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### Blowback

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

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

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

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

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

**American unipolarity has created a challenge for realists. Unipolarity was thought to be inherently unstable because other nations, seeking to protect their own security**, form alliances to counter-balance the leading state. n322 **But no nation or group of nations has yet attempted to challenge America's military predominance**. n323 Although some realists predict that [\*140] counter-balancing will occur or is already in some ways occurring, n324 William Wohlforth has offered a compelling explanation for why true counter-balancing, in the traditional realist sense, will probably not happen for decades. n325 American unipolarity is unprecedented. n326 First, **the United States is geographically isolated from other potential rivals**, who are located near one another in Eurasia. n327 **This mutes the security threat that the U.S. seems to pose while increasing the threats that potential rivals seem to pose to one another**. n328 Second, **the U.S. far exceeds the capabilities of all other states in every aspect of power** - military, economic, technological, and in terms of what is known as "soft power." **This advantage "is larger now than any analogous gap in the history of the modern state system."** n329 Third, **unipolarity is entrenched as the status quo** for the first time since the seventeenth century, multiplying free rider problems for potential rivals and rendering less relevant all modern previous experience with balancing. n330 Finally, the potential rivals' possession of nuclear weapons makes the concentration of power in the United States appear less threatening. A war between great powers in today's world is very unlikely. n331 These factors make the current system much more stable, peaceful and durable than the past multi-polar and bipolar systems in which the United States operated for all of its history until 1991. **The lack of balancing means that the U**nited **S**tates, **and by extension the executive branch, faces** much **weaker external constraints on its exercise of power** than in the past. n332 Therefore, **the internal processes of the U.S. matter now more than any other nations' have in history**. n333 And **it is these internal processes**, as much as external developments, **that will determine the durability of American unipolarity. As one realist scholar has argued, the U.S. can best ensure the [\*141] stability of this unipolar order by ensuring that its predominance appears legitimate**. n334 **Hegemonic orders take on hierarchical characteristics**, with the preeminent power having denser political ties with other nations than in a unipolar order. n335 **Stability in hegemonic orders is maintained in part through security guarantees and trade relationships that result in economic specialization** among nations. n336 For example, if Nation X's security is supplied by Hegemon Y, Nation X can de-emphasize military power and focus on economic power. In a hegemonic system, **the preeminent state has "the power to shape the rules of international politics according to its own interests."** n337 **The hegemon**, in return, **provides public goods for the system as a whole**. n338 **The hegemon possesses** not only superior command of military and economic resources but "**soft" power, the ability to guide other states' preferences and interests.** n339 **The durability and stability of hegemonic orders depends on other states' acceptance of the hegemon's role. The hegemon's leadership must be seen as legitimate.** n340 [\*142] **The U**nited **S**tates **qualifies as a global hegemon**. In many ways, **the U.S. acts as a world government**. n341 **It provides public goods for the world**, such as security guarantees, the protection of sea lanes, and support for open markets. n342 After World War II, the U.S. forged a system of military alliances and transnational economic and political institutions - such as the United Nations, NATO, the International Monetary Fund, and the World Bank - that remain in place today. The U.S. provides security for allies such as Japan and Germany by maintaining a strong military presence in Asia and Europe. n343 Because of its overwhelming military might, the U.S. possesses what amounts to a "quasi-monopoly" on the use of force. n344 This prevents other nations from launching wars that would tend to be truly destabilizing. Similarly, **the United States provides a public good through its efforts to combat terrorism** and confront - even through regime change - rogue states. n345 **The U**nited **S**tates also **provides a public good through its promulgation and enforcement of international norms. It exercises a dominant influence on the definition of international law because it is the largest "consumer" of such law and the only nation capable of enforcing it on a global scale.** n346 The U.S. was the primary driver behind the establishment of the United Nations system and the development of contemporary treaties and institutional regimes to effectuate those treaties in both public and private international law. n347 Moreover, **controlling international norms are** [\*143] sometimes **embodied in the U.S. Constitution and domestic law rather than in treaties or customary international law.** For example, **whether terrorist threats will be countered effectively depends "in large part on U.S. law regarding armed conflict, from rules that define the circumstances under which the President can use force to those that define the proper treatment of enemy combatants.**" n348 **These public goods provided by the United States stabilize the system by legitimizing it and decreasing resistance to it.** **The transnational** political and economic **institutions created by the U**nited **S**tates **provide other countries with informal access to policymaking and tend to reduce resistance to American hegemony, encouraging others to "bandwagon"** with the U.S. rather than seek to create alternative centers of power. n349 American hegemony also coincided with the rise of globalization - the increasing integration and standardization of markets and cultures - which tends to stabilize the global system and reduce conflict. n350 **The legitimacy of American hegemony is strengthened and sustained by the democratic and accessible nature of the U.S. government. The American constitutional separation of powers is an international public good. The risk that it will hinder the ability of the U.S. to act swiftly, coherently or decisively** in foreign affairs **is counter-balanced by the benefits it provides in permitting foreigners multiple points of access to the government**. n351 Foreign nations and citizens lobby Congress and executive branch agencies in the State, Treasury, Defense, and Commerce Departments, where foreign policy is made. n352 They use the media to broadcast their point of view in an effort to influence the opinion of decision-makers. n353 Because the United States is a nation of immigrants, many American citizens have a specific interest in the fates of particular countries and form "ethnic lobbies" for the purpose of affecting foreign policy. n354 **The courts,** too, **are accessible to foreign nations and non-citizens. The Alien Tort Statute is emerging as an** [\*144] **important vehicle for adjudicating tort claims among non-citizens in U.S. courts.