disturbing trends, looming catastrophes, and the imbecility and mendacity of policy makers**. And then it is to say why, if people listen to us, things will get better. We do this as if our careers depended upon it, and perhaps they do; for if all is going to be well, what need then for us? Our colleagues at Simon Fraser University are brave indeed. That may sound like a setup, but it is not. **I shall challenge neither the data nor the general conclusion that violent conflict around the world has been decreasing in fits and starts since the Second World War. When it comes to violent conflict among and within countries, things have been getting better**. (The trends have not been linear—Figure 1.1 actually shows that the frequency of interstate wars peaked in the 1980s—but the 65-year movement is clear.) Instead I shall accept that Mack et al. are correct on the macro-trends, and focus on their explanations they advance for these remarkable trends. With apologies to any readers of this forum who recoil from academic debates, this might get mildly theoretical and even more mildly methodological. **Concerning international wars, one version of the “nuclear-peace” theory is not in fact laid to rest by the dat**a. It is certainly true that nuclear-armed states have been involved in many wars. They have even been attacked (think of Israel), which falsifies the simple claim of “assured destruction”—that any nuclear country A will deter any kind of attack by any country B because B fears a retaliatory nuclear strike from A. But **the most important “nuclear-peace” claim has been about mutually assured destruction, which obtains between two robustly nuclear-armed states. The claim is that (1) rational states having second-strike capabilities**—enough deliverable nuclear weaponry to survive a nuclear first strike by an enemy—will have an overwhelming incentive not to attack one another; **and (2) we can safely assume that nuclear-armed states are rational**. It follows that states with a second-strike capability will not fight one another. Their colossal atomic arsenals neither kept the United States at peace with North Vietnam during the Cold War nor the Soviet Union at peace with Afghanistan. But the argument remains strong that those arsenals did help keep the United States and Soviet Union at peace with each other. Why non-nuclear **states are** not **deterred from fighting nuclear states** is an important and open question. But in a time when calls to ban the Bomb are being heard from more and more quarters, we must be clear about precisely what the broad trends toward peace can and cannot tell us. They may tell us nothing about why we have had no World War III, and little about the wisdom of banning the Bomb now. **Regarding the downward trend in international war, Professor Mack is friendlier to more palatable theories such as the “democratic peace”** (democracies do not fight one another, and the proportion of democracies has increased, hence less war); **the interdependence or “commercial peace”** (states with extensive economic ties find it irrational to fight one another, and **interdependence has increased**, hence less war); **and the notion that people around the world are more anti-war than their forebears were. Concerning the downward trend in civil wars, he favors theories of economic growth** (where commerce is enriching enough people, violence is less appealing—a logic similar to that of the “commercial peace” thesis that applies among nations) and the end of the Cold War (which end reduced superpower support for rival rebel factions in so many Third-World countries). **These are all plausible mechanisms for peace. What is more, none of them excludes any other; all could be working toward the same end.** That would be somewhat puzzling, however. **Is the world just lucky these days? How is it that an array of peace-inducing factors happens to be working coincidentally in our time**, when such a magical array was absent in the past? **The answer may be that one or more of these mechanisms reinforces some of the others, or perhaps some of them are mutually reinforcing**. Some scholars, for example, have been focusing on whether economic growth might support democracy and vice versa, and whether both might support international cooperation, including to end civil wars. **We would still need to explain how this charmed circle of causes got started, however. And here let me raise another factor, perhaps even less appealing than the “nuclear peace” thesis, at least outside of the United States. That factor is what international relations scholars call hegemony—specifically American hegemony.** A theory that many regard as discredited, but that refuses to go away, is called **hegemonic stability theory**. The theory **emerged in the 1970s in the realm of international political economy. It asserts that for the global economy to remain open—for countries to keep barriers to trade and investment low—one powerful country must take the lead**. Depending on the theorist we consult, “**taking the lead” entails paying for global public goods (keeping the sea lanes open, providing liquidity to the international economy), coercion (threatening to** raise trade barriers or **withdraw military protection from countries that cheat on the rules), or both**. **The theory is skeptical that international cooperation in economic matters can emerge or endure absent a hegemon.** The distastefulness of such claims is self-evident: they imply that it is good for everyone the world over if one country has more wealth and power than others. More precisely, they imply that it has been good for the world that the United States has been so predominant. **There is no obvious reason why hegemonic stability theory could not apply to other areas of international cooperation, including in security affairs, human rights, international law, peacekeeping** (UN or otherwise), and so on. **What I want to suggest here—suggest, not test—is that American hegemony might just be a deep cause of the steady decline of political deaths in the world.**How could that be? After all, the report states that United States is the third most war-prone country since 1945. Many of the deaths depicted in Figure 10.4 were in wars that involved the United States (the Vietnam War being the leading one). Notwithstanding politicians’ claims to the contrary, **a candid look at U.S. foreign policy reveals that the country is as ruthlessly self-interested as any other great power in history**. **The answer is that U.S. hegemony might just be a deeper cause of the proximate causes** outlined by Professor Mack. **Consider economic growth and openness to foreign trade and investment, which** (so say some theories) **render violence irrational**. **American power and policies may be responsible for these in two related ways. First**, at least since the 1940s **Washington has prodded other countries to embrace the market capitalism that entails economic openness and produces sustainable economic growth. The United States promotes capitalism for selfish reasons, of course**: its own domestic system depends upon growth, which in turn depends upon the efficiency gains from economic interaction with foreign countries, and the more the better. During the Cold War most of its allies accepted some degree of market-driven growth. **Second, the U.S.-led western victory in the Cold War damaged the credibility of alternative paths to development**—communism and import-substituting industrialization being the two leading ones—**and left market capitalism the best model.** The end of the Cold War also involved an end to the billions of rubles in Soviet material support for regimes that tried to make these alternative models work. (**It also**, as Professor Mack notes, **eliminated the superpowers’ incentives to feed civil violence in the Third World**.) **What we call globalization is caused in part by the emergence of the United States as the global hegemon**. **The same case can be made**, with somewhat more difficulty, **concerning the spread of democracy. Washington has supported democracy only under certain conditions—the chief one being the absence of a popular anti-American movement** in the target state—**but those conditions have become much more widespread following the collapse of communism**. Thus in the 1980s the Reagan administration—the most anti-communist government America ever had—began to dump America’s old dictator friends, starting in the Philippines. **Today Islamists tend to be anti-American, and so the Obama administration is skittish about democracy in Egypt and other authoritarian Muslim countries. But general U.S. material and moral support for liberal democracy remains strong.**

**Engaging international institutions and evaluating consequences is necessary to realize the alternative**

Anthony **Burke,** Associate Professor of Politics and International Relations, University of New South Wales, "Security Cosmopolitanism," CRITICAL STUDIES IN SECURITY v. 1. n. 1, 20**13**, pp. 13-28.

