## 2AC

**Terror DA: A2 “Intel”**

#### Prosecution helps with intel gathering

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

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

**Terror DA: A2 “Released Terrorists”**

#### Proportion of released prisoners who return to militant activity is very low

Laura **Pitter**, senior counterterrorism researcher, Human Rights Watch, Statement before the Senate Judiciary Committee, 7--31--**13**, http://www.hrw.org/news/2013/07/31/written-statement-human-rights-watchs-laura-pitter-us-senate-committee-judiciary, accessed 8-15-13.

Those seeking to keep Guantanamo open often cite concerns that detainees released from Guantanamo may engage in terrorism. The Office of the Director of National Intelligence (DNI) has stated that some detainees released from Guantanamo then become involved in terrorist activities, though the number is disputed and the government refuses to publicly release the information on which it is basing those claims. The DNI claims that about 17 percent of the approximately 600 people released from the facility over the past 12 years are “confirmed” and 13 percent are “suspected” of having engaged in terrorism after their release.[1] However, independent, credible analyses of those figures[2] by researchers at the New America Foundation indicate the actual percentage is closer to 2.8 percent “confirmed” and 3.5 percent “suspected” of engaging in militant activities against US targets and another 2.5 percent against non-US targets.[3] This amounts to 8.8 percent confirmed or suspected to have taken part in any form of militant activity anywhere in the world.[4] Even if the government figures were true, clearly the vast majority of people released from Guantanamo have not engaged in terrorism; in fact, it's well below the 68 percent[5] recidivism rate found by a Bureau of Justice Statistics study of recidivism after general criminal convictions in 15 states.[6] There are many people in the world who may commit crimes in the future, but the United States has not locked them up indefinitely. The bottom line is that the administration needs to assume some risk that those released may become involved in terrorism – even though that risk is objectively low. And that risk must be balanced against the harm to national security that occurs every day that Guantanamo remains open.

### Court Stripping DA: 2AC

#### Congress won’t retaliate

Baum 04 (Lawrence, professor of political science at the Ohio State University and holds a doctorate from the University of Wisconsin. A widely recognized authority on the court system, Baum is the author of *Judges and Their Audiences: A Perspective on Judicial Behavior* (2006), *American Courts: Process and Policy,* 5th Edition (2001) and *The Puzzle of Judicial Behavior* (1997), as well as numerous articles on topics such as the implementation of court decisions, change in Supreme Court policies, and interaction between the Supreme Court and Congress., The Supreme Court, Eight Edition, CQ Press, 2004, page 215-216 cabal//wej)

Despite such moves, it is striking how little use Congress has made of its enormous powers over the Court over the past century. Of the many actions that members of Congress threatened against the conservative Court in the early part of the twentieth century, culminating in Franklin Roosevelt's Court-packing plan, none was carried out.61 All the attacks on the liberal Court in the second half of the century resulted in nothing more serious than the salary "punishment" of 1964 and 1965. Why has Congress been so hesitant to use its powers, even at times when most members are unhappy about the Court's direction? Several factors help to explain this hesitancy. First, there are always some members of Congress who agree with the Court's policies and lead its defense. Second, serious forms of attack against the Court, such as impeachment and reducing its jurisdiction, seem illegitimate to many people. Finally, when threatened with serious attack, the Court sometimes retreats to reduce the impetus for congressional action. For these reasons, the congressional bark at the Supreme Court has been a good deal worse than its bite.

### Legal Counsel CP: 2AC

#### Multiple congressional restrictions block—only court action solves

Rosenberg 12 (Carol, 1-9-12, "Congress, rules keep Obama from closing Guantanamo Bay" The Miami Herald) www.mcclatchydc.com/2012/01/09/135179/congress-rule-keep-obama-from.html#.UjXQNcasiSo

The last two prisoners to leave the U.S. detention center at Guantánamo Bay were dead. On February 1, Awal Gul, a 48-year-old Afghan, collapsed in the shower and died of an apparent heart attack after working out on an exercise machine. Then, at dawn one morning in May, Haji Nassim, a 37-year-old man also from Afghanistan, was found hanging from bed linen in a prison camp recreation yard. In both cases, the Pentagon conducted swift autopsies and the U.S. military sent the bodies back to Afghanistan for traditional Muslim burials. These voyages were something the Pentagon had not planned for either man: Each was an “indefinite detainee,” categorized by the Obama administration’s 2009 Guantánamo Review Task Force as someone against whom the United States had no evidence to convict of a war crime but had concluded was too dangerous to let go. Today, this category of detainees makes up 46 of the last 171 captives held at Guantánamo. The only guaranteed route out of Guantánamo these days for a detainee, it seems, is in a body bag. The responsibility lies not so much with the White House but with Congress, which has thwarted President Barack Obama’s plans to close the detention center, which the Bush administration opened on Jan. 11, 2002, with 20 captives. Congress has used its spending oversight authority both to forbid the White House from financing trials of Guantánamo captives on U.S. soil and to block the acquisition of a state prison in Illinois to hold captives currently held in Cuba who would not be put on trial — a sort of Guantánamo North. The latest defense bill adopted by Congress moved to mandate military detention for most future al Qaida cases. The White House withdrew a veto threat on the eve of passage, and then Obama signed it into law with a “signing statement” that suggested he could lawfully ignore it. On paper, at least, the Obama administration would be set to release almost half the current captives at Guantánamo. The 2009 Task Force Review concluded that about 80 of the 171 detainees now held at Guantánamo could be let go if their home country was stable enough to help resettle them or if a foreign country could safely give them a new start. But Congress has made it nearly impossible to transfer captives anywhere. Legislation passed since Obama took office has created a series of roadblocks that mean that only a federal court order or a national security waiver issued by Secretary of Defense Leon Panetta could trump Congress and permit the release of a detainee to another country.

**Constraint is meaningless**

**HARVARD LAW REVIEW**, “Developments in the Law: Presidential Authority,” v. 125, 20**12**, p. 2089-2090.

The recent history of signing statements demonstrates how public opinion can effectively check presidential expansions of power by inducing executive self-binding. It remains to be seen, however, if this more restrained view of signing statements can remain intact, for it relies on the promises of one branch — indeed of one person — to enforce and maintain the separation of powers. To be sure, President Obama’s guidelines for the use of signing statements contain all the hallmarks of good executive branch policy: transparency, accountability, and fidelity to constitutional limitations. Yet, **in practice, this** apparent **constraint** (however well intentioned) **may amount to little more than voluntary self-restraint**. 146 **Without a formal institutional check, it is unclear what mechanism will prevent the next President** (or President **Obama** himself) **from reverting to** the allegedly abusive **Bush-era practices**. 147 Only time, and perhaps public opinion, will tell.

**Especially true with Obama and OLC**

Jacob **Sullum**, senior editor, Reason, “War Counsel: Obama Shops for Libya Advice that Lets Him Ignore the Law,” TOWNHALL, 6—22—**11**, http://townhall.com/columnists/jacobsullum/2011/06/22/war\_counsel\_obama\_shops\_for\_libya\_advice\_that\_lets\_him\_ignore\_the\_law/page/full/

During the Bush administration, when the Justice Department's Office of Legal Counsel got into the habit of rationalizing whatever the president wanted to do, Indiana University law professor Dawn **Johnsen dreamed of an OLC that was willing to "say no to the president**." It turns out **we have such an OLC now. Unfortunately,** as Barack Obama's defense of his unauthorized war in Libya shows, **we do not have a president who is willing to take no for an answer**. While running for president, Obama criticized George W. Bush's lawless unilateralism in areas such as torture, warrantless surveillance and detention of terrorism suspects. "The law is not subject to the whims of stubborn rulers," he declared in 2007, condemning "unchecked presidential power" and promising that under his administration there would be "no more ignoring the law when it is inconvenient." Obama's nomination of Johnsen to head the OLC, although ultimately blocked by Senate Republicans, was consistent with this commitment; his overreaching responses to threats ranging from terrorism to failing auto companies were not. Last week, by rejecting the OLC's advice concerning his three-month-old intervention in Libya's civil war, Obama sent the clearest signal yet that he is no more inclined than his predecessor to obey the law. Under the War Powers Act, a president who introduces U.S. armed forces into "hostilities" without a declaration of war must begin withdrawing those forces within 60 days unless Congress authorizes their deployment. Hence the OLC, backed by Attorney General Eric Holder and Defense Department General Counsel Jeh Johnson, told Obama he needed congressional permission to continue participating in NATO operations against Libyan dictator Moammar Gadhafi's forces. While **the president can override** the **OLC**'s **advice,** that rarely happens. "Under normal circumstances," The New York Times noted, "the office's interpretation of the law is legally binding on the executive branch." In this case, rather than follow the usual procedure of having the OLC solicit opinions from different departments and determine which best comported with the law, **Obama considered the office's position along with others more congenial to the course of action he had already chosen**. **Obama preferred the advice of White House Counsel** Robert **Bauer and State Department legal adviser** Harold **Koh,** who argued that American involvement in Libya, which includes bombing air defenses and firing missiles from drone aircraft as well as providing intelligence and refueling services, does not amount to participating in "hostilities." A report that the Obama administration sent Congress says, "U.S. operations do not involve sustained fighting or active exchanges of fire with hostile forces, nor do they involve the presence of U.S. ground troops, U.S. casualties or a serious threat thereof, or any significant chance of escalation into a conflict characterized by those factors." All that is irrelevant, since the War Powers Act says nothing about those criteria. According to the administration's logic, Congress has no say over the president's use of the armed forces as long as it does not involve boots on the ground or a serious risk of U.S. casualties — a gaping exception to the legislative branch's war powers in an era of increasingly automated and long-distance military action. As Harvard law professor Jack Goldsmith, a former head of the OLC, told the Times, "The administration's theory implies that the president can wage war with drones and all manner of offshore missiles without having to bother with the War Powers Resolution's time limits."

