## 1AC

**1AC: Blowback**

**Contention 1 is Blowback:**

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

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

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

**Legitimacy is crucial to sustainable and effective US hegemony—collapse causes great power war**

**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 U**nited** S**tates 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.**

#### Plan is key to EU relations—current detention disagreements spill over and wreck the entire relationship

Smith 7(JULIANNE, DIRECTOR AND SENIOR FELLOW, EUROPE PROGRAM, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES, April 17, “EXTRAORDINARY RENDITION IN U.S. COUNTERTERRORISM POLICY: THE IMPACT ON TRANSATLANTIC RELATIONS”, http://archives.republicans.foreignaffairs.house.gov/110/34712.pdf)

As a European analyst, who spends a considerable amount of time in Europe meeting with policymakers and addressing a variety of public audiences, I can confirm that the issue of extraordinary rendition, along with press revelations about secret prisons in Europe, have cast a rather dark shadow on our relationship with our European allies. While transatlantic intelligence and law enforcement cooperation does continue**,** European political **leaders are coming under increasing pressure to distance themselves from the** U**nited** S**tates**. Over time, I do believe that th**is could pose a** threat to joint **intelligence activity with our European allies**. Now it is well known that **America’s image in Europe has declined quite steadily** over the last couple of years, and some of the reasons for that were cited earlier this afternoon, in part due to the decision of the United States to go to Iraq, human rights abuses at Abu Ghraib and allegations of torture at Guantanamo bay. But we seemed to move away from some of these dark days in the transatlantic relationship as we moved into 2005, as both sides of the Atlantic I think, both Europe and the United States, made a conscious effort to renew transatlantic ties. When it was alleged, however, later in 2005—at the end of 2005 that the United States was detaining top terror suspects in socalled ‘‘black sites’’ in eight countries and that the CIA was flying terror suspects between secret prisons and countries in the Middle East that have been known to torture detainees, the United States image in Europe took another dive. On the particular issues of rendition, as we have heard earlier, **Europeans appear to** have two **primary concerns, one**, **Washington’s** **unwillingness to** grant due process to terror suspects and, two, violation **of suspects’ human rights** during interrogation. Now the allegations that have been submitted and the resulting investigation by the European Parliament have in many ways in my mind confirmed Europeans’ worst fears. Many Europeans, particularly at the public level, believe that they have plenty of evidence right now to prove a long-suspected gap between United States stated policies and U.S. action. As a result, U.S. promises not to torture terror suspects and to uphold the fundamental pillars of international law are no longer seen as credible. The question is, does any of this matter? President Bush has noted on several occasions that making policy is not a popularity contest, and he is right about that. But **when political leads in other countries start to feel that standing shoulder to shoulder with the United States is a political liability, I think that low favorability ratings can indeed hinder America’s ability to solve global challenges with its many partners and allies around the world; and I would cite a couple of reasons for this**. First, as we have seen with the tensions over the issue of rendition, **this particular issue has put unnecessary strain, in my mind, on what has been, in many cases, a very positive relationship**. In fact, **it is distracting the two sides from the core task at hand; and that is, of course, combating terrorism**. Second, as I mentioned earlier**, European political leaders are under pressure from their publics to keep the** U**nited** S**tates at arm’s length**. I don’t know that this pressure will ever halt counterterrorism cooperation with our European allies in full or certainly not in the near term, but **there are signs that negative public opinion is making it more difficult for our European allies to cooperate with the** U**nited** S**tates**. **One only has to look at the latest European responses to United States requests for more support in Afghanistan to find one such example**. Finally, I would point out that the U**nited** S**tates and Europe are facing a long list of challenges above and beyond terrorism, things like energy security,** nonproliferation**, brewing regional crises**, Darfur; and **the list goes on and on**. **In many of these areas, the United States are asking**—**we are asking Europe to do more**. But **differences in our counterterrorism** relationship with Europe h**ave** affected our relationship at other levels. Again, negative public sentiment toward the United States will never succeed in halting our cooperation with Europe entirely, but it does make asking for greater European support in other areas that much more challenging. Just to conclude, I would point out—and I feel very strongly— that **Europe is one of America’s most important partners in combating radical extremism, and there is certainly no shortage of success stories in the many things we have done together,** particularly over the past 6 years in this area. But I do feel—again based on my experience traveling back and forth to Europe on a regular basis—that **this relationship that we share is currently played with mistrust and divisions over strategy and tactics.**

**EU relations are at a key turning point—cementing strategic partnership is key to prevent numerous existential threats**

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There is no doubt that US-European relations are in a period of transition, and that the stresses and strains of globalization are increasing both the number and the seriousness of the challenges that confront transatlantic relations. ¶ The events of 9/11 and the Iraq War have added significantly to these stresses and strains. At the same time, international terrorism, the nuclearization of North Korea and especially Iran, the proliferation of weapons of mass destruction (WMD), the transformation of Russia into a stable and cooperative member of the international community, the growing power of China, the political and economic transformation and integration of the Caucasian and Central Asian states, the integration and stabilization of the Balkan countries, the promotion of peace and stability in the Middle East, poverty, climate change, AIDS and other emergent problems and situations require further cooperation among countries at the regional, global and institutional levels. ¶ Therefore, cooperation between the U.S. and Europe is more imperative than ever to deal effectively with these problems. It is fair to say that the challenges of crafting a new relationship between the U.S. and the EU as well as between the U.S. and NATO are more regional than global, but the implications of success or failure will be global. ¶ The transatlantic relationship is still in crisis, despite efforts to improve it since the Iraq War. This is not to say that differences between the two sides of the Atlantic did not exist before the war. Actually, post-1945 relations between Europe and the U.S. were fraught with disagreements and never free of crisis since the Suez crisis of 1956. Moreover, despite trans-Atlantic proclamations of solidarity in the aftermath of 9/11, the U.S. and Europe parted ways on issues from global warming and biotechnology to peacekeeping and national missile defense. ¶ Questions such as, the future role of NATO and its relationship to the common European Security and Defense policy (ESDP), or what constitutes terrorism and what the rights of captured suspected terrorists are, have been added to the list of US-European disagreements. ¶ There are two reasons for concern regarding the transatlantic rift. First, if European leaders conclude that Europe must become counterweight to the U.S., rather than a partner, it will be difficult to engage in the kind of open search for a common ground than an elective partnership requires. Second, there is a risk that public opinion in both the U.S. and Europe will make it difficult even for leaders who want to forge a new relationship to make the necessary accommodations.¶ If both sides would actively work to heal the breach, a new opportunity could be created. A vibrant transatlantic partnership remains a real possibility, but only if both sides make the necessary political commitment.

**Indefinite detention increases terrorism—multiple mechanisms**

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

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

**Prosecution in federal courts solves and facilitates counter-terrorism—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

**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.**

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

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

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

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

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

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

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

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

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

Obama team is moving quickly to establish the organizing principles that would drive policy and guide how it copes with the political realities of Russia today, and seeking opportunities to change the relationship. As a guide to coping with creeping authoritarianism, and for planning purposes, **the Obama administration** reasonably **can** (1) assume that Russia will continue, in the near term, on an authoritarian trajectory while at the same time, try to **encourage** President **Medvedev toward more openness and engagement**; (2) consider that Russia’s political regime may grow more brittle and thus potentially more fragile, rather than more robust and invulnerable; (3) propose and prepare for joint cooperation with Moscow on a number of issues, but anticipate that these plans could be overwhelmed by internal dynamics in Russia; and (4) understand and prepare for that which is difficult to anticipate, such as the depth and length of the economic crisis, and the potential divisions within Russian leadership that might emerge over a range of issues such as whether and how to cooperate with the United States and how to address the effects of the crisis, including the use of force against civilians to stop public protest.40 The ability of any U.S. administration to shape what happens inside Russia has long been exaggerated and misunderstood. The impact of foreign assistance clearly matters to those individuals who receive funds and technical training, but recent evidence suggests that **how the U**nited **S**tates **conducts itself in the world has far more weight in terms of its ability to bolster or undermine democracy, human rights and the rule of law in other countries.**41 For example, **U.S. noncompliance with human rights norms and laws has enabled**, although not caused, **Russia’s authoritarian drift. Therefore, a robust and comprehensive effort to opt back in to international legal frameworks will have important knock-on effects for our relations with Russia, in addition to bolstering our ability to work with allies. The United States needs to shape the larger policy context in a positive, rather than a negative, way. 42 An array of** **new U.S. policies unrelated to Russia (such as** **closing Guantánamo, ending detention without charge**, and halting unlawful interrogation of terror suspects) **can help restore U.S. soft power, as well as repair the international architecture that Russia** (correctly) **views as weak and that it** (regrettably) **seeks to replace. If the United States once again is associated with justice** instead of injustice, **it will do much to shore up human rights activists inside Russia. It will also challenge core assumptions that have taken hold within the Russian elite about the hypocrisy and weakness of democracy and human rights norms within the international system.**