It might be argued that having to peer long into an uncertain future through the prism of one's choices is an impossible burden. I disagree. Uncertainty is also potentiality; it opens up the potential for more just and secure paths, and the possible effects of particular technological, policy, and strategic choices can often be reasonably predicted through a combination of critical history, social science, public dialogue, and scenario-based planning. **A consistent aim must be to create legal and structural frameworks that work to build security and ward off disastrous outcomes in a systemic fashion. This process will be assisted by a third ethical principle: a principle that can responsibly guide security actions in the face of their future impacts, some of them potentially unknowable. This, in a modification of Kant, one could call a global categorical imperative.** Recall that Kant's categorical imperative of morality stated that one ‘must act only in accordance with that maxim through which you can at the same time will that it be a universal law…act as if the maxim of your action were to become by your will a universal law of nature’ (Kant 2004, 31). The global categorical imperative refines Kant's categorical imperative in two ways. First, its address expands from the individual to collectivities and organizations – governments, NGOs, international organizations, militaries, defence ministries, diplomats, insurgents, and more – to any actor or agency whose activities will affect the security of others (a principle that modifies the criteria for institutional moral responsibility developed in Erskine 2003, 6–8). Second, its scope moves beyond the moral individual wrestling with their duties to take in the world as a whole: actors must consider the systemic context and impact of their actions, work to understand their potential collective consequences, and act collectively to manage those impacts and resolve global insecurities. The global categorical imperative would thus state: act as if both the principles and consequences of your action will become global, across space and through time, and act only in ways that will bring a more secure life for all human beings closer. **We must act as if the principles and consequences of our actions will become global because they are likely to: because norms, ideas, and effects spread, or they lie dormant until they appear at other times** and in other places, and because the complex security processes that actions feed into reverberate widely through space and time; they take on momentum that is difficult to arrest. **The global categorical imperative tests norms and actions against their global consequences and the complex causal chains they feed into. What is the impact on global security if bad norms become commonplace-torture, the violation of human rights, military aggression, proxy warfare, targeted killings, terrorism, corruption, gender or racial discrimination, colonialism, and other great injustices?** Can the world really bear them, and judge itself secure? **The global categorical imperative demands that security actors look into a distant and open future, and take responsibility for it, in the face of the particularly challenging quality that Arendt attributed to action: ‘action has no end.** The process of a single deed can quite literally endure through time until mankind itself has come to an end’ (Arendt 1998, 233). The global categorical imperative asks us to consider what violence, conflict, and insecurity put into the world – grief, radicalization, impoverishment, resentment, pain, trauma, and fear – and then of the myriad ways that the insecurity that manifests them can multiply and mutate. The long-standing security concern with ‘proliferation’ here widens to take in its systemic potentials: proliferation of weapons, doctrines, tactics, norms, ideas, feelings, dilemmas, and consequences. The ethical principles of security cosmopolitanism, then, are not merely normative preferences: they are strategic necessities.

**Turn – traditional security studies incorrectly deflate threats – the affirmative is necessary to reverse this trend**

**Schweller 4**

Randall L. Schweller, Associate Professor in the Department of Political Science at The Ohio State University, “Unanswered Threats A Neoclassical RealistTheory of Underbalancing,” International Security 29.2 (2004) 159-201, Muse

Despite the historical frequency of underbalancing, little has been written on the subject. Indeed, Geoffrey Blainey's memorable observation that for "every thousand pages published on the causes of wars there is less than one page directly on the causes of peace" could have been made with equal veracity about overreactions to threats as opposed to underreactions to them.92 Library **shelves are filled with books on the causes and dangers of exaggerating threats, ranging from studies of domestic politics to bureaucratic politics, to political psychology, to organization theory. By comparison, there have been few studies at any level of analysis or from any theoretical perspective that directly explain why states have with some, if not equal, regularity underestimated dangers to their survival. There may be some cognitive or normative bias at work here. Consider, for instance, that there is a commonly used word, paranoia, for the unwarranted fear that people are, in some way, "out to get you" or are planning to do oneharm. I suspect that just as many people are afflicted with the opposite psychosis: the delusion that everyone loves you when, in fact, they do not even like you. Yet, we do not have a familiar word for this phenomenon. Indeed, I am unaware of any word that describes this pathology (hubris and overconfidence come close, but they plainly define something other than what I have described). That noted, international relations theory does have a frequently used phrase for the pathology of states' underestimation of threats to their survival, the so-called Munich analogy.** The term is used, however, in a disparaging way by theorists to ridicule those who employ it. The central claim is that the naïveté associated with Munich and the outbreak of World War II has become an overused and inappropriate analogy because few leaders are as evil and unappeasable as Adolf Hitler. Thus, the analogy either mistakenly causes leaders [End Page 198] to adopt hawkish and overly competitive policies or is deliberately used by leaders to justify such policies and mislead the public. A more compelling explanation for the paucity of studies on underreactions to threats, however, is the tendency of theories to reflect contemporary issues as well as the desire of theorists and journals to provide society with policy- relevant theories that may help resolve or manage urgent security problems. Thus, born in the atomic age with its new balance of terror and an ongoing Cold War, the field of **security studies has naturally produced theories of and prescriptions for national security that have had little to say about—and are, in fact, heavily biased against warnings of—the dangers of underreacting to or underestimating threats. After all, the nuclear revolution was not about overkill but, as Thomas Schelling pointed out, speed of kill and mutual kill.93 Given the apocalyptic consequences of miscalculation, accidents, or inadvertent nuclear war, small wonder that theorists were more concerned about overreacting to threats than underresponding to them**. At a time when all of humankind could be wiped out in less than twenty-five minutes, theorists may be excused for stressing the benefits of caution under conditions of uncertainty and erring on the side of inferring from ambiguous actions overly benign assessments of the opponent's intentions. The overwhelming fear was that a crisis "might unleash forces of an essentially military nature that overwhelm the political process and bring on a war thatnobody wants. Many important conclusions about the risk of nuclear war, and thus about the political meaning of nuclear forces, rest on this fundamental idea."94 Now that the Cold War is over, we can begin to redress these biases in the literature. In that spirit, I have offered a domestic politics model to explain why threatened states often fail to adjust in a prudent and coherent way to dangerous changes in their strategic environment. The model fits nicely with recent realist studies on imperial under- and overstretch. Specifically, it is consistent with Fareed Zakaria's analysis of U.S. foreign policy from 1865 to 1889, when, he claims, the United States had the national power and opportunity to expand but failed to do so because it lacked sufficient state power (i.e., the state was weak relative to society).95 Zakaria claims that the United States did [End Page 199] not take advantage of opportunities in its environment to expand because it lacked the institutional state strength to harness resources from society that were needed to do so. I am making a similar argument with respect to balancing rather than expansion: incoherent, fragmented states are unwilling and unable to balance against potentially dangerous threats because elites view the domestic risks as too high, and they are unable to mobilize the required resources from a divided society. The arguments presented here also suggest that elite fragmentation and disagreement within a competitive political process, which Jack Snyder cites as an explanation for overexpansionist policies, are more likely to produce underbalancing than overbalancing behavior among threatened incoherent states.96 This is because a balancing strategy carries certain political costs and risks with few, if any, compensating short-term political gains, and because the strategic environment is always somewhat uncertain. Consequently, logrolling among fragmented elites within threatened states is more likely to generate overly cautious responses to threats than overreactions to them. This dynamic captures the underreaction of democratic states to the rise of Nazi Germany during the interwar period.97 In addition to elite fragmentation, I have suggested some basic domestic-level variables that regularly intervene to thwart balance of power predictions.

**Focus on representations sanitizes power structures and doesn’t solve**

Doug **Stokes**, University of Bristol Politics Department, “Gluing the Hats On: Power, Agency, and Reagan’s Office of Public Diplomacy,” PAPER PRESENTED FOR THE BRITISH INTERNATIONAL STUDIES ASSOCIATION, 20**01**, http://web.archive.org/web/20060221025303/http://www.aqnt98.dsl.pipex.com/hats.htm.