#### Bureaucracy prevents implementation of an executive order

Rosenberg 12 (Carol, 1-9-12, "Congress, rules keep Obama from closing Guantanamo Bay" The Miami Herald) www.mcclatchydc.com/2012/01/09/135179/congress-rule-keep-obama-from.html#.UjXQNcasiSo

Lastly, Obama’s executive order to close Guantánamo was undone by the burdensome bureaucracy of the task force, which sought to sort each captive’s Bush-era file. Each detainee’s case file contained competing and often contradictory assessments from the Defense Intelligence Agency, the Pentagon’s Office of Military Commissions, the Department of Justice, and myriad other offices, bogging down the review process. Time ran out before the task force could settle on a master plan to move the detainees out of Guantánamo in time for Obama’s one-year deadline. Now it’s the war court — the military commissions that the Bush administration created to hear war crimes cases at Guantánamo, which were reformed by Obama through legislation — or nothing. And only two cases, both proposing military executions, are currently slated to go before the Guantánamo tribunals: those for the 9/11 attacks and for the October 2000 bombing of the U.S.S. Cole. To date, the war court has produced six convictions, four of them through guilty pleas in exchange for short sentences designed to get the detainees out of Guantánamo within a couple of years. Still, in the Kafkaesque world of military detention, neither an acquittal at the war court nor even a completed sentence guarantees that a detainee gets to leave Guantánamo. Once convicted, a captive is separated from the other detainees to serve his sentence on a different cellblock. (Four are there today, only one serving life.) Once that sentence is over, as both the Bush and Obama administrations have outlined detention policy, the convict can then be returned to the general population at Guantánamo as an “unprivileged enemy belligerent.” The doctrine has yet to be challenged. But if Ibrahim al Qosi, a 51-year-old Sudanese man convicted for working as a cook in an al Qaida compound in Kandahar, does not go home when his sentence expires this year, his lawyers are likely to turn to the civilian courts to seek a release order. Guantánamo has largely faded from public attention. There is little reason to expect it to emerge as an issue in the upcoming presidential campaign season beyond the usual finger-pointing and slogans: Obama may blame Congress for cornering him into keeping the captives at Guantánamo rather than moving them somewhere else, and his opponents will no doubt argue that, by virtue of his wanting to close the facility in the first place, Obama is soft on terrorism. (“My view is we ought to double it,” Mitt Romney said about Guantánamo in a 2007 debate.) Meanwhile, the detention center enters its 11th year on January 11. Guantánamo is arguably the most expensive prison camp on earth, with a staff of 1,850 U.S. troops and civilians managing a compound that contains 171 captives, at a cost of $800,000 a year per detainee. Of those 171 prisoners, just six are facing Pentagon tribunals that may start a year from now after pretrial hearings and discovery. Guantánamo today is the place that Obama cannot close.

**Executive orders are not enforced and will get rolled back**

Richard Wolf, citing Paul Light, professor of public service, “Obama Uses Executive Powers to Get Past Congress,” USA TODAY, 10—27—11, www.usatoday.com/news/washington/story/2011-10-26/obama-executive-orders/50942170/1, accessed 7-18-12.

On all three initiatives, Obama used his executive authority rather than seeking legislation. That limited the scope of his actions, but it enabled him to blow by his Republican critics. "It's the executive branch flexing its muscles," presidential historian and author Douglas Brinkley says. "President Obama's showing, 'I've still got a lot of cards up my sleeve.'" The cards aren't exactly aces, however. Unlike acts of Congress, executive actions cannot appropriate money. And they **can be wiped off the books** by courts, Congress or the next president. Thus it was that on the day after Obama was inaugurated, he revoked one of George W. Bush's executive orders limiting access to presidential records. On the very next day, Obama signed an executive order calling for the Guantanamo Bay military detention facility in Cuba to be closed within a year. **It remains open** today. Harry Truman's federal seizure of steel mills was invalidated by the Supreme Court. George H.W. Bush's establishment of a limited fetal tissue bank was blocked by Congress. Bill Clinton's five-year ban on senior staff lobbying former colleagues was lifted eight years later — by Clinton. "**Even presidents sometimes reverse themselves**," says Paul Light, a professor of public service at New York University. "Generally speaking, it's more symbolic than substantive."

#### 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 United States 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 and 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 United States. 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 meaningful 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.

### Defer: A2 “Enforcement”

#### Executives follow court decisions

Bradley and Morrison 13 (Curtis, Professor of Law, Duke Law School, and Trevor, Professor of Law, Columbia Law School , “Presidential Power, Historical Practice, And

Legal Constraint” Duke Law Scholarship Repository) http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5451&context=faculty\_scholarship

Insisting on a sharp distinction between the law governing presidential authority that is subject to judicial review and the law that is not also takes for granted a phenomenon that merits attention—that Presidents follow judicial decisions.118 That assumption is generally accurate in the United States today. To take one relatively recent example, despite disagreeing with the Supreme Court’s determination in Hamdan v. Rumsfeld that Common Article 3 of the Geneva Conventions applies to the war on terror, the Bush Administration quickly accepted it.119 But the reason why Presidents abide by court decisions has a connection to the broader issue of the constraining effect of law. An executive obligation to comply with judicial decisions is itself part of the practice-based constitutional law of the United States, so presidential compliance with this obligation may demonstrate that such law can in fact constrain the President. This is true, as we explain further in Part III, even if the effect on presidential behavior is motivated by concerns about external political perceptions rather than an internal sense of fidelity to law (or judicial review).120

### Legitimacy DA: 2AC

#### Multiple controversies thump—the Court is taking an activist stance

Blum 9-5 (Bill, 9-5-13, "Supreme Court Preview: A Storm Is on the Horizon" Truth Dig) www.truthdig.com/report/page2/supreme\_court\_preview\_a\_storm\_is\_on\_the\_horizon\_20130905/

They’re b-a-c-k! As the war clouds gather over Washington in preparation for airstrikes against Syria, the nine justices who sit on the Supreme Court have returned from summer break and are preparing to kick up a legal storm of their own as they resume their quest to radically transform federal law and the Constitution. To be sure, there are four moderate to liberal voices on the high court, led by the frail but courageous Ruth Bader Ginsburg, who at the tender age of 80 has become the conscience of the tribunal. But with precious few detours, the court has become, in Ginsburg’s words, “one of the most activist courts in history.” So, as the court readies for the commencement of oral arguments next month in a brand new term, what can we expect from the gang of nine? Here are three cases slated for decisions on the merits with the potential to cause lasting social and political harm, and three more with sufficient weight to be added to the docket as the current term unfolds: Affirmative Action (Schuette v. Coalition to Defend Affirmative Action) From the great state of Michigan, set for oral argument on Oct. 15, comes this new challenge to the consideration of race in public higher-education admissions programs. Last term, the court dealt a mild setback to colleges that have chosen to adopt race-conscious programs when it remanded a case involving the University of Texas’ admissions plan back to a federal appellate panel for reconsideration under a more stringent and hard-to-meet constitutional test (Fisher v. Texas). This time, the question before the court is far more extensive: whether a state, by a legislative act or popular initiative, can prohibit affirmative action even if a university system chooses on its own to implement or maintain a race-based program. In 2006, Michigan voters ratified Proposition 2, which outlawed such programs. The U.S. Court of Appeals for the 6th Circuit, however, subsequently declared the proposition unconstitutional. Advertisement Currently, the country is sharply divided on the issue, as California and five other states besides Michigan, accounting for 28 percent of college admissions nationwide, have also outlawed the consideration of race. The 9th Circuit Court of Appeals, unlike the 6th, has upheld California’s ban. The Schuette case will resolve the split. Since liberal Justice Elena Kagan has recused herself from deliberations due to conflicts arising from her tenure as solicitor general, the court’s five conservatives appear to have the perfect vehicle to drive another nail into the heart of race-conscious plans. The conservative majority may not be ready to adopt the ever-vitriolic Justice Clarence Thomas’ characterization of affirmative action as a latter-day form of Jim Crow, but in the end, it is likely to vote alongside Thomas, who in the cruelest of ironies was a beneficiary of affirmative action at Yale Law School. Environmental Protection (Environmental Protection Agency v. EME Homer City Generation) At the request of the Obama administration, the American Lung Association and environmental groups, the court has agreed to take up a federal appellate ruling that had invalidated the Environmental Protection Agency’s Cross-State Air Pollution rule, which sought to enforce the Clean Air Act by setting much-needed limits on nitrogen oxides and sulfur dioxide emissions from coal-fired power plants in 28 eastern states. Although some observers see the court’s decision to hear the EME case as a sign of support for the EPA, the Roberts court has a dismal record on environmental protection, aligning itself time and again on the side of corporate interests and polluters. In 2008, in Exxon v. Baker, the court voted 5-3 to reduce the punitive damages awarded to the victims of the Valdez oil spill from $2.5 billion to $500 million, a mere pittance of the oil giant’s annual profits, leaving more than 30,000 people whose livelihoods and community were destroyed by the disaster with a sum completely inadequate to make up for their losses. Last term, the court continued its beneficence toward big business, ruling unanimously that farmers could not use Monsanto’s patented genetically altered soybeans to create new seeds without paying the company a hefty fee. Expect more of the same going forward, this time on behalf of coal companies. Federal Election Law (McCutcheon v. Federal Election Commission) Dubbed by some commentators as Citizens United 2.0, this mean-spirited piece of litigation was generated by the Republican National Committee and Alabama businessman Scott McCutcheon. Together, they seek to overturn current federal law that limits the aggregate amount of money any single person can contribute directly to candidates for federal office, political parties and political committees to $123,000 in any two-year election cycle. As the New York-based Brennan Center for Justice has argued in an amicus (friend of the court) brief filed in the case, the aggregate contribution limits are designed to inhibit political corruption. But as the Roberts court demonstrated with the original Citizens United ruling in 2010, it views campaign contributions as a form of individual expression protected under the First Amendment. In 2012, the court signaled its intention to elevate this perverse interpretation of the First Amendment to a new level of rigidity as it overturned a 100-year-old Montana law that prohibited corporations from spending funds to influence the outcome of state elections (American Tradition Partnership v. Bullock). In the United States of Corporate America, under the judicial stewardship of Chief Justice John Roberts, money talks, as loudly as possible. Three Cases Vying to Make the A-List Abortion Rights (Cline v. Oklahoma Coalition for Reproductive Justice) In 2011, Oklahoma enacted a law that would impose severe restrictions on the use of RU-486 (also known as mifepristone or Mifeprex) and any other “abortion-inducing drugs” as alternatives to pregnancy-terminating surgery. Although the Roberts court had agreed in June to resolve the law’s validity, it later sent the case back to the Oklahoma Supreme Court to clarify the meaning of the statute. If the clarifications are delivered by January, the Roberts court may schedule the case for oral argument before the current term ends. Although the case lacks the potential to overturn Roe v. Wade, a resolution in favor of Oklahoma could have major implications for the 16 states that have passed similar laws, sending yet another signal that Roe’s days may be numbered. Voting Rights (League of Women Voters of North Carolina et al. v. North Carolina, United States v. Texas) Within days of the court’s decision last term in Shelby County v. Alabama, gutting the historic Voting Rights Act, several states, including Texas and North Carolina, reinstated various voting suppression schemes—including gerrymandered redistricting plans, harsh voter ID requirements and new curbs on same-day voting—that never would have passed muster under the act’s now eviscerated “preclearance” provisions. Those provisions required states and localities with a legacy of electoral discrimination to obtain advance approval from the Justice Department or the courts before implementing new voting laws and procedures. Despite the broad sweep of Shelby’s holding, the Justice Department quickly brought suit to declare the Texas maneuvers unconstitutional while the ACLU initiated an action to block the North Carolina measures. Both suits rely on Section 2 of the Voting Rights Act, which prohibits discrimination generally in elections, as well as the rarely invoked Section 3 of the act, which permits a court to order continuous monitoring of a jurisdiction found to have engaged in intentional discrimination in much the same fashion as the old preclearance procedures. Given the novelty of the Section 3 claims and in view of the Supreme Court’s skepticism about the continued need for federal election oversight and the high political stakes involved in the struggle over voter suppression, one or both cases stand a strong chance of being added to the docket.

