# 2AC

## Case-intel

### Law enforcement solves

Hakimi 8 (2008 International Standards for Detaining Terrorism Suspects: Moving Beyond the Armed Conflict-Criminal Divide Monica Hakimi Visiting Assistant Professor of Law, Benjamin N. Cardozo School of Law, University of Michigan Law School on leave from the Office of the Legal Adviser of the U.S. Department of State; <http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1124&context=articles>)

A. Rejecting the Armed-Conflict Approach The United States has almost singularly 114 asserted the authority to detain non-battlefield terrorism suspects based on the law of armed conflict.115 U.S. detention practices-under the CIA program and at Guantanamo Bay have therefore been at the center of the international conversation on applying the law of armed conflict to non-battlefield suspects. The international reaction to these practices has been intensely negative. From a systemic perspective, that reaction is strong evidence that the current law of armed conflict does not properly govern non-battlefield detentions. The United States has invoked the law of armed conflict to justify various forms of non-battlefield detention. Some non-battlefield suspects have been detained in secret CIA "dark sites" without any legal process at all.1' 6 Others have been detained at Guantdnamo Bay. lWStill others have been detained at secure facilities on U.S. soil.' 18 The common feature among all such detentions is their armed-conflict premise. The reaction to those detention practices from actors outside the United States has been extraordinarily negative. The facility at Guantdnamo Bay, in particular, has become a symbol of injustice around the world," 9 such that even close European allies of the United States demand that it be closed.120 International human rights bodies have been even more outspoken. These bodies have focused on the deficiencies of legal process available to terrorism detainees in U.S. custody. 121 The Human Rights Committee and the Committee Against Torture have each criticized the insufficiency of legal process at Guantdnamo Bay,' 22 and the Council of Europe has condemned the absence of any legal process under the CIA program. 23Finally, the heads of five mechanisms under the U.N. Human Rights Commission have concluded that non-battlefield detainees at Guantdnamo should be either subjected to criminal process or released. 124 The U.N. Secretary-General publicly supported that conclusion, asserting that "the basic point that one cannot detain individuals in perpetuity and that charges have to be brought against them and their being given a chance to explain themselves and be prosecuted, charged or released . . .is something that is common under any legal system."' 125

### State shift in law enforcement’s key to prevent existential Southeast European attacks

SET 9-12 (Experts: Prevention is the key to fighting terrorism 12/09/2013 By Linda Karadaku for Southeast European Times in Pristina http://www.setimes.com/cocoon/setimes/xhtml/en\_GB/features/setimes/features/2013/09/12/feature-02)

Officials at the Council of the European Union have said co-operation has been vital to preventing terrorism attacks in southeast Europe and in gaining convictions, although there have been some incidents, such as the 2012 tourist bus bombing in Burges, Bulgaria, and the February suicide bombing at the US embassy in Ankara. Experts said prevention efforts in Albania have been successful but must be improved to keep up with existing challenges. "The fact that no terrorist act has taken place [in Albania] means the continuous preventive measures, and also those undertaken in specific situations, have had results," Xhavit Shala of the Albanian Centre for National Security Studies, an NGO in Tirana, told SETimes. In Kosovo, authorities say a strategic approach is needed to prevent terrorism and acts of violent extremism. "There are extremists in every society. There are in Kosovo as well. A strategic approach is needed to deal with the issue, involving not only the law enforcement agencies, but more stakeholders, all state instruments, civil society, communities. A joint approach is needed, attacking the factors (that lay the ground for it). Addressing those factors does not allow the society to be vulnerable towards extremism and radicalism," Major Fatos Makolli, director of the directorate against terrorism in the Kosovo Police, told SETimes. Makolli said the state apparatus is not sufficient to raise awareness or deal by itself with the consequences of terrorism. Only by stakeholders jointly undermining the factors that contribute to the development of extremism will Kosovo reduce its vulnerability. Belgrade professor Obrad Savic said that the Muslim community in Kosovo is the integral part of European Muslims, "except small, radical Islamistic groups mainly organised in small villages, over local mosques around Pristina, as well as Sarajevo and Skopje." Such groups exist in many parts in Europe and the world, but what is important is the attitude by the populace toward them, Makolli said. "People's awareness of the issue and their education is the key," he said.

## Case-def

### Don’t give in to stripping—powers expanded on detention

Vladeck 11 (Stephen I., Professor of Law and Associate Dean for Scholarship, American University Washington College of Law. October 20, 2011, Columbia Law Review Sidebar, “ARTICLE: THE PASSIVE-AGGRESSIVE VIRTUES”)

As al-Kidd suggests, even when the Court has looked to the substantive law at issue in post-9/11 terrorism cases, it has treaded lightly. In Hamdi, for example, both of the Court's holdings were exceedingly narrow, with the plurality carefully circumscribing its holding that the Authorization for Use of Military Force (AUMF) n78 authorized Hamdi's detention, n79 and stressing that, although "some evidence" was an insufficient evidentiary burden to impose upon the government, the actual mechanics of resolving Hamdi's claims could--and should--be worked out by the lower courts. n80¶ And in Hamdan, the one case in which the Court categorically invalidated a post-September 11 counterterrorism policy, the Justices were at pains to stress the limited nature of their conclusion--turning, as it did, on the absence of statutory authorization for military commissions. n81 As Justice Breyer put it in his concurrence, "Nothing prevents the President from returning to Congress to seek the authority he believes necessary," n82 which is exactly what happened [\*133] next. n83¶ The above is not to suggest that no substantive law emerged from these decisions. On the contrary, Hamdi's analysis of the relationship between the AUMF and the laws of war have been a critical issue in the ongoing litigation in the D.C. Circuit arising out of Guantánamo, n84 and its outright rejection of the "some evidence" standard is also the likely culprit for the court of appeals's grudging adoption of a preponderance standard in those cases, as well. n85 Similarly, Hamdan's conclusion that the war on terrorism is not an international armed conflict triggering Common Article 3 of the Geneva Conventions was itself a massively important development, n86 as was the Court's more subtle repudiation of claims to indefeasible presidential power. n87 Even as the Court has stepped carefully, it has sent both indirect and thinly veiled messages to the Executive Branch that, without question, have had a salutary impact on the parameters of subsequent counterterrorism policy. n88 We may never know just how vital a role these assertions of judicial authority played in reshaping governmental conduct after September 11, but one need not look particularly hard to see the very real ways in which the government's approach changed after each of these decisions--even on issues on which the Supreme Court had provided no guidance whatsoever. Thus, one cannot plausibly argue--and I do not here suggest--that the Court's holdings in these cases have not dramatically shaped at least some aspects of counterterrorism policy over the past decade, especially with regard to the detention, treatment, and trial of enemy combatants. Clearly, they have.