In her discursive practices approach, Doty argues that more poststructurally inclined questions as to “how” foreign policy is made possible (that is, an examination of the prior conditions of possibility) provides a more nuanced account of foreign policy formation than questions which ask “why” (that is, why a particular decision or policy was pursued). She rightly argues that “why” questions pre-suppose a discursive matrix, a mode of being and a background of social practices. Furthermore, these “why” questions fail to account for “how these meanings, subjects, and interpretative dispositions are constructed”.66 However, in arguing for the superiority of analyses of possibility conditions, she misses a crucial point and simplifies the very nature of the “how” of foreign policy practice. **Whilst it is important to analyse the discursive conditions of possibility of policy formation, in failing to account for how various discourses were employed and through what institutional mechanisms, how some discourses gained ascendancy and not others, and how social actors intervene in hegemonic struggles to maintain various discourses**, Doty seriously compromises the critical potential of her analysis. By working with a notion of power free from any institutional basis and rejecting a notion of power that “social actors possess and use”,67 **she produces a narrative of foreign policy whereby the differential role of social actors is erased from foreign policy processes and decision making.** For Doty it seems, power resides in discourses themselves and their endless production of and play on meaning, not in the ability on the part of those who own and control the means of social reproduction to manipulate dominant social and political discourses and deploy them institutionally and strategically. **The ability to analyse the use of discourses by foreign policy elites for purposeful ends and their ability to deploy hegemonic discourses within foreign policy processes is lost through a delinking of those elites and discursive production (her “dispersed” notion of power).** Furthermore, Doty assumes that the “kind of power that works through social agents, a power that social actors posses and use” is somehow in opposition to a “power that is productive of meanings, subject identities, their interrelationships and a range of imaginable conduct”. But these forms of power are not mutually exclusive. **Social agents can be both subject to discourse and act in instrumental ways to effect discourse precisely through producing meanings and subject identities, and delineating the range of policy options.** Through her erasure of the link between foreign policy processes and purposeful social agents, **she ends up producing an account of hegemonic foreign policy narratives free from any narrator.**68 **This is particularly problematic because the power inherent within representational practices does not necessarily operate independently from the power to deploy those representations. The power to represent, in turn, does not operate independently from differential access to the principal conduits of discursive production, sedimentation and transmission** (for example, the news media).69 **Thus, Doty’s account fails to provide an adequate analysis of the socially constructed interests that constitute the discursive construction of reality.** As Stuart Hall argues “there are centers that operate directly on the formation and constitution of discourse. The media are in that business. Political parties are in that business. When you set the terms in which the debate proceeds, that is an exercise of symbolic power [which] circulates between constituted points of condensation.”**70 The overall critical thrust of poststructurally inclined IR theorists is blunted by both the refusal to examine or even acknowledge the limits and constraints on social discourses and the denial of any linkage** between identity representations and the interests that may infuse these representations.

**Perm do plan and alt in all other instances**

**Transition from IR structures prevents a new liberal order and causes violence**

Martin **Shaw**, Professor of International Relations and Politics, University of Sussex “The unfinished global revolution: intellectuals and the new politics of international relations,” REVIEW OF INTERNATIONAL STUDIES, v 27, 2001, p. 627-647, http://nationalism.org/library/science/ir/shaw/shaw-ris-2001-27-04.pdf

**The new politics of international relations require us**, therefore, **to go beyond the anti-imperialism of the** intellectual **left** as well as of the semi-anarchist traditions of the academic discipline. We need to recognize three fundamental truths. First, in the twenty-first century people struggling for democratic liberties across the non- Western world are likely to make constant demands on our solidarity. Courageous academics, students and other intellectuals will be in the forefront of these movements. They deserve the unstinting support of intellectuals in the West. Second, the old international thinking in which democratic movements are seen as purely internal to states no longer carries conviction—despite the lingering nostalgia for it on both the American right and the anti-American left. The idea that global principles can and should be enforced worldwide is firmly established in the minds of hundreds of millions of people. This consciousness will become a powerful force in the coming decades. Third, **global state-formation is a fact. International institutions are being extended, and** (like it or not) **they have a symbiotic relation with** the major centre of state power, the increasingly internationalized **Western conglomerate.** **The success of the global-democratic revolutionary wave depends** first on how well it is consolidated in each national context—but second, **on how thoroughly it is embedded in international networks of power,** at the centre of which, inescapably, is the West. From these political fundamentals, strategic propositions can be derived. First, democratic movements cannot regard non-governmental organizations and civil society as ends in themselves. They must aim to civilize local states, rendering them open, accountable and pluralistic, and curtail the arbitrary and violent exercise of power. Second, democratizing local states is not a separate task from integrating them into global and often Western-centred networks. Reproducing isolated local centres of power carries with it classic dangers of states as centres of war.84 **Embedding global norms** and integrating new state centres **with global institutional frameworks are essential to the control of violence**. (To put this another way: the proliferation of purely national democracies is not a recipe for peace.) Third, while the global revolution cannot do without the West and the UN, neither can it rely on them unconditionally. We need these power networks, but we need to tame them too, to make their messy bureaucracies enormously more accountable and sensitive to the needs of society worldwide. This will involve the kind of ‘cosmopolitan democracy’ argued for by David Held.85 It will also require us to advance a global social-democratic agenda, to address the literally catastrophic scale of world social inequalities. This is not a separate problem: social and economic reform is an essential ingredient of alternatives to warlike and genocidal power; these feed off and reinforce corrupt and criminal political economies. Fourth, if we need the global-Western state, if we want to democratize it and make its institutions friendlier to global peace and justice, **we cannot be indifferent to** its **strategic debates**. It matters to develop international political interventions, legal institutions and robust peacekeeping as strategic alternatives to bombing our way through zones of crisis. It matters that international intervention supports pluralist structures, rather than ratifying Bosnia-style apartheid.86 As political intellectuals in the West, we need to have our eyes on the ball at our feet, but we also need to raise them to the horizon. We need to grasp the historic drama that is transforming worldwide relationships between people and state, as well as between state and state. **We need to think about how the turbulence of the global revolution can be consolidated in democratic, pluralist, international networks of both social relations and state authority**. We cannot be simply optimistic about this prospect.Sadly, **it will require repeated** violent political **crises to push** Western and other **governments towards the required restructuring of world institutions**.87 What I have outlined is a huge challenge; **but the alternative is to see the global revolution splutter into** partial **defeat, or degenerate into new genocidal wars—perhaps even nuclear conflicts**. The practical challenge for all concerned citizens, and the theoretical and analytical challenges for students of international relations and politics, are intertwined.

**Rejection alt fails—political action is key**

Pinar **Bilgin**, Professor of International Relations, Bilkent University, Ankara, Regional Security in the Middle East, 20**05**, p. 60-1.

