# \*\*2AC\*\*

**Drone Shift DA: 2AC**

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

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

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

**There’s no tradeoff**

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

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

**Prosecuting terrorists solves drone shift**

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

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

### Heg: A2 “Alt Cause—Surveillance”

**PRISM doesn’t matter**

**Paramaguru 9-27** (Kharunya, 9-27-13, “Three Months After Snowden’s NSA Revelations, Europe Has Moved On” Time Magazine) http://world.time.com/2013/09/27/three-months-after-snowdens-nsa-revelations-europe-has-moved-on/#ixzz2g969BszS

**When** Edward **Snowden**, a former National Security Agency contractor, **disclosed details about** some of the clandestine electronic **surveillance programs run by the intelligence agencies** of the United States government in June, **it was widely seen as one of the biggest intelligence leaks in American history.** The Guardian, the British paper Snowden leaked the information to, saw record surges in web traffic as it published his exposés. Its main article on Edward Snowden, in which the paper declared that Snowden “will go down in history as one of America’s most consequential whistleblowers,” has become the most popular article ever read on the website, with over 3.7 million page impressions and counting according to the Guardian. **But, three months later, it’s difficult to see how consequential Snowden’s revelations have actually been. Despite** immediate and **widespread interest** from the news media and diplomatic backlash from some parts of the world (mainly from foreign officials who found out that the U.S. had been intercepting their communications), **the allegations of widespread spying conducted through the NSA’s PRISM program have not become the subject of any successful legislative efforts in Congress**–an initial attempt in July to cut the NSA’s funding for its phone metadata program fell flat after a narrow defeat. **And in some parts of the world, responses beyond the immediate surprise** caused by the revelations **have been particularly muted, with** some **British and French politicians suggesting** that **there was nothing in the leaks to cause the general public any concern.** Some politicians, such as Conservative Member of Parliament David Davis, questioned if there was adequate oversight of intelligence operations. But **in general, Europeans have shrugged and moved on.**

**GSPEC: 2AC**

**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.

### CP

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

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

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

**Only court action to enforce release solves deference and the rule of law**

**Vaughns 13** (Katherine, Professor of Law, University of Maryland, "Of Civil Wrongs and Rights: Kiyemba v. Obama and the Meaning of Freedom, Separation of Powers, and the Rule of Law Ten Years After 9/11" Asian American Law Journal, Lexis)

**After being reversed three times in a row in Rasul, Hamdan, and then Boumediene, the D.C. Circuit finally managed in Kiyemba to reassert,** and have effectively sanctioned, **its highly deferential stance towards the Executive in cases involving national security.** In particular, the D.C. Circuit concluded that an order mandating the Uighurs' release into the continental United States would impermissibly interfere with the political branches' exclusive authority over immigration matters. But this reasoning is legal ground that the Supreme Court has already implicitly - and another three-judge panel of the D.C. Circuit more explicitly - covered earlier. As such**, the Bush administration's strategy in employing the "war" paradigm at all costs and without any judicial intervention**, while unsuccessful in the Supreme Court, **has finally paid off in troubling, and binding, fashion in the D.C. Court of Appeals, where, national security fundamentalism reigns supreme and the Executive's powers as "Commander-in-Chief" can be exercised with little, if any, real check**; arguably leading to judicial abstention in cases involving national security. **The consequences of the Kiyemba decision** potentially **continue today**, for example, **with passage of the** **N**ational **D**efense **A**uthorization **A**ct of 2012, n246 **which** President **Obama signed**, with reservations, **into law** on December 31, 2011. n247 **This defense authorization bill contains detainee provisions that civil liberties groups and human rights advocates have strongly opposed.** n248 The bill's supporters strenuously objected to the assertion that **these provisions authorize the indefinite detention of U.S. citizens**. n249 In signing the bill, President **Obama** later issued a statement to [\*43] the effect that although he had reservations about some of the provisions, he "**vowed to use discretion when applying" them**. n250 **Of course, that does not mean another administration would do the same, especially if courts abstain from their role as protectors of individual rights.** In the years after 9/11, the Supreme Court asserted its role incrementally, slowly entering into the debate about the rights of enemy combatant detainees. This was a "somewhat novel role" for the Court. n251 Unsurprisingly, in so doing, the Court's intervention "strengthened detainee rights, enlarged the role of the judiciary, and rebuked broad assertions of executive power." n252 Also unsurprisingly, the Court's decisions in this arena "prompted strong reactions from the other two branches." n253 This may be so because, as Chief Justice Rehnquist noted, the Court had, in the past, recognized the primacy of liberty interests only in quieter times, after national emergencies had terminated or perhaps before they ever began. n254 However, since the twentieth century, wartime has been the "normal state of affairs." n255 If perpetual war is the new "normal," the political branches likely will be in a permanent state of alert. Thus, it remains for the courts to exercise vigilance and courage about protecting individual rights, even if these assertions of judicial authority come as a surprise to the political branches of government. n256 But courts, like any other institution, are susceptible to being swayed by influences external to the law. Joseph Margulies and Hope Metcalf make this very point in a 2011 article, noting that much of the post-9/11 scholarship mirrors this country's early wartime cases and "envisions a country that veers off course at the onset of a military emergency but gradually steers back to a peacetime norm once the threat recedes, via primarily legal interventions." n257 This model, they state, "cannot explain a sudden return to the repressive wilderness just at the moment when it seemed the country had recovered its moral bearings." n258 Kiyemba is very much a return to the repressive wilderness. In thinking about the practical and political considerations that inevitably play a role in judicial decisionmaking (or non-decisionmaking, as the case may be), I note that the Court tends to be reluctant to decide [\*44] constitutional cases if it can avoid doing so, as it did in Kiyemba. Arguably, this doctrine of judicial abstention is tied to concerns of institutional viability, in the form of public perception, and to concerns about respecting the separation of powers. n259 But, as Justice Douglas once famously noted, when considering the separation of powers, the Court should be mindful of Chief Justice Marshall's admonition that "it is a constitution we are expounding." n260 Consequently, "it is far more important [for the Court] to be respectful to the Constitution than to a coordinate branch of government." n261 And while brave jurists have made such assertions throughout the Court's history, the Court is not without some pessimism about its ability to effectively protect civil liberties in wartimes or national emergencies. For example, in Korematsu - one of the worst examples of judicial deference in times of crisis - Justice Jackson dissented, but he did so "with explicit resignation about judicial powerlessness," and concern that it was widely believed that "civilian courts, up to and including his own Supreme Court, perhaps should abstain from attempting to hold military commanders to constitutional limits in wartime." n262 Significantly, even when faced with the belief that the effort may be futile, Justice Jackson dissented. As I describe in the following section, that dissent serves a valuable purpose. But, for the moment, I must consider the external influences on the court that resulted in that feeling of judicial futility. In the Kiyemba case, the influences of both politics and public perception dominated. For example, the government's relocation efforts could be construed as an effort to remove the case from the Court's grasp - resolving the Uighurs' plight, without necessitating judicial review. n263 Through its "delay-then-moot strategy," the Executive controlled the Court's ability to determine a significant constitutional issue - the appropriate remedy for a habeas violation - by eliminating the Court's power to review the case. n264 The motivation for this strategy remains [\*45] uncertain. It is tied perhaps, at least in the Obama administration, to the congressional grilling received by former Secretary of Defense Robert Gates on the possibility of transferring the Uighurs into the interior of the United States. n265 In the face of widespread objection and fear mongering, the Obama administration ultimately bowed to congressional pressure, and terminated efforts to relocate the Uighurs within the continental United States. n266 More significantly, the Executive made these efforts the basis for its request that the Supreme Court deny continued review in Kiyemba. IV. What is at Stake? The Kiyemba litigation arose in a fascinating context: the War on Terror, with all of its Executive excess, fear-mongering, and deprivation of individual rights. **But it must be remembered that, at moments in the War on Terror and before, the courts of this country have risen above politics, and above fear, to resolutely declare the ongoing vitality of the rule of law. The Supreme Court itself has done so, most recently in Boumediene** v. Bush. **In the years since that decision, holes in the Court's doctrine have become apparent; and it is time for the Supreme Court to speak again, and to clearly articulate the remedy that accompanies the habeas corpus right.** As I describe below, **the rule of law remains viable only so long as there are those who are willing to defend it, to honor it, and to enforce it. A public reminder that such commitment exists could do much to invigorate in the public, and one hopes, in the government, a renewed obligation to the rule of law.**