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

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

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

**That causes miscalc and nuclear war**

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

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

**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.**

**deference kills CMR--the aff revives it**

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

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

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

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

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

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

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

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

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

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

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

**Bioweapons cause extinction**

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

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

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

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

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

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

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

**The precedent of this Court has a significant impact on rule of law in foreign states**. **Foreign governments, in particular foreign judiciaries, notice and follow the example set by the U.S. in upholding the rule of law**. **As foreign** governments and **judiciaries grapple with** new and challenging issues associated with **upholding the rule of law during times of conflict, U.S. leadership on the primacy of law during the war on terror** is particularly **important**. Recent decisions of this Court have reaffirmed the primacy of rule of law in the U.S. during the war on terror. As relates to the present case, a number of this Court’s decisions, most notably **Boumediene** v. Bush, 128 S.Ct. 2229 (2008**), have established clear precedent that** Guantanamo detainees **have a right to** petition for **habeas corpus relief. Despite a clear holding** from this Court in Boumediene, the **Court of Appeals sought** in Kiyemba v. Obama **to narrow Boumediene** **to such a degree as to render this Court’s ruling hollow**. 555 F.3d 1022 (D.C. Cir. 2009). **The** present **case is** thus **a test of both the substance of the right granted in Boumediene and the role of this Court in ensuring** faithful **implementation of its prior decisions**. Although this Court’s rulings only have the force of law in the U.S., foreign governments will take note of the decision in the present case and use the precedent **set by this Court** to guide their actions in times of conflict. 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**.

#### Rule of law solves global instability

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 roleinvolves 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 ourhistoric **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 law was 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.

#### That solves corruption

Sanghera 11**,** Office of the High Commissioner for Human Rights in Nepal, Nepal Bar Association (NBA) Interaction on Independence of Judiciary for Human Rights, http://nepal.ohchr.org/en/resources/Documents/English/statements/HCR/Year2011/May/2011\_05\_26\_Speech\_NBA\_Interaction\_on\_Independence\_of\_Judiciary\_for\_HR\_E.pdf

• It is crystal clear that judicial Independence is a matter of human rights. Independent judiciary is a must for rule of law and effective protection of fundamental human rights and freedoms of the people. If we take a look at universal bills of human rights, we can see a number of references to independent judiciary. For instance, Article 8 of UDHR provides, “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.” • This has also been incorporated in ICCPR. Article 2(3) of the ICCPR obliges the State to ensure that the right to a remedy is determined by competent judicial, legal or administrative authorities while the Article 14 (1) of the ICCPR guarantees the right to equality before the courts and tribunals and right to a fair and public hearing by a competent, independent and impartial tribunal. In response to Gonzalez del Rio v. Peru (1992) case, the UN Human Rights Committee labeled this right as “an absolute PAGE: 2 right that may suffer no exception”. UN HRC further recognizes that the independence of judiciary consist of a number of things including "actual independence of the Judiciary from the executive branch and the legislative’. • Independence of judiciary has been recognized as an unchallengeable principle globally. This principle received considerable elaboration in the UN Basic Principles on the Independence of the Judiciary (1985), which urges the States to ensure institutional as well as functional independence of judiciary. In this regard, allow me to remind you what these principles mainly require: constitutional guarantee that the judiciary is independent of the other branches of government; non-interference in internal matters of judicial administration; independence in financial matters and a provision of sufficient funds to perform their functions efficiently; the duty of others to respect judicial independence and observe the judicial decisions; jurisdictional exclusivity over all issues of a judicial nature (ban on exceptional or military courts); finality of decisions, meaning that the decisions of the courts are not subject to any revision outside the judiciary; and right and duty of the Judiciary to ensure fair court proceedings and reasoned decisions. • In terms of functional independence, UN Principles on Independence of Judiciary stand for a transparent and representative system of appointments by an independent body based on professional qualifications and personal integrity; security of tenure and adequate remuneration; effective and independent disciplinary mechanisms; right of judges to join professional associations; independence of judges in the performance of professional duties; a right and a duty to decide cases according to law; promotion of judges on basis of objective factors; and removal only for reasons of ‘incapacity or behaviour that renders them unfit to discharge their duties’. • I am pleased to note that Nepal has a strong constitutional tradition of guaranteeing fundamental rights together with an independent judiciary as an immutable safeguard for such rights. Since the ongoing Constitution-making process offers an historic opportunity to strengthen the foundation for the Nepalese State firmly grounded on respect for human rights and justice, it is crucial that the Constituent Assembly further strengthen the independence of the judiciary at the highest level in order to enable PAGE: 3 Nepali people to receive an appropriate remedy determined by competent and independent judicial institutions. In this regard, it is highly important to ensure an independent check and balance through judiciary against legislative and executive excesses encroaching upon fundamental rights and freedoms. • Experience from around the world tells us that even the most perfectly drafted Constitution does not, in itself, guarantee the enjoyment of human rights. The rights recognized in the Constitution must be given effect by independent bodies. In this regard, strong independent judiciary with sufficient power to hold the Government to account, and national human rights institutions that can adjudicate complaints of human rights violations are vital for effective accountability mechanisms.

#### It’s increasing now and will collapse Nepal

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FOR more than two decades, Nepal, a resource-rich, impoverished country wedged between China and India, has teetered between paralysis and upheaval. Its people have witnessed the transition, in 1990, from an authoritarian Hindu kingdom to a constitutional monarchy; the massacre of members of the royal family in 2001 by the heir to the throne; a decade-long civil war between Maoist insurgents and the government that ended in a faltering peace agreement in 2006; and the removal of the monarchy altogether in 2008.

Since the civil war ended, after the loss of more than 16,000 lives, **a** stalemate has ensued as each party caters to caste, class and ethnic divisions instead of national unity. Many politicians are maneuvering to get their hands on money from foreign aid, tourism and hydropower; even the Maoists have become crony capitalists, reaping large profits for themselves and their ostensibly proletarian party. Meanwhile, the bureaucracy, army and police — historically dominated by privileged social groups that never held them accountable — are becoming even more politicized and corrupt. Although Nepal is no stranger to crises, the one currently seizing the country risks turning it into afailed state. On May 27, the 601-member legislature, which had been directed to write a new constitution for what is now a democratic republic, missed its deadline for the fourth time since it was created in 2008. Hours before the deadline, after the Supreme Court refused to grant another extension, the Maoist prime minister, Babur/am Bhattarai, dissolved the legislature, known as the Constituent Assembly, and scheduled nationwide elections for Nov. 22. Although averting imminent political disaster and violence, the call for elections is unlikely to bring consensus among the self-interested and fractious political leaders, and is quite likely to produce an even more divided legislature. The fitful struggle to develop a constitution bothepitomizes and exacerbatesthe country’sethnic, religious, geographical, caste and class divisions. More than 90 languages are spoken in this country, about the size of Illinois. Buddhists and Muslims are sizable minorities among the largely Hindu population. Lower-caste people and rural residents have been historically marginalized; the grievances run deep. However, instead of unifying the country, constitution-drafting has become a frenzied contest to secure special privileges for one’s own community. By making promises they can’t fulfill, politicians arelosing control of the very animosities they’ve whipped up. Political parties have organized paralyzing protests, with barricades and roadblocks, to demand, or oppose, separate ethnic- and caste-based states within a federal system. The protests have shut down commercial activity across a country that can ill afford such losses: with a per-capita gross domestic product of $490, Nepal is one of the poorest countries in the world;unemployment is at 45 percent**.** The parties are using criminal groups to recruit stick-wielding youths to protest. Induced by a fistful of rupees, a rare treat of a meat meal and an illusion of empowerment, these youth have roughed up drivers and set fire to vehicles that attempt to pass the barriers. Some groups have attacked journalists. Reinforced by former fighters, the Maoist party is among the most effective in demonstrating its street might. Fearing a loss of power, the traditional economic and political elite, the Brahmin and Chhetri castes, who dominate the Nepali Congress Party, have begun to emulate the Maoists’ street tactics. On Monday, in a move symptomatic of the mistrust and cynicism, dozens of political parties, including the Nepali Congress, raised suspicions about the Maoists’ motives in dissolving the Constituent Assembly and called for protests against its dissolution. Few Nepalis expect the present situation to explode into another civil war, but increasingly brazen and regular acts of violence in the capital demonstrate that lawlessness has reached crisis proportions. With most institutions malfunctioning and the system of patronage deeply ingrained, bribery and political connections rule the day. Individual acts of courage against corruption are cause for hope, but to fully restore the rule of law, and respect for it, Nepal needs to step up its efforts to improve public integrity. A prominent anti-corruption agency has been leaderless for over a year as parties bicker over who should lead it.