#### Legitimacy isn’t tied to individual decisions

Ura 13 (Joseph Daniel, Ph.D. Political Science, University of North Carolina at Chapel Hill (2006). Assistant Professor Department of Political Science Texas A&M, 6-20-13, "Supreme Court Decisions in Favor of Gay Marriage Would Not Go ‘Too Far, Too Fast’" Pacific Standard) www.psmag.com/politics/supreme-court-tk-60537/

AN ARRAY OF RESEARCH in political science—due substantially to James Gibson of Washington University, Gregory Caldeira of Ohio State University, and their collaborators—shows that the Supreme Court’s legitimacy is not dependent on agreement on individual questions of policy between the Court and the public. Instead, judicial legitimacy rests on the public’s perception that the Court uses fair procedures to make principled decisions—as compared to the strategic behavior of elected legislators. These perceptions are supported by a variety of powerful symbols representing the close association between the Supreme Court and the law and its impartiality, such as black robes, the image of blind justice, and the practice of calling the members “justices.” The public’s response to the Supreme Court’s decision in Bush v. Gore, which resolved the contested presidential election in 2000, is perhaps the classic example of the nature and influence of the Court’s legitimacy. Despite the bitter partisan conflict that precipitated the case, the enormous political implications of the decision, the blatant partisan divisions on the Court, and the harsh tone of the dissenting justices, the best evidence available indicates that the public’s loyalty to the Supreme Court did not diminish as a result of the case. In particular, neither Democrats nor African-Americans significantly turned against the Court after the decision.

#### Legitimacy is resilient

Gibson 06 (James L. Professor of Government & Professor of African, June, 15, “The Legitimacy of the United States Supreme Court in a Polarized Polity,” Pa24, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=909162)

Conventional political science wisdom holds that contemporary American politics is characterized by deep and profound partisan and ideological divisions. Unanswered is the question of whether those divisions have spilled over into threats to the legitimacy of the United States Supreme Court. Since the Court is often intimately involved in making policy in many policy areas that divide Americans, including the contested 2000 presidential election, it is reasonable to hypothesize that loyalty toward the institution depends upon policy and/or ideological agreement and partisanship. Using data stretching from 1987 through 2005, the analysis reveals that Court support has not declined. Nor is it connected to partisan and ideological identifications. Instead, support is embedded within a larger set of relatively stable democratic values. Institutional legitimacy may not be obdurate, but it does not seem to be caught up in the divisiveness that characterizes so much of American politics - at least not at present.

#### 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

#### Public supports the plan

Reuters 13 (Quoting John McCain, Republican Senator, 6-9-13, "Support growing to close Guantanamo prison: senator" Reuters) www.reuters.com/article/2013/06/09/us-usa-obama-guantanamo-idUSBRE9580BL20130609

Republican Senator John McCain said on Sunday there is increasing public support for closing the military prison at Guantanamo Bay, Cuba, and moving detainees to a facility on the U.S. mainland. "There's renewed impetus. And I think that most Americans are more ready," McCain, who went to Guantanamo last week with White House chief of staff Denis McDonough and California Democratic Senator Dianne Feinstein, told CNN's "State of the Union" program. McCain, a senior member of the Senate Armed Services Committee, said he and fellow Republican Senator Lindsey Graham, of South Carolina, are working with the Obama administration on plans that could relocate detainees to a maximum-security prison in Illinois. "We're going to have to look at the whole issue, including giving them more periodic review of their cases," McCain, of Arizona, said. President Barack Obama has pushed to close Guantanamo, saying in a speech in May it "has become a symbol around the world for an America that flouts the rule of law."

#### That boosts legitimacy

Durr et al 2K (Robert, “Ideological Divergence and Public Support for the Supreme Court,”, American Journal of Political Science, Volume 44, No. 4, October, p. 775)

We expect our improve measure of aggregate Supreme Court support will be useful to other students of the Court. Unlike support for other institutions, interest in Supreme Court support is driven not by a hypothesized electoral linkage, but by the expectation that the Court necessarily depends on public support as a source of institutional legitimacy and political capital. The level of support the Court enjoys has long been viewed as a crucial resource, both by helping engender a positive response to the Court’s decisions and by encouraging the successful execution of its proclamations, necessarily carried out by other actors and institutions (Caldeira 1986).

### Defer Add-On: Environment 2AC

#### Deference allows the military to destroy the environment

John S. Applegate, Professor @ Indiana Law School, Ecology Law Quarterly, 1999

The defense establishment is not exempted from any of the major environmental laws (in fact, when Congress directly addresses the question, it uniformly includes defense activities), but federal courts have allowed it to behave as though it were exempt (pp. 16-19). This is the aspect of the intersection of the environment and national security that Dycus finds most troubling. The excessive deference given by the federal judiciary to claims of defense necessity is a recurrent theme in National Defense and the Environment (e.g., pp. 16-19, 60, 72, 154-58), and it drives Dycus' central proposal for reform. He argues that the courts should require consistently defense agencies to follow existing environmental rules and procedures to the same extent as private entities. Procedural approaches to environmental regulation, like NEPA, will fail unless the actions in question receive careful judicial scrutiny and unless there is a credible threat that the activity will be halted if the procedures are not followed. Moreover, uncritical deference undermines the thorough and public examination of the competing claims that form the substantive content of a procedural approach like NEPA.

#### The environment is invincible

#### Easterbrook 95, Distinguished Fellow, Fullbright Foundation (Gregg, A Moment on Earth pg 25)

IN THE AFTERMATH OF EVENTS SUCH AS LOVE CANAL OR THE Exxon Valdez oil spill, every reference to the environment is prefaced with the adjective "fragile." "Fragile environment" has become a welded phrase of the modern lexicon, like "aging hippie" or "fugitive financier." But the notion of a fragile environment is profoundly wrong. Individual animals, plants, and people are distressingly fragile. The environmentthat contains themis close to indestructible.The living environment of Earth has survived ice ages; bombardments of cosmic radiation more deadly than atomic fallout; solar radiation more powerful than the worst-case projection for ozone depletion; thousand-year periods of intense volcanism releasing global air pollution far worse than that made by any factory; reversals of the planet's magnetic poles; the rearrangement of continents; transformation of plains into mountain ranges and of seas into plains; fluctuations of ocean currents and the jet stream; 300-foot vacillations in sea levels; shortening and lengthening of the seasons caused by shifts in the planetary axis; collisions of asteroids and comets bearing far more force than man's nuclear arsenals; and the years without summer that followed these impacts.Yet hearts beat on, and petals unfold still.Were the environment fragile it would have expired many eons before the advent of the industrial affronts of the dreaming ape. Human assaults on the environment, though mischievous, are pinpricks compared to forces of the magnitude nature is accustomed to resisting.

### Debt Ceiling DA: 2AC

#### No way to avoid either debt limit crisis or shutdown—the tea party has taken over the House and Boehner won’t take it back

Poughkeepsie Journal, 9/20, (“Democratic chief: Congress 'hurtling' toward shutdown”, 9/20/2013, http://www.poughkeepsiejournal.com/article/20130920/NEWS03/130920004/Democratic-chief-Congress-hurtling-toward-shutdown-)

Democratic National Chairwoman Debbie Wasserman Schultz says Congress is "hurtling" toward a fiscal crisis in the next few weeks over financing the government and raising the debt ceiling. The Republicans who control the House of Representatives have "been engaged in an internecine battle and an internal civil war, and the Tea Party has won," the Florida congresswoman said in an interview with Capital Download, USA TODAY's weekly newsmaker series. "It's evident that we're headed toward government shutdown or a default, one or the other. It's kind of like deciding which car you're going to take." The so-called continuing resolution to finance governmental operations starting Oct. 1 has become entangled in demands by some Republicans that it include a provision cutting funding for implementation of the Affordable Care Act, an idea flatly rejected by the White House and the Democrats who control the Senate. The initial House vote on the measure is expected Friday. Later in October, Congress will face an urgent request by the Treasury Department to raise the debt limit or risk default. Wasserman Schultz says a shutdown would be bad for the country and the economy — but it might be politically good for Democrats. "If the government shuts down, it will be the Republicans that caused it," she said. Does she ever feel a little sorry for the beleaguered House speaker, John Boehner? "You know, I don't feel sorry for him," she said, saying he "signed up for this job." If he was willing to rely on Democratic votes to pass the budget bill — rather than insisting on getting a majority of Republican votes — "I'm pretty confident we could actually find a compromise and a way out of this." Instead, "John Boehner has stopped leading and is letting the tail wag the dog, with the Tea Party controlling the direction they'll go." Wasserman Schultz, 46, was relentlessly on message as she was interviewed in her DNC office, which sports a view of the Capitol and is scattered with photographs of her husband and three children. When she succeeded Virginia Sen. Tim Kaine as head of the DNC two years ago, the office featured brown walls. She had them painted two shades of pink "to show there was a woman in charge." The DNC headquarters is just a little over a mile north of the Washington Navy Yard, site of Monday's shooting rampage. She "sadly" agreed with the conventional wisdom that there was no prospect of passing tighter gun laws in the wake of the incident, which killed a dozen victims. "You have too many Republican members of Congress who ... are petrified of being challenged by the NRA (National Rifle Association) and having their resources poured in against them in re-election," she said. "They have essentially ceded their own vote on common-sense gun-safety laws to the NRA."