Admittedly, **providing a critique of existing approaches to security**, revealing those hidden assumptions and normative projects embedded in Cold War Security Studies, is only a first step. In other words, from a critical security perspective, **self-reflection, thinking** and writing **are not enough in themselves. They should be compounded by** other forms of practice (that is, **action taken on the ground)**. It is indeed crucial for students of critical approaches to re-think security in both theory and practice by pointing to possibilities for change immanent in world politics and suggesting emancipatory practices if it is going to fulfil the promise of becoming a 'force of change' in world politics. Cognisant of the need to find and suggest alternative practices to meet a broadened security agenda without adopting militarised or zero-sum thinking and practices, students of critical approaches to security have suggested the imagining, creation and nurturing of security communities as emancipatory practices (Booth 1994a; Booth and Vale 1997). Although Devetak's approach to the theory/practice relationship echoes critical approaches' conception of theory as a form of practice, the latter seeks to go further in shaping global practices. The distinction Booth makes between 'thinking about thinking' and 'thinking about doing' grasps the difference between the two. Booth (1997:114) writes: **Thinking about thinking is important, but, more urgently, so is thinking about doing**…. **Abstract ideas about emancipation will not suffice: it is important for Critical Security Studies to engage with the real by suggesting policies, agents, and sites of change, to help humankind**, in whole and in part, to move away from its structural wrongs. **In this sense, providing a critique of existing approaches to security,** revealing those hidden assumptions and normative projects embedded in Cold War Security Studies**, is only a** first (albeit crucial) **step. It is vital for the students** of critical approaches **to re-think security in both theory and practice.**

### DA

**Ruling for the petitioner is inevitable and won’t be derailed – White House and courts agree on pulling back on jurisdiction and justices have common ground stemming from the Kiobel decision**

**Anderson 13** [Kenneth, law professor @ Washington College of Law, American University, and a member of the Hoover task force on national security and law, “Supreme Court to Review Bauman v. DaimlerChrysler”, July 17, <http://opiniojuris.org/2013/07/17/supreme-court-to-review-bauman-v-daimlerchrysler/>]

About the same time (April 2013) that the US Supreme Court released its opinion in Kiobel v. Royal Dutch Petroleum, **the Court** also **granted review of** a Ninth Circuit case, **Bauman** v. DaimlerChrysler. Just ahead of the July 4th weekend, the **Obama** administration **submitted** what John Bellinger, in a lucid post over at Lawfare, describes as **a** “remarkably **strong” amicus brief urging the Court to**¶ **reverse the Ninth Circuit’s decision** in Bauman v. DaimlerChrysler. The Justice Department argued that the Ninth Circuit’s 2011 decision finding personal jurisdiction in California over Daimler AG, a German company, for the actions of a subsidiary in Argentina, was “seriously flawed” and contrary to the Supreme Court’s subsequent 2011 decision in Goodyear. The brief faults the Ninth Circuit for trying to hold a foreign corporation with few contacts to California to “answer in that State for any claim against it, arising anytime, anywhere in the world.”¶ The background to Bauman v. DaimlerChrysler, Bellinger explains, is that in May 2011 a Ninth Circuit panel¶ held that that Daimler AG, a German parent company with no operations or employees in the United States, could be sued under the Alien Tort Statute and the Torture Victim Protection Act (as well as common law and state law) by a group of Argentine nationals for human rights abuses allegedly committed by an Argentine subsidiary in collaborating with the Argentine government during the “Dirty War” in the 1970s, solely on the basis that a different U.S. subsidiary now distributes Mercedes Benz vehicles in the United States. Applying an agency theory, the panel concluded that Daimler AG had sufficient contacts with the state of California by virtue of the actions of its subsidiary Mercedes Benz USA to give California personal jurisdiction over the German parent , even though Mercedes Benz USA had no involvement with the alleged facts in Argentina.¶ I agree with Bellinger that **the likelihood, following Kiobel, is that the Court is moving to restrain jurisdictional assertions by Federal courts**, and is pushing back toward stricter grounding in the traditional bases of jurisdiction by national courts. My own larger, political view is that **this is connected to** a **perception that although** broad assertions of US jurisdiction through such vehicles as **the** **A**lien **T**ort **S**tatute over foreign parties for acts on foreign territory can certainly be framed as **enforc**ing universal **international law** through national courts, **it is better understood as** assertions of something quite different – what I’ve sometimes called **the “law of the hegemon**.” That is an increasingly contested position as a matter of international politics spilling over into international law, and **between the rise of new** great **powers and the** Obama **administration’s political embrace of decline, it** seems to me **unsurprising that** the **Obama** administration would **embrace a more** traditional, much more **restrictive understanding of jurisdiction**.¶ But it also seems **the Court is also** generally **on board with this pull-back**. As Bellinger says, many observers (me included) believe that¶ **the Court would not have accepted the case unless it plans to reverse the Ninth Circuit. Conservative justices are loathe to miss an opportunity to** try to **curb the Ninth Circuit**’s consistent efforts to be a world court, and the more **liberal justices** may have **want**ed **to demonstrate** (as Justice Breyer argued in his concurrence in Kiobel) that **the extraterritorial reach of the Alien Tort Statute can be limited** by other jurisdictional restrictions.¶ I agree. **Despite the obvious clash** of approaches between the Roberts majority and the Breyer minority **in Kiobel, they** do **have** an important **common ground** – an intention **to limit extraterritorial jurisdiction** through a stricter application of the traditional bases of jurisdiction.¶ **The** DaimlerChrysler **case gives** Justice **Breyer an opportunity to put sharper teeth**, if that’s his inclination, **into the** third **alternative test** for finding jurisdiction that **he proposed in Kiobel** – an interest of the United States, including its interest in not harboring persons or assets of the “common enemies of mankind.” Over at Volokh (in a lengthy post that I haven’t cross posted here because it’s mostly background on the ATS that would not interest OJ readers), I suggest that this reproduces the same basic problem as the Sosa test for restricting causes of action: the test is impeccable in theory, but unhelpful in practice. Why?

**Empirics prove the Court doesn’t consider capital**

**Schauer 04** [Frederick, Law prof at Hravard, “Judicial Supremacy and the Modest Constitution”, California Law Review, July, 92 Cal. L. Rev. 1045, ln //uwyo-kn]

Examples of the effects of judicial supremacy hardly occupy the entirety of constitutional law. As the proponents of popular constitutionalism properly claim, it is simply not plausible to argue that all of the Supreme Court's decisions are counter-majoritarian, nor that the Court is unaware of the potential repercussions if a high percentage of its decisions diverges too dramatically from the popular or legislative will. Nevertheless, **there is no indication that the Court uses its vast repository of political capital only to accumulate more** political capital, and in many areas judicial supremacy has made not just a short-term difference, but a long-term difference as well. Perhaps most obvious is school prayer. For over forty years the Court has persisted in its view that organized prayer in public schools is impermissible under the Establishment Clause 59 despite the fact that public opinion is little more receptive to that view now than it was in 1962. 60 So too with flag burning, where the Court's decisions from the late 1960s 61 to the present have remained dramatically divergent from public and legislative opinion. 62 Or consider child pornography, where the Court's decision in Ashcroft v. Free Speech Coalition 63 flew in the face of an overwhelming congressional majority approving the extension of existing child pornography laws to virtual child pornography. Similarly, in the regulation of "indecency," **the Court has spent well over a decade repeatedly striking down acts of Congress that enjoyed overwhelming public and** [\*1059] **congressional support**. 64 Most dramatic of all, however, is criminal procedure, where the Supreme Court's decision in Dickerson v. United States, 65 invalidating a congressional attempt to overrule Miranda v. Arizona, 66 underscores the persistent gap in concern for defendants' rights between Congress and the public, on the one hand, and the Supreme Court, on the other.

