**1AC: Blowback**

**Contention 1 is Blowback:**

**US legitimacy has been severely damaged by detention—plan is key to reverse negative perceptions**

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

**The Global War on Terror** 1 **has been** ideologically **framed as a struggle between** the principles of **freedom** and democracy on the one hand **and tyranny** and extremism on the other. 2 **Although this war has arguably led to a short-term disruption of** terrorist threats such as **al-Qaeda, it has also damaged America’s image both at home and abroad**. 3 **Throughout the world, there is a growing consensus that America has “a lack of credibility as a fair and just world leader**.” 4 **The perceived legitimacy of the U**nited **S**tates **in the War on Terror is critical because terrorism is not a conventional threat that** can surrender or **can be defeated** in the traditional sense. Instead, **this battle can only be won through legitimizing the rule of law and undermining** the use of **terror as a means of** political **influence**. 5 ¶ **Although a variety of political, economic, and security policies have negatively impacted** the perceived **legitimacy of the U**nited **S**tates, one of **the most damaging has been the detention**, treatment, and trial (or in many cases the lack thereof) **of suspected terrorists**. While many scholars have raised constitutional questions about the legality of U.S. detention procedures, 6 this article offers a psychological perspective of legitimacy in the context of detention.

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

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

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

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

**U.S. leadership is key to global stability and preventing great power wars**

Yuhan **Zhang**, Carnegie Endowment for International Peace, and Lin Shi, Columbia University, “America’s Decline: A Harbinger of Conflcit and Rivalry,” EAST ASIA FORUM, 1—22—**11**, <http://www.eastasiaforum.org/2011/01/22/americas-decline-a-harbinger-of-conflict-and-rivalry/>

This does not necessarily mean that the US is in systemic decline, but it encompasses a trend that appears to be negative and perhaps alarming. Although the US still possesses incomparable military prowess and its economy remains the world’s largest, the once seemingly indomitable chasm that separated America from anyone else is narrowing. Thus, the global distribution of power is shifting, and the inevitable result will be a world that is less peaceful, liberal and prosperous, burdened by a dearth of effective conflict regulation. Over the past two decades, no other state has had the ability to seriously challenge the US military. Under these circumstances, motivated by both opportunity and fear, **many actors have bandwagoned with US hegemony** and accepted a subordinate role. Canada, most of Western Europe, India, Japan, South Korea, Australia, Singapore and the Philippines have all joined the US, **creating a status quo that has tended to mute great power conflicts**. However, **as** the **hegemony** that drew these powers together **withers,** so will the pulling power behind the US alliance. **The result will be an** international **order where power is more diffuse,** American interests and influence can be more readily challenged, **and conflicts or wars may be harder to avoid. As history attests, power decline and redistribution result in military confrontation.** For example, in the late 19th century America’s emergence as a regional power saw it launch its first overseas war of conquest towards Spain. By the turn of the 20th century, accompanying the increase in US power and waning of British power, the American Navy had begun to challenge the notion that Britain ‘rules the waves.’ Such a notion would eventually see the US attain the status of sole guardians of the Western Hemisphere’s security to become the order-creating Leviathan shaping the international system with democracy and rule of law. Defining this US-centred system are three key characteristics: enforcement of property rights, constraints on the actions of powerful individuals and groups and some degree of equal opportunities for broad segments of society. As a result of such political stability, free markets, liberal trade and flexible financial mechanisms have appeared. And, with this, many countries have sought opportunities to enter this system, proliferating stable and cooperative relations. However, what will happen to these advances as America’s influence declines? Given that America’s authority, although sullied at times, has benefited people across much of Latin America, Central and Eastern Europe, the Balkans, as well as parts of Africa and, quite extensively, Asia, the answer to this question could affect global society in a profoundly detrimental way. Public imagination and academia have anticipated that **a post-hegemonic world would return to** the problems of the 1930s: **regional blocs, trade conflicts and strategic rivalry.** Furthermore, multilateral institutions such as the IMF, the World Bank or the WTO might give way to regional organisations. For example, Europe and East Asia would each step forward to fill the vacuum left by Washington’s withering leadership to pursue their own visions of regional political and economic orders. **Free markets would become more politicised — and, well, less free — and major powers would compete for supremacy.** Additionally, such power plays have historically possessed a zero-sum element. In the late 1960s and 1970s, US economic power declined relative to the rise of the Japanese and Western European economies, with the US dollar also becoming less attractive. And, as American power eroded, so did international regimes (such as the Bretton Woods System in 1973). **A world without American hegemony is one where great power wars re-emerge,** the liberal international system is supplanted by an authoritarian one, and trade protectionism devolves into restrictive, anti-globalisation barriers. This, at least, is one possibility we can forecast in a future that will inevitably be devoid of unrivalled US primacy.

**Hegemony solves conflicts that cause extinction**

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

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

**Indefinite detention increases terrorism—multiple mechanisms**

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

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

**Detention is a major terrorist recruitment tool**

**Postel 13** (Therese, policy associate in international affairs at The Century Foundation, 5-12-13, "How Guantanamo Bay's Existence Helps Al-Qaeda Recruit More Terrorists" The Atlantic) www.theatlantic.com/international/archive/2013/04/how-guantanamo-bays-existence-helps-al-qaeda-recruit-more-terrorists/274956/

While these human rights issues are egregious in their own right, and a vigilant minority continues to pressure the Obama administration on the situation, in the bigger picture, **the continued existence of Guantanamo Bay is damaging our national security on a daily basis. Guantanamo Bay has often been the focus of jihadist media and propaganda. Just recently, the Islamic Emirate of Afghanistan--the mouthpiece of the Taliban-- put out a statement calling attention to the ongoing hunger strike at Guantanamo** Bay. The brief message claims that the hunger strike at the prison has been going on for forty days (as of March 24) and calls for international rights organizations to "spread awareness about the plight of the destitute inmates." **Guantanamo** Bay **has become a salient issue used in jihadist propaganda. In 2010**, Al-Qaeda in the Arabian Peninsula (**AQAP**) **released the first issue of Inspire** , their English language recruitment magazine. To date, AQAP has released 10 issues of Inspire, and **the plight of prisoners at Guantanamo Bay has been featured prominently in several issues.** In the 2010 inaugural issue of Inspire, an essay by Osama bin Laden mentions "the crimes at Abu Ghraib and Guantanamo . . . which shook the conscience of humanity." Tellingly, bin Laden points out that "there has been no mentionable change" at Guantanamo and the prison is noted again later in the issue. Gitmo features even more prominently in Issue 2 of Inspire. The essays of Abu Sufyan al-Azdi and Uthman al-Gamidi, two former detainees who returned to AQAP upon their release, call new individuals to join the jihad, whether at home or abroad. In Issue 7, Yahya Ibrahim notes that Guantanamo Bay "exposed the West for what it really is" and "showed the world the American understanding of human rights." Most troubling, **in the latest issue of Inspire released early this month, AQAP mentions Guantanamo Bay several times.** In a prelude to the attention that the hunger strikers have been paid lately, Abu Musab al-Suri notes that Guantanamo is not only "filled with . . . mujahedeen" but also with "hundreds of innocent civilians." While it is quite rich to hear AQAP's concern for the plight of innocent civilians, given the high number of Yemenis cleared for release still at Guantanamo, this is a very salient message for AQAP's base in Yemen. **The constant refrain about Guantanamo Bay may be inspiring jihadist action. Anwar al-Awlaki issued a lecture discussing the plight of prisoners in Guantanamo Bay before his death by drone strike in 2011. Awlaki's lectures still play an important role in recruiting impressionable individuals to jihad.** As we know, Fort Hood shooter Nidal Hassan was impressed by Awlaki's message and was encouraged (although not directed) to carry out an attack on the states by the cleric himself. **The ramifications of the indefinite nature of Guantanamo have not been lost on American military and policy-makers, either. Air Force Officer Matthew Alexander, who was in charge of an interrogation team in Iraq, states that many of his subjects mentioned Guantanamo in their discussions and that it remains a strong recruitment tool**. Not only does it aid recruitment, but in Alexander's words, **"the longer it stays open the more cost it will have in U.S. lives."** John Brennan, now director of the Central Intelligence Agency, echoed Alexander's words just less than two years ago: "The prison at Guantánamo Bay undermines our national security, and our nation will be more secure the day when that prison is finally and responsibly closed." General Colin Powel underlined U.S. awareness of this perception in 2010. **Powell said unless Guantanamo is closed, it gives "radicals an opportunity to say, you see, this is what America is all about. They're all about torture and detention centers."** In Powell's words, the continuation of Guantanamo reinforces Al-Qaeda's "own positions." General David Petraeus' own words on Guantanamo Bay now seem prophetic. Just a year into Obama's first term Petraeus stated, I've been on the record on that for well over a year as well, saying that it [Guantanamo] should be closed. . . . And I think that whenever we have, perhaps, taken expedient measures, they have turned around and bitten us in the backside. . . . Abu Ghraib and other situations like that are nonbiodegradables. They don't go away. The enemy continues to beat you with them like a stick. **As the ongoing hunger strike intensifies at Guantanamo Bay, this issue and the facility itself continues to undermine our national security. Joe Biden called Guantanamo the "greatest propaganda tool that exists for recruiting of terrorists around the world" in 2005. Eight years later, if human rights and budgetary concerns are not enough to end this intractable problem, maybe national security will be.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**That causes miscalc and nuclear war**