#### Nepali instability causes India-China nuclear war

Poudel 2 (Keshab, Looming Uncertainty, The National NewsMagazine, 21(34), 3-8,

http://www.nepalnews.com.np/contents/englishweekly/spotlight/2002/mar/mar08/national2.htm)

Following the September 11 terrorist attacks, however, the United States and western European countries have been expressing solidarity with Nepal. The visit of US Secretary of State Colin Powell and expressions of concern from other western powers over the last three months underscore how the dimensions of violence in Nepal has extended beyond its frontiers. After the government imposed the state of emergency and the Maoist launched deadly assaults in Achham and Salyan districts, **western powers have** increased their interest in the kingdom. The growing concern expressed by Washington and European powers is understandable, as escalating violence and instability in Nepal could heighten the possibility of external intervention. Such intervention from either of Nepal's two neighbors — India and China — may trigger a direct conflict between the two. Even an indirect conflict between the two Asian powers could prove to be more dangerous than the confrontation between India and Pakistan. Foreign-relations experts say the recent visit of British Foreign Office Minister Ben Bradshaw to Nepal and US Ambassador Michael E. Malinowski trip to Achham and Salyan are clear indicators of Nepal's geo-strategical importance. Another senior US diplomat, A. Peter Burleigh, spoke more candidly about US concerns over the possibility of a prolonged confrontation. "[W]hen situations arise that challenge that positive world order, and which can be addressed by a collective response, it is the responsibility and obligation of all of our countries to come together to restore and preserve the peace," said Ambassador Malinowski in an address to a seminar on South Asian Peace Operations. "Here in Nepal, as we all know, there is no peace. But I do believe that there are lessons for both those of us who live in Nepal and for the international community," he said. Nepal's Position in South Asia Nepal has been ensnared in political instability following the restoration of democracy in 1990. After the Maoist insurgency began in 1996, the kingdom's economic, security and political processes have been thrown into a tangle. According to the Central Bureau of Statistics, Nepal has a length of 885-km (east-west) and a non-uniform mean width of 193-km (north-south). The kingdom shares a frontier of more than 1400 km with China in north and more than 1600 km with India in the east, west and south. The Nepal-India border is open and easy to cross. Although the frontier with China is more or less open, it straddles rugged mountain terrain. It is impossible to build border posts along the border with either country. Therefore, the geographical position of Nepal has been psychologically threatening to both neighbors. "China appears very sensitive towards activities against her in neighboring countries, including Nepal. China's security concern is indicated from [the visits of its] defense minister, senior army officials and home ministry officials from time to time," says Hiranya Lal Shrestha, a foreign relations expert in his article "Nepal-India Relations: Security Issue" published in Policy Study Series by the Institute of Foreign Affairs (November 2000). "At the same time, we cannot overlook the weaknesses of a landlocked state. Indian security perception regards the Himalayas as its sphere of influence. Since 14.9 percent of Nepal's territory lies to the north of the Himalayas, we may have to be divided into two spheres of influence if the northern neighbour also puts forward similar logic concerning its security perception. Nepal, in brief, does not want to remain under anyone's sphere of influence," says Shrestha. Be it the British Raj or independent India, Chinese influence in Nepal has always been a matter of concern to leaders of the south neighbor. In the book, "Life of Brian Houghton Hodgson, the British Resident at the Court of Nepal", William Wilson Hunter mentions how the British government was worried about Nepal's relations with China in 18th century. "But my situation by no means so agreeable as it might be if these barbarians did but know their own good. Instead of which they are insolent and hostile and play off on us, as far as they can dare, the Chinese etiquette and foreign polity. The Celestial Emperor is their idol, and, by the way, whilst I write, the  [Nepalese] sovereign himself is passing by the Residency in all royal pomp to go three miles in order to receive a letter which has just reached Nepal from Pekin. There they go! Fifty chiefs on horseback, royalty and royalty's advisors and on eight elephants and three thousand troops before and behind the cavalcade! They have reached the spot. The Emperor's letter, enclosed in a cylinder covered with brocade, hangs round the neck of a chief; who mounted on a spare elephant, is placed at the head of the cavalcade, and the cortege," writes Hodgson in a letter. This reflected how assertive and powerful the Chinese were in the internal dimensions of Nepalese politics in the 18th century. After independence, Indian leaders have been equally concerned about security issues, considering Nepal and Tibet to be the soft underbelly of their own country's security. "This is altogether more inexplicable when one examines the rapidity with which Nehru reacted to events in Nepal in the mid-fifties, forcefully intervening there to restore the Nepalese monarchy. Nepal and Tibet were both Himalayan kingdoms, both were of vital strategic importance to India, and they were both afflicted, almost simultaneously, whether externally or internally, and yet India and its political leadership reacted differently," writes Indian Foreign Minister Jaswant Singh in his book "Defending India". Referring to India's security, Indian Prime Minister Jawahar Lal Nehru once observed: "Now our interest in the internal conditions of Nepal became still more acute and personal, if I may say so, because of the developments in China and Tibet, to be frank. And regardless, of our feelings about Nepal, we were interested in our country's border. We have had from immemorial time a magnificent frontier, that is to say, the Himalayas are concerned, and they lie on the other side of Nepal. Therefore, the principal barrier to India lies on the other side of Nepal. Therefore, the principal barrier to India lies on the other side of Nepal and we are not going to tolerate any person coming over that barrier. Therefore, much as we appreciate the independence of Nepal, we cannot risk our own security by anything going wrong in Nepal." For his part, Li Peng, the chairman of China's National People's Congress, openly expressed China's security concerns in Nepal during the visit of Sher Bahadur Deuba in 1998 as a former prime minister. South Asia has three nuclear powers, India, China and Pakistan. Two powers, China and India, are competing for the status of regional power. Any form of direct confrontation between China and India in the south of the Himalayas will have far-reaching consequences.

**1AC: Plan**

**Plan: The United States federal judiciary should rule that individuals indefinitely detained under the War Powers authority of the President of the United States must be tried by an existing Article III court or be released.**

**1AC: Solvency (1:10**

**Contention 3 is Solvency:**

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

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

**The** inclusion of the **Suspension Clause** in the Constitution **was meant to preserve the common law tradition of protection against the Executive, and the ability of the petitioner to force the Executive to justify detention** or release the petitioner. **In 2008, the Supreme Court held that these protections had "full effect" in Guantanamo.** n105 **Because the writ of habeas** corpus **is both a statement of the rights of the individual and the means by which he can enforce a remedy, the denial of access to a remedy has resulted in a de facto suspension of the writ at Guantanamo. Without the power to order a remedy, the Court lacks the power to enforce the right, and it becomes no right at all.** **"Without a remedy, judicial decisions are merely advisory opinions, hypothetical undertakings with no practical effect" n106 that are unlikely to present any significant limitation on the government's ability to restrict individual liberty.** **While some argue that our Constitutional system contains instances in which certain rights lack enforceable remedies, it would be anathema to our understandings of judicial review and individual liberty to accept that the executive and the courts can concede that detention is unlawful, but the courts lack the power to grant release.** The Court has deemed the ability to order release the "Constitutionally required remedy," and by denying Guantanamo petitioners a remedy to enforce the writ, **the D.C. Circuit has circumvented Boumediene and denied Guantanamo petitioners full habeas rights.** The Government has simply substituted the plenary power of immigration for MCA § 7--the net effect of which is the same--petitioners are denied release from unlawful detention. **Because rights are only as meaningful as the remedies available to enforce them, extending a right of habeas without also extending the right to order a remedy to end the unlawful imprisonment has resulted in a de facto suspension of the writ.** n107 The extension of habeas to Guantanamo has become meaningless. If the Suspension Clause truly has "full effect" in Guantanamo, the denial of a remedy constitutes a suspension of habeas and the elimination of a fundamental protection to ensure personal liberty. **The Government has raised concerns that permitting the courts to craft remedies directing transfer to particular countries and restricting transfer to others would set a dangerous precedent of allowing the judiciary to direct the executive's foreign relations.** n108 **But appropriately crafting the judicial remedy,** [\*905] **rather than denying it all together, can sufficiently avoid this peril.**

**The courts need not issue detailed release orders; they simply need to issue a traditional habeas order requiring release within a specified time period.** n109 **Such an order would likely "induce" the Executive to quickly effectuate transfer** in almost every case where it was safe. n110 Indeed, the Government has shown that it will respond to judicial pressure to effectuate transfer. In Ali Ahmed v. Obama, the petitioner was abruptly transferred ngs indicated the judge was "losing patience with the delay in complying with her order." n111 The Executive is apt to respond to judicial pressure because if the Government is unable to repatriate detainees within the time period specified, the court could order the release of detainees within the United States, while still permitting the government to transfer detainees as soon as such transfer becomes possible. n112 Notably, the government's success in obtaining resettlement offers for the Kiyemba petitioners did not come until after the Supreme Court granted cert and judicial review appeared imminent. n113 The appropriate remedy in this case is no different than that offered in Clark and Zadvydas: the Government is entitled to a reasonable, specified period of time to effectuate the Court's order, and then the detainee is entitled to release wherever the Executive may accomplish it. Such a remedy would give the Executive fair notice of the potential consequence of failure to transfer, while at the same time protecting the detainee's liberty.