**Winners win**

**Law 09** (David, Professor of Law and Professor of Political Science, Washington University in St. Louis, Georgetown Law Journal, March 2009, 97 Geo. L.J. 723; “A Theory of Judicial Power and Judicial Review,” Lexis, rwg)

Part IV of this Article discusses a counterintuitive implication of a coordination-based account of judicial power. **Conventional wisdom suggests that courts secure compliance with their decisions by drawing upon their store of legitimacy, which is undermined by decisions that are unpopular, controversial, or lack intellectual integrity. n25 Part IV argues that precisely the opposite is true: an unpopular or unpersuasive decision can, in fact, enhance a court's power in future cases, as long as it is obeyed. Widespread compliance with a decision that is controversial,** unpopular, or unpersuasive **serves only to strengthen the widely held expectation that others comply with judicial decisions. This expectation, in turn, is self-fulfilling**: those who expect others to comply with a court's decisions will find it strategically prudent to comply themselves, and the aggregate result will, in fact, be widespread compliance. Part IV illustrates these strategic insights--and the Supreme Court's apparent grasp of them--by contrasting [\*734] Bush v. Gore n26 with Brown v. Board of Education n27 and Cooper v. Aaron. n28

**Issues are compartmentalized**

**Redish and Cisar 91** prof law @ Northwestern and Law clerk to US Court of Appeals, 1991

(MARTIN H. REDISH, prof law and public policy @ Northwestern; ELIZABETH J. CISAR, Law Clerk to Chief Judge William Bauer, United States Court of Appeals, Seventh Circuit, Dec 1991, “CONSTITUTIONAL PERSPECTIVES: ARTICLE: "IF ANGELS WERE TO GOVERN" \*: THE NEED FOR PRAGMATIC FORMALISM IN SEPARATION OF POWERS THEORY.”41 Duke L.J. 449)

**Choper's assumption that the judiciary's institutional capital is transferable from structural cases to individual rights cases is no more credible**. Common sense should tell us that **the public's reaction to con- troversial individual rights cases**-for example, cases **concerning abor- tion**,240 school prayer,241 busing,242 **or criminal defendants' rights**243- **will be based largely, if not exclusively, on the basis of its feelings con- cerning those particular issues. It is unreasonable to assume that the public's acceptance or rejection of these individual rights rulings would somehow be affected by anything the Court says about wholly unrelated structural issues.**

**Investor abandonment is empirically denied**

**Herz 13** (Richard, graduate of the University of Virginia School of Law, 1997-1998 Natural Resources Law Institute Fellow at Northwestern School of Law of Lewis and Clark College, "BRIEF FOR AMICUS CURIAE EARTHRIGHTS INTERNATIONAL IN SUPPORT OF RESPONDENTS" 8-26-13, Amicus Brief, EarthRights International) sblog.s3.amazonaws.com/wp-content/uploads/2013/09/11-965-bsac-EarthRights-International.pdf

**Petitioner speculates that the test applied** below **will cause everything from “a proliferation of suits against foreign defendants” to companies “limit[ing] or end[ing] their commercial ties to the U**nited **S**tates.” Pet. Br. at 13, 34-37; see also U.S. Br. at 2. As Respondents point out, these are properly considerations for Congress, not for this Court in determining the meaning of the Constitution. Resp. Br. at 30-31. Regardless, **Petitioner’s predictions are no substitute for evidence. The “sufficiently important” test has been recognized by the court below for over 35 years**, see Wells Fargo & Co. v. Wells Fargo Express Co., 556 F.2d 406, 423 (9th Cir. 1977), **and by the Second Circuit for a decade more.** See Gelfand v. Tanner Motor Tours, Ltd., 385 F.2d 116, 121 (2d Cir. 1967). **If this standard were going to open the courts to a flood of litigation, or if foreign companies were going to decline to invest, that would have long since become apparent. Yet Petitioner provides no evidence that foreign companies have limited their economic contacts with**, for example, **New York or California. Nor can they show any torrent of cases**; their claim that the test applied below can be met in virtually every case is demonstrably false. Pet. Br. at 13. Courts applying that standard have had no difficulty finding jurisdiction to be factually unwarranted. See e.g. Doe v. Unocal Corp., 248 F.3d 915, 928-931 (9th Cir. 2001); Focht v. Sol Melia S.A., 2012 U.S. Dist. LEXIS 5930 at \*\*33-34 (N.D. Cal. Jan. 19, 2012); In re W. States Wholesale Natural Gas Antitrust Litig., MDL 1566, 2009 U.S. Dist. LEXIS 14183 at \*\*35-41 (D. Nev. Feb. 23, 2009).

**Economic decline doesn’t cause war**

**Miller 2k** – Professor of Management, Ottawa (Morris, Poverty As A Cause Of Wars?, http://www.pugwash.org/reports/pac/pac256/WG4draft1.htm, AG)

Thus, these armed conflicts can hardly be said to be caused by poverty as a principal factor when the greed and envy of leaders and their hegemonic ambitions provide sufficient cause. The poor would appear to be more the victims than the perpetrators of armed conflict. It might be alleged that some dramatic event or rapid sequence of those types of events that lead to the exacerbation of poverty might be the catalyst for a violent reaction on the part of the people or on the part of the political leadership who might be tempted to seek a diversion by finding/fabricating an enemy and going to war. According to a study undertaken by Minxin Pei and Ariel Adesnik of **the Carnegie Endowment** for International Peace, there would not appear to be any merit in this hypothesis. **After studying 93 episodes of economic crisis in 22 countries** in Latin America and Asia in the years since World War II **they concluded that** Much of **the conventional** wisdom about **the** political **impact of economic crises may be wrong**... The **severity of economic crisis** - as measured in terms of inflation and negative growth - **bore no relationship to** the **collapse** of regimes. A more direct role was played by political variables such as ideological polarization, labor radicalism, guerilla insurgencies **and** an anti-Communist military... (**In democratic states) such changes seldom lead to** an outbreak of **violence (while**) in the cases of **dictatorships** and semi-democracies, the ruling elites **responded** to crises **by** increasing repression (thereby **using one form of violence to abort another.**

## 1AR

### heg solves war- history

**Two-thousand years of history and robust statistical analysis prove**

William **Wohlforth 8** Daniel Webster Professor of Government, Dartmouth. BA in IR, MA in IR and MPhil and PhD in pol sci, Yale, Unipolarity, Status Competition, and Great Power War, October 2008, World Politics Vol. 61, Iss. 1; pg. 28, 31 pgs, Proquest