**Capital irrelevant to fiscal battles**

Ed **Kilgore**, “Obama’s ‘Political Capital’,” WASHINGTON MONTHRLY, Political Animal, **9—5**—13, http://www.washingtonmonthly.com/political-animal-a/2013\_09/obamas\_political\_capital046735.php

An even hoarier meme than the no-win-war complaint is naturally emerging in Washington as everyone recalibrates his or her assumptions about how the year will end: **Obama’s limited “political capital” that he might have used on the fiscal front will now be “spread thin”** or “stretched to the breaking point” by the need to make a case for military action against Syria. Politico’s Brown and Sherman give it a full airing today: President Barack Obama faced a heavy lift in Congress this fall when his agenda included only budget issues and immigration reform. Now with Syria in the mix, the president appears ready to spend a lot of the political capital that he would have kept in reserve for his domestic priorities. A resolution authorizing the use of force in Syria won’t make it through the House or the Senate without significant cajoling from the White House. That means Obama, who struggles to get Congress to follow his lead on almost everything, could burn his limited leverage convincing Democrats and Republicans to vote for an unpopular military operation that even the president says he could carry out with or without their approval. Now this may be true with respect to congressional Democrats if Obama ultimately needs them to swallow hard and accept some fiscal deal to avoid a government shutdown or debt default. But **seriously, what sort of “political capital” does the president have with congressional Republicans**? They committed to a policy of total obstruction from the day he became president and picked up right where they had left off the day he was re-elected. **Obama’s only options** in dealing with the GOP **are to offer them cover for compromise when he must and hand them an anvil to speed their self-destruction when he can.** But **he has no “political capital” to spend**.

#### Obama will make a push to close Gitmo in the coming months

Kummer 8-28 (Luke Jerod, congressional correspondent for The Washington Diplomat, 8-28-13, "Will Congress Put Obama’s Push To Shutter Gitmo on Lockdown?" Washington Diplomat) www.washdiplomat.com/index.php?option=com\_content&view=article&id=9528:will-congress-put-obamas-push-to-shutter-gitmo-on-lockdown&catid=1506&Itemid=428

Prasow also said she has long believed that Obama would make a strong push to close Guantanamo at this point in his second term because he retains significant political capital and the 2014 midterm elections are still more than a year away. How much force he can muster, and how much risk he can stand, remains to be seen. But advocates like Prasow can take heart in knowing that Obama's legacy is tightly bound to this issue — something he seemed keenly aware of during his speech at the National Defense University. "I know the politics are hard," Obama told the audience. "But history will cast a harsh judgment on this aspect of our fight against terrorism and those of us who fail to end it."

#### Court don’t link—gitmo-specific

Stimson 9

[09/25/09, Cully Stimson is a senior legal fellow at the Heritage Foundation and an instructor at the Naval Justice School former American career appointee at the Pentagon. Stimson was the Deputy Assistant Secretary of Defense for Detainee Affairs., “Punting National Security To The Judiciary”, http://blog.heritage.org/2009/09/25/punting-national-security-to-the-judiciary/]

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

#### The decision won’t be announced till spring, after the DA

SCOTUS 12 (Supreme Court of the United States, 7/25/2012 “The Court and Its Procedures,”

http://www.supremecourt.gov/about/procedures.aspx, Accessed 7/25/2012, rwg)

The Court maintains this schedule each Term until all cases ready for submission have been heard and decided. In May and June the Court sits only to announce orders and opinions. The Court recesses at the end of June, but the work of the Justices is unceasing. During the summer they continue to analyze new petitions for review, consider motions and applications, and must make preparations for cases scheduled for fall argument.

**No economic impact-2011 and 2012 fights prove**

Paul **Vigna, 9/20** Debt Ceiling, Act III: Will the Market Notice at All This Time?, WSJ, <http://blogs.wsj.com/moneybeat/2013/09/20/debt-ceiling-act-iii-will-the-market-notice-at-all-this-time/>

So there you have it. The Republicans want to defund Obamacare. The president vows not to negotiate. Another **government shut down** looms. It all **sounds serious** enough. **You wonder**, though, **if the market will pay attention at all. Even going back to the shutdown in the 1990s, these political battles have had little lasting effect on markets. The 2011 debt-ceiling fight** came with a real-world effect: the specter of squabbling factions in Washington, and their decision to put politics above probity, **spurred S&P to downgrade U.S. debt**, for the first time in history. **The move sent shock waves through the markets, but ironically saw investors flee into the very debt instrument that had just been downgraded: U.S. Treasurys**. Congress hit the debt ceiling in May of 2011, and the Treasury Department started deploying gimmicks to keep the government under the ceiling until a budget agreement could be reached. An 11-hour deal was reached on Aug. 2. On Aug. 5, S&P downgraded U.S. debt. The markets started falling on July 22, with the Dow at 12681, and kept falling through Aug. 19, when it hit 10818. It wasn’t until February when the index retook the July level. **In the 2012 fiscal-cliff fight, Congress didn’t reach an 11th-hour deal. It reached a 13th-hour deal**. **The deadline this time was Dec. 31, and Congress missed it. But the general outlines of a plan were in place, and Congress passed the American Taxpayer Relief Act the next day, on Jan. 1.** President **Obama signed it into law on Jan. 2. The market paid almost no attention to the fight this time**. The Dow had been rising from mid-November into Dec. 21, when it stood at 13191. It dipped to 12938 on Dec. 28, and then started rising again. Even during the 1995-1996 budget fight, when the government actually did shut down, the Dow went from 4870 on Nov. 10, 1995, to 5184 on Jan. 19, 1996, at the beginning of the dot-com boom. So far, 2013 has been a banner year for stocks, and the bulls just got a big reprieve from the Federal Reserve, which decided against cutting its stimulus program by any amount (for the time being). **You wonder if the market will even worry about the squabbling down in Washington this time**.

**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.**

**Detentions at Bagram will prevent post-2014 Afghanistan troop presence**

**Sisk 13** (Richard, 1-4-13, "Afghan Jail a 'Tougher Problem Than Guantanamo'" Military.com) www.military.com/daily-news/2013/01/04/afghan-jail-a-tougher-problem-than-guantanamo.html