**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.

**\*\*Action by the judiciary is key**

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

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

## 2AC

**Case**

**\*\*Risk of India-China nuclear war is high—hair-trigger alert**

**Sullivan and Massa 10**, Mr. Sullivan is research fellow and program manager at the American Enterprise Institute's Center for Defense Studies. Mr. Mazza is a senior research associate at AEI, http://online.wsj.com/news/articles/SB10001424052748703384204575509163717438530

India and Pakistan are the two countries **most likely to engage in nuclear war,** or so goes the common wisdom. Yet if recent events are any indication, **the world's most vigorous nuclear competition may well erupt between** Asia's two giants: **India and China**. Both countries already house significant and growing arsenals. China is estimated to have approximately 450 warheads; India, roughly 100. Though intensifying as of late, Sino-Indian nuclear competition has a long history: India's pursuit of a weapons program in the 1960s was triggered in part by China's initial nuclear tests, and the two have eyed one another's arsenals with mounting concern ever since. The competition intensified in 2007, when China began to upgrade missile facilities near Tibet, placing targets in northern India within range of its forces. Yet **the stakes have been raised yet again in recent months. Indian defense minister A.K. Antony announced last month that the military will soon incorporate into its arsenal a new intermediate-range missile, the Agni-III, which is capable of reaching all of China's major cities.** Delhi is also reportedly considering redeploying survivable, medium-range Agni-IIs to its northeastern border. And just last month, India shifted a squadron of Su-30MKI fighters to a base just 150 kilometers from the disputed Sino-Indian border. An Indian Air Force official told Defense News these nuclear-armed planes could operate deep within China with midflight refueling. For its part**, China continues to enhance the quality, quantity and delivery systems of its nuclear forces.** The Pentagon reported last month that the People's Liberation Army has replaced older, vulnerable ballistic missiles deployed in Western China with modern, survivable ones; this transition has taken place over the last four years. China's Hainan Island naval base houses new, nuclear-powered ballistic-missile submarines and affords those boats easy access to the Indian Ocean. China's military is also developing a new, longer range submarine-launched ballistic missile which will allow its subs to strike targets throughout India from the secure confines of the South China Sea.

**GSPEC: 2AC**

**1. We meet, the plan is based on due process and habeas corpus grounds**

**2. Counter-interpretation –**

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

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

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

**3. We meet the counter-interpretation—the plan restricts the president’s authority**

**4. Disclosure and CX check**

**5. Infinite regress—no rez basis, grounds requirements are unpredictable**

**6. Not a voter, if they win that grounds are important you should determine them based on normal means**

### Dicta CP: 2AC

#### Perm do the counterplan

#### Perm—do both.

Caminker, ’94

[Evan H., Professor of Law @ UCLA, “Why Must Inferior Courts Obey Superior Court Precedents?”, Stanford Law Review, April, 46 Stan. L. Rev. 817, ln //uwyo-kn]

This speculative benefit of improved decisionmaking must be weighed against the process costs of underruling. Suppose an inferior court explicitly underrules a Supreme Court precedent. Unless and until the Supreme Court entertains an appeal and resolves the intramural squabble, the inferior court's defiance will thwart uniform federal law interpretation and its attendant values. If the Supreme Court reviews and reverses (reaffirming its precedent), the inferior court's disobedience will have raised the costs of adjudication and tarnished the Court's stature by challenging its competence for nothing. Only if the Supreme Court actually reviews and affirms the inferior court decision (thus overruling its precedent) will these process costs be justifiable.

#### Can’t solve deference or judicial power—doesn’t set a precedent

Barrett ‘03

[Amy Coney, “Stare Decisis and Due process”, Summer, 74 U. Colo. L. Rev. 1011 //uwyo-kn]

n34. Cf. Lea Brilmayer, A Reply, 93 Harv. L. Rev. 1727, 1728 (1980) ("Neither the cliche that any two cases are potentially distinguishable nor the characterization of some precedents as formative or tentative solves the problem. If taken literally, these seem to suggest that it would not make any difference whether adverse precedents were established. Regardless of whether one perceives the proper role of stare decisis as strong or weak, in the real world of litigation, precedents do have some binding force."); Evan Tsen Lee, Deconstitutionalizing Justiciability: The Example of Mootness, 105 Harv. L. Rev. 603, 652 (1992) ("The undesirability of having an adverse precedent on the books is unquestionable.").

**Hard law is key to make the plan’s signal credible**

**Koppel 09** (Martin, PhD student at the University of Tubigen, Germany, "The Effectiveness of Soft Law: First Insights from Comparing Legally Binding Agreements with Flexible Action Programs" Georgetown International Environmental Law Review, Lexis)

Hard law, on the contrary, possesses merits as well. n28 First, **hard law strengthens the credibility of a commitment. Hard law enhances credibility by constraining "self-serving autointerpretation".** n29 Another way is **by increasing the costs of reneging**. In a nutshell, one essential element of **hard law is that it "visibly stake[s] the parties' reputations to their pledges."** n30 When looking at **soft law, in contrast**, it becomes evident that its flexibility also means that it **can be** more **easily abandoned.** In addition, public debates that may provide national support for an agreement can more easily be avoided. Here, the stakes are diminished.

Second, hard law increases compliance because of the commitment required. **Harder legalization raises the political costs of noncompliance.** n31 Pacta sunt servanda and **when a state violates an international commitment, it may face several consequences. These** possible consequences **range from the loss of reputation as a reliable partner to specific and costly retaliation to more dramatic changes in the national reputation, such as depiction as a nation that is untrustworth**y or even as one that makes promises in order to deceive. In some cases, the consequences may also be combined with some form of direct sanction. n32

#### 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.

#### The court has no constitutional jurisdiction to issue dicta when a decision is not rendered.

David **O’Brien**, Leone Reaves and George W. Spicer Professor of Government and Foreign Affairs at the University of Virginia., Storm Center: The Supreme Court in American Politics, Seventh Edition, 20**06**, p. 167-169.

Adverseness and Advisory Opinions • The Court generally maintains that litigants must be real and adverse in seeking a decision that will resolve their dispute and not some hypothetical issue. The requirement of real and adverse parties means that the Court will not decide "friendly suits" (in which the parties do not have adverse interests in the outcome of a case). Nor will the Court give "advisory opinions" on issues not raised in an actual lawsuit. The Jay Court denied two requests for advisory opinions: one, in 1790, by Secretary of the Treasury Alexander Hamilton for advice on the national government's power to assume state Revolutionary War debts, and another, in 1793, by Secretary of State Thomas Jefferson for an interpretation of certain treaties and international law. Chief Justice John Jay held that it would be improper for the Court to judge such matters because the president might call on cabinet heads for advice. In doing so, the Jay Court broke with the English practice of advisory opinions and set a precedent. The Court continues to maintain that it is inappropriate "to give opinions in the nature of advice concerning legislative action, a function never conferred upon it by the Constitution and against the exercise of which this court has steadily set its face from the beginning."

#### Turn—spillover

#### A. Counterplan causes abuse of the doctrine

Caminker, ’94

[Evan H., Professor of Law @ UCLA, “Why Must Inferior Courts Obey Superior Court Precedents?”, Stanford Law Review, April, 46 Stan. L. Rev. 817, ln //uwyo-kn]

Second, even assuming a category of rare cases exists for which underruling's benefits outweigh its costs, a rigid duty to obey might still be desirable to prevent abuses of discretion. Suppose doctrine allowed inferior court judges to underrule superior court precedents whenever they believed those precedents to be "outside the range of allowable judicial interpretation," or "lawless," or "clearly wrong," or "not fully informed." Any such criterion would necessarily be somewhat elastic, and judges might (even in good faith) stretch the criterion to justify underruling precedents with which they strongly disagree. Thus, permission to underrule in rare cases could easily lead to its overuse, meaning judges will underrule even when the costs of underruling a particular precedent outweigh the benefits. At some point, underrulings in the aggregate will do more harm than good. It would then make sense to withhold permission to underrule entirely. In short, a bright-line doctrinal prohibition against underruling might reflect a reasonable judgment that overdeterrence is better than the alternative.

#### B. Destroys the judicial system

Caminker, ’94

[Evan H., Professor of Law @ UCLA, “Why Must Inferior Courts Obey Superior Court Precedents?”, Stanford Law Review, April, 46 Stan. L. Rev. 817, ln //uwyo-kn]

Paulsen acknowledges that "were judges to [underrule] on every issue on which they disagreed with higher courts, the smooth functioning of the judicial system might rapidly break down." The difficult question is whether, given the potential benefits and costs outlined above, lower court judges should ever do so. I myself agree that a category of cases exists for which, given the Supreme Court's fallibility, the benefit of forced rethinking outweighs its cost, though the category might be quite small, and people might reasonably disagree over its contours.