## 2AC Executive CP

\*compliance = normal means

### He’s got to report [the cp] to Congress—status of hostilities

Bradley and Goldsmith 5 (ARTICLE: CONGRESSIONAL AUTHORIZATION AND THE WAR ON TERRORISM NAME: Curtis A. and Jack L. \*\*, \* Professor, University of Virginia School of Law. \*\* Professor, Harvard Law School. We both recently worked in the Executive Branch. Bradley served as Counselor on International Law in the Legal Adviser's Office of the Department of State Goldsmith served as Special Counsel to the General Counsel of the Department of Defense and as Assistant Attorney General, Office of Legal Counsel. Copyright (c) 2005 The Harvard Law Review Association Harvard Law Review May, 2005 118 Harv. L. Rev. 2047. Lexis)

The AUMF is arguably more restrictive in one respect, and arguably broader in another respect, than authorizations in declared wars. It is arguably more restrictive to the extent that it requires the President to report to Congress on the status of hostilities. This difference from authorizations in declared wars, however, does not purport to affect the military authority that Congress has conferred on § Marked 13:16 § the President. The AUMF is arguably broader than authorizations in declared wars in its description of the enemy against which force can be used. The AUMF authorizes the President to use force against those "nations, organizations, or persons he determines" have the requisite nexus with the September 11 attacks. This provision contrasts with authorizations in declared wars in two related ways. First, it describes rather than names the enemies that are the objects of the use of force. 144 Second, it expressly authorizes the President to determine which "nations, organizations, or persons" satisfy the statutory criteria for enemy status. 145 One could argue that the effect of the "he determines" provision is to give the President broad, and possibly unreviewable, discretion to apply the nexus requirement to identify the covered enemy - at least to the extent that his determination does not implicate constitutional rights. 146 Even if this argument is correct, this provision [\*2083] probably adds little to the President's already-broad authority to determine the existence of facts related to the exercise of his authority under the AUMF. 147

### Authorization rulings solve the CP—national security case law precedent

Landau 12 (ARTICLE: CHEVRON MEETS YOUNGSTOWN: NATIONAL SECURITY AND THE ADMINISTRATIVE STATE Joseph Landau Associate Professor, Fordham Law School. December, 2012 Boston University Law Review 92 B.U.L. Rev. 1917. Lexis)

Although the underlying theory of deference in Curtiss-Wright cannot be reconciled with Youngstown, its outcome is consistent with Jackson's framework - a point Jackson himself noted. Jackson placed Curtiss-Wright within Category One of his framework, in which "the President acts pursuant to an express or implied authorization of Congress" and in which "his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate." 209 As Jackson explained, to the extent dicta in Curtiss-Wright "intimated that the President might act in external affairs without congressional authority," 210 the decision did not go so far as to claim the President "might act contrary to an Act of Congress." 211 If Justice Sutherland's dicta are treated as just that - dicta - Curtiss-Wright and Youngstown diverge less on their theories of executive power and more on factual differences. In one, executive policy was grounded in congressional authorization and therefore valid (Curtiss-Wright), and in the other, the [\*1947] Executive lacked a delegation from the legislature, and was therefore invalid § Marked 13:16 § (Youngstown). 212 And if it is possible to validate Curtiss-Wright on Youngstown's institutional process grounds, precisely as Justice Jackson was able to do, Dames & Moore's statutory approach is less about vindicating boundless executive power and more about vindicating a delegation-based theory of governance in the national security context. Indeed, there is plenty of room to argue that Dames & Moore is closer to Youngstown than it is to Curtiss-Wright. While many discussions of national security deference tend to frame the relevant doctrinal development through the lens of Curtiss-Wright, 213 there are a few notable exceptions. Samuel Issacharoff and Richard Pildes have argued, contrary to conventional accounts, that courts resolving complex national security cases have historically followed an approach akin to Jackson's Youngstown framework. As they explain, courts have developed, both in the past and the present, "a process-based, institutionally-oriented (as opposed to rights-oriented) framework" 214 for resolving cases pitting individual rights against executive power. Through these decisions, "courts have sought to shift the responsibility ... toward the joint action of the most democratic branches of the government." 215 [\*1948] More recent Supreme Court cases bear out that institutionally oriented framework. As discussed in Part II, in the decade since 9/11, the Supreme Court has tended to return to the ordinary administrative law requirement of a delegation as a necessary condition of judicial deference. Despite arguments for Curtiss-Wright-or Chevron-style deference, the Court rejected efforts by the Executive Branch to read statutory provisions beyond Congress's likely intent. Hence, while Chevron-backers have argued that courts should "play a smaller role ... in interpreting statutes that touch on foreign relations," 216 the Court has met them only part way, "applying the Youngstown framework in deciding critical post-9/11 cases concerning the war on terror." 217 When the Executive has been delegated the requisite powers to act, courts have deferred to the President. However, where neither the Constitution nor Congress provided the necessary authorization, the Court, following the logic of Youngstown and ordinary principles of administrative law, has remanded the matter to Congress for a second pass at the question.

### A2 backlash—Courts are careful but evidentiary deference limitations solve

Landau 12 (ARTICLE: CHEVRON MEETS YOUNGSTOWN: NATIONAL SECURITY AND THE ADMINISTRATIVE STATE Joseph Landau Associate Professor, Fordham Law School. December, 2012 Boston University Law Review 92 B.U.L. Rev. 1917. Lexis)

The Hamdi Court was deeply divided, producing four separate opinions reflecting a range of different positions regarding the deference owed to the [\*1953] Executive. Justice Souter, in a partial concurrence and dissent joined by Justice Ginsburg, accepted the premise that Congress could authorize such detentions but rejected the plurality's decision to defer to the President's interpretation of the AUMF. 238 Justice Souter argued that the AUMF lacked any specific authorizing language legitimizing indefinite detention, and, in the absence of more detailed statutory language, Hamdi's detention violated the Non-Detention Act, which requires direct and specific congressional authorization to detain U.S. citizens. § Marked 13:17 § 239 Justice Scalia also dissented, and his opinion, joined by Justice Stevens, argued that, absent congressional suspension of the writ of habeas corpus, the government would either have to charge Hamdi with a crime or release him. 240 Only Justice Thomas's dissent accepted the more expansive notion of deference, pressed by the Bush Administration, that the President possessed inherent authority to detain a wide range of individuals with a more attenuated (if any) connection to the 9/11 attacks. Justice Thomas invoked Curtiss-Wright's apparent support for the notion that the President should be "free from interference" by the Court on questions involving national security. 241 For Thomas, Hamdi's "detention [fell] squarely within the Federal Government's war powers, and we lack the expertise and capacity to second-guess that decision." 242 The Hamdi plurality, having upheld detention, next decided what, if any, due process rights it would accord U.S. citizen "enemy combatant" detainees. Here, again, the Court rejected the government's request for deference by refusing to credit a two-page affidavit the government supplied that purported to demonstrate Hamdi's affiliations with a Taliban unit captured by Northern Alliance forces in Afghanistan. 243 The government argued that the Court should accept the contents of the affidavit under a minimal level of judicial review - the deferential "some evidence" standard - which the government asserted was the appropriate test for evaluating the government's proof of Hamdi's alleged terrorist connections. 244 While the plurality accepted a range of other government-friendly procedural regimes - including a rebuttable presumption in favor of the government's evidence, the use of hearsay, and the [\*1954] use of non-Article III tribunals - it rejected the government's proffered "some evidence" standard as "extreme," 245 stating that "any process in which the Executive's factual assertions go wholly unchallenged or are simply presumed correct without any opportunity for the alleged combatant to demonstrate otherwise falls constitutionally short." 246 Citing Youngstown, the Court noted that the government's position would "serve[] only to condense power into a single branch of government," and that the ongoing "state of war is not a blank check for the President when it comes to the rights of the Nation's citizens." 247