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

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

**Leaves earth uninhabitable**

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

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

**1AC: Judiciary**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Bioweapons cause extinction**

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

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

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

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

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

**Court action on detention is key to reverse deference**

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

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

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

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

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

**Remedy mandate is key to overall judicial power**

Alex Young K. **Oh** et al., Counsel of Record, Brief for the Association of the Bar of the City of New York, the Brennan Center for Justice at the New York University School of Law, the Constitution Project, People for the American Way Foundation, the Rutherford Institute, and the National Association of Criminal Defense Lawyers as Amici Curiae in Support of the Petitioners, amal Kiyemba, et. Al., v. Barack H. Obama, et al., SCOTUS, No. 08-1234, 12—11—**09**, p. 11-12.

**The "judicial Power" granted by the Constitution includes the power to effectuate remedies** in those cases where a federal court properly exercises jurisdiction. As Justice Johnson explained, riding circuit in 1808, "[t]**he term 'judicial power' conveys the idea, both of exercising the faculty of judging and of applying physical force to give effect to a decision**. The term 'power' could with no propriety be applied, nor could the judiciary be denominated a department of government, without the means of enforcing its decrees." Gilchrist v. Collector of Charleston, 10 F. Cas. 355, 361 (C.C.D.S.C. 1808) (Johnson, J.) (emphasis added). Indeed, **if the power to effectuate remedies independently were not part of the "judicial Power**" granted to the courts by the Constitution, **the power of the courts to "say what the law is,"** Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803**), would be a functional nullity in the face of any contrary whim of the political branches and courts would be relegated to the issuance of hortatory advisory opinions**. See Michaelson v. United States, 266 U.S. 42, 66 (1924) (recognizing, in the context of a discussion of courts' inherent contempt power, that "the attributes which inhere in [judicial] power and are inseparable from it can neither be abrogated nor rendered practically inoperative"). **The "judicial Power**," of course, **embodies a far more substantial power. The heart of the "judicial Power" vested by Article III** in the several federal courts **is the power to speak authoritatively and finally on any matter of law over which they have jurisdiction, as this power sustains the judiciary's independence. "At the core of [the judicial] power is the federal courts' independent responsibility**—independent from its coequal branches in the Federal Government, and independent from the separate authority of the several States—**to interpret federal law**." SanchezLlamas v. Oregon, 548 U.S. 331, 354 (2006) (internal quotation marks omitted) (citing Williams v. Taylor, 529 U.S. 362, 378-79 (2000)). **The Court maintains its independence because this power to declare the law is the power to do so through orders and judgments that are binding and enforceable**. That is, **the Court acts only when its judgment on the law is not merely advisory, but effective**.

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

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

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

**Judicial review key to stop torture**

Mukul **Sharma**, "Bagram, the Other Guantanamo," THE HINDU, 1--6--**10**, http://beta.thehindu.com/opinion/op-ed/article76282.ece, accessed 8-15-13.

**As at Guantanamo, in the absence of judicial oversight** the **detentions** in Bagram **have been marked by torture and other kinds of ill-treatment** of detenus. **Agents of the** Federal Bureau of Investigation (**FBI**) deployed in Afghanistan between late-2001 and the end of 2004 **reported personally having observed military interrogators** in Bagram and elsewhere **employing stripping , sleep deprivation, threats of death or pain, threats against** detenus’ **family members, prolonged use of shackles, stress positions, hooding and blindfolding other than for transportation, use of loud music, use of strobe lights or darkness, extended isolation, forced cell extractions, use of and threats of use of dogs to induce fear, forcible shaving of hair for the purpose of humiliating detenus, h**olding detenus in an unregistered manner, sending them to other countries for “more aggressive” interrogation and threatening to take such action.

**Torture is a side constraint**

**Amnesty International**, Response to the Proposed “Interrogations Procedures Act,” 2--16--**05**, http://web.amnesty.org/library/Index/ENGAMR510392005

**What should matter even more is that the absolute duty to treat** all **prisoners with dignity** without exception **is a moral value reflecting fundament principles of humanity, as well as** part of **the bedrock of international law**. The proposed legislation **threatens to destroy all that and replace it by a legalized, regularized, supervised, and officially approved form of cruelty. The act** of one individual terrorizing another serves only to destroy the values it claims to be protecting.

**1AC: Plan**

**Plan: The United States federal judiciary should rule that all persons detained under the War Powers Authority of the President of the United States be afforded due process protections and that such individuals who have won their habeas corpus hearing or trial be released.**

**1AC: Solvency**

**Contention 3 is Solvency:**

**Boumediene failed provide detainees legal recourse—Court clarification is key**

**Reprieve 12** (Anti-detention advocacy group based in London, 7-10-12, "Why can't cleared prisoners leave Guantánamo Bay? Reprieve) www.reprieve.org.uk/publiceducation/2012\_07\_10\_Guantanamo\_public\_education/

**Guantánamo detainees can appeal to federal judges to compel the Department of Defense to release them; a federal court order would circumvent the NDAA restrictions. Under this method, detainees challenge their detention by seeking a court order of habeas corpus – essentially asking the court to declare their detention illegal.** In 2008, **the U**nited **S**tates **Supreme Court ruled in Boumediene v. Bush that US courts can make habeas corpus orders** for non-US citizens detained at Guantánamo. (The Court specifically ruled that a Congressional Act prohibiting such orders was unconstitutional.) Following Boumediene, **a number of Guantánamo detainees challenged their detention in court. Some of these habeas petitions were granted,** meaning that the detainee had indeed been held illegally. The release of some of these habeas winners was not contested by the government and such prisoners returned home or to a third country willing to take them. **However, since 2010, the D.C. Circuit Court has consistently decided against the detainee on appeal[1], meaning the US courts have become effectively worthless to Guantánamo prisoners. The problem was that the Supreme Court’s Boumediene opinion lacked clear guidance on the standards and procedures for Guantánamo habeas corpus review. This allowed lower** (and possibly more hostile) **courts to narrow and misinterpret the meaning of the Boumediene decision to a point where it became worthless. For example, the D.C. Circuit Court set the standard of evidence required of the government to oppose a release as a “preponderance of evidence”** - extremely low and vague. **The Court has also allowed hearsay evidence, and has even accepted the existence of simply “some evidence" as sufficient for continued detention**. Furthermore, th**e courts now side with the government whenever it presents a 'plausible' allegation about the prisoner.** In reality, **this shifts the burden of proof onto the prisoner**, as he must actively disprove the allegations about him, while the government may simply present them as fact. In sum, **while detainees can challenge their detention in court they now have no chance of winning.** **As the ultimate judicial decision-maker, the US Supreme Court could clarify its Boumediene opinion, overriding the D.C. Circuit Court’s apparent resolution to block Guantánamo releases**. However, **the Supreme Court has since refused to hear Guantánamo-related cases. This has effectively ended all hopes of judicially-ordered releases for detainees.** Eleven years after the island prison opened, the Supreme Court does not seem interested in delivering justice at Guantanamo Bay.