But this conclusion does not necessarily justify the practice of underruling. First, an inferior court could try to stimulate rethinking without resort to underruling by instead issuing a "critical concurrence" - an opinion that follows precedent but simultaneously criticizes it and urges the Supreme Court to review and reverse. By issuing a critical concurrence, the inferior court can encourage reconsideration without threatening the values served by adherence to hierarchical precedent. Perhaps outright disobedience, given its unique emotive force, is more likely to attract the Supreme Court's attention and encourage discretionary review than is the more subtle critical concurrence. This comparison is most likely true, however, in cases where the Court would find disobedience irksome because the Court is strongly wedded to its precedent, and hence review would more likely spur a rebuff than careful reconsideration. In any event, any marginal advantage underruling holds over critical concurrences must be offset by its greater frustration of values secured by hierarchical precedent.

#### Military is developing chemical soldiers

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

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

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

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

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

**EPA DA: 2AC**

**Multiple controversial rulings coming now**

**Bomboy 3-5**-14 (Scott, staff writer, "Four big Supreme Court decisions on the radar" Constitution Daily) blog.constitutioncenter.org/2014/03/four-big-supreme-court-decisions-on-the-radar/

**As the Supreme Court continues a busy week, Court watchers are wondering if a significant case from last fall could be announced in the next few weeks.** 20050422114651!US\_Supreme\_Court\_Building**Of the 22 cases argued at the Supreme Court in October and November, 17** cases **have already been decided. But four of the remaining** five **cases** from that time period **are** consider **major cases, which have received considerable attention** in the press and in the legal and academic worlds. The Justices will announce at least one opinion today, and one of the major cases could be announced. By this time last year, the Court had already decided two high-profile cases from that term. On February 19, 2013, the Justices ruled in Florida v. Harris and on February 26, the Court decided Clapper v. Amnesty International. In the Harris case, the Court considered if police officers could search a motor vehicle for drugs once a properly trained police dog “alerted” to a smell on a vehicle. Justice Elena Kagan wrote in a unanimous opinion that police could use the dog in a vehicle search in a public area. In Clapper v. Amnesty International, the Court considered if the respondents, including journalists, had standing under Article III of the Constitution to challenge the Foreign Intelligence Surveillance Act (or FISA). The Court, in a 5-4 decision, agreed with the federal government’s claims that the respondents’ fears were based on speculation. But the Court didn’t rule on the constitutionality of FISA. Later in March 2013, the Court decided another major case: Florida v. Jardines. In that decision, Justice Antonin Scalia wrote the majority opinion in a 5-4 decision, which ruled against the use of a police dog to sniff out drugs at a residence as a Fourth Amendment violation. This year, **four big cases from the October/November sessions remain undecided. McCutcheon v. FEC** was heard on October 8, 2013. The basic question in front of the Court in McCutcheon is what restrictions the Constitution allows the government to put on spending in federal elections. The Court might reconsider restrictions on campaign contributions in general, too, in a McCutcheon ruling, so the fate of the 1976 Buckley ruling is also in doubt. The second case is **Schuette v. Coalition to Defend Affirmative Action**, which was heard on October 15, 2013. The Schuette case challenges the constitutionality of a Michigan initiative prohibiting affirmative action programs from being employed in the state. In November, the Court also heard arguments in **Town of Greece v. Galloway**, where the Justices will decide whether a town council’s practice of beginning its legislative meetings with a prayer session violates the First Amendment’s Establishment Clause. It also heard another significant case in early November about international treaties and the 10th amendment: **Bond v. the United States.** The big picture issue in the Bond case is the possible fate of a landmark 1920 Supreme Court decision: Missouri v. Holland. The Holland decision gave Congress the power to pass laws to carry out the U.S. government’s obligations under international treaties.

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

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

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

**Winners win**

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

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

**Issues are compartmentalized**

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

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

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

**Public supports the plan**

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

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

**That boosts capital**

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

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

**The ruling won’t cause warming**

**Barnes 2-23** (Robert, staff writer, "Supreme Court to consider EPA’s authority to regulate greenhouse gases" WP) [www.washingtonpost.com/politics/supreme-court-to-consider-epas-authority-to-regulate-greenhouse-gases/2014/02/23/ec5d4f88-9af4-11e3-ad71-e03637a299c0\_story.html](http://www.washingtonpost.com/politics/supreme-court-to-consider-epas-authority-to-regulate-greenhouse-gases/2014/02/23/ec5d4f88-9af4-11e3-ad71-e03637a299c0_story.html)

But unless the court decides to revisit its 2007 decision that says the EPA has the power to regulate greenhouse gases — and there’s no evidence the justices are willing to reopen that debate — **the upcoming ruling may not live up to the hype. Utility Air Regulatory Group v. EPA , which deals with “stationary sources” such as power plants and factories, could end up being more about PR than CO2. Both sides agree that the outcome will not affect the agency’s rules governing emissions from motor vehicles or plans underway to control new power plants.** And a victory could be seen as an affirmation of Obama’s authority to move boldly on environmental regulations in the midst of a gridlocked Congress.

**China overwhelms**

Richard **Heinberg**, senior fellow, "China Coal Update," Post Carbon Institute, 3--8--**12**, <http://www.postcarbon.org/blog-post/747521-china-coal-update>, accessed 4-9-12.

Second, **can the world save itself from a climate apocalypse unless China leads the way**? Talk of “climate justice” (which emphasizes the higher per-capita emissions of wealthy nations) is all well and good, but the harsh reality is that **even drastic emissions cuts by the US will mean relatively little unless China also cuts soon and fast**. So far, **indications are that Beijing is keeping the carbon pedal to the metal, despite concurrent efforts to become a world leader in renewable energy. Barring a dramatic global emissions policy breakthrough**, resource limits and economic contraction seem to offer the main hope for keeping climate change to merely “catastrophic” levels.

**Timeframe is 200 years and adaptation solves**

**Mendelsohn 9** – Robert O. Mendelsohn 9, the Edwin Weyerhaeuser Davis Professor, Yale School of Forestry and Environmental Studies, Yale University, June 2009, “Climate Change and Economic Growth,” online: <http://www.growthcommission.org/storage/cgdev/documents/gcwp060web.pdf>

**These statements are** largely **alarmist and misleading**. Although climate change is a serious problem that deserves attention, **society’s immediate behavior has anextremely low probabilityof leading tocatastrophic consequences**. The **science and economics** of climate change **is quite clear that emissions over the next few decades will lead to only mild consequences**. The **severe impacts** predicted by alarmists **require a century (or two** in the case of Stern 2006) **of no mitigation**. Many of the **predicted impacts assume there will be no or little adaptation**. The net economic impacts from climate change over the next 50 years will be small regardless. Most of **the more severe impacts will take more than a century or even a millennium to unfold and many of these** “**potential” impacts will never occur because people will adapt. It is not at all apparent that immediate and dramatic policies need to be developed to thwart long‐range climate risks**. What is needed are long‐run balanced responses.

**It’s too late**

Andreas **Souvaliotis 12** (3-20, “Is It Too Late to Change Climate Change?” <http://www.huffingtonpost.ca/andreas-souvaliotis/climate-change_b_1365449.html>

The alarm bells were going off 20 years ago at the Rio Summit but few of us were listening. Six years ago, Al Gore raised the volume much higher with his film and we started paying a lot more attention, but we still didn't do much about it. And now **the evidence is mounting that we might,** in fact, **be too far gone already. Climate change is happening much faster than we anticipated**; **feedback loops are kicking in everywhere**, totally **dwarfing** **any of our own** greenhouse gas **contributions**. **Skyrocketing** property damage from **climate volatility is obliterating livelihoods**, panicking insurance companies, and draining government funds. And **the OECD just released a** frightening **study** this week, **suggesting** that our constant debate, dithering, and lack of real response are now setting us up for **a severe** economic and lifestyle **nosedive in the coming decades.**  Maybe some of the cynics are right**: No matter how much we curb our emissions now, the damage is already done and the climate will continue to destabilize**. Maybe that whole "mitigation" concept was pure fantasy and we were a few decades too late. But should we just give up, enjoy the irresponsible partying a little bit longer, and then simply brace ourselves for whatever comes next -- or should we refocus our attention and energy on the things we can still affect?