### XO rollback—not congressionally delegated authority

Landau 12 (ARTICLE: CHEVRON MEETS YOUNGSTOWN: NATIONAL SECURITY AND THE ADMINISTRATIVE STATE Joseph Landau Associate Professor, Fordham Law School. December, 2012 Boston University Law Review 92 B.U.L. Rev. 1917. Lexis)

2. Chevron Step Zero A closely related issue concerns whether courts should apply Chevron in cases where it remains unclear if an agency is acting with statutory authorization in the first place, or when it is unclear if the agency's decision, even though the product of a delegation, actually carries the force of law. 124 One example involves the use of informal agency procedures. In Christensen v. Harris County, 125 the Court rejected the idea that an informal agency opinion letter issued by the Department of Labor should be analyzed under the Chevron framework. 126 The Court held that "interpretations such as those in opinion letters - like interpretations contained in policy statements, agency manuals, and enforcement guidelines, all of which lack the force of law - do not warrant Chevron-style deference." 127 Instead§ Marked 13:17 § , such interpretations are entitled to the lesser Skidmore 128 deference and will be upheld based upon their "power to persuade." 129 In United States v. Mead, 130 the Court applied a similar analysis to hold that informal Customs ruling letters do not warrant Chevron deference. At issue in Mead were letters that are routinely issued by the Customs Service at ports of entry, assigning tariff rates to individual goods. Mead held that those letters, which are not subject to notice and comment (though "made "available for public inspection'" 131), did not trigger Chevron deference, as the agency interpretation was not promulgated in the exercise of congressionally delegated authority.

## Drones

### Relationships are vitiated during detention for those released—release prospects greatly increase cooperation

Benhalim 10 (The Emerging Law of Detention The Guantánamo Habeas Cases as Lawmaking\* Benjamin Wittes is a senior fellow in Governance Studies at The Brookings Institution. Robert M. Chesney is a nonresident senior fellow in Governance Studies at The Brookings Institution. Rabea Benhalim is a legal fellow in Governance Studies at The Brookings Institution. January 22, 2010 http://www.brookings.edu/~/media/research/files/papers/2010/1/22%20guantanamo%20wittes%20chesney/0122\_guantanamo\_wittes\_chesney.pdf)

Relationship Vitiated After Capture Whereas Al Ginco, Al Adahi, Hatim, and Khan all address the question of whether a relationship can be vitiated prior to the date of capture, Judge Huvelle in Basardh confronts the more counter-intuitive question of whether the relationship can be vitiated as a result of post-capture events. Ultimately she concludes that it can, and that vitiation has taken place in the particular case before her. In Basardh, the petitioner joined Al Qaeda and learned how to use weapons at an Al Qaeda training facility.84 In contrast to the aborted relationship decribed in Al Ginco and Al Adahi, Basardh “[b]y late 2001 . . . was hiding with bin Laden and others in the mountains of Tora Bora, where he acted as a cook and a fighter.”85 Subsequently, Pakistani officials captured him and turned him over to U.S. authorities. While in Guantánamo, however, the petitioner fully cooperated with the government, which resulted in beatings and threats to his life from other detainees. He stated that “[m]y family and I are threatened to be killed… and this threat happened here in prison many times.”86 His cooperation became public knowledge on February 3, 2009, when “the Washington Post published a front-page article regarding [his] cooperation, specifically citing him by name.”87 In determining whether continued detention is legally available, Judge Huvelle concludes that the court must look to the petitioner’s *current likelihood* of rejoining the enemy.88 Given his cooperation and the public knowledge of this cooperation, she decides that “the requested relief is warranted, for [the petitioner] can no longer constitute a threat to the United States.”89 In other words, the fact of becoming a cooperating witness against his fellows while in captivity—and the fact of his cooperation’s becoming known—serves to vitiate a conceded prior relationship.

### No dangerous release—don’t change cases with sound evidence

Wittes 12 (The Emerging Law of Detention 2.0 The Guantánamo Habeas Cases as Lawmaking April 2012 Benjamin Wittes senior fellow in Governance Studies Robert M. Chesney nonresident senior fellow in Governance Studies Larkin Reynolds legal fellow in Governance Studies The Harvard Law School National Security Research Committee http://www.brookings.edu/~/media/research/files/reports/2011/5/guantanamo%20wittes/chesney%20full%20text%20update32913.pdf)

Judge Laurence Silberman recently added his voice to those calling for a lower standard. In his concurring opinion in Abdah (Esmail), he wrote: [T]here are powerful reasons for the government to rely on our opinion in Al-Adahi v. Obama, which persuasively explains that in a habeas corpus proceeding the preponderance of evidence standard that the government assumes binds it, is unnecessary—and moreover, unrealistic. I doubt any of my colleagues will vote to grant a petition if he or she believes that it is somewhat likely that the petitioner is an al Qaeda adherent or an active supporter. Unless, of course, the Supreme Court were to adopt the preponderance of the evidence standard (which it is unlikely to do— taking a case might obligate it to assume direct responsibility for the consequences of Boumediene v. Bush). 72 He does caution that he would “certainly . . . release a petitioner against whom the government could not muster even ‘some evidence,’” but his bottom line is clear: the preponderance standard is unneeded, almost naïve.73

### EU co-op means they get rendered there

Worthington 13 (European Parliament to Debate Motion Calling for Closure of Guantánamo

22.5.13 Andy Worthington, independent journalist, writer of The Guantanamo Files. http://www.andyworthington.co.uk/2013/05/22/european-parliament-to-debate-motion-calling-for-closure-of-guantanamo/)

Tomorrow, just before President Obama delivers a major speech on national security issues — including his policy on Guantánamo, still gripped by a prison-wide hunger strike by men in despair at ever being released or receiving justice — the European Parliament will be discussing and voting on a resolution reiterating previous calls for President Obama to close Guantánamo as he promised when he took office in January 2009. Delayed from last month, this arrives at a perfect time, reminding President Obama that his obligations towards the men abandoned at Guantánamo — by all three branches of the US government over the last three years — are not just a domestic matter, but an international one, and that further delays in addressing the complaints of the hunger strikers are unconscionable. In brief, 86 of the 166 men still held were cleared for release over three years ago by an inter-agency task force established by President Obama when he took office; 46 others were consigned to indefinite detention without charge or trial by President Obama in an executive order two years ago, when they were promised periodic reviews of their cases that have not taken place; and the rest were supposed to be put on trial, although only six have been charged. All the men, therefore, have legitimate reasons for feeling abandoned by their jailers, and for seeking immediate action to secure their release, a review of their cases, or fair trials. As far as current action is concerned, involving European countries directly, the European Parliament resolution is noteworthy for its call for the coordination of “a joint EU Member States’ initiative” not only “to urge the US President to act” on revisiting his failed promise to close Guantánamo, but also to offer to “receive additional Guantánamo inmates on European soil, especially the approximately dozen men cleared for release who cannot return to their home countries.” In my article last October examining the cases of the 86 prisoners cleared for release but still held, I estimated that as many as 15 of the 30 non-Yemenis cleared for release may need new homes, but whatever the exact number it is heartening that European Parliamentarians are calling for renewed engagement from Europe, where, in 2009 and 2010, dozens of prisoners unable to return to their home countries were resettled. In April, when the motion was initially supposed to be debated, Cori Crider, the legal director of Reprieve, the London-based legal action charity whose lawyers represent prisoners held at Guantánamo, made a statement that is just as relevant now. She said: “Guantánamo is not just the US’s mess, but one for which Europe also bears great responsibility. European countries helped the US send men to the prison and provided interrogators. But all EU member states now have an opportunity to make this right. Many of those still detained grew up in, and feel a deep affinity with European countries. Whenever I talk with my client Nabil Hadjarab he speaks of the happiest time of his life: growing up in France. It is fantastic that the parliament is debating this issue at such a crucial time but they must pass the motion and help resettle cleared men to EU countries. My clients don’t want to die inside Guantánamo Bay; Europe can help to make sure this doesn’t happen.”