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

#### Military is developing chemical soldiers

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

The 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.

### Legalism K: New 2AC

**The permutation is best—legal reforms can utilized to protect vulnerable populations if we remain conscious of its dangers—the alternative leaves groups stranded**

**Lobel 7, Assistant Professor of Law**

[February, 2007; Orly Lobel is an Assistant Professor of Law, University of San Diego. LL.M. 2000 (waived), Harvard Law School; LL.B. 1998, Tel-Aviv University, “THE PARADOX OF EXTRALEGAL ACTIVISM: CRITICAL LEGAL CONSCIOUSNESS AND TRANSFORMATIVE POLITICS”, 120 Harv. L. Rev. 937]

B. Conceptual Boundaries: When the Dichotomies of Exit Are Unchecked At first glance, **the idea of opting out of the legal sphere and moving to an extralegal space using alternative modes of social activism may seem attractive to new social movements**. We are used to thinking in binary categories, constantly carving out different aspects of life as belonging to different spatial and temporal spheres. Moreover, **we are attracted to declarations about newness - new paradigms, new spheres of action, and new strategies that are seemingly untainted by prior failures.** n186 However, the critical insights about law's reach must not be abandoned in the process of critical analysis. Just as advocates of a laissez-faire market are incorrect in imagining a purely private space free of regulation, and just as the "state" is not a single organism but a multiplicity of legislative, administrative, and judicial organs, "nonstate arenas" are dispersed, multiple, and constructed. **The focus on action in a separate sphere** broadly defined as civil society **can be self-defeating precisely because it conceals the many ways in which law continues to play a crucial role in all spheres of life.** Today, **the lines between private and public functions are increasingly blurred**, forming what Professor Gunther Teubner terms "polycorporatist regimes," a symbiosis between private and public sectors. n187 Similarly, new economic partnerships and structures blur the lines between for-profit and nonprofit entities. n188 Yet much of the current literature on the limits of legal reform and the crisis of government action is built upon a privatization/regulation binary, particularly with regard [\*979] to social commitments, paying little attention to how the background conditions of a privatized market can sustain or curtail new conceptions of the public good. n189 In the same way, **legal scholars often emphasize sharp shifts between regulation and deregulation, overlooking the continuing presence of legal norms that shape and inform these shifts.** n190 These false dichotomies should resonate well with classic cooptation analysis, which shows how social reformers overestimate the possibilities of one channel for reform while crowding out other paths and more complex alternatives. Indeed, in the contemporary extralegal climate, and contrary to the conservative portrayal of federal social policies as harmful to the nonprofit sector, **voluntary associations have flourished in mutually beneficial relationships with federal regulations**. n191 A dichotomized notion of a shift between spheres - between law and informalization, and between regulatory and nonregulatory schemes - therefore neglects the ongoing possibilities within the legal system to develop and sustain desired outcomes and to eliminate others. **The challenge for social reform groups and for policymakers** today **is to identify the diverse ways in which some legal regulations and formal structures contribute to socially responsible practices while others produce new forms of exclusion and inequality**. Community empowerment requires ongoing government commitment. n192 In fact, **the most successful community-based projects have been those** which were not only supported by public funds, but **in which public administration also continued to play some coordination role**. n193 At both the global and local levels, with the growing enthusiasm around the proliferation of new norm-generating actors, **many envision a nonprofit, nongovernmental organization-led democratization of new informal processes**. n194 Yet this Article has begun to explore the problems with some of the assumptions underlying the potential of these new actors. Recalling the unbundled taxonomy of the cooptation critique, **it becomes easier to identify the ways extralegal activism is prone to problems of fragmentation, institutional limitation, and professionalization**. [\*980] **Private associations**, even when structured as nonprofit entities, **are frequently undemocratic institutions whose legitimacy is often questionable.** n195 There are problematic structural differences among NGOs, for example between Northern and Southern NGOs in international fora, stemming from asymmetrical resources and funding, n196 and between large foundations and struggling organizations at the national level. Moreover, direct regulation of private associations is becoming particularly important as the roles of nonprofits increase in the new political economy. Scholars have pointed to the fact that nonprofit organizations operate in many of the same areas as for-profit corporations and government bureaucracies. n197 This phenomenon raises a wide variety of difficulties, which range from ordinary financial corruption to the misrepresentation of certain partnerships as "nonprofit" or "private." n198 Incidents of corruption within nongovernmental organizations, as well as reports that these organizations serve merely as covers for either for-profit or governmental institutions, have increasingly come to the attention of the government and the public. n199 Recently, for example, the IRS revoked the tax-exempt nonprofit status of countless "credit counseling services" because these firms were in fact motivated primarily by profit and not by the not-for-profit cause of helping consumers get out of debt. n200 Courts have long recognized that the mere fact that an entity is a nonprofit does not preclude it from being concerned about raising cash revenues and maximizing profits or affecting competition in the market. n201 In the [\*981] application of antitrust laws, for example, almost every court has rejected the "pure motives" argument when it has been put forth in defense of nonprofits. n202 Moreover, akin to other sectors and arenas, nongovernmental organizations - even when they do not operate within the formal legal system - frequently report both the need to fit their arguments into the contemporary dominant rhetoric and strong pressures to subjugate themselves in the service of other negotiating interests. This is often the case when they appear before international fora, such as the World Bank and the World Trade Organization, and each of the parties in a given debate attempts to look as though it has formed a well-rounded team by enlisting the support of local voluntary associations. n203 One NGO member observes that "when so many different actors are drawn into the process, there is a danger that our demands may be blunted ... . Consequently, we may end up with a "lowest common denominator' which is no better than the kind of compromises the officials and diplomats engage in." n204 Finally, local NGOs that begin to receive funding for their projects from private investors report the limitations of binding themselves to other interests. Funding is rarely unaccompanied by requirements as to the nature and types of uses to which it is put. n205 These concessions to those who have the authority and resources to recognize some social demands but not others are indicative of the sorts of institutional and structural limitations that have been part of the traditional critique of cooptation. In this situation, local NGOs become dependent on players with greater repeat access and are induced to compromise their initial vision in return for limited victories. **The concerns about the nature of both civil society and nongovernmental actors illuminate the need to reject the notion of avoiding the legal system and opting into a nonregulated sphere of alternative social activism. When we understand these different realities and processes as also being formed and sustained by law, we can explore new ways in which legality relates to social reform**. **Some of these ways include efforts to design mechanisms of accountability** that address the conc