**Granting detainees immediate court access for prosecution solves**

Kenneth **Roth**, Executive Director, Human Rights Watch, "Why the Current Approach to Fighting Terrorism is Making Us Less Safe," CREIGHTON LAW REVIEW v. 41, 6--**08**, p. 592.

Let me conclude just by saying what concretely should the next President do, and along with him or her, what should the next Congress do. It's not going to be enough just to be a fresh face in the White House. **There are going to have to be real changes in practice.** **Among those changes will be the need to close Guantanamo**, **to close its equivalents** around the world: Bagram Air Base in Afghanistan, certainly the CIA secret detention facilities and the like. **People** there **should be prosecuted or released. It's that simple. There should not be a preventive detention option**. We should not just move Guantanamo onshore. The Army rules for interrogation should be extended to the CIA, initially by executive order and as quickly possible by legislation to make it harder for the next President to introduce another one of these exceptions. **Habeas corpus should be immediately restored** **so that anyone detained by the U.S. has immediate access to the courts to challenge the legality of their detention**. **We should abolish altogether the military commissions**. **We do not need a justice system designed to introduce into evidence coerced testimony. People can be brought before the civilian courts.** If they are captured in a battlefield, they can be brought before a regular court martial but none of these dumbed-down substandard military commissions. Apart from these concrete changes, **we also need a real repudiation. It is not enough to simply stop doing it**, I think **there is a need to disown the theories that led to this**, including I should say the concept of the global war against terrorism: The view that the Bush Administration or any administration on its own unilaterally can identify anybody any place in the world that is a combatant and therefore remove them from the criminal justice system and simply detain them as a combatant.

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

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

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

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

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

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

**1AC: Extra**

**Judicial review key to credibility of international law**

Oona A. **Hathaway**, Counsel of Record, Brief of International Law Experts as Amici Curiae in Support of the Petitions, Jamal Kiyemba, et. Al., v. Barack H. Obama, et al., SCOTUS, No. 08-1234, 12—**09**, p. 35-38.

THE **U**NITED **S**TATES **SHOULD LIVE UP TO THE STANDARDS OF INTERNATIONAL LAW TO WHICH IT HAS HELD OTHER COUNTRIES BY PROVIDING EFFECTIVE JUDICIAL REVIEW OF UNLAWFUL DETENTION** Since the mid-1970s, the **U**nited **S**tates has compiled annual reports on the human rights practices of other countries. By law, the reports reflect the Secretary of State’s assessment of the “status of internationally recognized human rights” in the states under review.23 These **reports have consistently criticized foreign countries for failing to provide effective judicial review of detention**. They have further made clear that the **U**nited **S**tates **considers courts’ capacity to order release essential to effective judicial review.** **They** therefore **provide powerful evidence of the importance of the shared international norm requiring release** upon a finding that a detention is unlawful**. If the U**nited **S**tates now **fails to live up to this shared norm, it will not only breed resentment but will also undermine its ability to encourage other countries to follow basic principles of international law in the future**. In evaluating other countries’ human rights practices, the **U**nited **St**ates **has considered whether habeas corpus review is not simply available but is effective.** The United States has criticized the Philippines for providing formal habeas corpus review but not making that process “effectively available to persons detained by the regime. . . .” See 1 Dep’t of State, Country Reports on Human Rights Practices 261 (1978). It has similarly criticized Cuba for “theoretically provid[ing] a safeguard against unlawful detention” but failing to provide any effective remedy. See 13 Dep’t of State, Country Reports on Human Rights Practices for 1988, at 520 (1989). The **U**nited **S**tates **has criticized many other countries for providing ineffective habeas review**, including Paraguay, 9 Dep’t of State, Country Reports on Human Rights Practices for 1984, at 637 (1985) (“the right of habeas corpus . . . can be ignored by government officials.”), Ethiopia, id. at 110 (“A writ of habeas corpus on [Ethiopia]’s statutes has not been successfully invoked in any known case.”), Ghana 8 Dep’t of State, Country Reports on Human Rights Practices for 1984, at 150 (1984) (“There has been no instance of the successful exercise of the right of habeas corpus.”), Afghanistan, 10 Dep’t of State, Country Report on Human Rights Practices for 1985, at 1166 (1986) (“nor is the right of habeas corpus respected”), and Bolivia, 4 Dep’t of State, Country Reports on Human Rights Practices for 1980, at 351 (1981) (“The Garcia Meza regime routinely violates constitutional provisions for habeas corpus.”). And the United States regularly criticizes countries for failing to provide effective judicial review for all detainees. See, e.g., 27 Dep’t of State, Country Reports on Human Rights Practices for 2002, at 345-46 (2003) (noting Liberia had incarcerated “an unknown number of persons . . . during [a] state of emergency as ‘illegal combatants,’ . . . and denied habeas corpus”); 13-A Dep’t of State, Country Reports on Human Rights Practices for 1988, at 844 (1989) (“[H]abeas corpus . . . does not apply to those [in South Korea] charged with violating the National Security Law.”). The **U**nited **S**tates’ **criticism**s of other countries further **makes clear that it regards the power of the courts to order release as essential to effective judicial review**. The United States criticized Ghana for responding to writs of habeas corpus by imposing “ex post facto preventive custody orders barring their release.” 10 Dep’t of State, supra, at 129. The United States similarly criticized Nepal for failing to release a prisoner after the Supreme Court issued a writ of habeas corpus. 27-B Dep’t of State, Country Reports on Human Rights Practices for 2002, at 2284 (2003). In discussing Zambia’s detention policies, the United States noted that “[h]abeas corpus is, in principle, available to persons detained under presidential order, but the Government is not obliged to accept the recommendation of the review tribunal.” 10 Dep’t of State, supra, at 383 (1986). The United States criticized Gambia when its “[p]olice ignored a December 31 court-ordered writ of habeas corpus to release [Gambian National Assembly Majority Leader Baba] Jobe and his co-detainees.” 28 Dep’t of State, Country Reports on Human Rights Practices for 2003, at 241 (2004). The United States has held other countries to account for their failure to live up to “internationally recognized human rights” including effective judicial review of detention. In reviewing the practices of other states, the United States has not regarded as sufficient a formal process allowing detainees to challenge their detention in court. The courts reviewing detention must also have the capacity to order release. The United States should now live up to its own high standards – standards it successfully fought to codify in international law and that it has long sought to encourage the rest of the world to follow.