## 2AC Syria

### Diplomacy solves now, no congress vote coming

SYLVIE CORBET and RYAN LUCAS 09/11/2013   
UN Resolution Talks Begin On Syria Chemical Arms <http://www.huffingtonpost.com/2013/09/11/un-resolution-talks-syria-chemical-arms_n_3906038.html>

In a nationally televised speech Tuesday night, Obama told Americans that diplomacy suddenly holds "the potential to remove the threat of chemical weapons" in Syria without use of force, but he declared that the U.S. military will "be ready to respond" against Assad if other measures fail. Obama said he had asked congressional leaders to postpone a vote he has been seeking to authorize the use of military force against Syria. The president pledged that any military action wouldn't involve deploying ground combat troops or waging a prolonged air campaign. Alexei Pushkov, a Kremlin-connected senior Russian lawmaker, said that Russia could expand arms sales to Iran and revise terms of U.S. military transit to Afghanistan if Washington launches a strike on Syria. For many in the Syrian opposition who held out hopes that Western strikes against Assad would tip the civil war in the rebellion's favor, Obama's decision to seek a diplomatic resolution was a disappointment.

### No Syria focus – it’s all debt ceiling

Sink 9/12 Justin Sink, reporter for the Hill, “Obama signals shift back to economic focus”, The Hill, September 12th, 2013, http://thehill.com/blogs/on-the-money/economy/321793-obama-signals-shift-back-to-focus-on-the-economy

The White House is signaling it wants to shift back to the economy after two weeks in which the Syrian crisis has dominated President Obama’s schedule and workload.¶ Obama will be “focusing” on issues related to the economy in the coming weeks, White House press secretary Jay Carney said Wednesday at his daily briefing.¶ He said the president wants to push forward with economic policies that the White House believes will grow the middle class.¶ Obama himself in his prime-time address to the nation Tuesday on Syria said voters wanted him focused on the economy and not on Syria. Public support for a military intervention in Syria is low.¶ “I know Americans want all of us in Washington — especially me — to concentrate on the task of building our nation here at home: putting people back to work, educating our kids, growing our middle class,” Obama said.¶ The president had wanted to use the beginning of September to press forward on his economic policies ahead of fights with Congress on government spending and debt.

### Means limitation avoids politics

Geltzer 11 (Boalt Hall School of Law, University of California, Berkeley 2011 Berkeley Journal of International Law 29 Berkeley J. Int'l L. 94 Decisions Detained: The Courts' Embrace of Complexity in Guantanamo-Related Litigation NAME: Joshua Alexander Geltzer a third-year student at Yale Law School, where he is editor-in-chief of the Yale Law Journal. He received his Ph.D. in War Studies from King's College London. His dissertation was published by Routledge as US Counter-Terrorism Strategy and al-Qaeda: Signalling and the Terrorist World-View. Lexis)

B. Avoiding Conflict with the Political Branches Focusing on the means of today's war against terrorism rather than on the war's time or space not only spared the judiciary from intruding into political questions; doing so also avoided the courts' clear and potentially unwinnable conflict with the political branches. To be sure, the courts' decisions in cases like Hamdi, Hamdan, Basardh, and Parhat dealt direct defeats to the government and forced the political branches, usually the executive, to take steps that previously it had claimed a right not to take. 108 Put in perspective, however, the effects of the judiciary's rulings were rather minimal. 109 While Hamdi may have demanded notice and an opportunity to be heard by a neutral adjudicator and Hamdan may have required alterations to Guantanamo's military commissions, as this article approached publication - almost nine years into the post-9/11 detentions - only a handful of detainees had been released from Guantanamo by court order, the ultimate outcome for which most detainees have been pressing. 110 Hence, by nibbling at the margins of the political branches' conduct of the war against terrorism, the courts have [\*117] managed to alter some of the means employed in that war without provoking open conflict with the political branches on major issues - conflict that the judiciary might well lose.

### Congress may get involved but solves

Breyer 6 (Concurring Opinion, Justice Stephen Breyer & Anthony Kennedy, in part; SALIM AHMED HAMDAN, Petitioner v. DONALD H. RUMSFELD, SECRETARY OF DEFENSE, et al. No. 05-184 SUPREME COURT OF THE UNITED STATES 548 U.S. 557; 126 S. Ct. 2749; 165 L. Ed. 2d 723; 2006 U.S. LEXIS 5185; 19 Fla. L. Weekly Fed. S 452 March 28, 2006, Argued June 29, 2006, Decided; Lexis)

[\*636] Justice Breyer, with whom Justice Kennedy, Justice Souter, and Justice Ginsburg join, concurring. The dissenters say that today's decision would "sorely hamper the President's ability to confront and defeat a new and deadly enemy." Post, at 705, 165 L. Ed. 2d, at 823 (opinion of Thomas, J.). They suggest that it undermines our Nation's ability to "preven[t] future attacks" of the grievous sort that we have already suffered. Post, at 724, 165 L. Ed. 2d, at 834-835. That claim leads me to state briefly what I believe the majority sets forth both explicitly and implicitly at greater length. The Court's conclusion ultimately rests upon a single ground: Congress has not issued the Executive a "blank check." Cf. Hamdi v. Rumsfeld, 542 U.S. 507, 536, 124 S. Ct. 2633, 159 L. Ed. 2d 578 (2004) (plurality opinion). Indeed, Congress has denied the President the legislative authority to create military commissions of the kind at issue here. Nothing prevents the President from returning to Congress to seek the authority he believes necessary. Where, as here, no emergency prevents consultation with Congress, judicial insistence upon that consultation does not weaken our Nation's ability to deal with danger. To the contrary, that insistence strengthens the Nation's ability to determine--through democratic means-- how best to do so. The Constitution places its faith in those democratic means. Our Court today simply does the same. Justice Kennedy, with whom Justice Souter, Justice Ginsburg, and Justice Breyer join as to Parts I and II, concurring in part.

### They just decided a whole slew of controversial cases

Wolf 2013 (Richard Wolf, August 12, 2013, “Supreme Court urged to open up,” USA Today, http://www.usatoday.com/story/news/nation/2013/08/12/supreme-court-urged-to-allow-cameras/2644779/)

A year-long string of controversial cases the general public couldn't see at all, or hear until later, has increased pressure on the Supreme Court to consider lifting the veil on its proceedings.¶ Since the end of the court's blockbuster term in late June, members of Congress and watchdog groups have urged the justices to allow cameras into the courtroom for the first time, broadcast live audio of their proceedings and adopt a binding code of ethics.¶ Many of the demands come from Democrats and liberal interest groups concerned about the court's conservative tilt. Though they are not likely to prompt Chief Justice John Roberts and his colleagues to make immediate changes, they could eventually help loosen up an institution that guards its privacy and autonomy.¶ "There have been baby steps taken to make the court more transparent, but it is still in many respects the least transparent branch of the three branches of government," says Doug Kendall, president of the Constitutional Accountability Center.