Despite increasingly compelling findings concerning the importance of status seeking in human behavior, research on its connection to war waned some three decades ago.38 Yet **empirical studies of the relationship between** both systemic and dyadic **capabilities distributions and war have continued to cumulate. If the relationships implied by the status theory run afoul** of well-established patterns or general historical findings, **then there is little reason to continue investigating them. The clearest empirical implication** of the theory **is that** status **competition is unlikely to cause great power military conflict in unipolar systems. If status competition is an important contributory cause of great power war, then,** ceteris paribus, **unipolar systems should be markedly less war-prone** than bipolar or multipolar systems. And this appears to be the case. As Daniel Geller notes **in a review of the empirical literature: "The only polar structure that appears to influence conflict probability is unipolarity."**39 In addition, a larger number of studies at the dyadic level support the related expectation that narrow capabilities gaps and ambiguous or unstable capabilities hierarchies increase the probability of war.40 These studies are based entirely on post-sixteenth-century European history, and most are limited to the post-1815 period covered by the standard data sets. Though the systems coded as unipolar, near-unipolar, and hegemonic are all marked by a high concentration of capabilities in a single state, these studies operationalize unipolarity in a variety of ways, often very differently from the definition adopted here. **An ongoing collaborative project looking at ancient interstate systems over** the course of **two thousand years suggests** **that** **historical systems** **that come closest to** the definition of unipolarity used here **exhibit precisely the** **behavioral** **properties implied by the theory**. 41 As David C. Kang's research shows, the **East Asian system between 1300 and 1900 was** an unusually stratified **unipolar** structure, **with** an economic and militarily dominant **China interacting with** a small number of geographically proximate, clearly weaker East Asian **states**.42 Status politics existed, but actors were channeled by elaborate cultural understandings and interstate practices into clearly recognized ranks. **Warfare was exceedingly rare, and the major outbreaks occurred precisely when the theory would predict: when China's capabilities waned**, reducing the clarity of the underlying material hierarchy and increasing status dissonance for lesser powers. Much more research is needed, but initial exploration of other arguably unipolar systems-for example, Rome, Assyria, the Amarna system-appears consistent with the hypothesis.43 Status Competition and Causal Mechanisms **Both theory and evidence demonstrate convincingly that competition for status is a driver of human behavior, and social** identity **theory** and related literatures **suggest** the **conditions under which it might come to the fore in great power relations.** **Both the systemic and dyadic findings presented in large-N studies are broadly consistent with the theory**, but they are also consistent with power transition and other rationalist theories of hegemonic war.

### heg sustainable

**Hegemony is sustainable**

-econ/military dominance

-trade measures

-diffusion of tech

Michael Beckley, PhD, “The Unipolar Era: Why American Power Persists and China’s Rise Is Limited,” Dissertation, Columbia University, 2012, p. 4-6.

In the pages that follow, I argue that such **declinist beliefs are exaggerated** and that **the alternative perspective more accurately captures the dynamics of the current unipolar era**. First, I show that **the United States is not in decline. Across most indicators of national power, the United States has maintained, and** in some areas **increased, its lead** over other countries since 1991. **Declinists often characterize the expansion of globalization and U.S. hegemonic burdens as** sufficient **conditions for U.S.** relative **decline. Yet, over the last two decades American economic and military dominance endured while globalization and U.S. hegemony increased significantly.** Second, I find that **U.S. hegemony is profitable** in certain areas. **The U**nited **S**tates **delegates part of the burden of maintaining international security to others while channeling** its own **resources**, and some of its allies resources, **into** enhancing **its** own **military dominance. It imposes punitive trade measures against others while deterring such measures against its own industries. And it manipulates global technology flows** in ways that enhance the technological and military capabilities of itself and allies. Such a privileged position has not provoked significant opposition from other countries. In fact, **balancing against the United States has declined steadily since the end of the Cold War.** Third, I conclude that **globalization benefits the United States more than other countries. Globalization causes innovative activity to concentrate in areas where it is done most efficiently**. Because the United States is already wealthy and innovative, it sucks up capital, technology, and people from the rest of the world. Paradoxically, therefore, **the diffusion of technology around the globe helps sustain a concentration of technological and military capabilities in the U**nited **S**tates.Taken together, **these results suggest that unipolarity will be an enduring feature of international relations, not a passing moment in time, but a deeply embedded material condition that will persist for the foreseeable future**. The United States may decline because of some unforeseen disaster, bad policies, or from domestic decay. But the two chief features of the current international system – **American hegemony and globalization – both reinforce unipolarity.** For scholars, this conclusion implies that the study of unipolarity should become a major research agenda, at least on par with the study of power transitions and hegemonic decline. For policymakers, the results of this study suggest that the United States should not retrench from the world, but rather continue to integrate with the world economy and sustain a significant diplomatic and military presence abroad.

### CP

#### CP spurs shift towards drones- kills coop and causes terror

Robert Chesney, Professor, Law, University of Texas, “Who May Be Held? Military Detention through the Habeas Lens,” BOSTON COLLEGE LAW REVIEW v. 52, 2011, LN.

The convergence thesis describes one manner in which law might respond to the cross-cutting pressures associated with the asymmetric warfare phenomenon—i.e., the pressure to reduce false positives (targeting, capture, or detention of the wrong individual) while also ensuring an adequate capacity to neutralize the non-state actors in question. One must bear in mind, however, that detention itself is not the only system of government action that can satisfy that latter interest. Other options exist, including the use of lethal force; the use of rendition to place individuals in detention at the hands of some other state; the use of persuasion to induce some other state to take custody of an individual through its own means; and perhaps also the use of various forms of surveillance to establish a sort of constructive, loose control over a person (though for persons located outside the United States it is unlikely that surveillance could be much more than episodic, and thus any resulting element of “control” may be quite weak).210¶ From the point of view of the individual involved, all but the last of these options are likely to be far worse experiences than U.S.-administered detention. In addition, all but the last are also likely to be far less useful for purposes of intelligence-gathering from the point of view of the U.S. government.211 Nonetheless, these alternatives may grow attractive to the government in circumstances where the detention alternative becomes unduly restricted, yet the pressure for intervention remains. The situation is rather like squeezing a balloon: the result is not to shrink the balloon, but instead to displace the pressure from

one side to another, causing the balloon to distend along the unconstrained side. So too here: when one of these coercive powers becomes constrained in new, more restrictive ways, the displaced pressure to incapacitate may simply find expression through one of the alternative mechanisms. On this view it is no surprise that lethal drone strikes have increased dramatically over the past two years, that the Obama administration has refused to foreswear rendition, that in Iraq we have largely (though not entirely) outsourced our detention operations to the Iraqis, and that we now are progressing along the same path in Afghanistan.212¶ Decisions regarding the calibration of a detention system—the¶ management of the convergence process, if you will—thus take place in the shadow of this balloon-squeezing phenomenon. A thorough policy review would take this into account, as should any formal lawmaking process. For the moment, however, our formal law-making process is not directed at the detention-scope question. Instead, clarification and development with respect to the substantive grounds for detention takes place through the lens of habeas corpus litigation.

**Prosecuting terrorists solves drone shift**

Craig **Whitlock 13**, Washington Post, "Renditions continue under Obama, despite due-process concerns", January 1, articles.washingtonpost.com/2013-01-01/world/36323571\_1\_obama-administration-interrogation-drone-strikes

The three European men with Somali roots were arrested on a murky pretext in August as they passed through the small African country of Djibouti. But the reason soon became clear when they were visited in their jail cells by a succession of American interrogators.¶ U.S. agents accused the men — two of them Swedes, the other a longtime resident of Britain — of supporting al-Shabab, an Islamist militia in Somalia that Washington considers a terrorist group. Two months after their arrest, the prisoners were secretly indicted by a federal grand jury in New York, then clandestinely taken into custody by the FBI and flown to the United States to face trial.¶ The secret arrests and detentions came to light Dec. 21 when the suspects made a brief appearance in a Brooklyn courtroom.¶ The men are the latest example of how the Obama administration has embraced rendition — the practice of holding and interrogating terrorism suspects in other countries without due process — despite widespread condemnation of the tactic in the years after the Sept. 11, 2001, attacks.¶ Renditions are taking on renewed significance because the administration and **Congress have not reached agreement on a consistent legal pathway for apprehending terrorism suspects** overseas **and bringing them to justice**.¶ Congress has thwarted President Obama’s pledge to close the military prison at Guantanamo Bay, Cuba, and has created barriers against trying al-Qaeda suspects in civilian courts, including new restrictions in a defense authorization bill passed last month. The White House, meanwhile, has resisted lawmakers’ efforts to hold suspects in military custody and try them before military commissions.¶ **The** impasse and **lack of detention options**, critics say, **have led to a de facto policy** under which the administration finds it easier **to kill terrorism suspects**, **a key reason for the surge of U.S. drone strikes in Pakistan, Yemen and Somalia**. Renditions, though controversial and complex, represent one of the few alternatives.