**Extinction**

Jurgen **Scheffran**, Professor, Institute for Geography, Hamburg University, “Climate Change, Nuclear Risks and Nuclear Disarmament: From Security Threats to Sustainable Peace,” World Future Council, 3—**12**, [www.worldfuturecouncil.org/fileadmin/user\_upload/Rob/P\_D\_website2012/Climate\_Change\_\_Nuclear\_Risks\_and\_Nuclear\_Disarmament\_-\_March\_2012.pdf](http://www.worldfuturecouncil.org/fileadmin/user_upload/Rob/P_D_website2012/Climate_Change__Nuclear_Risks_and_Nuclear_Disarmament_-_March_2012.pdf)

**To establish a foundation for peace that prevents climate change and nuclear war, it is crucial to develop** and establish the concepts of **cooperative security** and sustainable peace. Preventing the dangers of climate change and nuclear war in the long run requires an integrated set of strategies that address the causes as well as the impacts on the natural and social environment. New concepts of security could serve as building blocks for a more peaceful world, including common security (pursuing common responses to common threats), ecological security (preventing environmental problems from turning into security risks) and human security (shielding and empowering people against acute threats) (Scheffran 2011). **Satisfying human needs and harnessing human capabilities makes societies more resistant to climate change** and allows them to implement low-carbon energy alternatives and conflict-resolution mechanisms. **Both require the creation of institutions that ensure the benefits of cooperation via establishing and enforcing common rules and regulations. Reducing poverty and implementing human rights would significantly strengthen human security and build problem-solving capabilities**. Less wealthy countries need development cooperation and international financial assistance, e.g., by effectively using microfinance. A ―Green New Deal‖ would provide the framework for the financial and technology transfer required to build a low-carbon society that tackles the challenges of energy security, climate change and human development at the same time. To face both nuclear risks and climate change, it is important to create sustainable lifecycles and livelihoods that respect the capabilities of the living world. It is crucial to evade the vicious cycle of unsustainable economic growth, unchecked accumulation of political power and escalation of violence that for too long have contributed to environmental destruction, underdevelopment and war. Instead, **a ―virtuous cycle needs to be built that transforms the current world disorder into a more peaceful and sustainable world order.** To avoid conflicts related to the scarcity of natural resources, or at least reduce their destructive effects, a bundle of measures is required that is not limited to the traditional means of conflict management, such as military intervention, arms control, refugee support and disaster operations. A world that is violent and unpeaceful is at the same time unsustainable und unjust, and vice versa. Strategies for preventing the causes of violent conflict integrate a set of measures, including the preservation and efficient use of natural resources, implementing principles of equity and justice, strengthening cooperation and changing lifestyles. Accordingly, concepts of peace that rely on avoiding dangerous conflict, on preventive arms control, the reduction of violence and the abolition of nuclear weapons, and on compliance with human rights and cooperation, will improve the conditions for the cooperative implementation of sustainable development. The inherent linkages need to be further developed in a mutually stimulating way to an integrated concept of sustainable peace (Scheffran 1998).

**Drone Shift DA: 2AC**

**Drone shift now, but plan still solves legitimacy**

David **Ignatius 10**, Washington Post, "Our default is killing terrorists by drone attack. Do you care?", December 2, www.washingtonpost.com/wp-dyn/content/article/2010/12/01/AR2010120104458.html

Every war brings its own deformations, but consider this disturbing fact about America's war against al-Qaeda: **It has become easier, politically and legally, for the United States to kill suspected terrorists than to capture** and interrogate **them**.¶ **Predator and Reaper drones**, armed with Hellfire missiles, **have become the weapons of choice against al-Qaeda** operatives in the tribal areas of Pakistan. They have also been used in Yemen, and the demand for these efficient tools of war, which target enemies from 10,000 feet, is likely to grow.¶ **The pace of drone attacks on the tribal areas has increased sharply** during the Obama presidency, with more assaults in September and October of this year than in all of 2008. **At the same time, efforts to capture al-Qaeda suspects have virtually stopped.** Indeed, if CIA operatives were to snatch a terrorist tomorrow, the agency wouldn't be sure where it could detain him for interrogation.¶ Michael **Hayden, a former director of the CIA, frames the puzzle** this way: "Have **we made detention** and interrogation **so legally difficult and politically risky that our default option is to kill our adversaries rather than capture** and interrogate **them**?"¶ It's curious why the American public seems so comfortable with a tactic that arguably is a form of long-range assassination, after the furor about the CIA's use of nonlethal methods known as "enhanced interrogation." When Israel adopted an approach of "targeted killing" against Hamas and other terrorist adversaries, it provoked an extensive debate there and abroad.¶ "**For reasons that defy logic, people are more comfortable with drone attacks"** than with killings at close range, says Robert Grenier, a former top CIA counterterrorism officer who now is a consultant with ERG Partners. "**It's something that seems so clean and antiseptic, but the moral issues are the same."**

**There’s no tradeoff**

Robert **Chesney 11**, Charles I. Francis Professor in Law at the UT School of Law as well as a non-resident Senior Fellow at Brookings, "Examining the Evidence of a Detention-Drone Strike Tradeoff", October 17, www.lawfareblog.com/2011/10/examining-the-evidence-of-a-detention-drone-strike-tradeoff/

Yesterday Jack linked to this piece by Noah **Feldman**, which among other things **advances the argument that** the **Obama** administration has **resorted to** drone **strikes** at least in part **in order to avoid having to grapple with** the **legal and political problems associated with** military **detention**:¶ Guantanamo is still open, in part because Congress put obstacles in the way. Instead of detaining new terror suspects there, however, Obama vastly expanded the tactic of targeting them, with eight times more drone strikes in his first year than in all of Bush’s time in office.¶ **Is there truly a detention-drone strike tradeoff, such that** the **Obama** administration **favors killing** rather than capturing? As an initial matter, **the numbers quoted above aren’t correct** according to the New America Foundation database of drone strikes in Pakistan, **2008 saw a total of 33 strikes, while in 2009 there were 53** (51 subsequent to President Obama’s inauguration). Of course, you can recapture something close to the same point conveyed in the quote by looking instead to the full number of strikes conducted under Bush and Obama, respectively. There were relatively few drone strikes prior to 2008, after all, while the numbers jump to 118 for 2010 and at least 60 this year (plus an emerging Yemen drone strike campaign). But **what does all this really prove?**¶ **Not much**, I think. Most if not all of **the difference in drone strike rates can be accounted for by specific policy decisions relating to the quantity of drones available** for these missions, **the locations in Pakistan** where drones have been permitted to operate, **and** most notably **whether drone strikes were conditioned on** obtaining **Pakistani permission**. Here is how I summarize the matter in my forthcoming article on the legal consequences of the convergence of military and intelligence activities:¶ According to an analysis published by the New America Foundation, two more drone strikes in Pakistan’s FATA region followed in 2005, with at least two more in 2006, four more in 2007, and four more in the first half of 2008.[1] The pattern was halting at best. Yet that soon changed. U.S. policy up to that point had been to obtain Pakistan’s consent for strikes,[2] and toward that end to provide the Pakistani government with advance notification of them.[3] But intelligence suggested that on some occasions “the Pakistanis would delay planned strikes in order to warn al Qaeda and the Afghan Taliban, whose fighters would then disperse.”[4] A former official explained that in this environment, it was rare to get permission and not have the target slip away: “If you had to ask for permission, you got one of three answers: either ‘No,’ or ‘We’re thinking about it,’ or ‘Oops, where did the target go?”[5]¶ Declaring that he’d “had enough,” Bush in the summer of 2008 “ordered stepped-up Predator drone strikes on al Qaeda leaders and specific camps,” and specified that Pakistani officials going forward should receive only “‘concurrent notification’…meaning they learned of a strike as it was underway or, just to be sure, a few minutes after.”[6] **Pakistani permission no longer was required**.[7] ¶ **The results were dramatic. The CIA conducted dozens of strikes in Pakistan over the remainder of 2008, vastly exceeding the number of strikes over the prior four years combined**.[8] **That pace continued in 2009**, which eventually saw a total of 53 strikes.[9] **And then, in 2010, the rate more than doubled**, with 188 attacks (followed by 56 more as of late August 2011).[10] The further acceleration in 2010 appears to stem at least in part from a meeting in October 2009 during which President Obama granted a CIA request both for more drones and for permission to extend drone operations into areas of Pakistan’s FATA that previously had been off limits or at least discouraged.[11] ¶ **There is an additional reason to doubt that the number of drone strikes tells us much about a potential detention/targeting tradeoff: most of these strikes involved circumstances in which there was no feasible option for capturing the target. These strikes are concentrated in the FATA region**, after all. ¶ Having said all that: it does not follow that there is no detention-targeting tradeoff at work. I’m just saying that drone strikes in the FATA typically should not be understood in that way (though there might be limited exceptions where a capture raid could have been feasible). Where else to look, then, for evidence of a detention/targeting tradeoff?¶ Bear in mind that it is not as if we can simply assume that the same number of targets emerge in the same locations and circumstances each year, enabling an apples-to-apples comparison. But set that aside.¶ First, consider locations that (i) are outside Afghanistan (since we obviously still do conduct detention ops for new captures there) and (ii) entail host-state government control over the relevant territory plus a willingness either to enable us to conduct our own ops on their territory or to simply effectuate captures themselves and then turn the person(s) over to us. This is how most GTMO detainees captured outside Afghanistan ended up at GTMO. Think Bosnia with respect to the Boumediene petitioners, Pakistan’s non-FATA regions, and a variety of African and Asian states where such conditions obtained in years past. **In** such **locations, we seem to be using neither drones nor detention. Rather, we** either **are relying on host-state intervention or we are limiting ourselves to surveillance**. Very hard to know how much of each might be going on, of course. **If it is occurring often**, moreover, **it might reflect a decline in host-state willingness to cooperate with us** (in light of increased domestic and diplomatic pressure from being seen to be responsible for funneling someone into our hands, and the backdrop understanding that, in the age of wikileaks, we simply can’t promise credibly that such cooperation will be kept secret). **In any event, this tradeoff is not about detention versus targeting, but something much more complex and difficult to measure**.