### Plan is a huge win for Obama

Catalini 2013 (Michael Catalini, May 30, 2013, “Political Barriers Stand Between Obama and Closing Guantanamo Facility,” http://www.nationaljournal.com/politics/political-barriers-stand-between-obama-and-closing-guantanamo-facility-20130503)

The Cuban camp is grabbing headlines again because of a hunger strike among the detainees. Nearly 100 have stopped eating, and the military is forcing them to eat by placing tubes through their noses, the Associated Press reported. The president reconfirmed his opposition to the camp, responding to a question about the recent hunger strikes at Guantanamo Bay with regret in his voice.¶ “Well, it is not a surprise to me that we've got problems in Guantanamo, which is why, when I was campaigning in 2007 and 2008 and when I was elected in 2008, I said we need to close Guantanamo. I continue to believe that we've got to close Guantanamo,” he said.¶ Obama blamed his failure to follow through on a campaign promise on lawmakers. “Now, Congress determined that they would not let us close it,” he said. Despite Obama’s desire to close the base and his pledge this week to “go back to this,” he touched on a political reality: Lawmakers are not inclined to touch the issue.¶ "The president stated that the reason Guantanamo has not closed was because of Congress. That's true," Majority Leader Harry Reid told reporters last month, declining to elaborate.¶ The stakes for Obama on this issue are high when it comes to his liberal base, who would like to see him display the courage of his convictions and close the camp. But the political will is lacking, outside a small contingent of lawmakers, including Sen. Dick Durbin of Illinois and five other liberal Democrats who sided with Obama in 2009, and left-leaning opinion writers.¶ Congressional Democrats, unlike Obama, will have to face voters again. And closing the camp is deeply unpopular. A Washington Post/ABC News poll in February 2012 showed that 70 percent of Americans wantedto keep the camp open to detain “terrorist suspects,” and in a 2009 Gallup Poll, a majority said they would be upset if it shut down. In 2009, the Senate voted 90-6 to block the president’s efforts at closing the camp. Obama had signed an order seeking to close the detention center, but the Senate’s vote denied the administration the $80 million needed to fund the closure. ¶ Closing the camp in Cuba and bringing the detainees into the United States grates against the political sensibilities of many lawmakers. Jim Manley, a Democratic strategist who served as Reid’s spokesman at the time, remembers the debate very well.

### Plan’s announced in June

Reuters 2013 (Jewish Daily, June 21, 2013, “Supreme Tension as Big Cases Loom for Top Court,” http://forward.com/articles/179046/supreme-tension-as-big-cases-loom-for-top-court/?p=all#ixzz2cuIQ3iXH)

Despite the mystery over how the nine justices will decide the big cases, there is no real mystery about the delay. Late June at the Supreme Court is crunch time, as the justices - not unlike college students finishing term papers late into the night - push up against their self-imposed, end-of-June deadline.¶ In 2003, the last time the justices had college affirmative action and gay rights together on the docket, decisions came on June 23 and June 26, respectively. Last year, their decision on the constitutionality of the 2010 healthcare law signed by President Barack Obama came on the last day, June 28, before the justices recessed for the summer.¶ Justice Ruth Bader Ginsburg has called June “flood season.”

### Either it won’t pass or strikes are inevitable- doesn’t need congress for cred

[Gene Healy](http://object.cato.org/people/gene-healy) September 2, 2013.  
John Kerry Can’t See It, but Congress May Vote ‘No’ on Syria  [Gene Healy](http://www.cato.org/people/gene-healy) is a vice president at the Cato Institute and the author of [The Cult of the Presidency](http://www.cato.org/store/books/cult-presidency-america-s-dangerous-devotion-executive-power-hardback)  
<http://object.cato.org/publications/commentary/john-kerry-cant-see-it-congress-may-vote-no-syria>

On Saturday, President Obama announced that — this once — he’ll do what the Constitution commands. It doesn’t seem appropriate to praise him for that, but our standards have fallen so low that we’re now actually surprised when a president seeks congressional authorization before waging war. Surprised — and, in some cases, outraged. “Weakest president since James Buchanan,” former Ambassador John Bolton fumed on Fox News: “Astounding! … a very foolish thing. Rep. Peter King, R-N.Y., was downright insulted that Obama bothered to ask for congressional imprimatur: “The president doesn’t need 535 Members of Congress to enforce his own redline.” The Constitution’s architect, James Madison, believed that “in no part of the constitution is more wisdom to be found, than in the clause which confides the question of war or peace to the legislature” — but what did he know? Modern practice has been to let the Tomahawks fly, Congress be damned. “Asking for a vote makes it a lot harder to ignore the results.” The closest precedent to what the administration proposes in Syria is 1999’s air war over Kosovo, during which President Clinton ignored two congressional votes denying authorization, and became the first president to wage an illegal war beyond the War Powers Resolution’s 60-day time limit (with Libya in 2011, Obama became the second). On April 28, 1999, the House voted no on declaring war 427-2, and no on authorizing the president to continue airstrikes against Serbia, 213-213. “The House is obviously struggling to find its voice,” Clinton’s National Security Council spokesman explained, “so we sort of just blew by” the House votes. Clinton never wanted a vote; in contrast, on Saturday, Obama demanded that legislators stand and be counted: “All of us should be accountable… and that can only be accomplished with a vote.” The growth of the Imperial Presidency, Arthur Schlesinger Jr. observed in his classic 1973 book on the subject, has been “as much a matter of congressional abdication as of presidential usurpation,” as legislators have ceded vast authority to the executive branch. That’s a danger here in the Syria debate as well: The draft Authorization for Use of Military Force the White House released Saturday is appallingly broad. There’s no “sunset clause,” and ground troops aren’t ruled out. It neither limits the president to striking Syrian forces, nor bans strikes outside Syria — it’s loose enough, as Harvard’s Jack Goldsmith points out, to allow the president to wage war against Iran or Hezbollah in Lebanon, so long as “he determines” there’s some connection to WMD in Syria. “A president will interpret an AUMF for all it is worth, and then some,” Goldsmith cautions. Indeed, the last two administrations have used the post-Sept. 11 AUMF to justify unrestricted surveillance, drone strikes against American citizens, and other actions never contemplated by Congress. In this case, why take the risk? On Saturday, Obama maintained he has authority to act without Congress, and Secretary of State John Kerry echoed that claim the next day: “He has the right to do that, no matter what Congress does.” Still, asking for a vote makes it a lot harder to ignore the results. Clinton had already been bombing Serbia for a month when House refused authorization for the air war in 1999. A “no” vote in this case won’t be “blown by” nearly so easily. “You have to win the vote. You have to win,” a panicky senior administration official told the Wall Street Journal Saturday. “House Republicans are poised to say no on Syria,” the Washington Examiner reported Monday; “I may be wrong, but I don’t think the votes are even close,” said Rep. David Nunes, R-Calif. Kerry says he “can’t contemplate” that Congress would say no. He better start