### K: Ontology 1AR

#### alt=worse metaphysical relation- radical evil

Steven B. **Smith**, Alfred Cowles Professor of Political Science and Master of Branford College, Yale University, READING LEO STRAUSS: POLITICS, PHILOSOPHY, JUDAISM, 20**06**, p. 130.

At another point, Strauss suggests that not historicism as such, but Heidegger's virtually exclusive concern with Being blinded him to the real facts of tyranny. His subordination of political philosophy to fundamental ontology created its own forms of moral blindness. It was Heidegger's own curious "forgetfulness" of politics and the primacy of political philosophy that led him to minimize, if not deny altogether, the atrocities of the Holocaust. For Heidegger, the Holocaust remained fundamentally a consequence of technology, not a moral and political problem.126 It was Heidegger's indifference to moral phenomena that Strauss ultimately finds inexcusable. In the final sentence of his reply to Kojeve [at last fully restored to the English edition), Strauss attacks Heidegger for moral cowardice in the face of tyranny and for lacking the courage to face the consequences of his own philosophy. Here Strauss makes common cause with Kojeve for their close attention to the primacy of the political: Hut we have always been constantly mindful of it [i.e., the relation between tyranny and philosophy|. For we both apparently turned away from Being to Tyranny because we have seen that those who lack the courage to face the issue of Tyranny, who, therefore et humiliter serviebant et superbe dominabantur, were forced to evade the issue of Being as well, precisely because they did nothing but talk of Being. Strauss seems to suggest here that it was Heidegger's concern for Being, rather than beings, that led to his indifference to the fact of tyranny. At issue is the very abstractness of Heidegger's articulation of the problem of Being. The extreme artificiality of regarding human beings under the rubric of an anonymous historical Dasein could not but anesthetize him to the fate and suffering of actual historical persons. 1 am not finally convinced that Heidegger's Nazi problem is intimately connected to his analysis of Being, but Strauss's critique enables us to see the high price of Heidegger's forgetfulness of the political.

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**Global violence decreasing – civilization has become more moral**

**Pinker**, Johnstone Family Professor at Harvard University, **‘7** (Steven, March 19, “A History of Violence” The New Republic, lexis)

In sixteenth-century Paris, a popular form of entertainment was cat-burning, in which a cat was hoisted in a sling on a stage and slowly lowered into a fire. According to historian Norman Davies, "[T]he spectators, including kings and queens, shrieked with laughter as the animals, howling with pain, were singed, roasted, and finally carbonized." Today, such sadism would be unthinkable in most of the world. This change in sensibilities is just one example of perhaps the most important and most underappreciated trend in the human saga: **Violence has been in decline over long stretches of history,** and today **we are** probably **living in the most peaceful moment of our species' time on earth**. In the decade of Darfur and Iraq, and shortly after the century of Stalin, Hitler, and Mao, **the claim that violence has been diminishing may seem** somewhere between **hallucinatory** and obscene. **Yet recent studies** that seek to quantify the historical ebb and flow of violence **point to exactly that conclusion**. Some of the evidence has been under our nose all along. Conventional history has long shown that, in many ways, **we have been getting kinder and gentler. Cruelty as entertainment, human sacrifice to indulge superstition**, slavery as a labor-saving device, conquest as the mission statement of government, **genocide as a means of acquiring real estate, torture and mutilation as routine punishment**, the death penalty for misdemeanors and differences of opinion, **assassination as** the mechanism of **political succession, rape as the spoils of war**, pogroms as outlets for frustration, homicide as the major form of conflict resolution--**all were unexceptionable features of life for most of human history. But, today, they are rare to nonexistent in the West, far less common elsewhere than they used to be**, concealed when they do occur, **and widely condemned when they are brought to light.** At one time, these facts were widely appreciated. They were the source of notions like progress, civilization, and man's rise from savagery and barbarism. Recently, however, **those ideas have come to sound corny, even dangerous. They seem to demonize people in other times and places,** license colonial conquest and other foreign adventures, and conceal the crimes of our own societies. The doctrine of the noble savage--the idea that humans are peaceable by nature and corrupted by modern institutions--pops up frequently in the writing of public intellectuals like Jose Ortega y Gasset ("War is not an instinct but an invention"), Stephen Jay Gould ("Homo sapiens is not an evil or destructive species"), and Ashley Montagu ("Biological studies lend support to the ethic of universal brotherhood"). But, now that social scientists have started to count bodies in different historical periods, they have discovered that the romantic theory gets it backward: **Far from causing us to become more violent, something in modernity and its cultural institutions has made us nobler**. To be sure, any attempt to document changes in violence must be soaked in uncertainty. In much of the world, the distant past was a tree falling in the forest with no one to hear it, and, even for events in the historical record, statistics are spotty until recent periods. Long-term trends can be discerned only by smoothing out zigzags and spikes of horrific bloodletting. And the choice to focus on relative rather than absolute numbers brings up the moral imponderable of whether it is worse for 50 percent of a population of 100 to be killed or 1 percent in a population of one billion. Yet, despite these caveats, a picture is taking shape. **The decline of violence is** a fractal phenomenon, **visible at the scale of** millennia, centuries, decades, and **years. It applies over several orders of magnitude of violence, from genocide to war to rioting to homicide to the treatment of children and animals**. And it appears to be a worldwide trend, though not a homogeneous one. The leading edge has been in Western societies, especially England and Holland, and there seems to have been a tipping point at the onset of the Age of Reason in the early seventeenth century. At the widest-angle view, one can see a whopping difference across the millennia that separate us from our pre-state ancestors. Contra leftist anthropologists who celebrate the noble savage, **quantitative body-counts--such as the proportion of prehistoric skeletons with axemarks and embedded arrowheads** or the proportion of men in a contemporary foraging tribe who die at the hands of other men--**suggest that pre-state societies were far more violent than our own.** It is true that raids and battles killed a tiny percentage of the numbers that die in modern warfare. But**, in tribal violence, the clashes are more frequent, the percentage of**