** n355 Empires are more complex than unipolar or hegemonic systems. Empires consist of a "rimless-hub-and-spoke structure," with an imperial core - the preeminent state - ruling the periphery through intermediaries. n356 The core institutionalizes its control through distinct, asymmetrical bargains (heterogeneous contracting) with each part of the periphery. n357 Ties among peripheries (the spokes) are thin, creating firewalls against the spread of resistance to imperial rule from one part of the empire to the other. n358 The success of imperial governance depends on the lack of a "rim." n359 Stability in imperial orders is maintained through "divide and rule," preventing the formation of countervailing alliances in the periphery by exploiting differences among potential challengers. n360 Divide-and-rule strategies include using resources from one part of the empire against challengers in another part and multi-vocal communication - legitimating imperial rule by signaling "different identities ... to different audiences." n361 Although the U.S. has often been labeled an empire, the term applies only in limited respects and in certain situations. Many foreign relations scholars question the comparison. n362 However, the U.S. does exercise informal imperial rule when it has routine and consistent influence over the foreign policies of other nations, who risk losing "crucial military, economic, or political support" if they refuse to comply. n363 The "Status of Force Agreements" ("SOFAs") that govern legal rights and responsibilities of U.S. military personnel and others on U.S. bases throughout the world are typically one-sided. n364 And the U.S. occupations in Iraq and Afghanistan had a strong imperial dynamic because those regimes depended on American support. n365 [\*145] But the management of empire is increasingly difficult in the era of globalization. Heterogeneous contracting and divide-and-rule strategies tend to fail when peripheries can communicate with one another. The U.S. is less able control "the flow of information ... about its bargains and activities around the world." n366 In late 2008, negotiations on the Status of Force Agreement between the U.S. and Iraq were the subject of intense media scrutiny and became an issue in the presidential campaign. n367 Another classic imperial tactic - the use of brutal, overwhelming force to eliminate resistance to imperial rule - is also unlikely to be effective today. The success of counterinsurgency operations depends on winning a battle of ideas, and collateral damage is used by violent extremists, through the Internet and satellite media, to "create widespread sympathy for their cause." n368 The abuses at Abu Ghraib, once public, harmed America's "brand" and diminished support for U.S. policy abroad. n369 Imperial rule, like hegemony, depends on maintaining legitimacy.B. Constructing a Hegemonic Model International relations scholars are still struggling to define the current era. The U.S.-led international order is unipolar, hegemonic, and, in some instances, imperial. In any event, this order diverges from traditional realist assumptions in important respects. It is unipolar, but stable. It is more hierarchical. The U.S. is not the same as other states; it performs unique functions in the world and has a government open and accessible to foreigners. And the stability and legitimacy of the system depends more on successful functioning of the U.S. government as a whole than it does on balancing alliances crafted by elite statesmen practicing realpolitik. "World power politics are shaped primarily not by the structure created by interstate anarchy but by the foreign policy developed in Washington." n370 These differences require a new model for assessing the institutional competences of the executive and judicial branches in foreign affairs. [\*146] One approach would be to adapt an institutional competence model using insights from a major alternative theory of international relations - liberalism. Liberal IR theory generally holds that internal characteristics of states - in particular, the form of government - dictate states' behavior, and that democracies do not go to war against one another. n371 Liberalists also regard economic interdependence and international institutions as important for maintaining peace and stability in the world. n372 Dean Anne-Marie Slaughter has proposed a binary model that distinguishes between liberal, democratic states and non-democratic states. n373 Because domestic and foreign issues are "most convergent" among liberal democracies, Slaughter reasons, the courts should decide issues concerning the scope of the political branches' powers. n374 With respect to non-liberal states, the position of the U.S. is more "realist," and courts should deploy a high level of deference. n375 One strength of this binary approach is that it would tend to reduce the uncertainty in foreign affairs adjudication. Professor Nzelibe has observed that it would put courts in the difficult position of determining which countries are liberal democracies. n376 But even if courts are capable of making these determinations, they would still face the same dilemmas adjudicating controversies regarding non-liberal states. Where is the appropriate boundary between foreign affairs and domestic matters? How much discretion should be afforded the executive when individual rights and accountability values are at stake? To resolve these dilemmas, an institutional competence model should be applicable to foreign affairs adjudication across the board. In constructing a new realist model, it is worth recalling that the functional justifications for special deference are aimed at addressing problems of a particular sort of role effectiveness - which allocation of power among the branches will best achieve general governmental effectiveness in foreign affairs. In the twenty-first century, **America's global role has changed, and the best means of achieving effectiveness in foreign affairs have changed as well. The international realm remains highly political** - if not as much as in the past - but **it is American politics that matters most.** If the U.S. is truly an empire - [\*147] and in some respects it is - the problems of imperial management will be far different from the problems of managing relations with one other great power or many great powers. Similarly, **the management of hegemony or unipolarity requires a different set of competences.** Although American predominance is recognized as a salient fact, there is no consensus among realists about the precise nature of the current international order. n377 The hegemonic model I offer here adopts common insights from the three IR frameworks - unipolar, hegemonic, and imperial - described above. First, the "hybrid" hegemonic model assumes that the goal of U.S. foreign affairs should be the preservation of American hegemony, which is more stable, more peaceful, and better for America's security and prosperity, than the alternatives. If the United States were to withdraw **from its global leadership role, no other nation would be capable of taking its place. n378 The result would be radical instability and a** greater risk of major war. n379 In addition, the United States would no longer benefit from the public goods it had formerly produced; as the largest consumer, it would suffer the most. Second, the hegemonic model assumes that **American hegemony is unusually stable and durable**. n380 As noted above, **other nations have many incentives to continue to tolerate the current order**. n381 And although other nations or groups of nations - China, the European Union, and India are often mentioned - may eventually overtake the United States in certain areas, such as manufacturing, **the U.S. will remain dominant in most measures of capability for decades.** According to 2007 estimates, the U.S. economy was projected to be twice the size of China's in 2025. n382 **The U.S. accounted for half of the world's military spending in 2007 and holds enormous advantages in defense technology that far outstrip would-be competitors. n383 Predictions of American decline are not new, and they have thus far proved premature.** n384 [\*148] Third, **the hegemonic model assumes that preservation of American hegemony depends not just on power, but legitimacy. n385 All three IR frameworks for describing predominant states - although unipolarity less than hegemony or empire - suggest that legitimacy is crucial to the stability and durability of the system.** **Although empires and predominant states in unipolar systems can conceivably maintain their position through the use of force, this is much more likely to exhaust the resources of the predominant state and to lead to counter-balancing or the loss of control. n386 Legitimacy as a method of maintaining predominance is far more efficient.** The hegemonic model generally values courts' institutional competences more than the anarchic realist model. **The courts' strengths in offering a stable interpretation of the law, relative insulation from political pressure, and power to bestow legitimacy are important for realizing the functional constitutional goal of effective U.S. foreign policy.** This means that courts' treatment of deference in foreign affairs will, in most respects, resemble its treatment of domestic affairs. Given the amorphous quality of foreign affairs deference, this "domestication" reduces uncertainty. **The increasing boundary problems caused by the proliferation of treaties and the infiltration of domestic law by foreign affairs issues are lessened by reducing the deference gap**. And **the dilemma caused by the need to weigh different functional considerations** - liberty, accountability, and effectiveness - **against one another is made less intractable because it becomes part of the same project that the courts constantly grapple with in adjudicating domestic disputes.**