erns of the new political economy. Such efforts include [\*982] treating private entities as state actors by revising the tests of joint participation and public function that are employed in the state action doctrine; extending public requirements such as nondiscrimination, due process, and transparency to private actors; and developing procedural rules for such activities as standard-setting and certification by private groups. n206 They may also include using the nondelegation doctrine to prevent certain processes of privatization and rethinking the tax exemption criteria for nonprofits. n207 All of these avenues understand the law as performing significant roles in the quest for reform and accountability while recognizing that new realities require creative rethinking of existing courses of action. **Rather than opting out of the legal arena, it is possible to accept the need to diversify modes of activism and legal categories while using legal reform in ways that are responsive to new realities**. **Focusing on function and architecture**, rather than on labels or distinct sectors, **requires legal scholars to consider the desirability of new legal models** of governmental and nongovernmental partnerships and of the direct regulation of nonstate actors. In recent years, scholars and policymakers have produced a body of literature, rooted primarily in administrative law, describing ways in which **the government can harness the potential of private individuals to contribute to the project of governance**. n208 These new insights develop the idea that administrative agencies must be cognizant of, and actively involve, the private actors that they are charged with regulating. These studies, in fields ranging from occupational risk prevention to environmental policy to financial regulation, draw on the idea that groups and individuals will [\*983] better comply with state norms once they internalize them. n209 For example, in the context of occupational safety, there is a growing body of evidence that focusing on the implementation of a culture of safety, rather than on the promulgation of rules, can enhance compliance and induce effective self-monitoring by private firms. n210 Consequently, social activists interested in improving the conditions of safety and health for workers should advocate for the involvement of employees in cooperative compliance regimes that involve both top-down agency regulation and firm-and industry-wide risk-management techniques. Importantly, in all of these new models of governance, the government agency and the courts must preserve their authority to discipline those who lack the willingness or the capacity to participate actively and dynamically in collaborative governance. Thus, **unlike the contemporary message regarding extralegal activism that privileges private actors and nonlegal techniques to promote social goals**, **the new governance scholarship is engaged in developing a broad menu of legal reform strategies** that involve private industry and nongovernmental actors in a variety of ways **while maintaining the necessary role of the state to aid weaker groups in order to promote overall welfare and equity**. **A responsive legal architecture has the potential to generate new forms of accountability and social responsibility and to link hard law with "softer" practices and normativities**. **Reformers can potentially use law to increase the power and access of vulnerable individuals and groups and to develop tools to increase fair practices and knowledge building within the new market.**

**No alternative---other ideas bring more inequality and abuse**

Jerold S. **Auerbach 83**, Professor of History at Wellesley, “Justice Without Law?”, 1983, p. 144-146

**As cynicism about the legal system increases, so does enthusiasm for alternative** dispute-settlement **institutions**. The search for alternatives accelerates, as Richard Abel has suggested, "when some fairly powerful interest is threatened by an increase in the number or magnitude of legal rights.\*'6 Alternatives are designed to provide a safety valve, to siphon discontent from courts. With the danger of political confrontation reduced, the ruling power of legal institutions is preserved, and the stability of the social system reinforced. Not incidentally, **alternatives prevent the use of courts for redistributive purposes in the interest of equality, by consigning** the **rights of disadvantaged citizens to institutions with minimal power to** enforce or **protect them. It is, therefore, necessary to beware of the seductive appeal of alternative institutions. They may deflect energy from political organization by groups of people with common grievances; or discourage effective litigation strategies that could provide** substantial **benefits**. They may, in the end, create a two-track justice system that dispenses informal "justice" to poor people with "small" claims and "minor" disputes, who cannot afford legal services, and who are denied access to courts. (Bar associations do not recommend that corporate law firms divert their clients to mediation, or that business deductions for legal expenses—a gigantic government subsidy for litigation—be eliminated.) **Justice according to law will be reserved for the affluent**, hardly a novel development in American history but one that needs little encouragement from the spread of alternative dispute-settlement institutions.¶ It is social context and political choice that determine whether courts, or alternative institutions, can render justice more or less accessible—and to whom. Both can be discretionary, arbitrary, domineering—and unjust. Law can symbolize justice, or conceal repression. It can reduce exploitation, or facilitate it. It can prohibit the abuse of power, or disguise abuse in procedural forms. It can promote equality, or sustain inequality. **Despite the resiliency and power of law, it seems unable to eradicate the tension between legality and justice**: even in a society of (legal) equals, some still remain more equal than others. **But diversion from the legal system is likely to accentuate that inequality. Without legal power the imbalance between aggrieved individuals and corporations, or government agencies, cannot be redressed. In American society**, as Laura Nader has observed, "**disputing without the force of law ... [is| doomed to fail**."7 **Instructive examples document the deleterious effect of coerced informality** (even if others demonstrate the creative possibilities of indigenous experimentation). **Freed slaves after the Civil War and factory workers at the turn of the century, like inner-city poor people now, have all been assigned places in informal proceedings that offer substantially weaker safeguards than law can provide**. Legal institutions may not provide equal justice under law, but in a society ruled by law it is their responsibility.¶ **It is chimerical to believe that mediation or arbitration can now accomplish what law seems powerless to achieve. The American deification of individual rights requires an accessible legal system for their protection**. Understandably, diminished faith in its capacities will encourage the yearning for alternatives. But the rhetoric of "community" and "justice" should not be permitted to conceal the deterioration of community life and the unraveling of substantive notions of justice that has accompanied its demise. There is every reason why the values that historically are associated with informal justice should remain compelling: especially the preference for trust, harmony, and reciprocity within a communal setting. These are not, however, the values that American society encourages or sustains; **in their absence there is no effective alternative to legal institutions**.¶ The quest for community may indeed be "timeless and universal."8 In this century, however, the communitarian search for justice without law has deteriorated beyond recognition into a stunted off-shoot of the legal system. The historical progression is clear: from community justice without formal legal institutions to the rule of law, all too often without justice. **But injustice without law is an even worse possibility, which misguided enthusiasm for alternative** dispute settlement **now seems likely to encourage**. Our legal culture too accurately expresses the individualistic and materialistic values that most Americans deeply cherish to inspire optimism about the imminent restoration of communitarian purpose. **For law to be less conspicuous Americans would have to moderate their expansive freedom to compete, to acquire, and to possess, while simultaneously elevating shared responsibilities above individual rights. That is an unlikely prospect unless Americans become, in effect, un-American. Until then, the pursuit of justice without law does incalculable harm to the prospect of equal justice.**