### Rendition DA: 2AC

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

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

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

**Courts Solve: A2 “Rollback—Obama” 2AC**

**Obama wants the courts to take the blame**

**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.**

**Presidents yield to the court**

David M. **O'Brien**, Professor, University of Virginia, STORM CENTER: THE SUPREME COURT IN AMERICAN POLITICS, 5th Edition, **2K**, p. 372.

**The Court has** often **been the focus of presidential campaigns and power struggles**. But **Presidents seldom** openly **defy** particular **decisions by the Court.** Presidential defiance is, perhaps, symbolized by the following famous remark attributed to Andrew Jackson: "John Marshall has made his decision, now let him enforce it." Jackson's refusal to enforce the decision in Worcester v. Georgia ( 1832), which denied state courts jurisdiction over crimes committed on Indian lands, in fact simply left enforcement problems up to the courts and legislatures. During the Civil War, Lincoln ordered his military commanders to refuse to obey writs of habeas corpus issued by Chief Justice Taney. On less dramatic occasions, Presidents have also instructed their attorneys general to refuse to comply with other court orders**. In major confrontations, Presidents generally yield to the Court**. **Nixon complied with the** **ruling** in New York Times Co. v. United States, **which struck down**, as a prior restraint on freedom of the press, **an injunction against the publication of the Pentagon Papers**—a t**op-secret report detailing the history of America's involvement in Vietnam.** Then, in 1974, he submitted to the Court's decision in United States v. Nixon, ordering the release of White House tape recordings pertinent to the trial of his former Attorney General John Mitchell and other presidential assistants for conspiracy and obstruction of justice.

**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

**Congress CP: 2AC**

**Congress can’t solve deference**

**Sekhon 05** [Vijay-, U. of Connecticut School of Law, June, Boalt Journal of Criminal Law, “More Questions than Answers: The Indeterminacy Surrounding Enemy Combatants Following Hamdi v. Rumsfeld”, Vol. 9, <http://www.boalt.org/bjcl/v9/> v9sekhon.htm]

The nature of Executive power and social psychology in times of crisis further limit the practical force of Hamdi in the event of future periods of upheaval in the United States. Historically, presidents have extended their power to the outer boundaries of constitutional authority in times of crisis. 64 President Abraham Lincoln's suspension of the writ of habeas corpus during the Civil War, President Franklin D. Roosevelt's detention of Japanese-Americans during War II, President Harry Truman's seizure of the steel mills during the Korean War, and President Bush's enactment of the Patriot Act during the current War on Terrorism are just a few of the most cited examples. In addition, Congress' swift passage of the Patriot Act 65 demonstrates that **Congress typically acquiesces to the executive branch's proposed methods to deal with such crises**. 66 **The political culture of the United States tends to defer to executive action during wartime, and Congress tends to cave in to executive pressure during such periods**. 67 Congressional approval of the National Security Act during the Korean War, [\*14] the Foreign Intelligence Surveillance Act during the Vietnam War, and the Patriot Act during the War on Terrorism are a few examples. 68 Consequently, **one cannot expect the legislative branch to provide a significant check on the Executive power to detain American citizens as "enemy combatants."**

**CP fails and links to the net-benefit—legislation would be unclear, take years, and be reviewed by the Supreme Court**

**Eviatar 10** (Daphne- Senior Associate in Human Rights First’s Law and Security Program, June 10, “Judges to Congress: Don't Legislate Indefinite Detention”, http://www.huffingtonpost.com/daphne-eviatar/judges-to-congress-dont-l\_b\_607801.html)

For months now, **certain commentators and legislators have been arguing that Congress needs to pass a new law authorizing the indefinite detention without charge or trial of suspected terrorists and their supporters.**¶ **On its face**, **that would** seem to **violate** some **basic tenets of the U.S. Constitution**. But the U.S. government is already detaining hundreds of suspects captured abroad at Guantanamo Bay and elsewhere. The question is whether Congress should expand that authority and define it in more detail.¶ **Writers** such as Benjamin Wittes of the Brookings Institution and lawmakers such as Senator Lindsey Graham of South Carolina **argue** that even though hundreds of people have been detained over the last eight years at Guantanamo Bay, the law that justifies their detention or mandates their release isn't clear, and **Congress needs to step in and make new rules**.¶ In fact, as a new report issued today by **16 former federal judges makes clear, that's nonsense**. The people in the best position to decide when military detention is legal are already doing just that. **The** new **report**, published by Human Rights First and the Constitution Project, **explains** exactly **how that process is working** -- and demonstrates that it's actually working very well. Responding to a series of habeas corpus petitions, where Guantanamo detainees have asked the federal court to review the legality of their detentions, federal district court judges in Washington, D.C., have already issued written opinions concerning 50 different detainees that set out the legal standard for indefinite wartime detention, and which cases do and do not meet it.¶ **The claim by Wittes and Graham that judges are somehow overstepping their bounds and usurping the role of Congress reflects a fundamental misunderstanding of how the federal courts and judges work. In fact, the courts are doing just what they're supposed to do: interpret the law**.¶ **The reason judges are so well-situated to explain the contours of U.S. detention authority is because, according to judicial rulings, the right to detain arises out of existing laws, including the Authorization for Use of Military Force against Terrorists, or AUMF, passed by Congress in 2001; the traditional law of war; and the U.S. Constitution.¶** Traditionally, a government at war can detain fighting members of the enemy's forces, under humane conditions, until the war is over. Although that authority is less clear when the government is fighting a loose coalition of insurgent forces around the world rather than another country, the Supreme Court has said that at least in some circumstances, pursuant to the AUMF, the United States can detain enemy fighters seized on the battlefield.¶ **It's the Supreme Court's rulings on the subject, combined with the law of war and the mandates of the U.S. Constitution, that highly experienced federal judges have been applying to the habeas corpus cases that have come before them. Applying those rulings**, **they've developed a clear and consistent body of law that explains what kind of evidence the government needs to have amassed against a suspected insurgent to justify his military detention.¶** Under the D.C. District Court's rulings, for example, Fouad Al Rabiah, a 43-year-old, 240-pound, Kuwaiti Airways executive with a long history of volunteering for Islamic charities who'd been discharged from compulsory military service in Kuwait due to a knee injury, and who suffered from high blood pressure and chronic back pain, did not meet the requirement of being "part of" or having "substantially supported" al Qaeda, the Taliban or associated forces. Although seized while attempting to leave Afghanistan in 2001, by the time of Al Rabiah's hearing, even the government had decided the witnesses who claimed he'd helped al Qaeda weren't credible. The government's own interrogators didn't believe his "confessions," which the court determined had been coerced and were "entirely incredible."¶ On the other hand, Fawzi Al Odah, also Kuwaiti, did meet the law's detention standards. The same judge found that he'd attended a Taliban training camp, learned to use an AK-47, traveled with other armed fighters on a route common to jihadists, and took directions from Taliban leaders - all making it more likely than not that he was a member of Taliban fighting forces.¶ Still, despite the courts' careful analysis in these cases, Congress could step in and write its own new law on indefinite detention. **But how can any one statute possibly address all the vastly different factual scenarios, many spanning several countries and decades, that constitute the government's claims that any particular individual is detainable**? What's more, **any new law will still have to meet the requirements of the U.S. Constitution**, **and the Supreme Court gets the ultimate say on that**. **Any new statute passed by Congress, then, would likely be challenged as soon as it's applied, causing more confusion about what the law really is until the U.S. Supreme Court weighs in on that new statute several years later.**¶ The federal judges of the D.C. District Court and Court of Appeals are already way ahead of that game. In addition to the trial court opinions, the appellate court recently issued its own opinion setting out the law of detention and the government's constitutional authority. That decision may be appealed to the Supreme Court, whose opinion would set out the binding standard that every judge and future U.S. administration will have to follow.¶ The upshot of all this is that **if Congress legislates some new detention standard now**, **it will actually take a lot longer** **to get a clearly-defined and binding law that guides the government than it would if Congress** **just let the courts continue to play the role they're supposed to: deciding the legality of government detention**.¶ Wittes, Graham and others may secretly be hoping that **Congress** will **legislate in this area** anyway and try to expand the government's indefinite detention authority beyond Guantanamo Bay to reach even suspects arrested on U.S. soil. But that **would create a whole new constitutional firestorm, resulting in exactly the opposite of what they say they're after: a clear and reliable statement of the law.**