**With more than five times the** number of **prisoners than** the detention facility on **Guantanamo** Bay, **the U.S. jail next to Bagram Airfield is** just one of many factors **affecting the degree to which U.S. forces remain in Afghanistan after 2014.** President Obama and Afghan President Hamid Karzai will meet next week in the White House to discuss the fate of the prison, the pace of America’s withdrawal, and the size of the U.S. presence in Afghanistan after 2014. “The first thing is to establish how many will stay in Afghanistan” after 2014, said George Little, the chief Pentagon spokesman. Karzai has warned that he will not approve a troop agreement unless all Afghans in U.S. custody are turned over to his jurisdiction. A complicating factor is the U.S. custody of suspects who allegedly committed insider attacks against allied troops. These attackers, who often posed as Afghan police officers and soldiers, killed U.S. and allied troops at a record rate in 2012. The number of prisoners detained at the high-security, $60 million detention facility is a tightly protected figure. Afghan officials, prison administrators, International Security Assistance Force spokesmen, and senior Pentagon officials all have repeatedly declined comment in recent weeks on how many are held at the facility located next to Bagram Airfield. U.S. Combined Joint Interagency Task Force 435 is the unit assigned to run the detention facility. “As a matter of operational security, we do not discuss numbers of detainees transferred or currently held by CJIATF 435 or U.S. Forces,” said Col. Thomas Collins, an ISAF spokesman in Kabul. However, President Obama discussed the numbers in December. In one of his required periodic reports to Congress under the War Powers Act , Obama wrote on Dec. 14 that “United States Armed Forces are detaining in Afghanistan approximately 946 individuals under the Authorization for the Use of Military Force (Public Law 107-40) as informed by the law of war.” The vast majority of the 946 are detained by CJIATF 435. A small number of recently captured prisoners are kept at local commands until they can be transferred to the detention facility next to Bagram I n the Parawan province. Obama’s report did not state whether the prisoners were captured on the battlefield or were taken into custody for other reasons. “We do not talk about individual detainees and we do not discuss the provenance” of the prisoners’ presence in custody, said Lt. Col. Todd Brasseale, a Pentagon spokesman. Since 2005, Karzai has demanded that prisoners held by the U.S. and the NATO coalition be turned over to Afghan jurisdiction -- with the exception of foreign nationals who were captured in military operations. About one-third of the 946 in Parwan are thought to be foreign nationals, mostly Pakistani but also Yemenis and Saudis, Brasseale said. Karzai has said that he does not want custody of the foreign nationals. In November, Karzai called for "urgent actions” by the U.S. to release the prisoners in Parawan to his control. He said in a statement that the U.S. did not "have the right to run prisons and detain Afghan nationals in Afghanistan." **Karzai threatened to cancel the already difficult negotiations on a post-2014 presence for U.S. forces. A main sticking point to those negotiations involves “status of forces” -- whether U.S. troops in the residual force would be immune from Afghan law.** Iraq’s refusal to provide immunity forced the U.S. to remove military forces from Iraq. Karzai’s spokesman, Aimal Faizi, has said that **more than 70 detainees held by the U.S. under “administrative detention” have already been cleared of wrongdoing by Afghan courts. He said the U.S. had no justification for continuing to hold them since administrative detention was not recognized under Afghan law. "There are some prisoners found innocent by the court who are still in custody,” Faizi said.** “This act is a serious breach of a memorandum of understanding." The U.S. has not faced the same issue at Guantanamo, where the host nation of Cuba has not claimed jurisdiction of the alleged terrorists held on the naval base. Under U.S. court rulings and acts of Congress, many of the 166 prisoners at Naval Station Guantanamo Bay have been cleared to return to their own countries or to a third-party nation willing to take them pending agreements on their continued monitoring and detention. The rest of the prisoners at Gitmo, where the first 20 captives in the war on terror arrived in January 2002, can be tried before a military commission. There is no such prospect for the prisoners next to Bagram. “We have never held a military commission in Afghanistan and we don’t expect there will be one,” Brasseale said. A senior Pentagon official, speaking on background, said “our goal, eventually, is to turn all of the prisoners over” to the Afghans, but the official added that “there is not a mechanism currently in place” for achieving the goal. The Parwan prisoner impasse has left the U.S. in a legal and political bind under international law, the Geneva Conventions and the law of armed conflict, said Gary Solis, a former Marine Corps Judge Advocate General. “We are simply disregarding agreements with the Afghans,” said Solis, an adjunct professor at Georgetown University who also teaches the law of war at West Point. “There is no guidebook for this, no precedent for this situation.” For years, Parwan was a key factor in U.S. worldwide intelligence gathering operations, as interrogators grilled insurgents captured on the battlefield for information on Al Qaeda and the war on terror. In August 2009, Army Gen. Stanley McChrystal, then the coalition commander as head of the International Security Assistance Force, said Parwan was at risk of becoming a “strategic liability” for the U.S. McChrystal said the extrajudicial detentions at Bagram were eroding Afghan support for the allies. Under a Memorandum of Understanding between the U.S. and the Afghan governments reached last March, the U.S. was to have turned over all of the prisoners in September. This led to an awkward change of command ceremony at Parwan on Sept. 9, which Army Lt. Gen. Keith Huber, commander of CJIATF 435, declined to attend. The U.S. transferred about 3,000 prisoners to the Afghans. The U.S. held back more than 50 who were captured before March along with hundreds of others captured by U.S. forces between March and September. The Memorandum of Understanding called for the U.S. to turn over the entire Parwan jail to the Afghans, but the U.S. retained a section closed off to the Afghans. In the dispute over control of the Parwan facility, the U.S. stance has been that the Afghans might not be ready to manage the jail and that the corrupt Afghan justice system might hold trials that would result in the release of dangerous prisoners. In its latest “Report on Progress and Security and Stability in Afghanistan” to Congress last month, the Defense Department said “the Afghan judicial system continues to face numerous challenges.” The system is riddled with “systemic corruption at all levels resulting in a lack of political will to pursue prosecutions against many politically connected individuals,” the Defense Department report said. U.S. and Afghan officials declined comment on whether suspects in insider attacks by Afghan soldiers and police on coalition forces that have killed at least 62 allied troops last year were being held back for fear they would be turned loose. Several field commands said perpetrators in the attacks had been sent to Parwan. One such suspect was a 15-year-old boy allegedly working for the Taliban. A Marine spokesman said the boy had been sent to Parwan after he killed three Marines in southwestern Helmand province in August. According to the Long War Journal, at least 22 suspects in insider attacks have been captured, but U.S. and Afghan officials declined comment on their status. “No one is ever charged with anything so it’s difficult to know what they’re being held for” at Parwan, where prisoners “are not afforded even the minimal protections that the people at Guantanamo have,” said Heather Barr, a researcher in Kabul for Human Rights Watch, an independent advocacy group. Barr said she had attended sessions of the Detention Review Boards set up by the U.S. to determine the status of the prisoners, but the boards have never led to specific charges against prisoners. “We know of only one case that has gone to trial,” Barr said, and that case involved a prisoner, Abdul Sabor, who was captured by the French and handed over to the Afghans. Sabor, who allegedly killed five French troops in an insider attack last January, has been sentenced to death and his case is now under appeals in the Afghan courts, Barr said. Barr said the U.S. was “trying to bully the Afghans into setting up an administrative detention system” for high value prisoners that would allow them to be held indefinitely without the risk of a trial that might set them free. “The Afghan government has said it’s not going to do administrative detention, it’s unconstitutional under Afghan law,” Barr said. British officials have argued against transferring prisoners to the Afghans. In a November letter to Parliament, British Defense Secretary Phillip Hammond wrote that he was canceling future transfer of insurgents captured by British forces to the Afghans on grounds that they might be tortured. “There are currently reasonable grounds for believing that UK-captured detainees who are transferred to Lashkar Gah would be at real risk of serious mistreatment," Hammond said in a reference to the Afghan-run jail in the southwestern Helmand province capital of Lashkar Gah. U.S. Congressional leaders have expressed concerns that Afghan prisoners who still pose a threat might be released. In an August statement, Rep. Howard McKeon (R-Calif.), chairman of the House Armed Services Committee, cited the release of a “high-value terrorist” by Iraq over U.S. objections. “We call upon the President and Secretary of Defense (Leon) Panetta to extend all efforts to ensure that this tragic mistake is not repeated with terrorists currently in U.S. custody in Afghanistan,” McKeon said. **The central question on the Afghan prisoner issue was whether “the U.S. courts are going to take notice of what’s going on in Afghanistan” as they did in setting minimal habeas corpus rights on the charges against prisoners in Guantanamo, said** Donald **Huber**, a former Navy judge advocate general and now dean of the South Texas College of Law.

**Withdrawal causes Afghan instability and terror**

**Curtis 13** (Lisa, senior research fellow, 7-10-13, "Afghanistan: Zero Troops Should Not Be an Option" Heritage Foundation) www.heritage.org/research/reports/2013/07/afghanistan-zero-troops-should-not-be-an-option

The Obama Administration is considering **leaving no U.S. troops behind in Afghanistan after it ends its combat mission** there **in 2014**. This **would undermine U.S. security interests**, as it would **pave the way for the Taliban to regain influence in Afghanistan and ~~cripple~~ [badly hurt]** the U.S. ability to conduct **counterterrorism missions** in the region. President **Obama instead should commit the U.S. to maintaining a robust troop presence** (at least 15,000–20,000) in Afghanistan after 2014 in order to train and advise the Afghan troops and conduct counterterrorism missions as necessary. **The U.S. should** also **remain** diplomatically, politically, and financially **engaged** in Afghanistan in order to sustain the gains made over the past decade **and ensure that the country does not again serve as a sanctuary for international terrorists intent on attacking the U.S.** Flaring Tensions Fuel Poor Policy Decisions Tensions between the Obama and Karzai administrations have escalated in recent months. The U.S. Administration blundered in its handling of the opening of a Taliban political office in Doha in mid-June. In sending a U.S. delegation to Doha to meet with the Taliban leadership without the presence of the Afghan government, the Taliban appeared to be achieving its long-sought objective of cutting the Karzai administration out of the talks. The Taliban also scored a public relations coup by raising the flag associated with its five-year oppressive rule in front of the office. The episode angered Afghan President Hamid Karzai to the point that he pulled out of the Bilateral Security Agreement (BSA) talks with the U.S., thus fulfilling another Taliban goal of driving a wedge between the U.S. and Afghan governments. Karzai’s opposition to the U.S. talking unilaterally with the Taliban is understandable, but his decision to pull out of the BSA talks is misguided, since maintaining an international troop presence post-2014 is essential to the stability of the Afghan state and the ability of Afghan forces to protect against the use of its territory for international terrorism. The BSA talks are necessary to forge an agreement on a post-2014 U.S. troop presence. If the White House is publicizing its consideration of the zero-troop option to try to pressure the Karzai administration, it also is misguided in its negotiating tactics. The Afghans already believe the U.S. is likely to cut and run, similar to the way Washington turned its back on the Afghans over two decades ago when the Soviets conceded defeat and pulled out of the country. The Obama Administration’s failure to reach agreement with the Iraqi government on the terms for a residual U.S. force presence there highlights the White House’s poor track record in managing these kinds of negotiations. Taliban Talks a Masquerade The Taliban leadership has shown no sign that it is ready to compromise for peace in Afghanistan. The Taliban has refused to talk directly with the Karzai government, calling it a puppet of the U.S., and has shown little interest in participating in a normal political process. The Taliban appears to believe that it is winning the war in Afghanistan and simply needs to wait out U.S. and NATO forces. The insurgent leaders’ only motivation for engaging with U.S. officials appears to be to obtain prisoner releases and to encourage the U.S. to speed up its troop withdrawals. The Taliban has already scored tactical points through the dialogue process by playing the U.S. and Afghans off one another and establishing international legitimacy with other governments. Moreover, the Taliban has not tamped down violence in order to prepare an environment conducive to talks. In fact, in recent weeks Taliban insurgents have stepped up attacks. In early June, for instance, insurgents conducted a suicide attack near the international airport in Kabul, and two weeks later they attacked the Afghan presidential palace. Perseverance Required to Achieve U.S. Objectives As difficult as the job may be, it is essential that the U.S. remain engaged in Afghanistan. It would be shortsighted to ignore the likely perilous consequences of the U.S. turning its back on this pivotal country from where the 9/11 attacks originated. Moving forward, the U.S. should: Lay its cards down on the number of troops it plans to leave in Afghanistan post-2014. The White House should commit to keeping a fairly robust number of U.S. forces in Afghanistan over the next several years. Former U.S. Central Command chief General James Mattis made clear in recent remarks to Congress that he hoped the U.S. would leave behind around 13,500 troops and that other NATO nations would leave an additional 6,500 troops.[1] This would bring a total of around 20,000 international forces stationed in Afghanistan beyond 2014 to help with training and advising the Afghan forces. Encourage continued strengthening of the democratic process in the country rather than rely on the false hope of political reconciliation with the Taliban. The Taliban believe they will win the war in Afghanistan without compromising politically and through violent intimidation of the Afghan population, especially when U.S. and coalition troops are departing. Taliban leaders appear unmotivated to compromise for peace and indeed are stepping up attacks on the Afghan security forces and civilians. The White House should focus on promoting democratic processes and institutions that will directly counter extremist ideologies and practices. Integral to this strategy is supporting a free and fair electoral process next spring both through technical assistance and regular and consistent messaging on the importance of holding the elections on time. Further condition U.S. military aid to Pakistan on its willingness to crack down on Taliban and Haqqani network sanctuaries on its territory. There continues to be close ties between the Pakistani military and the Taliban leadership and its ally, the Haqqani network, which is responsible for some of the fiercest attacks against coalition and Afghan forces. In early June, the U.S. House of Representatives approved language in the fiscal year 2014 National Defense Authorization Act that conditions reimbursement of Coalition Support Funds (CSF) pending Pakistani actions against the Haqqani network. Hopefully, the language will be retained in the final bill. The U.S. provides CSF funds to reimburse Pakistan for the costs associated with stationing some 100,000 Pakistani troops along the border with Afghanistan. Pakistan has received over $10 billion in CSF funding over the past decade. Avoid Repeating History **The U.S. should not repeat the same mistake it made 20 years ago by disengaging abruptly from Afghanistan, especially when so much blood and treasure has been expended in the country over the past decade. There is a genuine risk of the Taliban reestablishing its power base and facilitating the revival of al-Qaeda in the region if the U.S. gives up the mission in Afghanistan.** While frustration with Karzai is high, U.S. officials should not allow a troop drawdown to turn into **a rush for the exits** that **would lead to greater instability in Afghanistan and** thus **leave the U.S. more vulnerable to the global terrorist threat.**