### Legitimacy is key to failed states

Loomis 2008 (Andrew Joseph Loomis, PhD in Government from Georgetown, August 4, 2008, “LEVERAGING LEGITIMACY IN SECURING U.S. LEADERSHIP: NORMATIVE DIMENSIONS OF HEGEMONIC AUTHORITY,” http://repository.library.georgetown.edu/bitstream/handle/10822/553090/loomisAndrewJoseph.pdf?sequence=1)

The results of this study suggest that U.S. authority levels vary with public ¶ perceptions of legitimacy, casting doubt on claims that ideational variables in the form of ¶ international perceptions of the legitimacy of U.S. policy are inconsequential with respect to ¶ the efficacy of U.S. foreign policy and alliance maintenance. These findings suggest that the ¶ United States would strengthen its authority by constructing policy that is sensitive to the ¶ international public voice. The need for allies is self-evident in the turbulent contemporary ¶ environment and most intractable international problems cannot be solved by the United ¶ States alone. Intelligence deficiencies, drug and human trafficking, proliferation of weapons ¶ of mass destruction, failing states, ethnic violence, and environmental catastrophe all ¶ demand joint responses by the world’s most capable countries. The question of what holds ¶ alliances together has immediate importance. The implications of this research suggest the ¶ need for policymakers to reassess the relevance of legitimate behavior and the impact that ¶ administration policy has on U.S. leadership among its allies.

### Extinction

**Manwaring 2005** (Max G. Manwaring, Retired U.S. Army colonel and an Adjunct Professor of International Politics at Dickinson College, venezuela’s hugo chávez, bolivarian socialism, and asymmetric warfare, October 2005, pg. PUB628.pdf)

President Chávez also understands that the process leading to state failure is the most dangerous long-term security challenge facing the global community today. The argument in general is that failing and failed state status is the breeding ground for instability, criminality, insurgency, regional conflict, and terrorism. These conditions breed massive humanitarian disasters and major refugee flows. They can host “evil” networks of all kinds, whether they involve criminal business enterprise, narco-trafficking, or some form of ideological crusade such as *Bolivarianismo.* More specifically, these conditions spawn all kinds of things people in general do not like such as murder, kidnapping, corruption, intimidation, and destruction of infrastructure. These means of coercion and persuasion can spawn further human rights violations, torture, poverty, starvation, disease, the recruitment and use of child soldiers, trafficking in women and body parts, trafficking and proliferation of conventional weapons systems and WMD, genocide, ethnic cleansing, warlordism, and criminal anarchy. At the same time, these actions are usually unconfined and spill over into regional syndromes of poverty, destabilization, and conflict.62 Peru’s *Sendero Luminoso* calls violent and destructive activities that facilitate the processes of state failure “armed propaganda.” Drug cartels operating throughout the Andean Ridge of South America and elsewhere call these activities “business incentives.” Chávez considers these actions to be steps that must be taken to bring about the political conditions necessary to establish Latin American socialism for the 21st century.63 Thus, in addition to helping to provide wider latitude to further their tactical and operational objectives, state and nonstate actors’ strategic efforts are aimed at progressively lessening a targeted regime’s credibility and capability in terms of its ability and willingness to govern and develop its national territory and society. Chávez’s intent is to focus his primary attack politically and psychologically on selected Latin American governments’ ability and right to govern. In that context, he understands that popular perceptions of corruption, disenfranchisement, poverty, and lack of upward mobility limit the right and the ability of a given regime to conduct the business of the state. Until a given populace generally perceives that its government is dealing with these and other basic issues of political, economic, and social injustice fairly and effectively, instability and the threat of subverting or destroying such a government are real.64 But failing and failed states simply do not go away. Virtually anyone can take advantage of such an unstable situation. The tendency is that the best motivated and best armed organization on the scene will control that instability. As a consequence, failing and failed states become dysfunctional states, rogue states, criminal states, narco-states, or new people’s democracies. In connection with the creation of new people’s democracies, one can rest assured that Chávez and his Bolivarian populist allies will be available to provide money, arms, and leadership at any given opportunity. And, of course, the longer dysfunctional, rogue, criminal, and narco-states and people’s democracies persist, the more they and their associated problems endanger global security, peace, and prosperity.65

## K

### Court action is key to legitimacy

Knowles 2009 (Robert Knowles, Acting Assistant Professor, New York University School of Law, 41 Ariz. St. L.J. 87 American Hegemony and the Foreign Affairs Constitution)

The enemy combatant litigation also underscores the extent to which the classic realist assumptions about courts’ legitimacy in foreign affairs have been turned on their head. In an anarchic world, legitimacy derives largely from brute force. The courts have no armies at their disposal and look weak when they issue decisions that cannot be enforced.440 But in a hegemonic system, where governance depends on voluntary acquiescence, the courts have a greater role to play. Rather than hobbling the exercise of foreign policy, the courts are a key form of “soft power.”441 As Justice Kennedy’s majority opinion observed in Boumediene, courts can bestow external legitimacy on the acts of the political branches.442 Acts having a basis in law are almost universally regarded as more legitimate than merely political acts. Most foreign policy experts believe that the Bush Administration’s detention scheme “hurt America’s image and standing in the world.”443 The restoration of habeas corpus in Boumediene may help begin to counter-act this loss of prestige.

#### Calculation is good and doesn’t devalue life

Revesz 2008 Richard L. Revesz (Dean and Lawrence King Professor of Law at New York University School of Law, JD Yale Law School) and Michael A Livermore. (JD NYU School of Law, Executive Director of the Institute for Policy Integrity, and Managing director of the NYU Law Review). Retaking Rationality How Cots-Benefit Analysis Can Better protect the Environment and Our Health. 2008. P. 1-4.