**ecosystems are resilient**

**NIPCC 11**. Nongovernmental International Panel on Climate Change. Surviving the unprecedented climate change of the IPCC. 8 March 2011. http://www.nipccreport.org/articles/2011/mar/8mar2011a5.html

In a paper published in *Systematics and Biodiversity*, Willis *et al*. (2010) consider the IPCC (2007) "predicted climatic changes for the next century" -- i.e., their contentions that "global temperatures will increase by 2-4°C and possibly beyond, sea levels will rise (~1 m ± 0.5 m), and atmospheric CO2will increase by up to 1000 ppm" -- noting that it is "widely suggested that the magnitude and rate of these changes will result in many plants and animals going extinct," citing studies that suggest that "within the next century, over 35% of some biota will have gone extinct (Thomas *et al*., 2004; Solomon *et al*., 2007) and there will be extensive die-back of the tropical rainforest due to climate change (e.g. Huntingford *et al*., 2008)." On the other hand, they indicate that some **biologists and climatologists have pointed out that "many of the predicted increases in climate have happened before, in terms of both magnitude and rate of change** (e.g. **Royer, 2008**; **Zachos et al., 2008**), **and yet biotic communities have remained remarkably resilient** (**Mayle and Power, 2008**) **and in some cases thrived** (**Svenning and Condit, 2008)**." But they report that those who mention these things are often "placed in the 'climate-change denier' category," although the purpose for pointing out these facts is simply to present "a sound scientific basis for understanding biotic responses to the magnitudes and rates of climate change predicted for the future through using the vast data resource that we can exploit in fossil records." Going on to do just that, **Willis et al. focus on "intervals in time in the fossil record when atmospheric CO2 concentrations increased up to 1200 ppm, temperatures in mid- to high-latitudes increased by greater than 4°C within 60 years, and sea levels rose by up to 3 m higher than present,"** **describing studies of past biotic responses that indicate "the scale and impact of the magnitude and rate of such climate changes on biodiversity**." And **what emerges** from those studies, as they describe it, "**is evidence for rapid community turnover, migrations, development of novel ecosystems and thresholds from one stable ecosystem state to anoth**er." And, most importantly in this regard, they report "**there is very little evidence for broad-scale extinctions due to a warming world.**" In concluding, the **Norwegian, Swedish and UK researchers say** that "based on such evidence **we urge some caution in assuming broad-scale extinctions of species will occur due solely to climate changes of the magnitude and rate predicted for the next centur**y," reiterating that "**the fossil record indicates remarkable biotic resilience to wide amplitude fluctuations in climate."**

### Edelman K: 2AC

#### Perm do both

**They’re wrong—futurism is key to public engagement**

**Hall 06** (Professor of English at West Virginia University, The Chronicle of Higher Education 53.4)

Indeed, much of the early energy in queer studies generally derived from the sense of being asked, and being willing, to commit one's self to an important, realizable, and exhilarating cause. Unfortunately some recent theoretical work is not helpful. Especially deflating is Lee **Edelman**'s much-discussed **antipolitical polemic** from 2004, No Future: Queer Theory and the Death Drive, which **is actually a symptom and reinforcement of the very problem of general political passivity** that I'm discussing here. Edelman uses Lacanian theory to argue that queers should repudiate the "oppressively political" and abandon any claim to a "viable political future." But the question remains as to how best to rekindle not only intellectual intensity in the classroom, but also **an excitement about a dramatically different** future that **might** even **motivate students to engage in the hard work of collective action and sustained respons**e long after they leave the university. Fundamental not only to "identity politics," but to all critical-thinking-based pedagogy is the belief that students, whatever their political orientation, should become engaged citizens in the world, not passive consumers who simply accept the status quo. And **what I have found works best** in that regard **is a return to an older model of consciousness-raising, based on dialogue and a sharing of lived experiences** (there are always students in class who have endured terrible hardships about which they are willing to speak), **followed by exercises that ask students to imagine certain futures — utopias, even — that they would find worthy of fighting for. The diversity of what they come up wit**h (Is sex work legalized? Does marriage become a wholly passé concept? What role does spirituality or religion play?) **can lead to very dynamic conversations.** Indee

d, **discussing their utopias allows them to begin to delineate the steps necessary to reach those states, looking backward in time to the successes of past social movements and forward to ones in which they might invest. It encourages students to think critically about how social change occurs**, rather than to imagine vaguely that injustice somehow dissipates magically without the hard work of individuals and groups' organizing. It urges them to juxtapose the present situation — and whatever fuzzy sense they have of its basic acceptability — with a concrete visualization of what they would prefer as a reigning paradigm (or variety of paradigms). Some, such as Edelman, would argue that such exercises lock us into variations of the "norm" as it currently stands (whatever we project will simply be a version of what already is), but consensus about a single place-holding utopia is never the goal. The wide variety of possible utopias, as they sometimes clash with and sometimes complement each other, leads to intellectual excitement, critical attachment, and even productive anger. I will take that energy any day over the stasis produced by a cynical refusal even to imagine or invest in a future.

**Queerness shouldn’t abandon the politics—the problem is the Christian right**

**Brenkman** **2002** **(John Brenkman, Distinguished Professor of English and Comparative Literature at the CUNY Graduate Center and Baruch College, 2002, Narrative, Vol. 10, No. 2, p. 190-191)**

I have not tried to offer a more optimistic (or futurist) assessment of the gay struggle than Edelman, though he has construed my remarks in that way; his essay very pointedly conveyed a sense of the ongoing ordeal of gays in American society and a pessimism regarding inaction on the AIDS crisis, domestic partner rights, and anti-gay violence and the persistence of repressive restrictions on sexual freedom. I have also not challenged his criticism of the figure of the child as futurity, because I find it is very persuasive. So, too, **Edelman offers a compelling interpretation of homophobia in his delineation of how this discourse figures the child as future in order to make the queer the figure of the death and jouissance, of the negativity, that haunts all (normalizing) fantasies of the sexual relation and sexual identity. What** **I** have **challenge**d **is the claim that this discourse** defines, or even **dominates, the political realm** as such. **It is the discourse of conservative** Catholicism and Christian **fundamentalism**, and **even though it resonates in strands of liberal discourse, it represents an intense reaction, backlash, against changes that have already taken place in American the gay and lesbian movement.** society**, many of them as the direct result of feminism and the gay and lesbian movement. It is indeed important not to underestimate the depth and danger of this reaction,** but it is a reactionary, not a foundational, discourse. **The uncoupling of sexuality and reproduction is ubiquitous in American culture today as a result of multiple developments beyond the expansion of gay rights** and the right to abortion, including birth control, divorce, and changing patterns of family life, as well as consumerism and mass culture; it may well be that the sheer scope, and irreversibility**, all of these developments** also **intensifies** **the targeting of gays by conservative ideology** an

d Christian fundamentalist movements. But **that is all the more reason to recognize that the deconstruction of the phobic figuration of the queer is a struggle to be pursued inside as well as outside politics.**

#### Edelman’s overidentification with the culture of death cedes the political to elites

**Balasopoulos**, **2006** [Antonis, Journal of American Studies, v. 40, projectmuse]

No Future is a work whose argument cannot be divorced from the experience of disillusionment with the failure of liberal sexual politics to prevail in a political struggle that the author suspects to have been doomed from the start. For political discourse is inconceivable, Edelman argues, without prior agreement to invest in the fantasy of the symbolic intelligibility of the social tissue. Such agreement, however, always turns out to involve a pledge of allegiance to the figure that embodies the promise of a meaning-fulfilling future at the same time that it affirms the transcendental meaningfulness of heterosexual union–the child. What is therefore exacted as entrance fee to the political is the perennial othering and exclusion of those who embody all that is queerly meaning-negating and thereby child-threatening as well: those whose forms of pleasure register as narcissistically antisocial, those whose sexuality refuses to be etherealized into an anodyne expression of subjectivity, those whose very existence appears as a threat to the innocence of the child and to the future-serving ethics of its self-declared protectors. Edelman’s defiant response to this ideological circuit (one made unmistakably visible in the resounding tactical success of the anti-gay marriage ballot in last November’s US presidential elections) is to affirm precisely what liberal defenses of queerness must necessarily seek to deny: an uncompromising “embrace of queer negativity,” whose ethical value would reside in its “radical challenge to the value of the social itself.” The bulk of what follows Edelman’s main thesis consists of three chapters, each of which psychoanalytically examines the vexed relation between the narrative exigencies of “reproductive futurism” and the figure of a subject whose queerness registers as an antisocial pursuit of jouissance and an enthrallment in the meaningless compulsions of the death drive–a subject Edelman, evoking Lacan, dubs the “sinthomosexual.” The first chapter anatomizes this relation through a reading of Victorian prose fiction (focusing on the misanthropic bachelor misers of Charles Dickens’s A Christmas Carol and George Eliot’s Silas Marner and the children who providentially straighten them out), while the remaining two focus on twentieth-century narrative cinema and on the future-negating figures inhabiting Hitchcock’s North by Northwest and The Birds. Edelman’s book takes obvious pleasure in provocation, stylistically indulging in the ironic hermeneutics it methodologically advocates with at times infelicitous results (an excess of largely gratuitous verbal punning and a partiality for highly convoluted syntax are cases in point). More disconcertingly, No Future involves a vision of queer subjectivity that is so strongly invested in transvaluating the homophobic linkage of homosexuality with a “culture of death” that it ends up **ignoring** the complexity and diversity of what has historically constituted queer (lesbian and transgender as well as gay) politics. Missing, for instance, is a serious and sustained attempt to engage with the multiple transformations the concepts of reproduction and parenthood have undergone in the last two decades, partly as a result of the interventions of queer theory itself. Equally absent is any analytical concern with the cultural and representational resonances of the queer child–a figure that certainly complicates the book’s one-dimensional treatment of the image of besieged childhood, while making apparent the unreflectively eclectic and historically untheorized nature of Edelman’s choice of primary texts. The effect of such exclusions–a highly repetitive account of texts that are treated as virtually interchangeable–is particularly troubling from a theoretical standpoint. For though Edelman’s argument largely rests on a theoretical distinction between an ideologically normative and a radically destabilizing kind of repetition compulsion, his analytical practice makes the difference between them less than obvious. Paying the reader diminishing dividends with each page, No Future bulldozes its way from Plato to the Victorians and from Hitchcock to Judith Butler by unwaveringly locating the same Manichean conflict between reproductive ideology and its queer negation, a struggle to the death between monolithic and unchanging absolutes. To declare No Future a timely work is hence not an unambiguous compliment; for its timeliness comes at the cost of **intellectual surrender** to the increasingly polarized and disconcertingly fundamentalist climate of American politics in the present.