#### 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.

#### 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.

### The Add-Ons

**Pakistan's judicial independence is threatened now**

Shabbir Ahmad **Khan**, PhD Scholar, West Virginia University, "Judicial Independence," EXPRESS TRIBUNE, 12--24--**12**, http://tribune.com.pk/story/483823/judicial-independence/

As far as the decisional independence of a judge is concerned, the judiciary as an independent institution also ensures individual independence. However, it is not true that judges make decisions in isolation. Lee Epstein and Jack Knight in their book, The Choices Justices Make (1998) and Lawrence Baum, in Judges and Their Audiences: A Perspective on Judicial Behaviour (2006) focus on the issue of how individual judges make their decisions. According to them, judges are human beings and they seek respect, popularity, approbation and approval from those around them including colleagues, lawyers, policy groups, media, branches of government and the public. Baum also challenges the prevailing conventional wisdom theory in judicial behaviour that judges at higher levels seek only to promote good laws and good policy. In fact, Baum’s argument is a continuation of the scholarly rejection of the traditional legal models of judicial behaviour. **In Pakistan, neither the judiciary as an institution nor the individual judges are independent.** The formation of different benches for the different cases in the superior courts and the ratio of dissenting opinions are crude examples. The jurists and scholars also make the distinction between judicial independence and judicial activism. **Independence of judiciary is the hallmark of liberal democracies**. On the other hand, our judicial process is based on arbitrary principles, from the appointment and removal of judges to the process of deciding the cases. And particularly, the absolute powers of the chief justices to grant cases to different benches. The suo-motu power of judges is another example of arbitrary nature of the court procedure. The ‘rule of four’ is applied in the US Supreme Court to grant certiorari, i.e., four justices out of a total of nine decide by vote whether or not to hear a case.

**That threatens massive instability**

Nasira **Iqbal**, retired justice, Lahore High Court, "Judicial Independence Abroad: The Struggle Continues," HUMAN RIGHTS v. 36, Winter 20**09**, www.americanbar.org/publications/human\_rights\_magazine\_home/human\_rights\_vol36\_2009/winter2009/judicial\_independence\_abroad.html

Recent encroachments on independence. The defining moment in the Supreme Court’s move toward judicial independence came on March 9, 2007, when Chief Justice Iftikhar Muhammad Chaudhry was suspended by General Pervez Musharraf on alleged charges of misuse of power when he did not oblige Musharraf and refused to resign. He had worked hard to clear the backlog of cases while simultaneously taking suo moto notice and deciding thousands of human rights cases of poor and vulnerable victims of injustice across the country. He gave judgments against the excesses of public functionaries regardless of the consequences. In the Pakistan Steel Mills case, he declared that the Cabinet Committee on Privatization, headed by the prime minister, grossly violated the law in selling the mills. While pursuing the case of so-called “missing persons,” he held the government responsible and observed that it was the duty of the state to protect people’s lives and to ensure their safety. He also canceled, as harmful to the environment, the New Murree Project and other urban development schemes undertaken by the government to benefit various members of the power elite. Thousands of lawyers, citizens, and the media rallied to his support. Lawyers took to the streets in peaceful processions and boycotted the courts. Ultimately, Chaudhry was reinstated by the judgment of a fifteen-member bench of the Supreme Court on July 20 of that year. On November 3, however, Musharraf preempted an impending court decision against his reelection and invoked emergency powers, suspending the constitution. Under his directions, the chief justice and seven other judges were arrested. Musharraf replaced Chaudhry with Justice Abdul Hameed Dogar. Dogar promptly obliged by declaring Musharraf validly elected as president and by declaring valid Musharraf’s National Reconciliation Ordinance, which provided immunity from prosecution to numerous corrupt public functionaries. Martial law was lifted and a considerably disfigured version of the constitution was restored on December 15. General elections were held in February 2008. On March 24, the newly elected government released Chaudhry, his colleagues, and his family from incarceration. Musharraf resigned under pressure on August 18. Asif Ali Zardari, who promised to restore Chaudhry to office, was elected president on September 6, but the restoration of the judiciary to its pre-November 3, 2007, position has still not come to pass. Those who have benefited from the judgments of a pliant judiciary, particularly by the validation of the dubious National Reconciliation Ordinance, are not eager to accept an independent judiciary. However, **the lawyers’ movement and the proactive media have forced average citizens to realize that good governance, economic and social justice, peace, stability, freedom from terror, and credibility in the comity of nations cannot be achieved without an independent judiciary. The future destiny of Pakistan will be determined by** the elected representatives **of the people. Rule of law must be upheld by an independent, impartial judiciary. The alternative is a descent into chaos.**

**Global nuclear war**

William **Pitt**, NYT best selling author on international affairs, "Unstable Pakistan Threatens the World," ARAB AMERICAN NEWS, 5--8--**09**, www.arabamericannews.com/news/index.php?mod=article&cat=commentary&article=2183