**Liberal legal thought provides space for the K**

**Altman**, Professor of Philosophy; Georgia State University, **90** (Andrew, Critical Legal Studies: A Liberal Critique, page 8)

In addition, it would be a distortion of liberal theory to suggest that it has no place for nonlegal modes of social regulation, such as mediation. Liberals can and do acknowledge the value of such nonlegal mechanisms in certain social contexts and can consis that the liberal view requires us to recognize that such procedures and rules have a central role to play in resolving fairly and effectively the conflicts that arise in a society characterized by moral, religious, and political pluralism. Thus, **the liberal endorsement of legalism does not necessarily involve a commitment to legalism in the sense that Judith Shldar defines the term: “the ethical attitude that holds moral conduct to be a matter of rule following, and moral relationships to consist of duties and rights determined by rules.**” Shldar, Legalism (Cambridge: Harvard University Press, 1986), p. 1. Shlclar understands full weli that a commitment to **the liberal rule of law does not entail an acceptance of legalism** in her sense of the term. See Legalism, pp. xi-xli. And **those who reject the rule of law can argue in the political arena for extending the role of such informal mechanisms**. Of course, a liberal state could not allow the antinomians to eradicate legal institutions; in that sense, one might say that **the liberal rule of law** is not neutral. But the kind of political neutrality which the liberal defends does not aim to guarantee that any normative view has an opportunity to remake society wholly in its vision. It **does guarantee an opportunity to negotiate and compromise within a framework of individual rights, and there is no reason why those who defend non- legal modes of social regulation cannot seize the opportunity under a liberal regime to carve out a significant role for nonlegal modes of social regulation within the liberal state.** The liberal ver sion of political neutrality demands that antinomians have such an opportunity, but there is nothing remotely inconsistent in liberal thought in making that demand or prohibiting antilegalism from going so far as to destroy all legal institution

**LOAC DA: 2AC**

**LOAC is destroyed now**

**A. PMCs**

Daniel P. **Ridlon**, A.F. Captain, JD Harvard, **2008**, “CONTRACTORS OR ILLEGAL COMBATANTS? THE STATUS OF ARMED CONTRACTORS IN IRAQ,” 62 A.F. L. Rev. 199, ln

In addition to legal liability, the United States' **employment of PMF personnel in future conflicts has potential negative policy ramifications**. Employing **PMF personnel** who are potentially viewed as illegal combatants **may undermine the public image that the United States conducts its military operations in accordance with the laws of war**. **This** **would** not only **serve as a p**ublic **r**elations **problem** for the United States, **but it could also be used as justification for other nations** or non-state actors **to violate the l**aws **o**f **w**ar, especially if those states or groups are engaged in a conflict against the United States. In the end, the employment of illegal combatants could reduce prisoner of war [\*253] protections afforded to United States military personnel if they are captured.

**B. Goldstone report**

Michael A. **Newton 10**, Law Prof @ Vanderbilt, “LAWFARE AND THE ISRAELI-PALESTINE PREDICAMENT: Illustrating Illegitimate Lawfare,” 43 Case W. Res. J. Int'l L. 255, ln

After detailing the content of the leaflet and radio broadcast warnings, the Report concluded that the warnings did not comply with the obligations of Protocol I because Israeli forces were presumed to have had the capability to issue more effective warnings, civilians in Gaza were uncertain about whether and where to go for safety, and some places of shelter were [\*277] struck after the warnings were issued. n91 Thus, despite giving more extensive warnings to the civilian population than in any other conflict in the long history of war, the efforts of the **Israeli attackers** were equated with attacks intentionally directed against the civilian population. This approach **eviscerates the appropriate margin of appreciation that commanders who respect the law and endeavor to enforce its constraints should be entitled to rely upon**--and which the law itself provides. There is simply no legal precedent for taking the position that the civilians actually respond to such warnings, particularly in circumstances such as Gaza where the civilian population is intimidated and often abused by an enemy that seeks to protect itself by deliberately intermingling with the innocent civilian population. **The newly minted Goldstone standard for warning the civilian population would displace operational initiative from the commander** in the attack to the defender who it must be remembered commits a war crime by intentionally commingling military objectives with protected civilians. **This** aspect of the report **would itself serve to amend the entire fabric of the textual rules that currently regulate offensive uses of force in the midst of armed conflict.¶** This, then, is the essence of illegitimate lawfare. Words matter--particularly when they are charged with legal significance and purport to convey legal rights and obligations. **When purported legal "developments" actually undermine the ends of the law, they are illegitimate and inappropriate. Legal movements that foreseeably serve to discredit the law of armed conflict even further in the eyes of a cynical world actually undermine its utility. Lawfare that creates uncertainty over the application of previously clear rules must be opposed vigorously because it does perhaps irrevocable harm to the fabric of the laws and customs of war. Illegitimate lawfare will marginalize the precepts of humanitarian law if left unchecked, and may serve to create strong disincentives to its application and enforcement**. Knowledge of the law and an accompanying professional awareness that the law is binding remains central to the professional ethos of military forces around our planet irrespective of the reality that incomplete compliance with the jus in bello remains the regrettable norm. Hence, it logically follows that any efforts to distort and politicize fundamental principles of international law cannot be meekly accepted as inevitable developments.

