# 1AC

### 1AC – Legitimacy Advantage

#### CONTENTION 1: LEGITIMACY

#### US credibility is collapsing due to detention policy---plan reverses that

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 United States 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 United States, 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.

#### Court oversight is the way forward in detention policy---it’s the only way to restore America’s image abroad

Glenn Sulmasy 9, Associate Professor of Law at the United States Coast Guard Academy and was a National Security and Human Rights Fellow at the Carr Center, Harvard Kennedy School, April 13, “THE NEED FOR A NATIONAL SECURITY COURT SYSTEM”, PDF

THE WAY FORWARD¶ The President, Secretary Gates and Secretary Rice have all declared that Guantanamo must close.16 Virtually 80% of the members of Congress have also declared that Guantanamo must close. Both major presidential candidates have called for its closure.17 The problem we face, however, is what to do once we close the facility. It is easy now in hindsight to be critical of the decision initially made by the administration and the way that things are currently being handled, but America’s next true challenge is to devise a way in which to deal with these terror suspects that will garner respect and admiration both domestically and abroad. Similar to changes in military strategy to win the war in Iraq and the war against al Qaeda, where the recognition was made that this new type of conflict required new tactics, the legal approach to handling terror suspects must change as well.¶ The solution is best seen through the lens of an evolutionary process, developing over time from the period of the Revolution, through the Civil War, through the First and Second World Wars and now into the realities we face in 21st century warfare. The Order of November 13, 2001, with all it warts and hairs, was undertaken with good intentions, but was later struck down by the Supreme Court. Recognizing the importance of trying these individuals, the President went to Congress for assistance, and subsequently Congress passed the Military Commissions Act of 2006,18 with warts and hairs of its own, but again making progress. A National Security Court System seems to be the next logical step in the natural progression of this “maturity” of justice. As we are fighting hybrid warriors, in a hybrid war—a mix of law enforcement and combat—a hybrid court should be created to adjudicate the alleged war crimes committed by these hybrid warriors.¶ Obviously, the key is to balance the needs of national security and to achieve our simultaneous goal of promoting human rights. Attaining that delicate balance is certainly critical. The success of this proposed new court system will depend upon its acceptance by Congressional and administration leaders who truly want to strike a balance between security and the rule of law. Clearly, the devil will be in the details in creating such a court through statutes.¶ The political branches have tough decisions to make in the next Congress and Presidency when it comes time for the actual closing of Guantanamo and the inevitable transfer of detainees. The most practical way of detaining and adjudicating these cases is to locate the National Security Court system on a number of military bases across the country. Detention and physical security issues would still exist, but these bases would be better suited to handle these situations than courts in downtown districts in major cities within Congressional districts.¶ While the detention and trial of these suspects would take place on American military bases, the key distinction from the existing military commissions system is that military oversight of the process would be transferred to civilian control. The Department of Justice would replace the Department of Defense in this new system, and specialized Article III judges would try the cases. The Justice Department would develop a pool of litigators out of their national security division branch to prosecute the suspects. Current military JAGs would defend the suspects with funding provided by outside sources. Having the civilian Department of Justice oversee the national security court is crucial to the success of the system and would help restore America’s image abroad. The new proposed system would also remove the tainted impression that the rest of the world receives by watching U.S. military officers in a U.S. military courtroom adjudicate cases against quasi-warriors.¶ In this new system, the President would appoint the system’s judges with the advice and consent of the Senate. The judges would be life tenured Article III judges, selected for possessing specialized knowledge of the substantive law surrounding issues of terrorism and a high level of practical experience.¶ Most importantly, the new system needs to be created as an adjudicatory system rather than part of a preventative detention scheme. Others, including my friend Ben Wittes, have argued in favor of using a national security court for detention and preventative detention schemes. I oppose this completely because using a national security court in this way would only transport the familiar problems from Gitmo into the United States. Trying the detainees in a properly constructed National Security Court, within a reasonable time frame, is the best means for the U.S. to regain some moral authority in world affairs. The United States must be active in ensuring that the cases go forward. The only way that the United States is going to gain credibility within the international legal community is to demonstrate that it is dedicated to the administration of justice and to upholding the rule of law.