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

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

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

**Hegemony solves conflicts that cause extinction**

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

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

**Indefinite detention increases terrorism—multiple mechanisms**

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

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

**Detention is a major terrorist recruitment tool**

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

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

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

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

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

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

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

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

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

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

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

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

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

Since the collapse of the Soviet Union in 1991, every U.S. administration has considered Russia’s political trajectory a national security concern. Based on campaign statements and President Barack Obama’s early personnel choices, this perspective likely will affect policy toward Russia in some way for the foreseeable future. **While** the **Obama** administration **plans to cooperate with Moscow** on a number of issues, **it will find that Russia’s** current **deficit in** the areas of **democracy and the rule of law complicate the relationship and** may, in some cases, **undermine** attempts at **engagement.** The organizers of the Century Foundation Russia Working Group have labeled this policy problem “coping with creeping authoritarianism.” Results from nearly a dozen large, random sample **surveys** in Russia since 2001 that examine the views and experiences of literally thousands of Russians, combined with other research and newspaper reporting, all s**uggest the current democracy and rule of law deficit is** rather **stark**. The deficit does not diminish the importance of Russia in international affairs, nor is it meant to suggest the situation is unique to Russia. The internal conditions of many states have negative international security implications. As Europeans repeatedly pointed out during the administration of George W. Bush, **U.S. departures from the rule of law made the** **U**nited **S**tates **increasingly problematic as a global partner**, whether through the use of force in Iraq or the manner in which the United States pursued and handled terrorist suspects. In fact, **coping with authoritarian trends in Russia** (and elsewhere) **will involve changes in U.S. policies** that have, on the surface, nothing to do with Russia. Bush administration **counterterrorism policies that authorized torture, indefinite detention** of terrorist suspects, and the rendering of detainees to secret prisons and Guantánamo **have had numerous negative unintended consequences** for U.S. national security, **including serving as a recruitment tool** for al Qaeda and insurgents in Iraq. Less often recognized, **these policies also have undercut** whatever **leverage the** **U**nited **S**tates **had, as well as limited the effectiveness of American decision-makers, to push back on authoritarian policies adopted by,** among others, the **Putin** administration. At its worst, **American departures from the rule of law** may **have enabled abuse inside Russia**. These departures certainly left human rights defenders isolated. **Repairing the damage to U.S. soft power and reversing the departure from human rights norms** that characterized the Bush administration’s counterterrorism policies **will provide the** Obama **administration strategic and moral authority and improve the ability of the United States to work with allies. It also can have positive consequences for Obama’s Russia policy**. The **changes** that **need to be made in U.S.** counterterrorism **policies**, however politically sensitive, **are** somewhat more **straightforward** than the adjustments that must be made to respond to the complex issues concerning Russia. The Obama administration must determine how best to engage Russian leaders and the population on issues of importance to the United States, given Russia’s poor governance structures, the stark drop in oil prices, Russia’s continued aspirations for great power status, and the rather serious resentment by Russians concerning American dominance and prior policies. The policy puzzle, therefore, is how to do all this without, at the same time, sacrificing our values and undercutting (yet again) U.S. soft power.

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

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

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

**That causes miscalc and nuclear war**

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

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

**Leaves earth uninhabitable**

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

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

### Deference

#### Contention 2 is Deference

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

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

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

#### Scenario 1 is CMR

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

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

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

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

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

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

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

Dr. Mackubin Thomas Owens, Professor, National Security Affairs, “What Military Officers Need to Know About Civil-Military Relations,” NAVAL WAR COLLEGE REVIEW v. 65 n. 2, Spring 2012, p. 81-82.

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

#### Scenario 2 is Bioweapons

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

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

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

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

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

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

#### Bioweapons cause extinction

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

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

### Solvency

**Contention 3 is Solvency:**

#### Plan: The United States federal judiciary should order that all habeas corpus hearings of persons detained under the War Powers Authority of the President of the United States be subject to due process guarantees and that such individuals who have won their habeas corpus hearing be released.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 2AC

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**Restriction means a limit and includes conditions on action**

**CAA 8**,COURT OF APPEALS OF ARIZONA, DIVISION ONE, DEPARTMENT A, STATE OF ARIZONA, Appellee, v. JEREMY RAY WAGNER, Appellant., 2008 Ariz. App. Unpub. LEXIS 613

P10 The term "restriction" is not defined by the Legislature for the purposes of the DUI statutes. See generally A.R.S. § 28-1301 (2004) (providing the "[d]efinitions" section of the DUI statutes). In the absence of a statutory definition of a term, we look to ordinary dictionary definitions and do not construe the word as being a term of art. Lee v. State, 215 Ariz. 540, 544, ¶ 15, 161 P.3d 583, 587 (App. 2007) ("**When a statutory term is not explicitly defined, we assume**, unless otherwise stated, **that the Legislature intended to accord the word its natural and obvious meaning**, which may be discerned from its dictionary definition."). P11 **The dictionary definition of "restriction" is "[a] limitation or qualification**." Black's Law Dictionary 1341 (8th ed. 1999). In fact, "**limited" and "restricted" are considered synonyms.** See Webster's II New Collegiate Dictionary 946 (2001). **Under these** **commonly accepted definitions**, **Wagner's driving privileges were "restrict[ed]" when they were "limited" by the ignition interlock requirement.** **Wagner was not only** [\*7] **statutorily required** **to install an ignition** **interlock device on all of the vehicles he operated,** A.R.S. § 28-1461(A)(1)(b), **but he** was also **prohibited from driving any vehicle that was not equipped with such a device**, regardless whether he owned the vehicle or was under the influence of intoxicants, A.R.S. § 28-1464(H). **These limitations constituted a restriction** on Wagner's privilege to drive, **for he was unable to drive in circumstances which were otherwise available** to the general driving population. Thus, the rules of statutory construction dictate that the term "restriction" includes the ignition interlock device limitation.

**A restriction on war powers authority limits Presidential discretion**

Jules **Lobel 8**, Professor of Law at the University of Pittsburgh  Law School, President of the Center for Constitutional Rights, represented members of Congress challenging assertions of Executive power to unilaterally initiate warfare, “Conflicts Between the Commander in Chief and Congress: Concurrent Power  over the Conduct of War,” Ohio State Law Journal, Vol 69, p 391, 2008, http://moritzlaw.osu.edu/students/groups/oslj/files/2012/04/69.3.lobel\_.pdf

So too, **the congressional power to declare or authorize war has been long held to permit Congress to authorize and wage a limited war**—“limited in place, in objects, and in time.” 63 **When Congress places such restrictions on the President’s authority to wage war, it limits the President’s discretion to conduct battlefield operations**. For example, **Congress authorized** President George H. W. **Bush to attack Iraq** in response to Iraq’s 1990 invasion of Kuwait, **but** it **confined the President’s authority to the use of U.S. armed forces pursuant to U.N. Security Council resolutions** directed to force Iraqi troops to leave Kuwait. **That restriction would not have permitted the President to march into Baghdad** after the Iraqi army had been decisively ejected from Kuwait, a limitation recognized by President Bush himself.64

**Terror DA: A2 “Intel”**

#### Prosecution helps with intel gathering

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

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

**Terror DA: A2 “Leaks”**

#### No leaks

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

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

### A2: Plan doesn’t solve HR

#### Plan is key to restoring U.S. human rights credibility

Suzanne Nossel, Executive Director, Amnesty International, “Time for a Reset on Human Rights,” FOREIGN POLICY, 11—7—12, [www.foreignpolicy.com/articles/2012/11/07/time\_for\_a\_reset\_on\_human\_rights?page=0,0](http://www.foreignpolicy.com/articles/2012/11/07/time_for_a_reset_on_human_rights?page=0,0), accessed 8-7-13.

Although Obama faced truculent political opposition in his first term, his weak record on human rights cannot be explained away by economic exigencies or even congressional defiance. Obama now openly embraces the concept of a global "war on terror" as grounds to override international human rights norms and reinterpret the Constitution. Osama Bin Laden's killing was not only the chief talking point of his campaign but a synecdoche for his approach to the terrorist threat, one in which the administration writes its own rules. Although preventing attacks on U.S. soil represents an important human rights victory, this should not overshadow the worrisome direction of U.S. human rights policy and its long-term consequences. If the president's legacy is to include reclaiming U.S. human rights credibility, he needs to face up to his troubling record, and fix it.

The Obama administration has led in some areas of human rights policy; examples include advancing gay and lesbian rights, bolstering U.N. human rights mechanisms, and promoting Internet freedom. But where human rights norms are pitted against counterterrorism tactics, it has fallen down. Blocked by Congress, Obama broke his first-term promise to close Guantánamo. Four years later, that failure barely seems to register as a disappointment; 167 men languish in the prison, including 55 who are cleared for release but have not been transferred.