#### And, only futurism solves the turn

**Kurasawa** **2004** Professor of Sociology, York University of Toronto [Fuyuki, “Cautionary Tales: The Global Culture of Prevention and the Work of Foresight,” *Constellations* 11.4, December, ebsco]

None of this is to disavow the international community’s rather patchy record of avoiding foreseeable calamities over the last decades, or to minimize the difficulties of implementing the kinds of global institutional reforms described above and the perils of historical contingency, presentist indifference toward the future, or alarmism and resignation. To my mind, however, this is **all the more reason** to pay attention to the work of preventive foresight in global civil society, through which civic associations can build up the latter’s coordination mechanisms and institutional leverage, cultivate and mobilize public opinion in distant parts of the world, and compel political leaders and national and transnational governance structures to implement certain policies. While seeking to prevent cataclysms from worsening or, better yet, from occurring in the first place, these sorts of initiatives can and must remain consistent with a vision of a just world order. Furthermore, the labor of farsightedness supports an autonomous view of the future, according to which we are the creators of the field of possibilities within which our successors will dwell. The current socio-political order, with all its short-term biases, is neither natural nor necessary. Accordingly, informed public participation in deliberative processes makes a socially self-instituting future possible, through the involvement of groups and individuals active in domestic and supranational public spaces; prevention is a public practice, and a public responsibility. To believe otherwise is, I would argue, to leave the path clear for a **series of alternatives** that heteronomously compromise the well-being of those who will come after us. We would thereby effectively **abandon the future to the vagaries of history** (‘let it unfold as it may’), the technocratic or instrumental will of official institutions (‘let others decide for us’), or to gambles about the time-lags of risks (‘let our progeny deal with their realization’). But, as I have tried to show here, this will not and cannot be accepted. Engaging in autonomous preventive struggles, then, remains our **best hope**. A farsighted cosmopolitanism that aims to avert crises while working toward the realization of precaution and global justice represents a compelling ethico-political project, for we will not inherit a better future. It must be made, starting with us, in the here and now.

#### No tyranny of the majority

**Shaw, 99** – Professor of Philosophy @ San Jose State

(William H, Contemporary Ethics, p. 13)

Actions affect people to different degrees. Your playing the stereo loudly might bring slight pleasure to three of your neighbors, cause significant discomfort to two others who do not share your taste in music or are trying to concentrate on something else, and leave a sixth person indifferent The utilitarian theory is not that each individual votes on the basis of his or her happiness or unhappiness with the majority ruling, but that we add up the various pleasures or pains, however large or small, and go with the action that results in the greatest net amount of happiness. Because any action will affect some people more strongly than others, utilitarianism is not the same as majority rule. For example, in the United States today it would probably increase overall happiness to permit homosexuals to marry, even though the thought of their doing so makes many heterosexuals slightly uncomfortable. This is because such a policy would affect the happiness or unhappiness of the majority only slightly, if at all, while it would profoundly enhance the lives of a small percentage of people. Even if banning homosexual marriages makes most people happy, it doesn't bring about the most happiness.As quoted earlier, Bentham famously said that the utilitarian standard is the greatest happiness of the greatest number." Although often repeated, this formulation is misleading. The problem is that it erroneously implies that we should maximize two different things: the amount of happiness produced and the number of people made happy.' Correctly understood, utilitarianism tells us to do only one thing, maximize happiness. Doing what makes the most people happy usually produces the most happiness, but it may not - as the example of homosexual marriages illustrates. For utilitarianism, it is the total amount of happiness, not the number of people whose happiness is increased, that matters.

**Turn – Focusing on undermining the heterosexist ideology reintrenches the binary structure of sex itself and the dominative heteronormative system**

CindyPatton, Asst. Professor at Temple University, 1995 (*Performativity and Performance*, pg 179-180, ed. Andrew Parker and Eve Kosofsky Sedgwick)

**We have, I now believe, pressed too hard on the homophobic core, or at least understood the constitution of a “self” through reverse-discourse in too unified a manner, a manner that insists too strongly on the bipolar structure of subject-constitution that is required within the self-other model. Surely these figural “Others” must operate quite differently in different regimes, sometimes simply in relation to a unifiable “Self”** (whether individual or writ larger as class or nation**), but in other cases as the multiply other “Other”**

**in relation to many competing or autonomous sites of knowledge claims. The “homosexual” of AIDS discourse, while palpably still the central figure, is a different “other” from “heterosexual,” “hemophiliac,” or “woman,”** not to mention from “doctor,” “nation,” or “African.” **If it is relatively easy**, through concepts like stigma, **to correlate a range of marginalized in similarly antipodal positions to the idea of a codifying center** (“self” writ large), **this does not mean they are in the same place, subjected to the same discursive and institutional tyrannies. And it is extremely hazardous to assume that the range of “selfs” which multiple notions of “other” inflect are, in fact, constitutive of a single, dominating system. It becomes difficult to see that space and time and the fate of those without the capacity to make specific, protective claims on their institutions are all linked through the idea of movement, if only because the body impinged upon may wish to save itself through flight.**

**Turn – Identity politics risk erasure of individual identities**

Shaun Sewell, PhD Dissertation, Louisiana State University,2005, Public Sexuality: A Contemporary History of Gay Images and Ideologies, [http://etd.lsu.edu/docs/submitted/etd-01212005-212501/unrestricted/Sewell\_dis.pdf], p. 6

However, **the danger in identity groupings so adequately pointed out by Judith Butler is the erasure of individual identities in service of those normalizing regimes. Moreover, tensions are engendered over the “proper” public image to put forward in order to achieve the particular political aim**. In an article which, in part, discusses scholarship of the Black diaspora, Cornel West argues against the essentializing nature of the identity category “Black,” as if the term itself can somehow encompass the identities of all of the people within the category. He writes, Any notions of “the real Black community” and “positive images” are value-laden, socially-loaded and ideologically-charged. To pursue this discussion is to call into question the possibility of such an uncontested consensus regarding them. (73) Similarly, the identity category “American” is also a category in which non-majority political voices are lost. **The major contribution, I think, of postmodern theory is to call into question the nature of identity categories.** To continue with West’s line of reasoning, such categories are politically and culturally constructed.

**anti-political focus of queer theory destroys any possibility of activism**

**Hall, 06** (Donald, professor of English at West Virginia University, “Imagining Queer Studies Out of the Doldrums”, Chronicle of Higher Education, 9/15, http://chronicle.com.proxy.library.emory.edu/weekly/v53/i04/04b01501.htm)