**Link turn—unawful combatant is NOT a category under LOAC—the plan is key to bring us into compliance**

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

**The most controversial aspect of U.S. conduct in the "war on terror" to date has been the treatment of detainees. Drawing on** arguably **misconstrued precedent**, n247 until early 2009 **the U**nited **S**tates **classified detainees as "enemy combatants"-a term** Department of Defense officials coined in 2002, n248 **which lacks understood meaning under the law of war-and treated them as falling outside any recognized protective regime.** n249 In February 2002, President Bush accepted the Department of Justice's view that neither al Qaeda nor the Taliban qualified for protection under the Geneva Conventions but ambiguously declared that: Our values as a Nation ... call for us to treat detainees humanely, including those who are not legally entitled to such [\*997] treatment... As a matter of policy, the United States Armed Forces shall continue to treat detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva. n250 **Given the modern development of international humanitarian and human rights law, it is inconceivable that there are now any human beings not legally entitled to humane treatment. Yet the Bush administration sought to place these detainees in the law-free zone that** John **Yoo erroneously imagined was occupied by nineteenth century pirates and slave traders.** n251 Further, **anyone** remotely **familiar with the law of war recognizes that military necessity is already incorporated into its provisions and can never justify departure from its rules**. n252 Probably **the single most important step towards reestablishing compliance with the rule of law is to identify a recognized legal classification into which U.S. adversaries can be placed and to treat them in accordance with the rules governing that category.** n253 **International law indisputably recognizes two legal classifications for participants in armed conflict, combatants and civilians**, n254 while some commentators argue for the existence of unlawful combatants as a discreet third group. n255 Credible lawyering requires careful analysis of the rules governing these categories and the practical ramifications of their selection. [\*998] A. Combatant Status Under the Law of War Identifying persons legally entitled to participate in hostilities is a key element of the law of war. n256 Francis Lieber first gained government attention by addressing guerillas and the classification of prisoners in a civil war. n257 Provisions Lieber incorporated in his subsequent "Code" underwent further development in the unratified Brussels Declaration of 1874 n258 and the first binding codification of rules governing combatant qualifications, adopted at the Hague in 1899. The Hague Regulations' declare: Article 1. The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions: 1. To be commanded by a person responsible for his subordinates; 2. To have a fixed distinctive emblem recognizable at a distance; 3. To carry arms openly; and 4. To conduct their operations in accordance with the laws and customs of war. In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination "army." n259 The key "right" accorded belligerents meeting these criteria is immunity from domestic prosecution for their conduct. As Yoram Dinstein explains: At bottom, warfare by its very nature consists of a series of acts of violence (like homicide, assault, battery and arson) ordinarily penalized by the criminal codes of all countries. When a combat- [\*999] ant, John Doe, holds a rifle, aims it at ... a soldier belonging to the enemy's armed forces[] with an intent to kill, pulls the trigger, and causes ... death, what we have is a premeditated homicide fitting the definition of murder in virtually all domestic penal codes. If, upon being captured by the enemy, John Doe is not prosecuted for murder, this is due to one reason only. [The law of war] provides John Doe with a legal shield, protecting him from trial and punishment. n260 This immunity, often called "the combatant's privilege," n261 is more important than the standards of treatment mandated for a prisoner of war (POW), which seem to be the preoccupation of most commentators. n262 Rules governing POW treatment would be of little practical value if captured belligerents could be criminally prosecuted for taking part in hostilities. Belligerent immunity, limiting combatants' trials to actual violations of the law of war, is really the most fundamental benefit conferred by that law, and leads, as Ryan Goodman observes, to the fact that these individuals can generally be killed or detained in wartime but not tried. n263 It is the threat of trial and actual criminal punishment, or even execution, that is the primary incentive for combatants to conform their conduct to the law of war, preserving their place within the category of persons who may only be detained without trial. Many scholars, including Dinstein, view this domestic immunity as intertwined with POW status n264 -a position arguably bolstered by provisions of Protocol I discussed later in this article. n265 In 1929, the first Geneva POW convention explicitly adopted the Hague criteria for combatants as the formal standard for POW eligibility. n266 But Geneva III's Article 4 in 1949 expanded POW eligibility. n267 Part A of that article lists six categories of persons entitled to POW [\*1000] status, n268 but does not explicitly state that only four of these can ever be entitled to combatant status. n269 The "combatant privilege" is thus logically separable from POW status. A combatant receives no immunity for law of war violations, however, only from domestic prosecutions. It has been clear from Lieber's time that "[a] prisoner of war remains answerable for his crimes against the captor's army or people, committed before he was captured, and for which he has not been punished by his own authorities." n270 The immunities accorded the combatant under the law of war come with a substantial price. In exchange for the right to engage in violence, combatants are in turn subject to being killed or wounded at essentially any place and any time during an armed conflict from the time they enlist until they are separated from military service. n271 If captured, they may be preventively detained for the duration of the conflict based solely on their membership in the enemy's forces. Geneva III now requires combatants to carry an identification card that establishes their entitlement to POW status but also provides prima facie authority for their detention. n272 Geneva III, Article 5 calls for a "competent tribunal" to determine status in cases of doubt about POW eligibility but provides no criteria for their composition or procedure. n273 [\*1001] Al Qaeda is not a state and thus lacks an "army," but it could be a "militia" or "volunteer corps," which can have combatant status under Hague and Geneva rules. Testimony was given during Salim Hamdan's 2008 military commission trial that al Qaeda had a unit composed of several thousand fighters, the 055 Brigade, who fought for the Taliban in camouflage uniforms. n274 While al Qaeda fighters failing to wear uniforms or follow the law of war have no right to demand combatant status, nothing in the law would bar the United States from choosing to treat them as combatants. n275 **Unilaterally according al Qaeda members combatant status would have several advantages. First, there would be no question of the legality of military action to kill al Qaeda personnel without first attempting their capture.** The United States has been killing al Qaeda members via airstrikes, missiles fired from remotely operated Predator drones, and traditional ground combat. n276 Second, **simply establishing a detainee's status as an al Qaeda fighter would justify preventive detention for the duration of hostilities**. It would not be necessary to link them with any hostile acts or even to demonstrate any specific individual intent to commit such acts. The government and its critics have said much about "battlefield" captures-the government generally asserts that detainees were captured on a battlefield and critics seek to refute these claims. n277 But there is no formal provision in the law of war that requires any tie to a battlefield to justify preventive detention; it is the affiliation with opposition forces, not the locus of capture or personal conduct, which determines eligibility for detention. Indeed, Geneva III defines prisoners of war as persons "who have fallen into the power of the enemy," n278 not even requiring that they have been "captured" at all. Third, although combatants are protected from abuse and do not have to provide any information beyond basic identifying data, [\*1002] there are no explicit legal limitations on the subject or duration of interrogations and no right to counsel during questioning. n279 Fourth, al Qaeda members would be subject to military trial for any law of war violations they commit. A Geneva III provision that might now be customary law calls for combatant trials by "the same courts according to the same procedure as in the case of members of the ... Detaining Power." n280 This precludes use of the current military commissions, which are limited to aliens. n281 But this Geneva provision does allow trial by courts-martial, n282 which would merit greater international support than the current commissions, which are roundly criticized even by close allies. n283 Despite the combatants' immunity from ordinary domestic crimes, Article III courts also should be able to try them for War Crimes Act n284 violations because these courts also have jurisdiction over U.S. service personnel. n285 These advantages must be balanced against potential downsides to granting al Qaeda combatant status. Perhaps the most significant is political; letting al Qaeda fighters claim the mantle of "combatants" could facilitate their self-portrayal as warriors engaged in jihad against the West. n286 Treating them as combatants also could legitimate attacks on valid military targets such as the Pentagon and the USS Cole. n287 Al Qaeda's means of attack employed to date, including the use of commercial airliners as weapons and the indiscriminate targeting of civilians, should still render most past attacks unlawful, n288 but "combatant" classification opens the possibility that future strikes could be done lawfully. Although the United States could elect to accord al Qaeda combatant status, it might thus choose not to do so. [\*1003] B. Civilian Status Under the Law of War **Although initially counterintuitive, the other classification indisputably available is "civilian." n289 This seems illogical since civilians are protected persons under the law of war, n290 and the goal of applying the war paradigm is to gain greater freedom of action against al Qaeda than criminal law provides, not to grant terrorists additional safeguards. But the "civilian" category is sufficiently broad that Protocol I's Article 50 declares that anyone not meeting the legal criteria for combatant status is a civilian.** n291 Combatant status is determined with respect to individual conflicts, so even a uniformed service person can be considered a civilian if not an actual participant in the conflict. n292 British military officers caught in Kuwait during Iraq's 1990 invasion and U.N. peacekeepers thus have both been held legally to be civilians. n293 Any doubt as to whether persons considered to be "unlawful combatants" could be civilians should be dispelled by the facial language of Geneva IV's Article 5 which includes persons detained as "a spy or saboteur" within the ambit of "protected person[s]" n294 and Article 68, which allows their trial for espionage, sabotage, or offenses "solely intended to harm the Occupying Power." n295 Geneva IV gives belligerents significant flexibility to deal with civilians posing actual security threats. n296 Historically, the law of war simply declared that civilians could not be the object of attack but provided few specific rules for their treatment. As a result there are comparatively few longstanding customary rules in this area. But since IHRL should be fully applicable in the absence of positive law of war rules constituting a lex specialis, states should find it advantageous to recognize most Geneva IV provisions as constituting customary law and thus applicable even when there are technical gaps in the treaty's application. Otherwise civilians will logically be governed by more restrictive rules such as the ICCPR, [\*1004] which proclaims "[n]o one shall be deprived of his liberty except ... in accordance with such procedure as are established by law" and mandates an enforceable right to compensation for anyone wrongfully detained. n297 **Treating detainees as civilians governed by the basic principles of Geneva IV and Protocol I advances U.S. objectives in several ways. First, civilians have no right to participate in hostilities and thus get no immunity from domestic law. n298 Any acts of violence they commit remain domestic crimes, subjecting them to stigmatization as common criminals and the indignity of ordinary courtroom prosecution.** n299 Second, like POWs, enemy civilians are subject to preventive internment if they pose a significant threat, n300 that is, "if the security of the Detaining Power makes it absolutely necessary." n301 The physical conditions mandated for civilian internment are very much like those mandated for POWs. Unlike the one-time determination made at the beginning of combatant detention, however, Geneva IV's Article 43 requires an initial threat determination and semiannual review "by an appropriate court or administrative board." n302 But there is no bar to holding a detainee who is periodically reassessed as a threat until the end of hostilities. n303 Third**, civilians who participate in hostilities are subject to attack while doing so.** The Israeli Supreme Court held that "participating" should be interpreted fairly broadly even while upholding application of the law of war to fighting terrorists. n304 This result makes logical sense in applying the law of war to a group like al Qaeda. Protocol I focused on the resistance figures who were "farmers by [\*1005] day and soldiers by night," n305 such as the Viet Cong. n306 The logic for limiting attacks to periods of actual participation in fighting is that it is difficult to distinguish between insurgents and innocent civilians when both are engaged in everyday activities and there is a risk of collateral harm to innocent persons during attacks in civilian settings. An additional consideration is that in an occupation setting, where military forces traditionally encountered resistance fighters, the military exercises governmental authority and could arrest individuals isolated from their units. Al Qaeda is a full-time job for most personnel, n307 so they may be "participating" in hostilities through a broader scope of activity than just heading to or from an attack. n308 There is no principled reason why these persons, like actual military personnel, should not be subject to attack while planning or training for a combat operation. n309 But, as Curtis Bradley notes, attempts to expand the definition of "participat[ing] in hostilities" will undoubtedly incur some international public opposition toward the United States as it has for Israel. n310 Like combatants, interned civilians should also be subject to interrogation outside traditional criminal procedure constraints. Geneva IV's Article 31 bars "physical or moral coercion ... against protected persons, in particular to obtain information from them or from third parties." n311 There are no express limits on the duration or subject of questioning, however, providing a clear advantage over criminal law. n312 **As previously noted, civilians participating in armed conflict enjoy no immunity from prosecution under domestic laws. n313 Any killing they commit is a homicide and any destruction of property a [\*1006] criminal act. As offenses against regular domestic law, the proper venue for such trials is ordinary civilian courts.** Although such acts have been punished by military tribunals in the past, these typically drew their authority either as martial law courts, such as those in border states during the U.S. Civil War, or as military government courts situated in occupied territory. n314 Despite having the functional appearance of law of war tribunals, the law applied was formally "domestic." Typically, this would be either an ad hoc code established for an occupied territory or the existing criminal code left in effect by military authorities. n315 Civilians can be tried for war crimes in some circumstances but generally must either be inciting or directing military personnel, or engaged in conduct with them, to be prosecuted under the law of war. n316 Most legal scholars agree that persons not entitled to combatant status do not commit a war crime just by participating in hostilities, n317 but rather that any acts of violence they commit are punishable as crimes under domestic law. When civilians can be tried for grave breaches of Geneva IV, that convention mandates legal protections at least equivalent to those provided POWs. n318 Treating al Qaeda personnel as civilians thus imposes more legal constraints on U.S. actions than according them combatant status would, including less authority to target such personnel and a higher burden to justify their detention. But it has the advantage of weakening their claims to be warriors and facilitates their stigmatization as criminals. It also allows their prosecution under the full scope of U.S. federal criminal law, including inchoate offenses, rather than the more limited set of acts constituting actual law of war violations. [\*1007] C. Unlawful Combatants **Despite universal agreement on the existence of the combatant and civilian categories, the U.S. approach has been to assert that al Qaeda and even Taliban fighters fall into a third group-unlawful combatants-which the U.S. holds lies outside existing legal protections.** n319 First, the Bush administration excluded al Qaeda from Geneva Convention coverage because they are nonstate actors. n320 The Bush administration then categorized both Taliban and al Qaeda personnel as "unlawful combatants" by this apparent logic: (1) they are fighters so they must be combatants, not civilians; (2) they fail to satisfy two key criteria for lawful combatants: - lacking a "fixed distinctive emblem"; and, - not following "the laws of war"; (3) therefore they must be unlawful combatants. n321 **Because "unlawful combatant," like the term "enemy combatant" which the government has also employed, is not explicitly defined by the law of war, this reasoning endeavored to place members of these groups outside formal legal protections. They were thus effec tively "extra-conventional persons."** n322 The government considered them subject to detention for the duration of hostilities and triable for law of war violations by military commissions but contended that their treatment did not have to meet any specific legal standards. n323 **This logic might have been dispositive a century ago**. Historic practice held irregulars to be subject to summary execution as recently as the nineteenth century. The French shot Spanish guerillas during the Napoleonic Wars, for example. n324 American General [\*1008] Winfield Scott established Councils of War in 1847 to deal with law of war violators more summarily than military commissions, which he also created, dealt with other offenses. n325 He justified this on a greater power/lesser power argument, asserting the law of war allowed guerrillas' summary execution so any process provided exceeded international requirements. n326 Even assuming these examples reflected the law at the time, **however, they do not reflect the law as it stands today. The 1899 Hague Regulations declared that spies could no longer be executed without trial, and contemporary commentary asserts that this rule applies "in all other cases" as well.** n327 **This principle was clearly evidenced by the 1902 British court-martial convictions of Lieutenant Harry H. "Breaker" Morant and several other members of the Bushveldt Carbineers for the summary killing of Boer guerillas, rejecting defense arguments that such individuals fell outside the prot**