**Global nuclear war**

**Morgan 07** (Stephen J., Political Writer and Former Member of the British Labour Party Executive Committee, “Better another Taliban Afghanistan, than a Taliban NUCLEAR Pakistan!?”, 9-23, http://www.freearticlesarchive .com/article/\_Better\_another\_Taliban\_Afghanistan\_\_than\_a\_Taliban\_NUCLEAR\_Pakistan\_\_\_/99961/0/)

However events may prove him sorely wrong. Indeed, his policy could completely backfire upon him. **As the war intensifies,** he has no guarantees that **the current autonomy may** yet **burgeon into a separatist movement**. Appetite comes with eating, as they say. Moreover, should the Taliban fail to re-conquer al of Afghanistan, as looks likely, but captures at least half of the country, then **a Taliban Pashtun caliphate** could be established which **would act as a magnet to separatist Pashtuns in Pakistan**. Then, **the** likely **break up of Afghanistan** along ethnic lines, **could**, indeed, **lead** the way **to the break up of Pakistan, as well**. Strong centrifugal forces have always bedevilled the stability and unity of **Pakistan**, and, in the context of the new world situation, the country **could be faced with civil wars and** popular **fundamentalist uprisings**, probably **including a** military-fundamentalist **coup** d’état. Fundamentalism is deeply rooted in Pakistan society. The fact that in the year following 9/11, the most popular name given to male children born that year was “Osama” (not a Pakistani name) is a small indication of the mood. Given the weakening base of the traditional, secular opposition parties, conditions would be ripe for a coup d’état by the fundamentalist wing of the Army and ISI, leaning on the radicalised masses to take power. Some form of radical, military Islamic regime, where legal powers would shift to Islamic courts and forms of shira law would be likely. Although, even then, this might not take place outside of a protracted crisis of upheaval and civil war conditions, mixing fundamentalist movements with nationalist uprisings and sectarian violence between the Sunni and minority Shia populations. The nightmare that is now Iraq would take on gothic proportions across the continent. The prophesy of **an arc of civil war** over Lebanon, Palestine and Iraq **would spread to south Asia, stretching from Pakistan to Palestine, through Afghanistan into Iraq and up to the Mediterranean** coast. **Undoubtedly, this would** also **spill over into India** both with regards to the Muslim community and Kashmir. **Border clashes**, terrorist attacks, sectarian pogroms and insurgency **would break out. A** new war, and possibly **nuclear war**, between Pakistan and India **could no be ruled out**. Atomic Al Qaeda Should Pakistan break down completely, a Taliban-style government with strong Al Qaeda influence is a real possibility. **Such deep chaos would**, of course, **open a “Pandora's box” for** the region and **the world**. With the possibility of unstable clerical and military fundamentalist elements being in control of the Pakistan nuclear arsenal, not only their use against India, but Israel becomes a possibility, as well as the acquisition of nuclear and other deadly weapons secrets by Al Qaeda. Invading Pakistan would not be an option for America. Therefore **a nuclear war** would now again become a real strategic possibility. This would bring a shift in the tectonic plates of global relations. It **could usher in a new Cold War with China and Russia pitted against the US**.

#### African rule of law key to stability

Mbaku, 13 (John Mukum, Presidential Distinguished Professor of Economics, Willard L. Eccles Professor of Economics, and John S. Hinckley Research Fellow at Weber State University, "PROVIDING A FOUNDATION FOR WEALTH CREATION AND DEVELOPMENT IN AFRICA: THE ROLE OF THE RULE OF LAW," 38 Brooklyn J. Int'l L. 959, lexis)

These priorities are all interrelated. For example, the failure of African governments to manage ethnic and religious diversity has often resulted in destructive and violent mobilization by groups that perceive themselves as being marginalized by a central government dominated and controlled by other groups. n308 The result has been significantly high levels of political instability, which have created economic environments that are not suitable for, or conducive to, investment and/or engagement by entrepreneurs in productive activities. Peaceful coexistence creates opportunities for mutually-beneficial exchanges between groups, which may include cultural exchanges and trade. Such exchanges can lead to innovation and the creation of new knowledge that can aid production and the peaceful resolution of problems and conflicts. State actors, such as civil servants and politicians, are responsible for a significant amount of the corruption and rent seeking that takes place in the African countries today. n309 [\*1051] Thus, to minimize the engagement of state actors in growth-inhibiting behaviors, it is necessary that the state be adequately constrained by the constitution. To adequately restrain the state, the law must be supreme--no citizen, regardless of their political, economic, or traditional standing in society, can be above the law. Judicial independence must also be assured, so that the executive does not turn judiciary structures into instruments of control and plunder. In addition, the laws chosen must reflect the values and aspirations of citizens, that is, the laws need to be locally-focused, and must also be laws that citizens can obey in order to enhance compliance and minimize the costs of policing. Furthermore, government operations must be conducted in an open and transparent manner to minimize corruption, enhance participation, and increase the people's trust in the government. Finally, the rights of minorities must be protected--it is critical that the rights of minority ethnic and religious groups be protected, not just from state tyranny, but also from violence perpetuated against them by non-state actors. The rule of law is a critical catalyst to Africa's effort to deal effectively with poverty. Each country must engage its citizens in democratic constitution-making to provide laws and institutions that guarantee the rule of law. One must caution that what is being advocated here is not simple regime change as has occurred in many countries throughout the continent. In order to secure institutional arrangements that guarantee the rule of law, countries must engage in the type of robust state reconstruction that provides all of the country's relevant stakeholders with the wherewithal to participate fully and effectively in institutional reforms. It is only through such a democratic process that a country can avail itself of legal and judicial frameworks that guarantee the rule of law, and hence, provide the environment for peaceful coexistence, wealth creation, and democratic governance.

#### Escalates to great power war

Glick, 07 (Caroline, Senior Middle East Fellow – Center for Security Policy, “Condi’s African Holiday”, 12-12, [http://www.centerforsecuritypolicy.org/home.aspx?sid=56&categoryid=56&subcategoryid=90&newsid=11568](http://www.centerforsecuritypolicy.org/home.aspx?sid=56&categoryid=56&subcategoryid=90&newsid=11568%29))

US Secretary of State Condoleezza Rice introduced a new venue for her superficial and destructive stewardship of US foreign policy during her lightning visit to the Horn of Africa last Wednesday. The Horn of Africa is a dangerous and strategically vital place. Small wars, which rage continuously, can easily escalate into big wars. Local conflicts have regional and global aspects. All of the conflicts in this tinderbox, which controls shipping lanes from the Indian Ocean into the Red Sea, can potentially give rise to regional, and indeed global conflagrations between competing regional actors and global powers. Located in and around the Horn of Africa are the states of Eritrea, Djibouti, Ethiopia, Somalia, Sudan and Kenya. Eritrea, which gained independence from Ethiopia in 1993 after a 30-year civil war, is a major source of regional conflict. Eritrea has a nagging border dispute with Ethiopia which could easily ignite. The two countries fought a bloody border war from 1998-2000 over control of the town of Badme. Although a UN mandated body determined in 2002 that the disputed town belonged to Eritrea, Ethiopia has rejected the finding and so the conflict festers. Eritrea also fights a proxy war against Ethiopia in Somalia and in Ethiopia's rebellious Ogaden region. In Somalia, Eritrea is the primary sponsor of the al-Qaida-linked Islamic Courts Union which took control of Somalia in June, 2006. In November 2006, the ICU government declared jihad against Ethiopia and Kenya. Backed by the US, Ethiopia invaded Somalia last December to restore the recognized Transitional Federal Government to power which the ICU had deposed. Although the Ethiopian army successfully ousted the ICU from power in less than a week, backed by massive military and financial assistance from Eritrea, as well as Egypt and Libya, the ICU has waged a brutal insurgency against the TFG and the Ethiopian military for the past year. The senior ICU leadership, including Sheikh Hassan Dahir Aweys and Sheikh Sharif Ahmed have received safe haven in Eritrea. In September, the exiled ICU leadership held a nine-day conference in the Eritrean capital of Asmara where they formed the Alliance for the Re-Liberation of Somalia headed by Ahmed. Eritrean President-for-life Isaias Afwerki declared his country's support for the insurgents stating, "The Eritrean people's support to the Somali people is consistent and historical, as well as a legal and moral obligation." Although touted in the West as a moderate, Ahmed has openly supported jihad and terrorism against Ethiopia, Kenya and the West. Aweys, for his part, is wanted by the FBI in connection with his role in the bombing of the US embassies in Kenya and Tanzania in 1998. Then there is Eritrea's support for the Ogaden separatists in Ethiopia. The Ogaden rebels are Somali ethnics who live in the region bordering Somalia and Kenya. The rebellion is run by the Ogaden National Liberation Front (ONLF) which uses terror and sabotage as its preferred methods of warfare. It targets not only Ethiopian forces and military installations, but locals who wish to maintain their allegiance to Ethiopia or reach a negotiated resolution of the conflict. In their most sensationalist attack to date, in April ONLF terror forces attacked a Chinese-run oil installation in April killing nine Chinese and 65 Ethiopians. Ethiopia, for its part has fought a brutal counter-insurgency to restore its control over the region. Human rights organizations have accused Ethiopia of massive human rights abuses of civilians in Ogaden. Then there is Sudan. As Eric Reeves wrote in the Boston Globe on Saturday, "The brutal regime in Khartoum, the capital of Sudan, has orchestrated genocidal counter-insurgency war in Darfur for five years, and is now poised for victory in its ghastly assault on the region's African populations." The Islamist government of Omar Hasan Ahmad al-Bashir is refusing to accept non-African states as members of the hybrid UN-African Union peacekeeping mission to Darfur that is due to replace the undermanned and demoralized African Union peacekeeping force whose mandate ends on December 31. Without its UN component of non-African states, the UN Security Council mandated force will be unable to operate effectively. Khartoum's veto led Jean-Marie Guehenno, the UN undersecretary for peacekeeping to warn last month that the entire peacekeeping mission may have to be aborted. And the Darfur region is not the only one at risk. Due to Khartoum's refusal to carry out the terms of its 2005 peace treaty with the Southern Sudanese that ended Khartoum's 20-year war and genocide against the region's Christian and animist population, the unsteady peace may be undone. Given Khartoum's apparent sprint to victory over the international community regarding Darfur, there is little reason to doubt that once victory is secured, it will renew its attacks in the south. The conflicts in the Horn of Africa have regional and global dimensions. Regionally, Egypt has played a central role in sponsoring and fomenting conflicts. Egypt's meddling advances its interest of preventing the African nations from mounting a unified challenge to Egypt's colonial legacy of extraordinary rights to the waters of the Nile River which flows through all countries of the region.