Recent weeks have revealed details of an Orwellian "disposition matrix" -- a kill list of top terrorist targets that keeps getting longer. The administration claims the authority to kill those named, anytime and anywhere, based on secret information and unreviewable judgments. The administration has declared any man killed by a drone to be an enemy terrorist, and defends such killings regardless of resulting civilian casualties.

With the U.S. withdrawing from Afghanistan, these extraordinary powers are detached from any major battlefield or conventional war. The administration is now backed into claiming that a war exists because it has convinced itself it cannot function without a broad license to kill. Short of al Qaeda suing for peace, this war may never end. The administration's reshaping of the concept of war risks undoing over 100 years of evolution of the laws of war, and the protections those laws have delivered.

The next four years will define whether this rewriting of the rules becomes a bipartisan "new normal" in the United States, and implicit permission for the rest of the world to sidestep human rights. Absent swift progress to close Guantánamo, the men now held will likely die there of old age decades from now, since no future president is likely to renew Obama's ill-fated pledge to close the facility. And even if the Guantánamo detainees are transferred to a U.S. prison, bringing indefinite detention onshore, it is hard to fathom the practice will not be used again to deal with future threats. The bipartisan affirmation of drone use will make those weapons routine for the United States and any other government with a kill list of its own.

### CP

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

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

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

**Withdrawal causes Afghan instability and terror**

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

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

**Global nuclear war**

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

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

### PTX

#### GOP won’t cave—feels insulated from public pressure

Alex Isenstadt, “Government Shutdown: Why many Republicans Have no Reason to Deal,” POLITICO, 10—3—13,

<http://www.politico.com/story/2013/10/government-shutdown-republicans-deal-97768.html?hp=l23>

The prevailing wisdom ahead of the government shutdown was that tea party lawmakers who agitated for it would fold within a few days, once they got an earful from angry constituents and felt the sting of bad headlines. House GOP leaders called it a “touch the stove” moment for the band of Republican rebels, when ideology would finally meet reality. But there’s another reality that explains why that thinking may well be wrong, and the country could be in for a protracted standoff: Most of the Republicans digging in have no reason to fear voters will ever punish them for it. The vast majority of GOP lawmakers are safely ensconced in districts that, based on the voter rolls, would never think of electing a Democrat. Their bigger worry is that someone even more conservative than they are — bankrolled by a cadre of uncompromising conservative groups — might challenge them in a primary. So from the standpoint of pure political survival, there’s every incentive to keep the government closed in what looks like a futile protest over Obamacare. The latest theory gaining currency in Congress is that it will take a potential default on the nation’s debt in a few weeks to bring the crisis to a head.

#### Government shutdown thumps Obama cred/resolve

Nikolas Gvosdev, Professor, National Security Studies, US Naval War college, “Shutdown Amplifies Middle East Policy Problems,” NATIONAL INTEREST, 10—2—13, <http://nationalinterest.org/profile/nikolas-k-gvosdev>

Last week, speaking at the United Nations, President Barack Obama laid out an ambitious set of goals with regards to the Middle East. In the remainder of his second term, the chief executive promised to intensify efforts to end the civil war in Syria, broker a lasting settlement between the Israelis and the Palestinians, and initiate a **dialogue with Iran** to end the standoff over its nuclear program. The government shutdown, however, imperils all of these initiatives, by exposing the President's political weakness vis-a-vis the Congress.¶ The failure to get even a short-term continuing resolution through the Congress—leaving aside the point that the United States has not had actual budgets passed for years—sends a clear signal that partisan politics trumps even matters of the highest national interest. But it also communicates to other countries that if the U.S. government is so dysfunctional that it cannot get a basic measure for simply funding government operations through the legislature, how in the world is President Obama going to shepherd the legislation that would be required for the United States to be able to move forward on the president's Middle East agenda?

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

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

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

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

#### Court don’t link—gitmo-specific

Stimson 9

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

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

#### Issues are compartmentalized

Dickenson 09   Presidential Power, A NonPartisan Analysis of Presidential Politics . “Sotomayor, Obama and Presidential Power” May 26, 2009 by Matthew Dickinson Categories: Uncategorized http://blogs.middlebury.edu/presidentialpower/2009/05/26/sotamayor-obama-and-presidential-power/

What is of more interest to me, however, is what her selection reveals about the basis of presidential power. Political scientists, like baseball writers evaluating hitters, have devised numerous means of measuring a president’s influence in Congress. I will devote a separate post to discussing these, but in brief, they often center on the creation of legislative “box scores” designed to measure how many times a president’s preferred piece of legislation, or nominee to the executive branch or the courts, is approved by Congress. That is, how many pieces of legislation that the president supports actually pass Congress? How often do members of Congress vote with the president’s preferences? How often is a president’s policy position supported by roll call outcomes? These measures, however, are a misleading gauge of presidential power – they are a better indicator of congressional power. This is because how members of Congress vote on a nominee or legislative item is rarely influenced by anything a president does. Although journalists (and political scientists) often focus on the legislative “endgame” to gauge presidential influence – will the President swing enough votes to get his preferred legislation enacted? – this mistakes an outcome with actual evidence of presidential influence. Once we control for other factors – a member of Congress’ ideological and partisan leanings, the political leanings of her constituency, whether she’s up for reelection or not – we can usually predict how she will vote without needing to know much of anything about what the president wants. (I am ignoring the importance of a president’s veto power for the moment.) Despite the much publicized and celebrated instances of presidential arm-twisting during the legislative endgame, then, most legislative outcomes don’t depend on presidential lobbying. But this is not to say that presidents lack influence. Instead, the primary means by which presidents influence what Congress does is through their ability to determine the alternatives from which Congress must choose. That is, presidential power is largely an exercise in agenda-setting – not arm-twisting. And we see this in the Sotomayer nomination. Barring a major scandal, she will almost certainly be confirmed to the Supreme Court whether Obama spends the confirmation hearings calling every Senator or instead spends the next few weeks ignoring the Senate debate in order to play Halo III on his Xbox. That is, how senators decide to vote on Sotomayor will have almost nothing to do with Obama’s lobbying from here on in (or lack thereof). His real influence has already occurred, in the decision to present Sotomayor as his nominee.