**men in the population who fight is greater, and the rates of death per battle are higher.** According to anthropologists like Lawrence Keeley, Stephen LeBlanc, Phillip Walker, and Bruce Knauft, these factors combine to yield population-wide rates of death in tribal warfare that dwarf those of modern times. If the wars of the twentieth century had killed the same proportion of the population that die in the wars of a typical tribal society, there would have been two billion deaths, not 100 million. Political correctness from the other end of the ideological spectrum has also distorted many people's conception of violence in early civilizations--namely, those featured in the Bible. This supposed source of moral values contains many celebrations of genocide, in which the Hebrews, egged on by God, slaughter every last resident of an invaded city. **The Bible also prescribes death by stoning as the penalty for a long list of nonviolent infractions, including idolatry, blasphemy, homosexuality, adultery, disrespecting one's parents, and picking up sticks on the Sabbath.** The Hebrews, of course, were no more murderous than other tribes; one also finds frequent boasts of torture and genocide in the early histories of the Hindus, Christians, Muslims, and Chinese. At the century scale, it is hard to find quantitative studies of deaths in warfare spanning medieval and modern times. Several historians have suggested that there has been an increase in the number of recorded wars across the centuries to the present, but, as political scientist James Payne has noted, this may show only that "the Associated Press is a more comprehensive source of information about battles around the world than were sixteenth-century monks." **Social histories of the West provide evidence of numerous barbaric practices that became obsolete in the last five centuries, such as slavery, amputation, blinding, branding, flaying, disembowelment, burning at the stake, breaking on the wheel, and so on.** Meanwhile, for another kind of violence--homicide--the data are abundant and striking. The criminologist Manuel Eisner has assembled hundreds of homicide estimates from Western European localities that kept records at some point between 1200 and the mid-1990s. **In every country** he **analyzed, murder rates declined steeply**--for example, from 24 homicides per 100,000 Englishmen in the fourteenth century to 0.6 per 100,000 by the early 1960s. On the scale of decades, comprehensive data again paint a shockingly happy picture: **Global violence has fallen steadily since the middle of the twentieth century**. According to the Human Security Brief 2006, **the number of battle deaths in interstate wars has declined from more than 65,000** per year in the 1950s **to less than 2,000** per year in this decade. In Western Europe and the Americas, **the second half of the century saw a steep decline in the number of wars, military coups, and deadly ethnic riots**. Zooming in by a further power of ten exposes yet another reduction. **After the cold war, every part of the world saw a steep drop-off in state-based conflicts, and those that do occur are more likely to end in negotiated settlements** rather than being fought to the bitter end. Meanwhile, according to political scientist Barbara Harff, between 1989 and 2005 the number of campaigns of mass killing of civilians decreased by 90 percent. The decline of killing and cruelty poses several challenges to our ability to make sense of the world. To begin with, **how could so many people be so wrong** about something so important? Partly, it's because of a cognitive illusion: We estimate the probability of an event from how easy it is to recall examples. Scenes of carnage are more likely to be relayed to our living rooms and burned into our memories than footage of people dying of old age. Partly, **it's an intellectual culture that is loath to admit that there could be anything good about the institutions of civilization and Western society**. Partly, it's the incentive structure of the activism and opinion markets: **No one ever attracted followers** and donations **by announcing that things keep getting better.** And part of the explanation lies in the phenomenon itself. **The decline of violent behavior has been paralleled by a decline in attitudes that tolerate or glorify violence,** and often the attitudes are in the lead. As deplorable as they are, **the abuses at Abu Ghraib and the lethal injections of a few murderers in Texas are mild by the standards of atrocities in human history. But, from a contemporary vantage point, we see them as signs of how low our behavior can sink, not of how high our standards have risen.** The other major challenge posed by the decline of violence is how to explain it. A force that pushes in the same direction across many epochs, continents, and scales of social organization mocks our standard tools of causal explanation. The usual suspects--guns, drugs, the press, American culture--aren't nearly up to the job. Nor could it possibly be explained by evolution in the biologist's sense: Even if the meek could inherit the earth, natural selection could not favor the genes for meekness quickly enough. In any case, **human nature has** not changed so much as to have **lost its taste for violence.** Social psychologists find that at least 80 percent of people have fantasized about killing someone they don't like. And modern humans still take pleasure in viewing violence, if we are to judge by the popularity of murder mysteries, Shakespearean dramas, Mel Gibson movies, video games, and hockey. What has changed, of course, is people's willingness to act on these fantasies. The sociologist Norbert Elias suggested that **European modernity accelerated a "civilizing process" marked by increases in self-control, long-term planning, and sensitivity to the thoughts and feelings of others.** These are precisely the functions that today's cognitive neuroscientists attribute to the prefrontal cortex. But this only raises the question of why humans have increasingly exercised that part of their brains. No one knows why our behavior has come under the control of the better angels of our nature, but there are four plausible suggestions. The first is that Hobbes got it right. Life in a state of nature is nasty, brutish, and short, not because of a primal thirst for blood but because of the inescapable logic of anarchy. Any beings with a modicum of self-interest may be tempted to invade their neighbors to steal their resources. The resulting fear of attack will tempt the neighbors to strike first in preemptive self-defense, which will in turn tempt the first group to strike against them preemptively, and so on. This danger can be defused by a policy of deterrence--don't strike first, retaliate if struck--but, to guarantee its credibility, parties must avenge all insults and settle all scores, leading to cycles of bloody vendetta. These **tragedies can be averted by a state with a monopoly on violence, because it can inflict disinterested penalties that eliminate the incentives for aggression, thereby defusing anxieties about preemptive attack and obviating the need to maintain a hair-trigger propensity for retaliation.** Indeed, Eisner and Elias attribute the decline in European homicide to the transition from knightly warrior societies to the centralized governments of early modernity. And, today**, violence continues to fester in zones of anarchy**, such as frontier regions, failed states, collapsed empires, and territories contested by mafias, gangs, and other dealers of contraband. Payne suggests another possibility: that the critical variable in the indulgence of violence is an overarching sense that life is cheap. When pain and early death are everyday features of one's own life, one feels fewer compunctions about inflicting them on others. As technology and economic efficiency lengthen and improve our lives, we place a higher value on life in general. A third theory, championed by Robert Wright, invokes the logic of **non-zero-sum games**: scenarios **in which two agents can each come out ahead if they cooperate, such as trading goods,** dividing up labor, or sharing the peace dividend that **comes from laying down** their **arms**. As people acquire know-how that they can share cheaply with others and develop technologies that allow them to spread their goods and ideas over larger territories at lower cost, their incentive to cooperate steadily increases, because other people become more valuable alive than dead. Then there is the scenario sketched by philosopher Peter Singer. Evolution, he suggests, bequeathed people a small kernel of empathy, which by default they apply only within a narrow circle of friends and relations. Over the millennia, people's moral circles have expanded to encompass larger and larger polities: the clan, the tribe, the nation, both sexes, other races, and even animals. The circle may have been pushed outward by expanding networks of reciprocity, a la Wright, but it might also be inflated by the inexorable logic of the golden rule: **The more one knows and thinks about other living things, the harder it is to privilege one's own interests over theirs.** The empathy escalator may also be powered by cosmopolitanism, in which journalism, memoir, and realistic fiction make the inner lives of other people, and the contingent nature of one's own station, more palpable--the feeling that "there but for fortune go I." Whatever its causes, **the decline of violence has profound implications. It is not a license for complacency**: We enjoy the peace we find today because people in past generations were appalled by the violence in their time and worked to end it, and so we should work to end the appalling violence in our time. Nor is it necessarily grounds for optimism about the immediate future, since the world has never before had national leaders who combine pre-modern sensibilities with modern weapons. But **the phenomenon does force us to rethink our understanding of violence.** Man's inhumanity to man has long been a subject for moralization. With the knowledge that something has driven it dramatically down, we can also treat it as a matter of cause and effect**. Instead of asking, "Why is there war?" we might ask, "Why is there peace?" From the likelihood that states will commit genocide to the way that people treat cats, we must have been doing something right.** And it would be nice to know what, exactly, it is.