#### The plan’s external oversight on detention maintains heg---legitimacy is the vital internal link to global stability

Robert Knowles 9, Acting Assistant Professor, New York University School of Law, Spring, “Article: American Hegemony and the Foreign Affairs Constitution”, 41 Ariz. St. L.J. 87, 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.¶ The Supreme Court's response to the detainee policy enabled the U.S. government as a whole to hew more closely to established procedures and norms, and to regularize the process for departing from them. After Hamdi, n432 the Department of Defense established a process, the CSRTs, for making an individual determination about the enemy combatant status of all detainees at Guantanamo. After the Court recognized habeas jurisdiction at Guantanamo, Congress passed the DTA, n433 establishing direct judicial review of CSRT determinations in lieu of habeas. Similarly, after the Court declared the military commissions unlawful in Hamdan, n434 this forced the Administration to seek congressional approval for commissions that restored some of the rights afforded at courts martial. n435 In Boumediene, the Court rejected the executive branch's foreign policy arguments, and bucked Congress as well, to restore the norm of habeas review. n436¶ Throughout this enemy combatant litigation, it has been the courts' relative insulation from politics that has enabled them to take the long view. In contrast, the President's (and Congress's) responsiveness to political concerns in the wake of 9/11 has encouraged them to depart from established norms for the nation's perceived short-term advantage, even at the expense of the nation's long-term interests. n437 As Derek Jinks and Neal Katyal have observed, "treaties are part of [a] system of time-tested standards, and this feature makes the wisdom of their judicial interpretation manifest." n438¶ At the same time, the enemy combatant cases make allowances for the executive branch's superior speed. The care that the Court took to limit the issues it decided in each case gave the executive branch plenty of time to [\*157] arrive at an effective detainee policy. n439 Hamdi, Rasul, and Boumediene recognized that the availability of habeas would depend on the distance from the battlefield and the length of detention. n440¶ 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. n441 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." n442 As Justice Kennedy's majority opinion observed in Boumediene, courts can bestow external legitimacy on the acts of the political branches. n443 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." n444 The restoration of habeas corpus in Boumediene may help begin to counteract this loss of prestige.¶ Finally, the enemy combatant cases are striking in that they embrace a role for representation-reinforcement in the international realm. n445 Although defenders of special deference acknowledge that courts' strengths lie in protecting the rights of minorities, it has been very difficult for courts to protect these rights in the face of exigencies asserted by the executive branch in foreign affairs matters. This is especially difficult when the minorities are alleged enemy aliens being held outside the sovereign territory of the United States in wartime. In the infamous Korematsu decision, another World War II-era case, the Court bowed to the President's factual assessment of the emergency justifying detention of U.S. citizens of Japanese ancestry living in the United States. n446 In Boumediene, the Court [\*158] pointedly declined to defer to the executive branch's factual assessments of military necessity. n447 The court may have recognized that a more aggressive role in protecting the rights of non-citizens was required by American hegemony. In fact, the arguments for deference with respect to the rights of non-citizens are even weaker because aliens lack a political constituency in the United States. n448 This outward-looking form of representation-reinforcement serves important functions. It strengthens the legitimacy of U.S. hegemony by establishing equality as a benchmark and reinforces the sense that our constitutional values reflect universal human rights. n449¶ Conclusion¶ When it comes to the constitutional regime of foreign affairs, geopolitics has always mattered. Understandings about America's role in the world have shaped foreign affairs doctrines. But the classic realist assumptions that support special deference do not reflect the world as it is today. A better, more realist, approach looks to the ways that the courts can reinforce and legitimize America's leadership role. The Supreme Court's rejection of the government's claimed exigencies in the enemy combatant cases strongly indicates that the Judiciary is becoming reconciled to the current world order and is asserting its prerogatives in response to the fewer constraints imposed on the executive branch. In other words, the courts are moving toward the hegemonic model. In the great dismal swamp that is the judicial treatment of foreign affairs, this transformation offers hope for clarity: the positive reality of the international system, despite terrorism and other serious challenges, permits the courts to reduce the "deference gap" between foreign and domestic cases.