Governmental decisions are also fundamentally different from personal decisions in that they often affect people in the aggregate. In our individual lives, we come into contact with at least some of the consequences of our decisions. If we fail to consult a map, we pay the price: losing valuable time driving around in circles and listening to the complaints of our passengers. We are constantly confronted with the consequences of the choices that we have made. Not so for governments, however, which exercise authority by making decisions at a distance. Perhaps one of the most challenging aspects of governmental decisions is that they require a special kind of compassion—one that can seem, at first glance, cold and calculating, the antithesis of empathy. The aggregate and complex nature of governmental decisions does not address people as human beings, with concerns and interests, families and emotional relationships, secrets and sorrows. Rather, people are numbers stacked in a column or points on a graph, described not through their individual stories of triumph and despair, but by equations, functions, and dose-response curves. The language of governmental decisionmaking can seem to—and to a certain extent does—ignore what makes individuals unique and morally important. But, although the language of bureaucratic decisionmaking can be dehumanizing, it is also a prerequisite for the kind of compassion that is needed in contemporary society. Elaine Scarry has developed a comparison between individual compassion and statistical compassion.' Individual compassion is familiar—when we see a person suffering, or hear the story of some terrible tragedy, we are moved to take action. Statistical compassion seems foreign—we hear only a string of numbers but must comprehend "the concrete realities embedded there."' Individual compassion derives from our social nature, and may be hardwired directly into the human brain.' Statistical compassion calls on us to use our higher reasoning power to extend our natural compassion to the task of solving more abstract—but no less real—problems. Because compassion is not just about making us feel better—which we could do as easily by forgetting about a problem as by addressing it—we have a responsibility to make the best decisions that we can. This book argues that cost-benefit analysis, properly conducted, can improve environmental and public health policy. Cost-benefit analysis—the translation of human lives and acres of forest into the language of dollars and cents—can seem harsh and impersonal. But such an approach is also necessary to improve the quality of decisions that regulators make. Saving the most lives, and § Marked 13:21 § best protecting the quality of our environment and our health—in short, exercising our compassion most effectively—requires us to step back and use our best analytic tools. Sometimes, in order to save a life, we need to treat a person like a number. This is the challenge of statistical compassion. This book is about making good decisions. It focuses on the area of environmental, health and safety regulation. These regulations have been the source of numerous and hard-fought controversies over the past several decades, particularly at the federal level. Reaching the right decisions in the areas of environmental protection, increasing safety, and improving public health is clearly of high importance. Although it is admirable (and fashionable) for people to buy green or avoid products made in sweatshops, efforts taken at the individual level are not enough to address the pressing problems we face—there is a vital role for government in tackling these issues, and sound collective decisions concerning regulation are needed. There is a temptation to rely on gut-level decisionmaking in order to avoid economic analysis, which, to many, is a foreign language on top of seeming cold and unsympathetic. For government to make good decisions, however, it cannot abandon reasoned analysis. Because of the complex nature of governmental decisions, we have no choice but to deploy complex analytic tools in order to make the best choices possible. Failing to use these tools, which amounts to abandoning our duties to one another, is not a legitimate response. Rather, we must exercise statistical compassion by recognizing what numbers of lives saved represent: living and breathing human beings, unique, with rich inner lives and an interlocking web of emotional relationships. The acres of a forest can be tallied up in a chart, but that should not blind us to the beauty of a single stand of trees. We need to use complex tools to make good decisions while simultaneously remembering that we are not engaging in abstract exercises, but that we are having real effects on people and the environment. In our personal lives, it would be unwise not to shop around for the best price when making a major purchase, or to fail to think through our options when making a major life decision. It is equally foolish for government to fail to fully examine alternative policies when making regulatory decisions with life-or-death consequences. This reality has been recognized by four successive presidential administrations. Since 1981, the cost-benefit analysis of major regulations has been required by presidential order. Over the past twenty-five years, however, environmental and other progressive groups have declined to participate in the key governmental proceedings concerning the cost-benefit analysis of federal regulations, instead preferring to criticize the technique from the outside. The resulting asymmetry in political participation has had profound negative consequences, both for the state of federal regulation and for the technique of cost-benefit analysis itself. Ironically, this state of affairs has left progressives open to the charge of rejecting reason, when in fact strong environmental and public health pro-grams are often justified by cost-benefit analysis. It is time for progressive groups, as well as ordinary citizens, to retake the high ground by embracing and reforming cost-benefit analysis. The difference between being unthinking—failing to use the best tools to analyze policy—and unfeeling—making decisions without compassion—is unimportant: Both lead to bad policy. Calamities can result from the failure to use either emotion or reason. Our emotions provide us with the grounding for our principles, our innate interconnectedness, and our sense of obligation to others. We use our powers of reason to build on that emotional foundation, and act effectively to bring about a better world.

#### Court action is a key rallying point that catalyzes social change (blue)

Burstein 1991 Paul Burstein, pub. date: 1991, Professor of sociology and political science at the University of Washington, “Legal Mobilization as a Social Movement Tactic: The Struggle for Equal Employment Opportunity”, JSTOR

What types of actions should we examine? For most sociologists, and for many political scientists studying social movements, the distinction between political action "inside the system" and that taking place "outside” is critical. They see groups resorting to a "politics of protest" when they are not allowed to use institutionalized channels to express their political demands or when such channels prove ineffective. Those interested in social movements see themselves as examining political behavior not directed into "proper channels"-that is, demonstrations, strikes and boycotts, as opposed to election campaigns, lobbying, or legal proceedings. This distinction is often useful, but at times it impedes progress in understanding political change. Those using outsider tactics are often trying, first, to gain access to power holders and, then, to influence their decisions. By defining their interests in terms of particular tactics, those studying social movements virtually force themselves to abandon the field of inquiry when the groups they are interested in begin to have influence-when they gain access to proper channels. I suggest that successful movements generally utilize proper channels as well as outsider tactics and that an adequate understanding of move- ments must therefore consider both. In fact, social movement analysts seem to recognize this, even if only implicitly. This implicit recognition takes two forms: in definitions of social movement and in analyses of particular movements. As for definitions, consider one of Tilly's recent attempts to define social movement (1984, p. 305; italics in original): "The term social movement applies most usefully to a sustained interac-tion between a specific set of authorities and various spokespersons for a given challenge to these authorities. The interaction is a coherent, bounded unit in roughly the same sense that a war or political campaign is a unit." Tilly struggles to limit the definition to outsider groups, but nothing in it excludes the legal tactics often employed by the civil rights movement, even though such tactics involved going through proper channels In fact, analysts of American social movements frequently ascribe im- portance to court cases. McAdam, for example, shows that a Supreme Court decision on segregation had a critical effect on the bus boycotts (1983, p. 741), while Harding (1984, pp. 3 93-95) argues that the decisions of a federal judge undermined the hegemony of white-supremacist ideol- ogy in Mississippi (also see Jenkins and Eckert 1986, p. 827). The role of the courts is seldom the subject of theorizing because so much emphasis is placed on demonstrating the importance of outsider tactics. Yet deep historical knowledge of particular movements consistently forces social movement analysts to report how critical court decisions are.

#### Biopower doesn’t create bear life or void life of value.

Mika Ojakangas (Helsinki Collegium for Advanced Studies in Finland) 2005 “Impossible Dialogue on Bio-power,” Foucault Studies, No. 2, p. 5-28, May

Moreover, life as the object and the subject of biopower – given that life is everywhere, it becomes everywhere – is in no way bare, but is as the synthetic notion of life implies, the multiplicity of the forms of life, from the nutritive life to the intellectual life, from the biological levels of life to the political existence of man. Instead of bare life, the life of biopower is a plenitude of life, as Foucault puts it. Agamben is certainly right in saying that the production of bare life is, and has been since Aristotle, a main strategy of the sovereign power to establish itself – to the same degree that sovereignty has been the main fiction of juridico‐institutional thinking from Jean Bodin to Carl Schmitt. The sovereign power is, indeed, based on bare life because it is capable of confronting life merely when stripped off and isolated from all forms of life, when the entire existence of a man is reduced to a bare life and exposed to an unconditional threat of death. Life is undoubtedly sacred for the sovereign power in the sense that Agamben defines it. It can be taken away without a homicide being committed. In the case of bio‐power, however, this does not hold true. In order to function properly, biopower cannot reduce life to the level of bare life, because bare life is life that can only be taken away or allowed to persist – which also makes understandable the vast critique of sovereignty in the era of biopower. Biopower needs a notion of life that corresponds to its aims. What then is the aim of biopower? Its aim is not to produce bare life but, as Foucault emphasizes, to “multiply life”,to produce “extra life.” Biopower needs, in other words, a notion of life which enables it to accomplish this task. The modern synthetic notion of life endows it with such a notion. It enables bio power to “invest life through and through”, to “optimize forces, aptitudes, and life in general without at the same time making them more difficult to govern.” It could be argued, of course, that instead of bare life (zoe) the form of life (bios) functions as the foundation of biopower. However, there is no room either for a bios in the modern biopolitical order because every bios has always been, as Agamben emphasizes, the result of the exclusion of zoe from the political realm. The modern biopolitical order does not exclude anything – not even in the form of “inclusive exclusion”. As a matter of fact, in the era of bio‐politics, life is already a bios that is only its own zoe. It has already moved into the site that Agamben suggests as the remedy of the political pathologies of modernity, that is to say, into the site where politics is freed from every ban and “a form of life is wholly exhausted in bare life.”At the end of Homo Sacer, Agamben gives this life the name “form of life”, signifying “always and above all possibilities of life, always and above all power”, understood as potentiality (potenza).49 According to Agamben, there would be no power that could have any hold over men’s existence if life were understood as a “form‐of‐life”. However, it is precisely this life, life as untamed power and potentiality, that bio‐power invests and optimizes. If bio‐power multiplies and optimizes life, it does so, above all, by multiplying and optimizing potentialities of life, by fostering and generating “forms of life”.