#### No default

Daniel J. Mitchell, senior fellow, Cato Institute, “The Economic Costs of Debt-Ceiling Brinksmanship,” 9—18—13,

<http://www.cato.org/publications/testimony/economic-costs-debt-ceiling-brinkmanship>

Let’s now deal directly with the debt ceiling. My fourth point is that an increase in the debt ceiling is not needed to avert a default. Simply stated, the federal government is collecting far more in revenue than what’s needed to pay interest on that debt. To put some numbers on the table, interest payments are about $230 billion per year while federal tax revenues are approaching $3 trillion per year. There’s no need to fret about a default. But don’t believe me. Let’s look at the views of some folks that disagree with me on many fiscal issues, but nonetheless are not prone to false demagoguery. Donald Marron, head of the Urban-Brookings Tax Policy Center and former Director of the Congressional Budget Office, explained what actually would happen in an article for CNN Money. If we hit the debt limit… that does not mean that we will default on the public debt. …[The Treasury Secretary] would undoubtedly keep making payments on the public debt, rolling over the outstanding principal and paying interest. Interest payments are relatively small, averaging about $20 billion per month. And here is the analysis of Stan Collender, one of Washington’s best-known commentators on budget issues. There is so much misinformation and grossly misleading talk about what will happen if the federal debt ceiling isn’t increased…it’s worth taking a few steps back from the edge. …if a standoff on raising the debt ceiling lasts for a significant amount of time… a default wouldn’t be automatic because payments to existing bondholders could be made the priority while payments to others could be delayed for months. Or what about the Economist magazine, which made this sage observation. Even with no increase in the ceiling, the Treasury can easily service its existing debt; it is free to roll over maturing issues, and tax revenue covers monthly interest payments by a large multiple. Let me add one caveat to all this analysis. I suppose it’s possible that a default might occur, but only if the Secretary of the Treasury deliberately chose not to pay interest in the debt. But that won’t happen. Not only because the Obama Administration wouldn’t want to needlessly roil financial markets, but also since research by Administration lawyers in the 1960s concluded that the Secretary of the Treasury might be personally liable in the event of a default. Mr. Lew has more than one reason to make

#### Resilience – No collapse, no war

Thomas Barnett, “The New Rules: Security Remains Stable Amid Financial Crisis,” WORLD POLITICS REVIEW, 8—24—09,

<http://www.worldpoliticsreview.com/articles/4213/the-new-rules-security-remains-stable-amid-financial-crisis>

When the global financial crisis struck roughly a year ago, the blogosphere was ablaze with all sorts of scary predictions of, and commentary regarding, ensuing conflict and wars -- a rerun of the Great Depression leading to world war, as it were. Now, as global economic news brightens and recovery -- surprisingly led by China and emerging markets -- is the talk of the day, it's interesting to look back over the past year and realize howglobalization's first truly worldwiderecession has hadvirtually no impact whatsoever on the international security landscape. None of the more than three-dozen ongoingconflicts listed by GlobalSecurity.org can beclearly attributed to the global recession. Indeed, the last new entry (civil conflict between Hamas and Fatah in the Palestine) predates the economic crisis by a year, and three quarters of the chronic struggles began in the last century. Ditto for the 15 low-intensity conflicts listed by Wikipedia (where the latest entry is the Mexican "drug war" begun in 2006). Certainly, the Russia-Georgia conflict last August was specifically timed, but by most accounts the opening ceremony of the Beijing Olympics was the most important external trigger (followed by the U.S. presidential campaign) for that sudden spike in an almost two-decade long struggle between Georgia and its two breakaway regions. Looking over the various databases, then, we see a most familiar picture: the usual mix of civil conflicts, insurgencies, and liberation-themed terrorist movements. Besides the recent Russia-Georgia dust-up, the only two potential state-on-state wars (North v. South Korea, Israel v. Iran) are both tied to one side acquiring a nuclear weapon capacity -- a process wholly unrelated to global economic trends. And with the United States effectively tied down by its two ongoing major interventions (Iraq and Afghanistan-bleeding-into-Pakistan), our involvement elsewhere around the planet has been quite modest, both leading up to and following the onset of the economic crisis: e.g., the usual counter-drug efforts in Latin America, the usual military exercises with allies across Asia, mixing it up with pirates off Somalia's coast). Everywhere else we find serious instability we pretty much let it burn, occasionally pressing the Chinese -- unsuccessfully -- to do something. Our new Africa Command, for example, hasn't led us to anything beyond advising and training local forces. So, to sum up: \*Nosignificant uptick inmass violenceor unrest (remember the smattering of urban riots last year in places like Greece, Moldova and Latvia?); \*The usual frequency maintained in civil conflicts (in all the usual places); \*Not a single state**-**on-statewar directly caused (and no great-power-on-great-power crises even triggered); \*No great improvement or disruption in great-power cooperation regarding the emergence of new nuclear powers (despite all that diplomacy); \*A modest scaling back of international policing efforts by the system's acknowledged Leviathan power (inevitable given the strain); and \*Noserious efforts by any risinggreat powerto challenge that Leviathan or supplant its role. (The worst things we can cite are Moscow's occasional deployments of strategic assets to the Western hemisphere and its weak efforts to outbid the United States on basing rights in Kyrgyzstan; but the best include China and India stepping up their aid and investments in Afghanistan and Iraq.) Sure, we've finally seen global defense spending surpass the previous world record set in the late 1980s, but even that's likely to wane given the stress on public budgets created by all this unprecedented "stimulus" spending. If anything, the friendly cooperation on such stimulus packaging was the most notable great-power dynamic caused by the crisis. Can we say that the world has suffered a distinct shift to political radicalism as a result of the economic crisis? Indeed, no. The world's major economies remain governed by center-left or center-right political factions that remain decidedly friendly to both markets and trade. In the short run, there were attempts across the board to insulate economies from immediate damage (in effect, as much protectionism as allowed under current trade rules), but there was nogreat slide into "trade wars." Instead, the World Trade Organization is functioning as it was designed to function, and regional efforts toward free-trade agreements have not slowed. Can we say Islamic radicalism was inflamed by the economic crisis? If it was, that shift was clearly overwhelmed by the Islamic world's growing disenchantment with the brutality displayed by violent extremist groups such as al-Qaida. And looking forward, austere economic times are just as likely to breed connecting evangelicalism as disconnecting fundamentalism. At the end of the day, the economic crisis did not prove to be sufficiently frightening to provoke major economies into establishing global regulatory schemes, even as it has sparked a spirited -- and much needed, as I argued last week -- discussion of the continuing viability of the U.S. dollar as the world's primary reserve currency. Naturally, plenty of experts and pundits have attached great significance to this debate, seeing in it the beginning of "economic warfare" and the like between "fading" America and "rising" China. And yet, in a world of globally integrated production chains and interconnected financial markets, such **"**diverging interests" hardly constitute signposts for warsup ahead. Frankly, I don't welcome a world in which America's fiscal profligacy goes undisciplined, so bring it on -- please! Add it all up and it's fair to say that thisglobal financial crisis has proven the great resilience of America's post-World War II international liberal trade order. Do I expect to read any analyses along those lines in the blogosphere any time soon? Absolutely not. I expect the fantastic fear-mongering to proceed apace. That's what the Internet is for.

#### Unilateral action solves

- they’re “won’t happen ev” doesn’t assume last-minute pressure

Nelson Schwartz, “Wall St. Fears Go Beyond Shutdown,” NEW YORK TIMES, 10—2—13,

<http://www.nytimes.com/2013/10/03/business/wall-st-fears-go-beyond-shutdown.html?_r=0>

Still, some **observers** outside government in Washington and on Wall Street, **citing** a **game theory** like approach, **suggest** that the president’s position is more tactical than fundamental, since raising the possibility of a way out for the White House like the constitutional gambit would take the heat off Republicans in Congress to act on its own before the Oct. 17 deadline.¶ “If a default is imminent, **the option of** raising the debt limit by **executive** fiat has to be on the table,” **said** Greg Valliere, **chief political strategist at Potomac** Research. “Desperate times require desperate measures.”¶ Some professional investors echoed his view, **which is a reason Wall Street remains hopeful** that the economic and financial disaster a government default could usher in will be avoided.¶ “**At the end of the day** if **there is no action and** the United States has a default looming, I think President Obama can issue an executive order authorizing **the Treasury secretary to make** payments,” said David Kotok, chief investment officer of Cumberland Advisors in Sarasota, Fla., which has just over $2 billion under management. “There’s always been **more** flexibility i**n the hands of Treasury than they’ve acknowledged.**”¶ According to some legal theorists**, the president could** essentially **ignore the debt limit** imposed by Congress, because the 14th Amendment states that **the “validity of the** public debt of the United States, **authorized by law,**” including for debts like pensions and bounties to suppress insurrections, “shall not be questioned.”