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But a suicide bomber in Pakistan rammed a car packed with explosives into a jeep filled with troops today, killing five and wounding as many as 21, including several children who were waiting for a ride to school. Residents of the region where the attack took place are fleeing in terror as gunfire rings out around them, and government forces have been unable to quell the violence. Two regional government officials were beheaded by militants in retaliation for the killing of other militants by government forces. As familiar as this sounds, it did not take place where we have come to expect such terrible events. This, unfortunately, is a whole new ballgame. It is part of another conflict that is brewing, one which puts what is happening in Iraq and Afghanistan in deep shade, and which represents a grave and growing threat to us all.**Pakistan is now trembling on the edge of violent chaos,** and is doing so **with nuclear weapons** in its hip pocket,right in the middle of one of the most dangerous neighborhoods in the world**.**The situation in brief: Pakistan for years has been a nation in turmoil, run by a shaky government supported by a corrupted system, dominated by a blatantly criminal security service, and threatened by a large fundamentalist Islamic population with deep ties to the Taliban in Afghanistan. All this is piled atop an ongoing standoff with neighboring India that has been the center of political gravity in the region for more than half a century. The fact that **Pakistan**, and **India, and Russia, and China all possess nuclear weapons** and share the same space means any ongoing or **escalating violence** over there **has** the **real potential to crack open the very gates of Hell** itself. Recently, the Taliban made a military push into the northwest Pakistani region around the Swat Valley. According to a recent Reuters report: The (Pakistani) army deployed troops in Swat in October 2007 and used artillery and gunship helicopters to reassert control. But insecurity mounted after a civilian government came to power last year and tried to reach a negotiated settlement. A peace accord fell apart in May 2008. After that, hundreds — including soldiers, militants and civilians — died in battles. Militants unleashed a reign of terror, killing and beheading politicians, singers, soldiers and opponents. They banned female education and destroyed nearly 200 girls' schools.About 1,200 people were killed since late 2007 and 250,000 to 500,000 fled, leaving the militants in virtual control. Pakistan offered on February 16 to introduce Islamic law in the Swat valley and neighboring areas in a bid to take the steam out of the insurgency. The militants announced an indefinite cease-fire after the army said it was halting operations in the region. President Asif Ali Zardari signed a regulation imposing sharia in the area last month. But the Taliban refused to give up their guns and pushed into Buner and another district adjacent to Swat, intent on spreading their rule. The United States, already embroiled in a war against Taliban forces in Afghanistan, must now face the possibility that Pakistan could collapse under the mounting threat of Taliban forces there. Military and diplomatic advisers to President Obama, uncertain how best to proceed, now face one of the great nightmare scenarios of our time. "Recent militant gains in Pakistan," reported The New York Times on Monday, "have so alarmed the White House that the national security adviser, Gen. James L. Jones, described the situation as 'one of the very most serious problems we face.'" "Security was deteriorating rapidly," reported The Washington Post on Monday, "particularly in the mountains along the Afghan border that harbor al-Qaeda and the Taliban, intelligence chiefs reported, and there were signs that those groups were working with indigenous extremists in Pakistan's populous Punjabi heartland. The Pakistani government was mired in political bickering. The army, still fixated on its historical adversary India, remained ill-equipped and unwilling to throw its full weight into the counterinsurgency fight. But despite the threat the intelligence conveyed, Obama has only limited options for dealing with it. Anti-American feeling in Pakistan is high, and a U.S. combat presence is prohibited. The United States is fighting Pakistan-based extremists by proxy, through an army over which it has little control, in alliance with a government in which it has little confidence." It is believedPakistan is currently in possession of between 60 and 100 nuclear weapons. Because Pakistan's stability is threatened by the wide swath of its population that shares ethnic, cultural and religious connections to the fundamentalist Islamic populace of Afghanistan, fears over what could happen to those nuclear weapons if the Pakistani government collapses are very real. "As the insurgency of the Taliban and Al Qaeda spreads in Pakistan," reported the Times last week, "senior American officials say they are increasingly concerned about new vulnerabilities for Pakistan's nuclear arsenal, including the potential for militants to snatch a weapon in transport or to insert sympathizers into laboratories or fuel-production facilities. In public, the administration has only hinted at those concerns, repeating the formulation that the Bush administration used: that it has faith in the Pakistani Army. But that cooperation, according to officials who would not speak for attribution because of the sensitivity surrounding the exchanges between Washington and Islamabad, has been sharply limited when the subject has turned to the vulnerabilities in the Pakistani nuclear infrastructure." "The prospect of turmoil in Pakistan sends shivers up the spinesof those U.S. officials charged with keeping tabs on foreign nuclear weapons," reported Time Magazine last month. "Pakistan is thought to possess about 100 — the U.S. isn't sure of the total, and may not know where all of them are. Still, if Pakistan collapses, the U.S. military is primed to enter the country and secure as many of those weapons as it can, according to U.S. officials. Pakistani officials insist their personnel safeguards are stringent, but a sleeper cell could cause big trouble, U.S. officials say." In other words, a shaky Pakistan spells trouble for everyone, especially if America loses the footrace to secure those weapons in the event of the worst-case scenario**. If Pakistani militants** ever succeed in **toppl**ing **the government**, several very dangerous events could happen at once. **Nuclear-armed India** could **be galvanized into military action** of some kind,**as could** nuclear-armed **China or** nuclear-armed **Russia.** If the Pakistani government does fall, and all those Pakistani nukes are not immediately accounted for and secured,the specter (or reality) o**f** loose nukes falling into the hands of terrorist organizations could place the entire world on a collision course with unimaginable disaster.We have all been paying a great deal of attention to Iraq and Afghanistan, and rightly so. The developing situation in Pakistan, however, needs to be placed immediately on the front burner. The Obama administration appears to be gravely serious about addressing the situation. So should we all.

**Bagram Addon: 2AC**

**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**.

**Prez Flex DA: 2AC**

#### Flexibility is irrelevant in the hegemonic era—rule-breaking is a greater risk

Knowles 09 (Robert, Assistant Professor, New York University School of Law, Spring 2009, "American Hegemony and the Foreign Affairs Constitution" Arizona State Law Journal, Lexis)

The hegemonic model also reduces the need for executive branch flexibility, and the institutional competence terrain shifts toward the courts. The stability of the current U.S.-led international system depends on the ability of the U.S. to govern effectively. Effective governance depends on, among other things, predictability. n422 G. John Ikenberry analogizes America's hegemonic position to that of a "giant corporation" seeking foreign investors: "The rule of law and the institutions of policy making in a democracy are the political equivalent of corporate transparency and [\*155] accountability." n423 Stable interpretation of the law bolsters the stability of the system because other nations will know that they can rely on those interpretations and that there will be at least some degree of enforcement by the United States. At the same time, the separation of powers serves the global-governance function by reducing the ability of the executive branch to make "abrupt or aggressive moves toward other states." n424 The Bush Administration's detainee policy, for all of its virtues and faults, was an exceedingly aggressive departure from existing norms, and was therefore bound to generate intense controversy. It was formulated quickly, by a small group of policy-makers and legal advisors without consulting Congress and over the objections of even some within the executive branch. n425 Although the Administration invoked the law of armed conflict to justify its detention of enemy combatants, it did not seem to recognize limits imposed by that law. n426 Most significantly, it designed the detention scheme around interrogation rather than incapacitation and excluded the detainees from all legal protections of the Geneva Conventions. n427 It declared all detainees at Guantanamo to be "enemy combatants" without establishing a regularized process for making an individual determination for each detainee. n428 And when it established the military commissions, also without consulting Congress, the Administration denied defendants important procedural protections. n429 In an anarchic world characterized by great power conflict, one could make the argument that the executive branch requires maximum flexibility to defeat the enemy, who may not adhere to international law. Indeed, the precedents relied on most heavily by the Administration in the enemy combatant cases date from the 1930s and 1940s - a period when the international system was radically unstable, and the United States was one of several great powers vying for advantage. n430 But during that time, the executive branch faced much more exogenous pressure from other great powers to comply with international law in the treatment of captured enemies. If the United States strayed too far from established norms, it would risk retaliation upon its own soldiers or other consequences from [\*156] powerful rivals. Today, there are no such constraints: enemies such as al Qaeda are not great powers and are not likely to obey international law anyway. Instead, the danger is that American rule-breaking will set a pattern of rule-breaking for the world, leading to instability. n431 America's military predominance enables it to set the rules of the game. When the U.S. breaks its own rules, it loses legitimacy.