**ections of the law of war.** n328 And a number of World War II era war crimes prosecutions held Axis personnel criminally liable for punishing alleged unlawful combatants without a valid trial. n329 So it seems, **by the start of the twentieth century, no one was subject to punishment for law of war violations without trial. Any residual doubt about whether individuals can remain outside formal legal protection is dispelled by the expansive proliferation of international humanitarian and human rights law in the latter half of the twentieth century**. n330 The existence vel non of unlawful combatants as a discreet category is debated by experts today. Israel's Yoram Dinstein is perhaps the leading proponent of unlawful combatants as a continuing separate classification. n331 But other **scholars as diverse as** Britain's A. P. V. **Rogers**, n332 America's Gabor **Rona**, n333 the Congressional [\*1009] Research Service's Jennifer **Elsea**, n334 **and** current and former U.S. Army Judge Advocates Paul **Kantwill and** Sean **Watts** n335 **endorse the single combatant/civilian distinction. This view also finds support in both the language of Protocol I's Article 50** n336 and the commentary to Geneva IV, **which declares: Every person in enemy hands must have some status under international law: he is either a prisoner of war ... covered by the Third Convention, a civilian covered by the Fourth Convention, or [] a member of the medical personnel of the armed forces who is covered by the First Convention. There is no intermediate status; nobody in enemy hands can be outside the law.** n337 **Assuming that one purpose of applying the law of war is to foster public belief in the legitimacy of U.S. conduct** and facilitate international cooperation in defeating al Qaeda, **bullish reliance on a legal position fairly characterized as "colorable" at best seems like an extremely poor choice.** n338 But **that is what the U.S. seems to have done over the objections of the State Department, which foresaw many of the practical and political ramifications that have resulted from placing detainees outside the law.** n339 The denial of any mandatory protections is particularly hard to justify given that Protocol I's Article 75, widely regarded as declaratory of customary law, n340 provides a minimum set of baseline protections that must now be applied to anyone not benefitting from a more favorable regime. n341 Legitimate scholars arguing for the existence of "unlawful combatants" as a third category typically dispute the view that no specific legal protections apply and agree that Article 75 is fully applicable. n342 Article 75 protections, which are more extensive than [\*1010] those of CA3, include requiring release from noncriminal detention "with the minimum delay possible" and a detailed set of fair trial standards. n343 **Even if the Bush administration was correct in identifying al Qaeda fighters as "unlawful combatants," it was clearly mistaken in holding that they fall outside the law of war's protective ambit.**