**Prez Flex DA: 2AC**

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

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

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

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

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

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

**Iraq disproves the link**

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

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

**UCMJ disproves the link**

National Institute of Military Justice, Brief for the National Institute of Military Justice as Amicus Curiae in Support of Petitioners, Ronald W. Meister, Counsel of Record, in Fawzi Khalid Abdullah Fahad Al Odah, et al., Petitioners, v. United States of America, et al., Respondents. Shafiz Rasul, et al., Petitioners, v. George W. Bush, et al., Respondents, Nos. 03-334, 03-343, 2003 U.S. Briefs 334; 2004 U.S. S. Ct. Briefs LEXIS 20, January 14, 2004, LN.

The UCMJ established not only a code of substantive and procedural law, but also a tiered system of judicial review, including intermediate appellate courts, UCMJ art. 66, 10 U.S.C. § 866, and extending up to the civilian United States Court of Appeals for the Armed Forces, [\*\*9] formerly the United States Court of Military Appeals, UCMJ arts. 67, 141-45, 10 U.S.C. § § 867, 941-45. The Military Justice Acts of 1968, Pub. L. No. 90-632, 82 Stat. 1335, and of 1983, Pub. L. No. 98-209, 310(a)(1), 97 Stat. 1405, further professionalized court-martial personnel, see UCMJ arts. 26, 66, 10 U.S.C. § § 826, 866, and added certiorari jurisdiction in this Court, UCMJ art. 67a, 10 U.S.C. § 867a; 28 U.S.C. § 1259. Congress has forbidden military officers and other persons subject to the UCMJ to influence unlawfully the actions of courts-martial and other military tribunals, UCMJ art. 37, 10 U.S.C. § 837, and the military services have taken further steps to reduce command influence and insure the independence of the judiciary. This Court, as well as courts throughout the military justice system, regularly re-affirm that military personnel do not forfeit their rights to the protection of the law when they enter the military. United States ex rel. Toth v. Quarles, 350 U.S. 11, 21-22 (1955); United States v. Jacoby, 11 C.M.A. 428, 430-31, 29 C.M.R. 244, 246-47 (1960). [\*\*10] Military personnel and prisoners of war in custody of the armed forces enjoy the following protections and guarantees, among others: . Against self-incrimination, compare U.S. Const. amend. 5 with UCMJ art. 31, 10 U.S.C. § 831. . Against double jeopardy, compare U.S. Const. amend. 5 with UCMJ art. 44, 10 U.S.C. § 844. . Against cruel and unusual punishment, compare U.S. Const. amend. 8 with UCMJ art. 55, 10 U.S.C. § 855; see United States v. Matthews, 16 M.J. 354 (C.M.A. 1983). . To a speedy trial, compare U.S. Const. amend. 6 with Rule for Courts-Martial 707. . To a knowing, intelligent and voluntary waiver of trial rights before entering a guilty plea. United States v. Care, 18 C.M.A. 535, 40 C.M.R. 247 (1967). Significantly, the rule of law in the military has also been enforced through the issuance of writs of habeas corpus by civilian courts. E.g., Reid v. Covert, 354 U.S. 1 (1957); Toth, supra. Over a half century of experience with the UCMJ has justified the Legislative determination that the rule of law can be applied in peace and war without modification and without concern that doing so will interfere with Executive Branch power.

**Turn: double standards undermine US forces**

National Institute of Military Justice, Brief for the National Institute of Military Justice as Amicus Curiae in Support of Petitioners, Ronald W. Meister, Counsel of Record, in Fawzi Khalid Abdullah Fahad Al Odah, et al., Petitioners, v. United States of America, et al., Respondents. Shafiz Rasul, et al., Petitioners, v. George W. Bush, et al., Respondents, Nos. 03-334, 03-343, 2003 U.S. Briefs 334; 2004 U.S. S. Ct. Briefs LEXIS 20, January 14, 2004, LN.

The Government's position is inconsistent with its own law and regulations, and with its actions in this and past conflicts. On the one hand, it argues that the domestic law enacted by Congress to provide for court-martial jurisdiction over individuals at Guantanamo Bay, [\*\*23] the international law it has ratified to provide for impartial tribunals, and the military regulations it has adopted to apply and enforce those rules, are all inapplicable to these detainees because the Executive Branch says they interfere with the President's authority to make war. On the other hand, the Executive Branch by its actions insists on compliance [\*15] with these standards by other nations, and even accords statutory protections to its own personnel at Guantanamo Bay, the very site where it argues that judicial involvement will "fetter field commanders." So long as the United States applies this double standard, it unavoidably increases the jeopardy of United States personnel captured abroad, in this and future conflicts. If this country is to have credibility in seeking to apply standards of humane conduct in international conflict; if it is to maintain a position of moral leadership; and, not least, if it is to protect its own fighting forces, it should abide by the standards it has enacted, ratified and adopted. The Solicitor General's authorities in support of a claimed unlimited and unreviewable right to "capture and detain," Opp. at 3, are particularly ill-chosen. [\*\*24] In Duncan v. Kahanamoku, 327 U.S. 304, 324 (1946), this Court granted a writ of habeas corpus holding that a Navy employee tried by a military tribunal in 1944 was "entitled to be released" because he was protected by the Constitution as interpreted under the Hawaiian Organic Act. In Ex parte Quirin, 317 U.S. 1 (1942), this Court adjudicated whether the petitioners were held in lawful custody and whether the tribunal trying them was lawfully constituted, convening in special session in defiance of a presidential order declaring that the federal courts were closed to these defendants. Proclamation 2561, Denying Certain Enemies Access to the Courts of the United States, 7 Fed. Reg. 5101 (Jul. 3, 1942).

**Judicial review does nothing to constrain legit executive war-making powers**

National Institute of Military Justice, Brief for the National Institute of Military Justice as Amicus Curiae in Support of Petitioners, Ronald W. Meister, Counsel of Record, in Fawzi Khalid Abdullah Fahad Al Odah, et al., Petitioners, v. United States of America, et al., Respondents. Shafiz Rasul, et al., Petitioners, v. George W. Bush, et al., Respondents, Nos. 03-334, 03-343, 2003 U.S. Briefs 334; 2004 U.S. S. Ct. Briefs LEXIS 20, January 14, 2004, LN.