"Queer Theory" burst onto the scene about 15 years ago. The term received its first high-profile usage in a special issue of the journal differences ("Queer Theory: Lesbian and Gay Sexualities") published in the summer of 1991; was mentioned also in the groundbreaking collection of essays Inside/Out, appearing the same year; and then gained wide notice with the publication in 1993 of Michael Warner's influential collection Fear of a Queer Planet. By the fall of 1993, I was teaching a queer-studies course at California State University at Northridge, a class bursting at the seams with politically agitated students, many of whom were members of the campus activist group Squish — Strong Queers United in Suppressing Heterosexism. Since then my classes have always remained well enrolled (today I still turn away students, even with an enrollment cap of 40), but gradually the political energy has died away almost completely. The students in California (before I left in 2004) and now in West Virginia have become remarkably blasé concerning (what they consider) the few lingering vestiges of homophobia and increasingly eager to claim that life is actually pretty good now, with our many queer television shows, product lines, and other lifestyle components. While vicious gay-marriage debates rage in the media, Brokeback Mountain stirs up heated local controversy, and Fred Phelps's "God Hates Fags" picketers show up at local gay-pride events, even self-identifying queer students seem stunningly dismissive of politics generally, relying often on eye rolling as both critique and response. As we read about the early energy of groups such as Queer Nation and ACT UP, I often ask students about their own lack of passion for social-justice issues and political activism. A few will roll their eyes, but others will admit that their passivity does, in fact, constitute a problem, though with a very unhelpful explanation for its root cause. "It's our own fault," said one very fashionable (and often fashionably late for class) A student. "We're just shallow." While some might see that comment as actual evidence supporting the explanation he offered, I don't buy the ease of that answer. Nor do I agree with another student from a few years ago at Humboldt State University, where I visited to give a talk on the state of queer studies, who tried to explain why all the queer students there seemed a bit depressed during the meeting I had with them: "Things are just too easy on this campus for people to get motivated; we need some real oppression around here to energize us." More oppression is not the answer to anyone's or any field's problems. Certainly there are some social contextual factors that offer help in understanding the waning of political energy in the classroom and in the field of queer studies generally. No student in my class last spring knew a single person who had died of AIDS. Since most of them were born in the mid-1980s and became sexually and socially self-aware in the last 10 years, they have never thought of AIDS as anything other than a pharmacologically manageable disease (even if that is a very dangerous and inaccurate perception, which I address in class). Ellen Degeneres's character on her show Ellen came out on national television in 1997, and the series Will and Grace started in 1998, when most of them were in middle school. The lesbian and gay students in my classes today never knew a time when their identities did not receive at least a modicum of media validation through visibility. Furthermore, the big issue of today — gay marriage — does not motivate them very much as a topic of personal and political urgency. Most of my gay and lesbian students are still sowing wild oats, so to speak; some speak about perhaps wanting to marry someday but express vague confidence that at some indeterminate point in the future, it will probably be allowed without any active work on their part. Others dismiss marriage as an outmoded concept and not worthy of a battle in any event (a perspective with which I have a lot of sympathy). They do become interested when I talk about a few practicalities that marriage might bring with it and use, as an example, my own inability to get health insurance for my partner because of the lack of domestic-partnership benefits in West Virginia. But on the whole, they are not particularly energized by contemplating the impracticalities of being a middle-aged couple with no social safety net except what can be pieced together in spite of an unsympathetic state government. Granted, when I was in my teens and 20s, health insurance wasn't a burning issue for me either, at least until the AIDS crisis hit, and friends of mine without insurance (and many with insurance) faced terrible struggles in trying to get basic care for their illnesses. And given the fact that there is no similar or immediately galvanizing "life and death" issue today to enrage students, it is not surprising perhaps that they are rather blasé about politics. But just as the initial intensity of the feminist movement on college campuses waned long before sexism itself was seriously challenged, so too is queer intensity declining precipitously, even as heterosexism remains legally entrenched and homophobia remains a common political tool and general social undercurrent. What does begin to rouse my students is the immediacy of violenceboth rhetorical and physical. Showing the film Boys Don't Cry got many of them very agitated (even as a few also complained that I should only show them happy films rather than sad ones). Bringing in news stories of the harsh rhetoric used in legislatures across the nation as politicians debated anti-gay-marriage legislation and restrictions on rights for transgendered individuals led to even more-engaged classroom discussion. And I always actively encourage my socially conservative and religious students to speak their minds — not to shoot down their ideas but certainly to generate genuine awareness that not everyone agrees with each other on topics that my queer students seem to take for granted as already resolved. I do not teach political activism — that is not my role as a cultural-studies professor — but I do teach about the dynamics of social movements and hope that my students develop a passionate attachment to the topic, whatever their political beliefs. Once ignited, that intensity has to be nurtured carefully. Readings from the early work of Judith Butler still help in that regard. Her now largely abandoned implication of individual agency in changing sexual and gender norms through disruptive performances (which surfaces in both Gender Trouble from 1990 and the essay "Imitation and Gender Insubordination" from 1991) still makes students leave the classroom thinking that they can change the world if they first work creatively on themselves or their selves. Indeed, much of the early energy in queer studies generally derived from the sense of being asked, and being willing, to commit one's self to an important, realizable, and exhilarating cause. Unfortunately some recent theoretical work is not helpful. Especially deflating is Lee Edelman's much-discussed antipolitical polemic from 2004, No Future: Queer Theory and the Death Drive, which is actually a symptom and reinforcement of the very problem of general political passivity that I'm discussing here. Edelman uses Lacanian theory to argue that queers should repudiate the "oppressively political" and abandon any claim to a "viable political future." But the question remains as to how best to rekindle not only intellectual intensity in the classroom, but also an excitement about a dramatically different future that might even motivate students to engage in the hard work of collective action and sustained response long after they leave the university. Fundamental not only to "identity politics," but to all critical-thinking-based pedagogy is the belief that students, whatever their political orientation, should become engaged citizens in the world, not passive consumers who simply accept the status quo. And what I have found works best in that regard is a return to an older model of consciousness-raising, based on dialogue and a sharing of lived experiences (there are always students in class who have endured terrible hardships about which they are willing to speak), followed by exercises that ask students to imagine certain futures — utopias, even — that they would find worthy of fighting for. The diversity of what they come up with (Is sex work legalized? Does marriage become a wholly passé concept? What role does spirituality or religion play?) can lead to very dynamic conversations. Indeed, discussing their utopias allows them to begin to delineate the steps necessary to reach those states, looking backward in time to the successes of past social movements and forward to ones in which they might invest. It encourages students to think critically about how social change occurs, rather than to imagine vaguely that injustice somehow **dissipates magically** without the hard work of individuals and groups' organizing. It urges them to juxtapose the present situation — and whatever fuzzy sense they have of its basic acceptability — with a concrete visualization of what they would prefer as a reigning paradigm (or variety of paradigms). Some, such as Edelman, would argue that such exercises lock us into variations of the "norm" as it currently stands (whatever we project will simply be a version of what already is), but consensus about a single place-holding utopia is never the goal. The wide variety of possible utopias, as they sometimes clash with and sometimes complement each other, leads to intellectual excitement, critical attachment, and even productive anger. I will take that energy any day over the stasis produced by a cynical refusal even to imagine or invest in a future. Queer studies will never be what it was in the early 1990s. Today's context of ongoing oppression but token media and marketplace acceptance is very different. However, the doldrums of the queer-studies classroom and queer studies as a field can be challenged and the energy reignited. This means resisting the all-too-easy acceptance by students of the status quo; it means reminding them of the rhetorical and physical violence that continues to exist (but that is also uncomfortable to acknowledge and much easier simply to ignore or downplay); it means (for those of us working in queer studies) disrupting our own complacency that can result from being tenured, having successful writing and lecturing careers, and being able to afford a few comfortable lifestyle components. Queer studies will have a future only if it does the hard work of imagining possible futures and articulating ways to actually get us there.

**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**.

## 1AR

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

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

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

**Value to life always exists**

**Frankl** (Holocaust Survivor) **46** (Victor Frankl, Professor of Neurology and Psychiatry at the University of Vienna, Man’s Search for Meaning, 1946, p. 104)

But I did not only talk of the future and the veil which was drawn over it. I also mentioned the past; all its joys, and how its light shone even in the present darkness. Again I quoted a poet—to avoid sounding like a preacher myself—who had written, “Was Dii erlebst, k,ann keme Macht der Welt Dir rauben.” (What you have experienced, no power on earth can take from you.) Not only our experiences, but all we have done, whatever great thoughts we may have had, and all we have suffered, all this is not lost, though it is past; we have brought it into being. Having been is also a kind of being, and perhaps the surest kind. Then I spoke of the many opportunities of giving life a meaning. **I told my comrades** (who lay motionless, although occasionally a sigh could be heard) **that human life, under any circumstances, never ceases to have a meaning, and that this infinite meaning of life includes suffering and dying, privation and death.** I asked the poor **creatures** who listened to me attentively in the darkness of the hut to face up to the seriousness of our position. **They must not lose hope but should keep their courage in the certainty that the hopelessness of our struggle did not detract from its dignity and its meaning**. I said that someone looks down on each of us in difficult hours—a friend, a wife, somebody alive or dead, or a God—and he would not expect us to disappoint him. He would hope to find us suffering proudly—not miserably—knowing how to die.

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#### no impact to homonationalism

Jackson ‘12

Kyle Jackson, PhD Candidate, Department of Political Studies, Queen’s University – Neocolonial Homonationalism: Homonational Canada and Homophobic Jamaica – www.cpsa-acsp.ca/papers-2012/Jackson.pdf

The analysis undertaken in this paper also raises some important questions and introduces some complications. The near absence of explicitly racialized discourse (no doubt related to the type of text considered) stands in contrast to the strong form of racialization typically associated with the concept of homonationalism. “Whiteness” and “blackness” are implicit in many of the texts considered, but more needs to be done to draw out how “homophobic other nation-states” are specificall

y racialized. Relatedly, neocolonial homonationalism appears to be subtler and/or milder than Puar’s notion of the production of a sexualized and racialized, queer Muslim and/or terrorist other. The queer Muslim and/or terrorist other is, in biopolitical terms, “marked for death.” By contrast, the (seemingly) more subtly racialized, homophobic other nation-state appears to be more of a “marker of distinction.” This raises the possibility that homonationalism contains within it a large “continuum of othering” in which many different types of others (at varying “distances” from the homonational community) secure national homosexuality in many different types of ways. The similarities and differences between this paper’s treatment of homonationalism and Puar’s original formulation of the concept need to be explored further in the future. In the end, this paper raises more questions than it answers. It does, however, at least provide a first sketch of what it might look like to contextualize homonationalism in relations of neocolonialism between specific nationstates: homonational Canada and homophobic Jamaica.