## 1AR

### Enforcement

### Defer: A2 “Enforcement”

#### Lack of perfect enforcement doesn’t mean law can’t constrain

Bradley and Morrison 13 (Curtis, Professor of Law, Duke Law School, and Trevor, Professor of Law, Columbia Law School , “Presidential Power, Historical Practice, And

Legal Constraint” Duke Law Scholarship Repository) http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5451&context=faculty\_scholarship

One of the grounds of skepticism about whether the presidency is constrained by law concerns the frequent lack of formal enforcement mechanisms. There is an extensive jurisprudential literature on whether and to what extent enforcement is necessary in order for norms to qualify as law.105 Modern perspectives on law, in the tradition of H.L.A. Hart, tend to de-emphasize the importance of external enforcement and focus instead on internal perceptions, a point we return to in Part III. For present purposes, we simply note two things. First, a norm need not be perfectly enforced in order to constrain. Of course, as the legal realists emphasized, one cannot get an accurate picture of the law by looking only at the law on the books rather than the law in action.106 Our point here, however, is simply that the lack of perfect enforcement of a legal rule does not mean the rule does not exist, or that it does not constrain. The fact that homicides continue to be committed in the United States—and that not everyone who commits such a crime is apprehended and prosecuted—does not remove or render meaningless the legal prohibition against homicide. Second, enforcement need not be formal. Domestic criminal laws, of course, are typically implemented through a range of formal enforcement mechanisms, such as state-sanctioned incarceration. Even such formal modes of enforcement, however, are probably enhanced by informal mechanisms such as public shaming and exclusion. For example, the formal punishment-based deterrence against committing an offense like embezzlement is likely enhanced by a desire to avoid public embarrassment and a worry about the difficulty of obtaining future employment.107 Even when the likely enforcement mechanisms are entirely informal, we think they should count for purposes of evaluating whether law operates as a constraint. For some issues of presidential power, there are very few potential modes of formal enforcement (impeachment may be the only formal mode), and the likelihood that they would be employed to sanction any particular presidential act is generally very low. But there may still be enforcement through informal mechanisms such as congressional backlash and public disapproval. If those enforcement measures are triggered or intensified at least in part by the legal status of a norm, then we believe one can meaningfully describe them as a type of legal enforcement. On this point it is worth noting that, outside of the area of constitutional law, it is generally accepted that law can act as a constraint even when it takes the form of customary norms, and even when it is subject primarily to informal enforcement. There is a rich literature, for example, on the customary “law merchant” in medieval Europe, the enforcement of which was based heavily on reputation.108 Gillian Hadfield and Barry Weingast have recently supplemented that literature with modeling that shows how legal norms in general can be effective even in the absence of centralized enforcement.109 As applied to presidential power, this analysis suggests, once again, that the interrelationship of law and politics does not by itself negate the importance of law.

### Terror: A2 “AQ Weak”

**Bin Laden’s death proves nothing**

**Silber 13** (Mitchell, Executive Managing Director of K2 Intelligence and former Director of Intelligence Analysis for the New York Police Department from 2007 to 2012, 5-16-13, "The ever-evolving al-Qaeda threat" Foreign Policy) afpak.foreignpolicy.com/posts/2013/05/16/the\_evolution\_of\_a\_threat

Not surprisingly, Mr. Atwan makes a compelling case that **while the death of** Osama **bin Laden and the decimation of al Qaeda Core's top leadership has hurt the central organization** that was based in Afghanistan and Pakistan, **the movement and ideology, with its worldwide presence via regional associated movements, is as much of a menace to the West as ever and undiminished in its goal of a global caliphate.** Mr. Atwan spends considerable time discussing the poorly named "Arab Spring," the successive revolutions which occurred across the Arab world and the relationship that these events have with indigenous al Qaeda-associated movements that have their own deep roots in some of the very states that saw their governments topple, sectarian conflicts break into the open, and civil wars erupt. **While many** of us in the West **hoped that the revolutions in the Arab states would herald better governance** and the opportunity for homegrown secularists with their own domestic legitimacy to rise, Mr. **Atwan saw a different future** - one **where Islamist parties would dominate the ballot box and armed Islamists or AQAM would have a role to play as well.** Mr. Atwan takes the reader on an impressive tour of the Islamic world, with chapters and sections on almost every country and region from Arabia to Uzbekistan. While some of the background history that he provides on each country or region is old news to regular readers of the New York Times international section, they do provide the context in each locale for Mr. Atwan to make his most provocative argument - **al Qaeda-associated movements are poised for a comeback when either the Islamists or secularists fail in their efforts of good governance, regardless of whether it is in Afghanistan, Pakistan, Yemen, Somalia, Iraq, Nigeria, North Africa, Sinai, or Central Asia. While the situation in each country is distinct, in general, regional al Qaeda-type violence certainly seems unabated and potentially is on the upswing in countries like Iraq, Nigeria, Mali and Syria.** Mr. Atwan is at his best when explaining the tribal dynamics **in such places as Yemen**, where **different alliances among the tribes and their long standing dissatisfaction with any central government make them a natural ally of al Qaeda-associated movements**, who also seek to challenge the central government, are armed, and espouse an austere form of Islam that is not foreign to the locals. Mr. **Atwan draws similar astute insights about local dynamics when considering the prospects for growth for al Qaeda in the states of North Africa or the Islamic Maghreb.**

### Intel

#### Abusive detainments create false leads that divert the war on terror

Muslim American Society News 04

[“Former Detainees Charge Brutality at Guantanamo,” August 4, www.masnet.org/news.asp?id=1497//uwyo-ajl]

"What this shows is that you can't trust at all the information coming out of Guantanamo," said Michael Ratner, president of the Center for Constitutional Rights, which won a victory for Guantanamo detainees in June when the U.S. Supreme Court ruled that they be allowed access to the U.S. legal system. "This is a chilling, chilling document ... of what can happen when an administration decides to leave law behind and run an interrogation camp that they say is a law-free zone," Ratner said, adding that the mistreatment described was "off the charts in terms of legality." Asif Iqbal, Ruhal Ahmed and Shafiq Rasul, from Tipton in England, were detained in Afghanistan in November 2001. They were released without charge in March after more than two years in custody - most if it at the U.S. military base in Guantanamo Bay, Cuba. Copies of the report were sent Wednesday to Senator John Warner, chair of the U.S. Senate Armed Services Committee. Rasul and Iqbal detailed their confinement in open cages in the sweltering Cuban heat, with many prisoners suffering bites and stings from the snakes and scorpions allowed to roam the cells. According to the report, the men were told prisoners had been stripped naked and forced to watch videotapes of other prisoners ordered to sodomize each other. The men said the guards would throw the prisoners' Qur’ans into the toilet and forcibly shave the prisoners to try to force people to abandon their Muslim faith, reports the Associated Press (AP). The men also claimed to have been beaten, shackled in painfully contorted positions, forcibly injected with drugs and deprived of sleep. At one point, Iqbal said he was coerced by a female interrogator into admitting that he was one of the people shown in a videotape listening to a speech from Osama bin Laden. "She said to me, 'I've put detainees in isolation for 12 months and eventually they've broken. You might as well admit it now so that you don't have to stay in isolation'," Iqbal said. "I was going out of my mind ... Eventually I just gave in and said, "OK it's me'," he added. British intelligence later found that Iqbal was living in Birmingham, England, when the tape was made. "I was left in a room and strobe lighting was put on and very loud music - it was a dance version of Eminem played repeatedly again and again," Iqbal said of one session. One soldier said "you killed my family in the [twin] towers, and now it's time to get you back." "The idea that these three people were kept in this prison, this gulag and forced to make false confessions is amazing," said Ratner. "What we are talking about here is false leads, false confessions and going after the wrong people and what you get is wrong information," he said. "If you really want to get to the bottom of terrorism, get real information.

#### Review doesn’t threaten intel

(1) military regs prove

(2) disproven by tribunals

Rasul, Petitioner’s Reply Brief, Rasul v. Bush, 2003 U.S. Briefs 334, April 7, 2004, p. 17-19.