Military legal process can and does function without impairing the Executive's war powers. The United States has fought enemies the world over while recognizing and respecting the rights that it seeks to deny here. America's integrity, and the protection of this country's own fighting forces, demand that it continue to recognize those rights today. To ask that the Executive Branch comply with its own regulations, which in turn apply consistent domestic and international law, is not to seek any restraint on the executive function. To ask that the Judicial Branch exercise its traditional responsibility of applying the law, is not to seek any extension of the judicial function. In the absence of law; in the absence of checks and balances; and in the absence of "the alembic of public scrutiny," United States v. Coplon, 185 F.2d 629, 638 (2d Cir. 1950) (L. Hand, J.), the Executive Branch claims the right to operate an unprecedented secret American prison system free of any restraint [\*\*26] or review. Affirming the decision below will leave the Executive Branch with unlimited and unreviewable discretion that fifty years of domestic and international legal developments have tried to contain.

**Legalism K: 2AC**

**Working through the courts is necessary to solve Gitmo—popular activism can’t solve**

**Cole 2011** - Professor, Georgetown University Law Center (Winter, David, “WHERE LIBERTY LIES: CIVIL SOCIETY AND INDIVIDUAL RIGHTS AFTER 9/11,” 57 Wayne L. Rev. 1203, Lexis)

Unlike the majoritarian electoral politics Posner and Vermeule imagine, the work of **civil society cannot be segregated neatly from the law**. On the contrary, **it will often coalesce around a distinctly legal challenge,** objecting to departures from specific legal norms, **often** but not always heard **in** a **court** case, **as with civil society's challenge to the treatment of detainees at Guantanamo. Congress's actions** on that subject **make clear that had Guantánamo been left to the majoritarian political process, there would have been few if any advances**. The **litigation generated** and concentrated **pressure** on claims for a restoration of the values of legality, **and**, as discussed above, that pressure then **played a critical role in the litigation's outcome, which in turn contributed to** a broader impetus for **reform**.

**Legal norms don’t cause wars and the alt can’t effect liberalism**

David **Luban 10**, law prof at Georgetown, Beyond Traditional Concepts of Lawfare: Carl Schmitt and the Critique of Lawfare, 43 Case W. Res. J. Int'l L. 457

Among these associations is **the positive, constructive side of politics**, the very foundation of Aristotle's conception of politics, which **Schmitt completely ignores. Politics**, we often say, is the art of the possible. It **is the medium for organizing** all human **cooperation. Peaceable civilization, civil institutions, and elemental tasks such as collecting the garbage and delivering food to hungry mouths all depend on politics**. Of course, peering into the sausage factory of even such mundane municipal institutions as the town mayor's office will reveal plenty of nasty politicking, jockeying for position and patronage, and downright corruption. Schmitt sneers at these as "banal forms of politics, . . . all sorts of tactics and practices, competitions and intrigues" and dismisses them contemptuously as "parasite- and caricature-like formations." n55 **The fact is that Schmitt has nothing whatever to say about the constructive side of politics, and his entire theory focuses on enemies, not friends. In my small community, political meetings debate issues as trivial as whether to close a street and divert the traffic to another street. It is hard to see mortal combat as even a remote possibility in such disputes,** and so, in Schmitt's view, they would not count as politics, but merely administration. **Yet issues like these are the stuff of peaceable human politics**. Schmitt, I have said, uses the word "political" polemically--in his sense, politically. I have suggested that his very choice of the word "political" to describe mortal enmity is tendentious, attaching to mortal enmity Aristotelian and republican associations quite foreign to it. But the more basic point is that Schmitt's critique of humanitarianism as political and polemical is itself political and polemical. In a word, **the critique of lawfare is** itself **lawfare**. It is self-undermining because to the extent that it succeeds in showing that lawfare is illegitimate, it de-legitimizes itself. What about the merits of Schmitt's critique of humanitarianism? His argument is straightforward: either humanitarianism is toothless and [\*471] apolitical, in which case ruthless political actors will destroy the humanitarians; or else humanitarianism is a fighting faith, in which case it has succumbed to the political but made matters worse, because wars on behalf of humanity are the most inhuman wars of all. Liberal humanitarianism is either too weak or too savage. The argument has obvious merit. When Schmitt wrote in 1932 that wars against "outlaws of humanity" would be the most horrible of all, it is hard not to salute him as a prophet of Hiroshima. The same is true when Schmitt writes about the League of Nations' resolution to use "economic sanctions and severance of the food supply," n56 which he calls "imperialism based on pure economic power." n57 Schmitt is no warmonger--he calls the killing of human beings for any reason other than warding off an existential threat "sinister and crazy" n58 --nor is he indifferent to human suffering. But **international humanitarian law and criminal law are not the same thing as wars to end all war or humanitarian military interventions, so Schmitt's important moral** **warning** **against ultimate military self-righteousness** **does not** **really** **apply**. n59 **Nor does "bracketing" war by humanitarian constraints on war-fighting presuppose a vanished order of European public law.** The fact is that in nine years of conventional war, the United States has significantly bracketed war-fighting, even against enemies who do not recognize duties of reciprocity. n60 This may frustrate current lawfare critics who complain that American soldiers in Afghanistan are being forced to put down their guns. **Bracketing warfare is a decision**--Schmitt might call it an existential decision--**that rests in part on values that** **transcend the friend-enemy distinction.** **Liberal values are not alien extrusions into politics** **or evasions of politics;** **they are part of politics, and,** **as Stephen Holmes argued against Schmitt,** **liberalism has proven remarkably strong, not weak**. n61 **We could choose to abandon liberal humanitarianism, and that would be a political decision. It would simply be a bad one.**

**In a nuclear world we have to weigh consequences.**

Sissela **Bok** (Professor of Philosophy) 19**98** Applied Ethics and Ethical Theory, Ed. David Rosenthal and Fudlou Shehadi

The same argument can be made for Kant’s other formulations of the Categorical Imperative: “So act as to use humanity, both in your own person and in the person of every other, always at the same time as an end, never simply as a means”; and “So act as if you were always through actions a law-making member in a universal Kingdom of Ends.” **No one with a concern for humanity could** consistently **will to risk eliminating humanity** in the person of himself and every other **or to risk the death of all members in a universal Kingdom of Ends for the sake of justice. To risk their collective death for the sake of following one’s conscience would be,** as Rawls said, **“irrational, crazy.” And to say that one did not intend such a catastrophe, but** that one **merely failed to stop other persons from bringing it about would be beside the point when the end of the world was at stake. For although it is true that we cannot be held responsible for most of the wrongs that others commit,** the Latin maxim presents a case where **we would have to take such a responsibility seriously—perhaps to the**

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## Case

### Legit

#### Legitimacy is the only way to ensure an effective hegemony – perceived illegitimacy causes great power war

Martha Finnemore 9, professor of political science and international affairs at George Washington University, January 2009, “Legitimacy, Hypocrisy, and the Social Structure of Unipolarity: Why Being a Unipole Isn’t All It’s Cracked Up to Be,” World Politics, Volume 61, Number 1