#### 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.

**Iraq disproves the link**

National Institute of Military Justice, Amicus Brief, Rasul v. Bush, 2003 U.S. Briefs 334, January 14, 2004, p. 12-13.

The experience of United States armed forces in combat belies the Government's expressed concern that judicial review of the claims of combatants "would interfere with the President's authority as Commander in Chief." (Opp. at 11) Courts-martial, prisoner status determinations, and other legal processes have been a regular adjunct of American wartime operations throughout the period since Eisentrager. During the Vietnam era, the United States Army held approximately 25,000 courts-martial in the war theater. In 1969 alone, 7691 of these were special and general courts-martial, which are trials presided over by a military judge in which the defendant is entitled to a panel equivalent to a jury as provided in the UCMJ. Frederic L. Borch, Judge Advocates In Combat: Army Lawyers in Military Operations from Vietnam to Haiti 29 (2001). Another 1146 special and general courts-martial were held in Vietnam by the Marine Corps in 1969. In addition, still only in 1969, the Army held 66,702 less formal disciplinary proceedings under Article 15 of the UCMJ, 10 U.S.C. § 815. Id. . The United States Military Assistance Command in Vietnam enforced strict requirements for the classification of captured personnel, including providing impartial tribunals to determine eligibility for prisoner of war status. Military Assistance Command Vietnam, Directive No. 381-46, Annex A (Dec. 27, 1967) and Directive No. 20-5 (Sept. 21, 1966 as amended Mar. 15, 1968.) . During the 1991 Persian Gulf War, the status of approximately 1200 detainees was determined by "competent tribunals" established for that purpose. Dep't of Defense, Final Report to Congress: Conduct of the Persian Gulf War 578 (1992); Army Judge Advocate General's School, Operational Law Handbook 22 (O'Brien ed. 2003). . At this very time, United States forces in Iraq, a theater of actual combat, are providing impartial tribunals compliant with Article 5 of the GPW to adjudicate the status of captured belligerents. Although details are difficult to come by, American commanders of forces in Iraq acknowledge that as many as 100 prisoners there have had their status adjudicated by impartial tribunals under Article 5 of the GPW.

### Econ--1NC

#### 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.

#### resilient

**Globe and Mail 2010** (5/31/10, BRIAN MILNER, "While gloom says bear, TIGER points to bull", lexis, WEA)

Even at the height of the remarkable rebound of 2009 that brought stocks back from the dead zone, the bears never retreated to their lairs. Negative sentiment among investors remained stubbornly high, no matter how promising the economic indicators looked. And then along came the Greeks and their little sovereign debt problem, the Chinese and their public hand-wringing over asset bubbles and the North Koreans and their latest idiotic sabre-ratting to remind nervous markets just how fragile the nascent global recovery could turn out to be. The latest survey of American investors last week showed bearish sentiment hovering close to 30 per cent, with plenty of room for an uptick in the months ahead, as the optimists come to realize that a V-shaped recovery was never in the cards after the worst global financial and economic crisis since the Great Depression. The world's most overexposed permabear, Nouriel Roubini, is still grabbing headlines with his dire Greece-is-just-the-tip-of-the-iceberg warnings. (Well, he does have a new book to sell.) And such high-profile Canadian bruins as gold-loving money manager Eric Sprott and eminent strategist and data miner David Rosenberg have never veered from their sombre outlooks. The fact that May turned into a particularly brutal month for just about everything but U.S. Treasuries - even after last week's modest rebound, the Dow posted its worst performance for the month in 70 years - only added fuel to arguments that worse, much worse, is yet to come. I mention all this to Eswar Prasad, when I reach the Cornell University economics professor at his hotel in Beijing. Prof. Prasad is a noted China watcher who once headed the IMF's China division and still keeps in close touch with top government finance officials. But on this call, I'm more interested in one of his other hats as a shrewd analyst of global economic and market trends. "My inclination also is to be a bear," the affable academic says. "But the data don't support my bearishness as much as I would like. One has to be a little cautious, because these are based on a variety of indicators. Some of them certainly show more strength than I had realized." The data he's talking about come out of his work on a new composite index derived from a broad set of economic, market and confidence measures in the G20 countries and designed to provide a quarterly snapshot of the global recovery. "All signs are that the recovery has some momentum," says Prof. Prasad, who developed the index at the Brookings Institution, a Washington think tank where he is also a senior fellow. "But I wouldn't call it solid enough momentum that we can consider it 'in the bag.'" The new index, cutely named TIGER (Tracking Indices for the Global Economic Recovery), is a joint effort by Brookings and the Financial Times. And TIGER shows that since the world began climbing out of the deep trough about the middle of last year, big emerging economies have roared ahead, while the developed world has experienced much more uneven results. Industrial production and trade have bounced back handsomely - total exports from the big emerging countries now exceed pre-crisis levels - but the employment picture remains cloudy and consumption has yet to develop a new head of steam. "It's much easier at this stage to list all the things that could derail the recovery," Prof. Prasad says. "But all of those things are still conjectural. The reality, and the data, is that things are looking better."

### Prolif (Short)

#### Proliferation is slow, doesn’t cascade, and doesn’t cause conflict – 60 years of empirics prove

DeGarmo 2011

Denise, professor of international relations at Southern Illinois University, “Proliferation Leads to Peace”

Unfortunately, while the fear of proliferation is pervasive, it is unfounded and lacks an understanding of the evidence. Nuclear proliferation has been slow. From [1945 to 1970](http://en.wikipedia.org/wiki/List_of_states_with_nuclear_weapons), only six countries acquired nuclear weapons: United States, Russia, United Kingdom, France, China, and Israel. Since the Nuclear Non-Proliferation Treaty came into effect in 1970, only three countries have joined the nuclear club: India, Pakistan, and North Korea. In total, only .05% of the world’s states have nuclear weapons in their possession. Supporters of non-proliferation seem to overlook the fact that there are states currently capable of making nuclear weapons and have chosen not to construct them, which illustrates the seriousness with which states consider their entrance into the nuclear club. Included on this list are such actors as: [Japan, Argentina, Brazil, Egypt, Iran, South Korea, Taiwan, and South Africa](http://www.fas.org/irp/threat/svr_nuke.htm). The attraction of nuclear weapons is multifold. Nuclear weapons enhance the international status of states that possess them and help insecure states feel more secure. States also seek nuclear capabilities for offensive purposes. It is important to point out that while nuclear weapons have spread very slowly, conventional weapons have proliferated exponentially across the globe. The wars of the 21st century are being fought in the peripheral regions of the globe that are undergoing conventional weapons proliferation. What the pundits of non-proliferation forget to mention are the many lessons that are learned from the nuclear world. Nuclear weapons provide stability just as they did during the Cold War era. The fear of[Mutual Assured Destruction (MAD)](http://atomicarchive.com/History/coldwar/page15.shtml) loomed heavily on the minds of nuclear powers through out the Cold War and continues to be an important consideration for nuclear states today. States do not strike first unless they are assured of a military victory, and the probability of a military victory is diminished by fear that their actions would prompt a swift retaliation by other states. In other words, states with nuclear weapons are deterred by another state’s second-strike capabilities. During the Cold War, the United States and Soviet Union could not destroy enough of the other’s massive arsenal of nuclear weapons to make a retaliatory strike bearable. Even the prospect of a small number of nuclear weapons being placed in Cuba by the Soviets had a great deterrent effect on the United States. Nothing can be done with nuclear weapons other than to use them for deterrent purposes. If deterrence works reliably, as it has done over the past 60 plus years, then there is less to be feared from nuclear proliferation than there is from convention warfare.

**Defer Add-On: Chemical Soldiers 2AC**

**Military is developing chemical soldiers**

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

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

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

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

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