The Respondents warn ominously that Article III jurisdiction in this case will trigger a cascading series of events and place the nation in peril. Resp. Br. 41-46. According to the Respondents, habeas review means lawyers, which leads to contact with the detainees; contact means the end of interrogations, which will end all intelligence gathering; this in turn destroys the nation's ability to protect itself. Any judicial involvement, therefore, "would directly interfere with the Executive's conduct of the military campaign against al Qaeda and its supporters.". This sweeping contention, however, is simply not credible. First, the argument "knocks at an open door" by attacking a claim Petitioners do not advance. military may create a process to determine whether the Petitioners are lawfully detained, so long as the proceedings are not "manifestly unfair ... such as to prevent a fair investigation, or show manifest abuse of the discretion committed to the executive officers ..., or that their authority was not fairly exercised, that is, consistently with the fundamental principles of justice embraced within the conception of due process of law." Kwack Jan Fat v. White, 253 U.S. 454, 457-58 (1920) (internal quotation marks omitted). In that respect, the military faces the prospect of plenary review only because it insists on holding the Petitioners in a lawless void. Second, the Respondents' position cannot be squared with the military's regulations. As discussed in the Petitioners' brief, these regulations were drafted by the military and apply without limitation to all prisoners in military custody, including foreign nationals seized on or near the field of battle during on-going hostilities. They guarantee that when doubt arises as to any detainee's status, individuals will not be denied POW or civilian internee status without notice and an opportunity to be heard before an impartial tribunal of three commissioned officers. Pet. Br. 48-49. n26 The military conducted nearly 1200 such hearings during the first Persian Gulf War and continues to conduct these hearings in Iraq. Id. at 49. The Executive Branch has never suggested that these hearings interfere with intelligence gathering or fetter field commanders. And in a silence that speaks volumes, the Respondents do not mention these regulations in their brief. Third, the Respondents' argument is belied by their own position. As they describe in their brief, the Department of Defense has vowed to create -- sometime in the vague and uncertain future -- a review process that gives those imprisoned at Guantanamo an annual opportunity to establish their claim to freedom. Resp. Br. at 7 n.4. The Court can assume the military would not create a process that imperils national security. It follows that creating a process to determine whether a detainee is being held unlawfully will not realistically interfere with the current war efforts. As discussed above, the belated, extra-record account of this contemplated review, which may include the assistance of a commissioned officer, is hardly a sufficient basis to establish its legitimacy at this stage of the litigation. But unless the Defense Department has no intention of honoring its commitment, the very existence of the proposed review is conclusive proof that individualized hearings in Guantanamo, even with the assistance of counsel, are not a threat to national security.

#### No leaks

Skaggs and Edwards 09 (David and Mickey, members of the Constitution Project's Liberty and Security Committee, 5-4-2009, "National Security Courts and Preventive Detention: A Bad and Unnecessary Idea" Jurist) jurist.org/forum/2009/03/national-security-courts-and-preventive.php#

Third, let's not get distracted by the straw man argument about "protecting sensitive intelligence." The federal courts have an excellent record of handling classified material. Indeed, the only leaks of classified information over the last 15 years, in more than a hundred international terrorism prosecutions, came from the executive branch, not federal criminal courts.

### Prez flex

#### Executive flexibility is bad—leads to arbitrary decisions and mismanagement

Pearlstein 09 (Deborah, Visiting Scholar and Lecturer in Public and International Affairs, Woodrow Wilson School of Public & International Affairs, Princeton University, "Form and Function in the National Security Constitution" Connecticut Law Review) uconn.lawreviewnetwork.com/files/archive/v41n5/formandfunction.pdf

The new functionalists’ instinctive attraction to flexibility in decisionmaking rules or structures—and its corresponding possibilities of secrecy and dispatch—is not without foundation in organization theory.183 Flexibility ideally can make it possible for organizations to adapt and respond quickly in circumstances of substantial strain or uncertainty, as conditions change or knowledge improves, and to respond to events that cannot be predicted in advance.184 In a crisis or emergency setting in particular, one can of course imagine circumstances in which taking the time to follow a series of structurally required decision-making steps would vitiate the need for action altogether.185 What the new functionalists fail to engage, however, are flexibility’s substantial costs, especially in grappling with an emergency. For example, organizations that depend on decentralized decision-making but leave subordinates too much flexibility can face substantial principal-agent problems, resulting in effectively arbitrary decisions. The problem of differences in motivation or understanding between organizational leaders and frontline agents is a familiar one, a disjunction that can leave agents poorly equipped to translate organizational priorities into priority consistent operational goals. As Sagan found in the context of U.S. nuclear weapons safety, whatever level of importance organizational leadership placed on safety, leaders and operatives would invariably have conflicting priorities, making it likely that leaders would pay “only arbitrary attention to the critical details of deciding among trade-offs” faced by operatives in real time.186 One way of describing this phenomenon is as “goal displacement”—a narrow interpretation of operational goals by agents that obscures focus on overarching priorities.187 In the military context, units in the field may have different interests than commanders in secure headquarters;188 prison guards have different interests from prison administrators.189 Emergencies exacerbate the risk of such effectively arbitrary decisions. Critical information may be unavailable or inaccessible.190 Short-term interests may seek to exploit opportunities that run counter to desired long-term (or even near-term) outcomes. 191 The distance between what a leader wants and what an agent knows and does is thus likely even greater. The Cuban Missile Crisis affords striking examples of such a problem. When informed by the Joint Chiefs of Staff of the growing tensions with the Soviet Union in late October 1962, NATO’s Supreme Allied Commander in Europe, American General Lauris Norstad, ordered subordinate commanders in Europe not to take any actions that the Soviets might consider provocative.192 Putting forces on heightened alert status was just the kind of potentially provocative move Norstad sought to forestall. Indeed, when the Joint Chiefs of Staff ordered U.S. forces globally to increase alert status in a directive leaving room for Norstad to exercise his discretion in complying with the order, Norstad initially decided not to put European-stationed forces on alert.193 Yet despite Norstad’s no-provocation instruction, his subordinate General Truman Landon, then Commander of U.S. Air Forces in Europe, increased the alert level of nuclear-armed NATO aircraft in the region.194 In Sagan’s account, General Landon’s first organizational priority—to maximize combat potential—led him to undermine higher priority political interests in avoiding potential provocations of the Soviets.195 It is in part for such reasons that studies of organizational performance in crisis management have regularly found that “planning and effective response are causally connected.”196 Clear, well-understood rules, formalized training and planning can function to match cultural and individual instincts that emerge in a crisis with commitments that flow from standard operating procedures and professional norms.197 Indeed, “the less an organization has to change its pre-disaster functions and roles to perform in a disaster, the more effective is its disastetr [sic] response.”198 In this sense, a decisionmaker with absolute flexibility in an emergency— unconstrained by protocols or plans—may be systematically more prone to error than a decision-maker who is in some way compelled to follow procedures and guidelines, which have incorporated professional expertise, and which are set as effective constraints in advance. Examples of excessive flexibility producing adverse consequences are ample. Following Hurricane Katrina, one of the most important lessons independent analysis drew from the government response was the extent to which the disaster was made worse as a result of the lack of experience and knowledge of crisis procedures among key officials, the absence of expert advisors available to key officials (including the President), and the failure to follow existing response plans or to draw from lessons learned from simulations conducted before the fact. 199 Among the many consequences, basic items like food, water, and medicines were in such short supply that local law enforcement (instead of focusing on security issues) were occupied, in part, with breaking into businesses and taking what residents needed.200 Or consider the widespread abuse of prisoners at U.S. detention facilities such as Abu Ghraib. Whatever the theoretical merits of applying coercive interrogation in a carefully selected way against key intelligence targets,201 the systemic torture and abuse of scores of detainees was an outcome no one purported to seek. There is substantial agreement among security analysts of both parties that the prisoner abuse scandals have produced predominantly negative consequences for U.S. national security.202 While there remain important questions about the extent to which some of the abuses at Abu Ghraib were the result of civilian or senior military command actions or omissions, one of the too often overlooked findings of the government investigations of the incidents is the unanimous agreement that the abuse was (at least in part) the result of structural organization failures 203—failures that one might expect to produce errors either to the benefit or detriment of security. In particular, military investigators looking at the causes of Abu Ghraib cited vague guidance, as well as inadequate training and planning for detention and interrogation operations, as key factors leading to the abuse. Remarkably, “pre-war planning [did] not include[] planning for detainee operations” in Iraq.204 Moreover, investigators cited failures at the policy level—decisions to lift existing detention and interrogation strictures without replacing those rules with more than the most general guidance about custodial intelligence collection.205 As one Army General later investigating the abuses noted: “By October 2003, interrogation policy in Iraq had changed three times in less than thirty days and it became very confusing as to what techniques could be employed and at what level non-doctrinal approaches had to be approved.”206 It was thus unsurprising that detention and interrogation operations were assigned to troops with grossly inadequate training in any rules that were still recognized.207 The uncertain effect of broad, general guidance, coupled with the competing imperatives of guidelines that differed among theaters of operation, agencies, and military units, caused serious confusion among troops and led to decisionmaking that it is overly kind to call arbitrary.208 Would the new functionalists disagree with the importance of government planning for detention operations in an emergency surrounding a terrorist nuclear attack? Not necessarily. Can an organization anticipate and plan for everything? Certainly not. But such findings should at least call into question the inclination to simply maximize flexibility and discretion in an emergency, without, for example, structural incentives that might ensure the engagement of professional expertise.209 Particularly if one embraces the view that the most potentially damaging terrorist threats are nuclear and biological terrorism, involving highly technical information about weapons acquisition and deployment, a security policy structure based on nothing more than general popular mandate and political instincts is unlikely to suffice; a structure that systematically excludes knowledge of and training in emergency response will almost certainly result in mismanagement.210 In this light, a general take on role effectiveness might suggest favoring a structure in which the engagement of relevant expertise in crisis management is required, leaders have incentives to anticipate and plan in advance for trade-offs, and organizations are able to train subordinates to ensure that plans are adhered to in emergencies. Such structural constraints could help increase the likelihood that something more than arbitrary attention has been paid before transcendent priorities are overridden.