#### Nuclear war

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

#### Material power’s irrelevant---lack of legitimacy makes heg ineffective

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Going against common conceptions, I argue that the United States sought to advance more than what it viewed as simply its own interest. The United States stands behind multiple collaborative enterprises and should be credited for that. Nevertheless, sometimes it has overreached, sought to gain special rights other states do not have, or presented strategies that were not compatible with the general design of the war on terrorism, to which most states subscribed. When it went too far, the United States found that, while secondary powers could not stop it from taking action, they could deny it legitimacy and make the achievement of its objectives unattainable. Thus, despite the common narrative, U.S. power was successfully checked, and the United States found the limitations of its power, even under the Bush administration. Defining Hegemony Let me begin with my conception of hegemony. While the definition of hegemony is based on its material aspects—the preponderance of power—hegemony should be understood as a part of a social web comprised of states. A hegemon relates to the other states in the system not merely through the prism of power balances, but through shared norms and a system of rules providing an umbrella for interstate relations. Although interstate conflict is ubiquitous in international society and the pursuit of particularistic interests is common, the international society provides a normative framework that restricts and moderates the hegemon's actions. This normative framework accounts for the hegemon's inclination toward orderly and peaceful interstate relations and minimizes its reliance on power. A hegemon’s role in the international community relies on legitimacy. Legitimacy is associated with external recognition of the hegemon’s right of primacy, not just the fact of this primacy. States recognize the hegemon’s power, but they develop expectations that go beyond the idea that the hegemon will act as it wishes because it has the capabilities to do so. Instead, the primacy of the hegemon is manifested in the belief that, while it has special rights that other members of the international society lack, it also has a set of duties to the members of the international society. As long as the hegemon realizes its commitment to the collective, its position will be deemed legitimate. International cooperation is hard to achieve. And, in general, international relations is not a story of harmony. A state’s first inclination is to think about its own interests, and states always prefer doing less over doing more. The inclination to pass the buck or to free ride on the efforts of others is always in the background. If a hegemon is willing to lead in pursuit of collective interests and to shoulder most of the burden, it can improve the prospects of international cooperation. However, even when there is a hegemon willing to lead a collective action and when states accept that action is needed, obstacles may still arise. These difficulties can be attributed to various factors, but especially prominent is the disagreement over the particular strategy that the hegemon promotes in pursuing the general interest. When states think that the strategy and policies offered by the hegemon are not compatible with the accepted rules of “rightful conduct” and break established norms, many will disapprove and resist. Indeed, while acceptance of a hegemon’s leadership in international society may result in broad willingness to cooperate with the hegemon in pursuit of shared interests it does not guarantee immediate and unconditional compliance with all the policies the hegemon articulates. While its legitimacy does transfer to its actions and grants some leeway, that legitimacy does not justify every policy the hegemon pursues—particularly those policies that are not seen as naturally deriving from the existing order. As a result, specific policies must be legitimated before cooperation takes place. This process constrains the hegemon’s actions and prevents the uninhibited exercise of power.

#### Independently, absent renewal of rule of law principles, multilateral cooperation to solve warming and disease is impossible

John G. Ikenberry 11, Albert G. Milbank Professor of Politics and International Affairs at Princeton, Spring, “A World of Our Making”, http://www.democracyjournal.org/20/a-world-of-our-making.php?page=all