**No impact—LOAC is redundant**

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

But even the most cursory study of the law of war quickly reveals the fallacy of this view. Virtually every society that has left a written record has documented legal constraints on the conduct of hostilities. n133 **The law of war constitutes a major portion of eighteenth- and nineteenth-century international law treatises.** n134 **The explosive growth of international law in the twentieth century, including the proliferation of multinational organizations and international courts, as well as the development of such new fields as international environmental and human rights law, relegated the law of war to relative obscurity. Today, it typically occupies just a single chapter in an international law text.** n135 This is ironic given the equally expansive development of the law of war during this same era n136 but may explain why expertise on this subject seems so limited among policymakers.

**PQD DA: 2AC**

**The PQD is already dead in the realm for foreign policy**

**Skinner 8/23**, Professor of Law at Willamette

(13, Gwynne, Misunderstood, Misconstrued, and Now Clearly Dead: The 'Political Question Doctrine' in Cases Arising in the Context of Foreign Affairs, papers.ssrn.com/sol3/papers.cfm?abstract\_id=2315237)

Lower federal courts often erroneously cite the “political question doctrine” to dismiss as nonjusticiable individual rights claims arising in foreign or military affairs contexts, a trend that has increased since the 1962 case of Baker v. Carr. Similarly, lower courts have begun citing “special factors counselling hesitation” when dismissing constitutional claims (“Bivens claims”) in similar contexts, inappropriately treating “special factors” as a nonjusticiability doctrine. Lower federal courts should not cite either doctrine as a reason to avoid adjudicating individual rights claims arising **in the context of foreign or military affairs**. Rather, lower federal **courts should adjudicate these claims** on their merits **by deciding whether the political branch at issue had the power under the Constitution to act as it did. Doing so is consistent with the manner in which the Supreme Court has approached these types of cases for over 200 years. The Court affirmed this approach in the 2012 case of Zivotofsky v. Clinton, a case in which the Court once and for all rung the death knell for the application of the “political question doctrine”** as a nonjusticiability doctrinein cases involving individual rights – even those arising **in a foreign policy context.** In fact, **a historical review of Supreme Court cases demonstrates that the Supreme Court has never applied the** so-called “**political question doctrine**” as a true nonjusticiable doctrine **to dismiss individual rights claims** (and arguably, not to any claims at all), **even those arising in the context of foreign or military affairs**. This includes the seminal “political question” case of Marbury v. Madison. Rather, **the Supreme Court has almost always rejected the “political question doctrine” as a basis to preclude adjudication of individual rights claims, even in the context of foreign or military affairs**. Moreover, the Supreme Court has consistently admonished lower courts regarding the importance of the judiciary branch’s adjudication of individual rights claims, even in such contexts.13 That is not to say that from time to time the Court has not cited a “political question doctrine” in certain of its cases. However, a close review of those cases demonstrates that rather than dismissing such claims in those cases as “nonjusticiable,” the Court in fact adjudicated the claims by finding that either the executive or Congress acted constitutionally within their power or discretion. Moreover, **the post-9/11 Supreme Court cases of Hamdi** v. Rumsfeld, **Rasul** v. Bush, **and** Bush v. **Boumediene, in which the Supreme Court consistently found that the political branches overstepped their constitutional authority, clarified that the doctrine should not be used to dismiss** indi

vidual rights claims as nonjusticiable**, even those arising in a foreign or military affairs context. In case there remained any doubt, the Supreme Court in Zivotofsky rejected the “political question doctrine**” as a nonjusticiability doctrine, at least in the area individual rights, if not altogether. The Court found the case, involving whether the parents of a boy born in Jerusalem had the right to list Israel as his place of birth pursuant to a Congressional statute, was justiciable.17 The Court addressed the real issue, which was whether Congress had the authority to trump the President over whether Israel could be listed as the country of birth on passports where a person was born in Jerusalem, notwithstanding the President’s sole authority to recognize other governments. 18 In ruling as it did, the Court stayed true to many of its earlier cases involving “political questions” by adjudicating the claim through deciding whether one of the political branches took action that was within its constitutional authority. **In the case, the Court showed its willingness to limit the power of the President in the area of foreign affairs** rather than finding the claim nonjusticiable.