# 1ar

## Pltx

### Won’t pass. No vote until November. Budget thumps the DA.

Burgess **Everett 9/15** (Politico) “Tough Hill vote on Syria fades” < http://www.politico.com/story/2013/09/congress-syria-vote-96806.html>

Congress can breathe a sigh of relief: Lawmakers won’t have to take a tough vote on authorizing the use of military force in Syria anytime soon. The preliminary agreement between the United States and Russia on turning over Syria’s chemical weapons by mid-2014 sets a deadline of November of this year for international inspectors to enter the Middle Eastern country. The delay will allow Capitol Hill to pivot from an unpopular decision on military strikes — which many members in both parties opposed — to instead confront a pair of looming fiscal crises, funding the government and raising the debt ceiling. It now seems the fall, as originally expected, will be dominated by economic fights that pit the Republican House against the Democratic Senate. When we’re working Syria, we’re not working on something else,” Sen. Ben Cardin (D-Md.) told POLITICO late Thursday. The pressure of a high-stakes vote had intensified as it became increasingly clear that President Barack Obama would lose in the House and faced an uphill battle in the Senate. The possibility of a diplomatic solution emerged after Kerry made what appeared to be an off-hand comment in Europe last week — suggesting Syria could avoid military strikes if the regime of Syrian President Bashar Assad turned over its stockpiles of chemical weapons to the international community.

### Means-limitation doesn’t link to politics—the SPIN is key

Geltzer 11 (Boalt Hall School of Law, University of California, Berkeley 2011 Berkeley Journal of International Law 29 Berkeley J. Int'l L. 94 Decisions Detained: The Courts' Embrace of Complexity in Guantanamo-Related Litigation NAME: Joshua Alexander Geltzer a third-year student at Yale Law School, where he is editor-in-chief of the Yale Law Journal. He received his Ph.D. in War Studies from King's College London. His dissertation was published by Routledge as US Counter-Terrorism Strategy and al-Qaeda: Signalling and the Terrorist World-View. Lexis)

Avoiding Political Questions As previously mentioned, American courts have shown a willingness to scrutinize and even alter the political branches' conduct of the war against terrorism that is unusual for the judiciary during war-time. Becoming involved to such an extent treads contested ground. In few arenas has the notion of non-justiciable political questions been pressed as vigorously as in the national security arena, in which a vision of "unchecked executive discretion has claimed virtually the entire field of foreign affairs as falling under the president's inherent authority." 97 While acceptance of this vision has waxed and waned throughout American history, it emerges most strongly during war-time, and is often attributed to the Supreme Court's 1936 decision in United States v. Curtiss-Wright Export Corp. 98 The dissenting opinions in the major cases bearing on post-9/11 detention consistently have complained that the Court has overstepped its bounds by venturing into political questions. 99 In Rasul, Justice Scalia's dissent charged that the Court's decision would force "the courts to oversee one aspect of the Executive's conduct of a foreign war" and would bring "the cumbersome machinery of our domestic courts into military affairs." 100 In Hamdi, Justice Thomas' dissent insisted that "this Court has long ... held that the President has constitutional authority to protect the national security and that this authority carries with it broad discretion," adding that "judicial interference in these domains destroys the purpose of vesting primary responsibility in a unitary Executive" and avowing that "we lack the information and expertise to question whether Hamdi is actually an enemy combatant, a question the resolution of [\*114] which is committed to other branches." 101 In like vein, Justice Thomas' dissent in Hamdan complained that the Court's opinion "openly flouts our well-established duty to respect the Executive's judgment in matters of military operations and foreign affairs," arguing that the Court's "evident belief that it is qualified to pass on the "military necessity' of the Commander in Chief's decision to employ a particular form of force against our enemies is so antithetical to our constitutional structure that it simply cannot go unanswered." 102 Already, the Court was straying far enough into the contested borderland between the judiciary and the political branches to make its decisions deeply divided, at times forcing a plurality to speak for the Court. However, the complexity of the war's limiting factor being questioned by the Court - the war's means - masked the extent to which the judiciary really was contesting the political branches' war-making authority. In asserting jurisdiction, as in Rasul, or in demanding procedural protections for American citizens detained on American soil, as in Hamdi, or in rejecting the proposed procedures and charges for a military commission, as in Hamdan, the Court plausibly could claim merely to be delineating the scope of the law, rather than circumscribing the scope of the war. After all, it is the judiciary's job to uphold the law, while it is the political branches' responsibility to wage war. 103 In turn, the Court was able to portray itself as modestly ensuring that the law played some role in situations where judges and justices seemed to belong: the extent to which that role enmeshed the judiciary in the prosecution of the war against terrorism was at least partially obscured amidst the complexity that defines the means of war-making, a complexity that is heightened when those means involve detentions and military commissions on or near American soil.

## K

#### Discursive focus on the state doesn’t legitimize it and is tactically necessary

Frost 1996 (Mervyn Frost, Professor at the University of Kent, “Ethics In International Relations A Constitutive Theory,” pp. 90-91)

A first objection which seems inherent in Donelan's approach is that utilizing the modern state domain of discourse in effect sanctifies the state: it assumes that people will always live in states and that it is not possible within such a language to consider alternatives to the system. This objection is not well founded. By having recourse to the ordinary language of international relations I am not thereby committed to argue that the state system as it exists is the best mode of human political organization or that people ought always to live in states as we know them. As I have said, my argument is that whatever proposals for piecemeal or large-scale reform of the state system are made, they must of necessity be made in the language of the modern state. Whatever proposals are made, whether in justification or in criticism of the state system, will have to make use of concepts which are at present part and parcel of the theory of states. Thus, for example, any proposal for a new global institutional arrangement superseding the state system will itself have to be justified, and that justification will have to include within it reference to a new and good form of individual citizenship, reference to a new legislative machinery equipped with satisfactory checks and balances, reference to satisfactory law enforcement procedures, reference to a satisfactory arrangement for distributing the goods produced in the world, and so on. All of these notions are notions which have been developed and finely honed within the theory of the modern state. It is not possible to imagine a justification of a new world order succeeding which used, for example, feudal, or traditional/tribal, discourse. More generally there is no worldwide language of political morality which is not completely shot through with state-related notions such as citizenship, rights under law, representative government and so on.