Grand Strategy as Liberal Order Building American dominance of the global system will eventually yield to the rise of other powerful states. The unipolar moment will pass. In facing this circumstance, American grand strategy should be informed by answers to this question: What sort of international order would we like to see in place in 2020 or 2030 when America is less powerful? Grand strategy is a set of coordinated and sustained policies designed to address the long-term threats and opportunities that lie beyond the country’s shores. Given the great shifts in the global system and the crisis of liberal hegemonic order, how should the United States pursue grand strategy in the coming years? The answer is that the United States should work with others to rebuild and renew the institutional foundations of the liberal international order and along the way re-establish its own authority as a global leader. The United States is going to need to invest in alliances, partnerships, multilateral institutions, special relationships, great-power concerts, cooperative security pacts, and democratic security communities. That is, the United States will need to return to the great tasks of liberal order building. It is useful to distinguish between two types of grand strategy: positional and milieu oriented. With a positional grand strategy, a great power seeks to diminish the power or threat embodied in a specific challenger state or group of states. Examples are Nazi Germany, Imperial Japan, the Soviet bloc, and perhaps—in the future—Greater China. With a milieu-oriented grand strategy, a great power does not target a specific state but seeks to structure its general international environment in ways that are congenial with its long-term security. This might entail building the infrastructure of international cooperation, promoting trade and democracy in various regions of the world, and establishing partnerships that might be useful for various contingencies. My point is that under conditions of unipolarity, in a world of diffuse threats, and with pervasive uncertainty over what the specific security challenges will be in the future, this milieu-based approach to grand strategy is necessary. The United States does not face the sort of singular geopolitical threat that it did with the fascist and communist powers of the last century. Indeed, compared with the dark days of the 1930s or the Cold War, America lives in an extraordinarily benign security environment. Rather than a single overriding threat, the United States and other countries face a host of diffuse and evolving threats. Global warming, nuclear proliferation, jihadist terrorism, energy security, health pandemics—these and other dangers loom on the horizon. Any of these threats could endanger Americans’ lives and way of life either directly or indirectly by destabilizing the global system upon which American security and prosperity depends. What is more, these threats are interconnected—and it is their interactive effects that represent the most acute danger. And if several of these threats materialize at the same time and interact to generate greater violence and instability, then the global order itself, as well as the foundations of American national security, would be put at risk. What unites these threats and challenges is that they are all manifestations of rising security interdependence. More and more of what goes on in other countries matters for the health and safety of the United States and the rest of the world. Many of the new dangers—such as health pandemics and transnational terrorist violence—stem from the weakness of states rather than their strength. At the same time, technologies of violence are evolving, providing opportunities for weak states or nonstate groups to threaten others at a greater distance. When states are in a situation of security interdependence, they cannot go it alone. They must negotiate and cooperate with other states and seek mutual restraints and protections. The United States can-not hide or protect itself from threats under conditions of rising security interdependence. It must get out in the world and work with other states to build frameworks of cooperation and leverage capacities for action against this unusually diverse, diffuse, and unpredictable array of threats and challenges. This is why a milieu-based grand strategy is attractive. The objective is to shape the international environment to maximize your capacities to protect the nation from threats. To engage in liberal order building is to invest in international cooperative frameworks—that is, rules, institutions, partnerships, networks, standby capacities, social knowledge, etc.—in which the United States operates. To build international order is to increase the global stock of “social capital”—which is the term Pierre Bourdieu, Robert Putnam, and other social scientists have used to define the actual and potential resources and capacities within a political community, manifest in and through its networks of social relations, that are available for solving collective problems. If American grand strategy is to be organized around liberal order building, what are the specific objectives and what is the policy agenda? There are five such objectives. First, the United States needs to lead in the building of an enhanced protective infrastructure that helps prevent the emergence of threats and limits the damage if they do materialize. Many of the threats mentioned above are manifest as socioeconomic backwardness and failure that cause regional and international instability and conflict. These are the sorts of threats that are likely to arise with the coming of global warming and epidemic disease. What is needed here is institutional cooperation to strengthen the capacity of governments and the international com-munity to prevent epidemics or food shortages or mass migrations that create global upheaval—and mitigate the effects of these upheavals if they occur. The international system already has a great deal of this protective infrastructure—institutions and networks that pro-mote cooperation over public health, refugees, and emergency aid. But as the scale and scope of potential problems grow in the twenty-first century, investments in these preventive and management capacities will also need to grow. Early warning systems, protocols for emergency operations, standby capacities, etc.