**No link to PQD**

**Roberts 09** (Caprice, Visiting Professor of Law, The Catholic University of America; Professor of Law, West Virginia University, Fall 2009, "Rights, Remedies, And Habeas Corpus--The Uighurs, Legally Free While Actually Imprisoned" Georgetown Immigration Law Journal, Lexis)

We no doubt live in interesting times. Extraordinary times may well call for extraordinary measures by the political branches of government. **The** [\*30] **federal judiciary may find it prudent to give the political branches wide berth, but it should not turn a blind eye. An ongoing violation of an applicable constitutional right should not go unreviewed and unremedied lightly. The federal courts at issue grappled in good faith with vexing issues raised by the Uighurs' allegations. Ultimately, the highest court to pass on the matter determined that it was powerless to resolve the case or remedy the wrong.** n212 In this section, I maintain that **the federal judiciary is not powerless, despite the potential political question. The federal judiciary possesses the authority under Article III of the Constitution to hear the Uighurs' case, which is otherwise justiciable**. Prudential reasons exist for finding that the case poses a nonjusticiable political question, but the context and rights at stake outweigh those prudential reasons. **Federal courts should lean towards accepting jurisdiction in cases like the Uighurs', because two political branches of government have acted in concert to threaten core constitutional rights.** Alternatively, the Executive exceeded limitations imposed by Congress and operated at the Executive's "lowest ebb" of power. n213 Certainly one political branch, Congress, may serve as an effective check on another political branch, the Executive. Given the pressures of the global war on terror, Congress has often not served as a meaningful check on potential abuses of presidential power. It is in these moments that judicial review is all the more essential. In fact, **judicial review should be exercised unless constitutionally prohibited. Of all the traditional justifications for the political question doctrine, the one with the strongest constitutional force is the textual commitment ground.** Although the immigration cases rely on this ground (as well as others), they differ from traditional political question cases because the text of the Constitution does not explicitly commit exclusion of aliens to the political branches. Rather, the power stems from extra-constitutional sources such as the implied and inherent powers as sovereign. **If the commitment stems from implied powers, the political question doctrine may be inapplicable under a strict construction of the textual commitment factor. The doubt presented by this gray area may mean declining jurisdiction is not required.** Other political question rationales, including judicial functionality and interbranch respect, suggest moving cautiously, but not halting all review.

# \*\*1ar\*\*

### Heg

**Statistically proven that heg prevents war**

**Owen ‘11**

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

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

**US pursuit of hegemony inevitable, its just a question of how we use that power – means the impact of the k is non unique**

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

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

### Legalism

### FW

**Discussions of structure should precede substance—second generation Guantanamo issues require a more detailed focus on the legal system—student advocacy enables us to make change**

**Marguiles 11, Professor of Law**

[February 9, 2011, Peter Margulies is Professor of Law, Roger Williams University., “The Ivory Tower at Ground Zero: Conflict and Convergence in Legal Education’s Responses to Terrorism”Journal of Legal Education, Vol. 60, p. 373, 2011, Roger Williams Univ. Legal Studies Paper No. 100]

If timidity in the face of government overreaching is the academy’s overarching historical narrative,1 responses to September 11 broke the mold. **In** what I will call **the first generation of Guantánamo issues, members of the legal academy mounted a vigorous campaign against the unilateralism of Bush Administration policies.**2 However, **the landscape has changed in Guantánamo’s second generation, which started with** the Supreme Court’s landmark decision in **Boumediene v. Bush**,3 affirming detainees’ access to habeas corpus, and continued with the election of Barack Obama. **Second generation Guantánamo issues are murkier, without the clarion calls that marked first generation fights.** This Article identifies points of substantive and methodological convergence4 in the wake of Boumediene and President Obama’s election. It then addresses the risks in the latter form of convergence. **Substantive points of convergence that have emerged include a consensus on the lawfulness of detention of suspected terrorists subject to judicial review**5 and **a more fragile meeting of the minds on the salutary role of constraints** generally and international law in particular. However, **the promise of substantive consensus is marred by the peril of** a methodological convergence that I call **dominant doctrinalism**. Too often, **law school pedagogy and scholarship squint through the lens of doctrine, inattentive to the way that law works in practice**.6 **Novel doctrinal developments**, such as the president’s power to detain United States citizens or persons apprehended in the United States, **get disproportionate attention** in casebooks and scholarship. In contrast, **developments such as an expansion in criminal and immigration law** enforcement that build on settled doctrine **get short shrift, even though they have equal or greater real-world consequences.** **Consumers of pedagogy and scholarship are ill-equipped to make informed assessments or push for necessary changes.**

**If legal academia is to respond adequately to second generation Guantánamo issues**, **as well as issues raised by any future attacks**, **it must transcend the fascination with doctrine displayed by both left and right, and bolster its commitment to understanding and changing how law works “on the ground.”** To combat dominant doctrinalism and promote positive change, this Article asks for greater attention in three areas. First, law **schools should** do even more to **promote** clinical and **other courses that give students first-hand experience in advocacy** for vulnerable and sometimes unpopular clients, including the need for affirming their clients’ humanity and expanding the venue of advocacy into the court of public opinion.7 Clinical **students** also often **discover** with their clients **that legal rights** matter, **although** chastened veterans of rights battles like Joe Margulies and Hope Metcalf are correct that **victories are provisional and sometimes pyrrhic**.8 Second, **legal scholarship and education should encourage the study of social phenomena like path dependence—the notion that past choices frame current advocacy strategies**, so that lawyers recommending an option must consider the consequences of push-back from that choice. **Aggressive Bush Administration lawyers unduly discounted risks flagged by more reflective colleagues on the consequences of push-back** from the courts. Similarly, both the new **Obama Administration and advocates** trying to cope with Guantánamo’s post-Boumediene second generation **failed to gauge the probability of push-back from the administration’s early announcement of plans to close the facility within a year**. In each case, **unexpected but reasonably foreseeable reactions skewed the implementation of legal and policy choices.** **Students should learn more about these dynamics before they enter the legal arena.** Third, **teachers need to focus more on ways in which bureaucratic structures affect policy choices**. For example, **terrorism fears gave conservative politicians like John Ashcroft an opportunity to decimate asylum adjudication**, harming many victims of persecution who have been unable to press meritorious claims for refugee status and other forms of relief. Similarly, **creation of the Department of Homeland Security turned a vital governmental function like disaster relief into a bureaucratic orphan**, thereby paving the way for the inadequate response to Hurricane Katrina. **Students need more guidance on what to look for when structure shapes substance.**

### K: A2 “Security K” 1AR

#### Security K is backwards

Joanna **Macy**, General Systems Scholar and Deep Ecologist, Ecopsychology: RESTORING THE EARTH, HEALING THE MIND, 19**95**, p. 246-7.

**There is** also **the superstition that negative thoughts are self-fulfilling. This is of a piece with the notion**, popular in New Age circles, **that we create our own reality**. I have had people tell me that **'**To speak of catastrophe will just make it more likely to happen." Actually, the contrary is nearer to the truth.Psychoanalytic theory and personal experience show us that it **is precisely what we repress that eludes our conscious control and tends to erupt into behavior**. As Carl Jung observed, "When an inner situation is not made conscious, it happens outside as fate." But ironically, in our current situation**, the person who gives warning of a likely ecological holocaust is often made to feel guilty of contributing to that very fate.**