Legitimacy is, by its nature, a social and relational phenomenon. One’s position or power cannot be legitimate in a vacuum. The concept only has meaning in a particular social context. Actors, even unipoles, cannot create legitimacy unilaterally. Legitimacy can only be given by others. It is conferred either by peers, as when great powers accept or reject the actions of another power, or by those upon whom power is exercised. Reasons to confer legitimacy have varied throughout history. Tradition, blood, and claims of divine right have all provided reasons to confer legitimacy, although in contemporary politics conformity with [End Page 61] international norms and law is more influential in determining which actors and actions will be accepted as legitimate. 9¶ Recognizing the legitimacy of power does not mean these others necessarily like the powerful or their policies, but it implies at least tacit acceptance of the social structure in which power is exercised. One may not like the inequalities of global capitalism but still believe that markets are the only realistic or likely way to organize successful economic growth. One may not like the P5 vetoes of the Security Council but still understand that the United Nations cannot exist without this concession to power asymmetries. We can see the importance of legitimacy by thinking about its absence. Active rejection of social structures and the withdrawal of recognition of their legitimacy create a crisis. In domestic politics, regimes suffering legitimacy crises face resistance, whether passive or active and armed. Internationally, systems suffering legitimacy crises tend to be violent and noncooperative. Post-Reformation Europe might be an example of such a system. Without at least tacit acceptance of power’s legitimacy, the wheels of international social life get derailed. Material force alone remains to impose order, and order creation or maintenance by that means is difficult, even under unipolarity. Successful and stable orders require the grease of some legitimation structure to persist and prosper.10¶ The social and relational character of legitimacy thus strongly colors the nature of any unipolar order and the kinds of orders a unipole can construct. Yes, unipoles can impose their will, but only to an extent. The willingness of others to recognize the legitimacy of a unipole’s actions and defer to its wishes or judgment shapes the character of the order that will emerge. Unipolar power without any underlying legitimacy will have a very particular character. The unipole’s policies will meet with resistance, either active or passive, at every turn. Cooperation will be induced only through material quid pro quo payoffs. Trust will be thin to nonexistent. This is obviously an expensive system to run and few unipoles have tried to do so.

### Terr

#### Recruitment is necessary for nuclear terrorism

Diez et all 10 (Emily, , Terrance Clark, and Caroline Zaw-Mon, Akribis Group and the Center for Terrorism and Intelligence Studies, March 2010, “Global Risk of Nuclear Terrorism”, <http://scholarcommons.usf.edu/cgi/viewcontent.cgi?article=1019&context=jss>, zzx)

Building a nuclear program is an arduous task that requires tacit knowledge, the recruitment of nuclear scientists, engineers, and machinists, and the resources and time to obtain nuclear materials and components.5 While it is unlikely that terrorist organizations have the capacity to develop full-fledged programs in the near term, terrorist development and acquisition of nuclear weapons remains a long-term threat that requires international action.6

### Intel

#### Will yield bad intel

Amnesty International 04 [“Undermining security: violaitons of human dignity, the rule of law and the National Security Strategy in ‘war on terror’ detentions,” April 9, web.amnesty.org/library/Index/ENGAMR510612004//uwyo-ajl]

Three of the UK detainees claim to have been subjected to more than 200 interrogations each during their time in US custody, without access to any court, to legal counsel, or to relatives. Forty years ago, examining the question of interrogations in incommunicado detention, the US Supreme Court noted that: "Even without employing brutality... the very fact of custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals... It is obvious that such an interrogation environment is created for no purpose other than to subjugate the individual to the will of his examiner. This atmosphere carries its own badge of intimidation. To be sure, this is not physical intimidation, but it is equally destructive of human dignity. The current practice of incommunicado interrogation is at odds with one of our Nation’s most cherished principles - that the individual may not be compelled to incriminate himself. Unless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice."(25) As the US National Security Strategy says, there must be limits on the power of the state. Unchecked state power raises the prospect not only of unchallengeable errors, but also, history shows, of serious abuses of human rights and dignity. The three released UK prisoners have recalled how they made false confessions after being put in isolation cells and repeatedly interrogated.(26) Their allegations have fuelled concern not only that detainees may face trial by military commission on the basis of coerced statements, but also more generally that the Guantánamo regime is as likely to produce bad intelligence as good, hardly a constructive strategy for the promotion of national security. Detainees held in this legal limbo, with its system of rewards and punishment for cooperation or non-cooperation, are likely to say what they believe their captors want to hear in order to gain leniency or release. A leading expert on interrogations and confessions has said: "The longer people are detained, the harsher the conditions, and the worse the lack of a support system, the greater the risk that what they say will be unreliable".(27) The mental health aspects of this indefinite detention heighten the concern in this regard. It will soon be a year since the International Committee of the Red Cross first said that it had observed a "worrying deterioration" in the psychological well-being of a large number of the detainees because of the lack of legal process. The credibility of any detainee statements made under such circumstances would be extremely suspect, and inadmissible as evidence in many courts.

## K

### Top top

**No specific link to the plan means no offense for the alt – law is good sometimes**

Owen M. **Fiss**, Summer 19**94**, “What is Feminism?” 26 Ariz. St. L. J. 413

**Although** the radical **feminists' denial of objectivity is deeply troubling as a theoretical matter**, a more limited, historically grounded doubt about the **impartiality of the law is not**. Such a critique could be based on the simple but disturbing fact that for most of our history, **women have been excluded from the process of creating and interpreting the law**, an exclusion that is likely to render the claimed neutrality of the law a pretense or sham, masking the interests of those who made it, namely, men. This historically grounded doubt about the law is no small matter; it casts a broad skeptical shadow over received doctrine n37 [\*428] and may be sufficient to sustain the widespread support garnered by more radical branches of feminism. But **the historically grounded critique is qualitatively different from its theoretically grounded counterpart**, for **it at least admits the possibility of an objective law** and thus renders feminism philosophically coherent - as a claim to justice, not interest. Of course, to some, **objective law may remain just that**, a theoretical possibility, an aspiration and nothing more, **but occasionally one can find in cases like Roe v. Wade, or perhaps in the more recent affirmation of that decision in the Casey case**, n38 **a theoretical possibility turned into concrete reality**. The historical critique allows feminists to embrace **Roe v. Wade**, **not just as good politics**, **but** also as **good law** - reflecting a true and proper understanding of equality. Recast in these terms, feminism, even in its more radical versions, can be seen as giving expression to the same hermeneutic of suspicion that gave critical legal studies so much of its appeal during the seventies and eighties, but nonetheless allows a more affirmative vision of the law. The historical critique admits that one must be wary as to whether justice has been achieved, but nonetheless acknowledges that **justice is possible and worth the struggle**. Indeed, the historically grounded critique may well further, rather than impede, the movement's egalitarianism, in much the same way that an understanding of the history of racism in America and the specific origins of Jim Crow laws forced us to reexamine critically the separate-but-equal doctrine. Admittedly, presenting the feminist critique as more historically than theoretically grounded somewhat weakens its claim to being a "jurisprudence," at least as that term is traditionally understood. Feminism will be seen less as a theory about law, or about the integrity of the law, than as a theory about equality. But perhaps this is not a loss to be regretted. While some of the glamour often associated with the most abstract theorizing will be gone, a feminism grounded in a historical critique seems more authentic and still fully worthy of admiration and attention. **Like the civil rights movement that preceded it** and from which it draws much of its inspiration, **feminism will be seen as a systematic body of thought about one of the law's highest ideals and as a determined effort to turn that ideal into concrete reality**. Sometimes less is more.