—these safeguards are the stuff of a protective global infrastructure. Second, the United States should recommit to and rebuild its security alliances. The idea is to update the old bargains that lie behind these security pacts. In NATO, but also in the East Asia bilateral partner-ships, the United States agrees to provide security protection to the other states and brings its partners into the process of decision-making over the use of force. In return, these partners agree to work with the United States—providing manpower, logistics, and other types of support—in wider theaters of action. The United States gives up some autonomy in strategic decision-making, although it is more an informal restraint than a legally binding one, and in exchange it gets cooperation and political support. Third, the United States should reform and create encompassing global institutions that foster and legitimate collective action. The first move here should be to reform the United Nations, starting with the expansion of the permanent membership on the Security Council. Several plans have been proposed. All of them entail adding new members—such as Germany, Japan, India, Brazil, South Africa, and others—and reforming the voting procedures. Almost all of the candidates for permanent membership are mature or rising democracies. The goal, of course, is to make them stakeholders in the United Nations and thereby strengthen the primacy of the UN as a vehicle for global collective action. There really is no substitute for the legitimacy that the United Nations can offer to emergency actions—humanitarian interventions, economic sanctions, uses of force against terrorists, and so forth. Public support in advanced democracies grows rapidly when their governments can stand behind a UN-sanctioned action. Fourth, the United States should accommodate and institution-ally engage China. China will most likely be a dominant state, and the United States will need to yield to it in various ways. The United States should respond to the rise of China by strengthening the rules and institutions of the liberal international order—deepening their roots, integrating rising capitalist democracies, sharing authority and functional roles. The United States should also intensify cooperation with Europe and renew joint commitments to alliances and multilateral global governance. The more that China faces not just the United States but the entire world of capitalist democracies, the better. This is not to argue that China must face a grand counterbalancing alliance against it. Rather, it should face a complex and highly integrated global system—one that is so encompassing and deeply entrenched that it essentially has no choice but to join it and seek to prosper within it. The United States should also be seeking to construct a regional security order in East Asia that can provide a framework for managing the coming shifts. The idea is not to block China’s entry into the regional order but to help shape its terms, looking for opportunities to strike strategic bargains at various moments along the shifting power trajectories and encroaching geopolitical spheres. The big bargain that the United States will want to strike is this: to accommodate a rising China by offering it status and position within the regional order in return for Beijing’s acceptance and accommodation of Washington’s core strategic interests, which include remaining a dominant security provider within East Asia. In striking this strategic bargain, the United States will also want to try to build multilateral institutional arrangements in East Asia that will tie China to the wider region. Fifth, the United States should reclaim a liberal internationalist public philosophy. When American officials after World War II championed the building of a rule-based postwar order, they articulated a distinctive internationalist vision of order that has faded in recent decades. It was a vision that entailed a synthesis of liberal and realist ideas about economic and national security, and the sources of stable and peaceful order. These ideas—drawn from the experiences with the New Deal and the previous decades of war and depression—led American leaders to associate the national interest with the building of a managed and institutionalized global system. What is needed today is a renewed public philosophy of liberal internationalism—a shift away from neoliberal-ism—that can inform American elites as they make trade-offs between sovereignty and institutional cooperation. Under this philosophy, the restraint and the commitment of American power went hand in hand. Global rules and institutions advanced America’s national interest rather than threatened it. The alternative public philosophies that have circulated in recent years—philosophies that champion American unilateralism and disentanglement from global rules and institutions—did not meet with great success. So an opening exists for America’s postwar vision of internationalism to be updated and rearticulated today. The United States should embrace the tenets of this liberal public philosophy: Lead with rules rather than dominate with power; provide public goods and connect their provision to cooperative and accommodative policies of others; build and renew international rules and institutions that work to reinforce the capacities of states to govern and achieve security and economic success; keep the other liberal democracies close; and let the global system itself do the deep work of liberal modernization. As it navigates this brave new world, the United States will find itself needing to share power and rely in part on others to ensure its security. It will not be able to depend on unipolar power or airtight borders. It will need, above all else, authority and respect as a global leader. The United States has lost some of that authority and respect in recent years. In committing itself to a grand strategy of liberal order building, it can begin the process of gaining it back.

#### Warming causes extinction

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In the Online Journal of Space Communication , Dr. Feng Hsu, a  NASA scientist at Goddard Space Flight Center, a research center in the forefront of science of space and Earth, writes, “The evidence of global warming is alarming,” noting the potential for a catastrophic planetary climate change is real and troubling (Hsu 2010 ) . Hsu and his NASA colleagues were engaged in monitoring and analyzing climate changes on a global scale, through which they received first-hand scientific information and data relating to global warming issues, including the dynamics of polar ice cap melting. After discussing this research with colleagues who were world experts on the subject, he wrote: I now have no doubt global temperatures are rising, and that global warming is a serious problem confronting all of humanity. No matter whether these trends are due to human interference or to the cosmic cycling of our solar system, there are two basic facts that are crystal clear: (a) there is overwhelming scientific evidence showing positive correlations between the level of CO2 concentrations in Earth’s atmosphere with respect to the historical fluctuations of global temperature changes; and (b) the overwhelming majority of the world’s scientific community is in agreement about the risks of a potential catastrophic global climate change. That is, if we humans continue to ignore this problem and do nothing, if we continue dumping huge quantities of greenhouse gases into Earth’s biosphere, humanity will be at dire risk (Hsu 2010 ) . As a technology risk assessment expert, Hsu says he can show with some confidence that the planet will face more risk doing nothing to curb its fossil-based energy addictions than it will in making a fundamental shift in its energy supply. “This,” he writes, “is because the risks of a catastrophic anthropogenic climate change can be potentially the extinction of human species, a risk that is simply too high for us to take any chances” (Hsu 2010 ).

#### Diseases end civilization

David Quammen 12, award-winning science writer, long-time columnist for Outside magazine for fifteen years, with work in National Geographic, Harper's, Rolling Stone, the New York Times Book Review and other periodicals, 9/29, “Could the next big animal-to-human disease wipe us out?,” The Guardian, pg. 29, Lexis

Infectious disease is all around us. It's one of the basic processes that ecologists study, along with predation and competition. Predators are big beasts that eat their prey from outside. Pathogens (disease-causing agents, such as viruses) are small beasts that eat their prey from within. Although infectious disease can seem grisly and dreadful, under ordinary conditions, it's every bit as natural as what lions do to wildebeests and zebras. But conditions aren't always ordinary. Just as predators have their accustomed prey, so do pathogens. And just as a lion might occasionally depart from its normal behaviour - to kill a cow instead of a wildebeest, or a human instead of a zebra - so a pathogen can shift to a new target. Aberrations occur. When a pathogen leaps from an animal into a person, and succeeds in establishing itself as an infectious presence, sometimes causing illness or death, the result is a zoonosis. It's a mildly technical term, zoonosis, unfamiliar to most people, but it helps clarify the biological complexities behind the ominous headlines about swine flu, bird flu, Sars, emerging diseases in general, and the threat of a global pandemic. It's a word of the future, destined for heavy use in the 21st century. Ebola and Marburg are zoonoses. So is bubonic plague. So was the so-called Spanish influenza of 1918-1919, which had its source in a wild aquatic bird and emerged to kill as many as 50 million people. All of the human influenzas are zoonoses. As are monkeypox, bovine tuberculosis, Lyme disease, West Nile fever, rabies and a strange new affliction called Nipah encephalitis, which has killed pigs and pig farmers in Malaysia. Each of these zoonoses reflects the action of a pathogen that can "spillover", crossing into people from other animals. Aids is a disease of zoonotic origin caused by a virus that, having reached humans through a few accidental events in western and central Africa, now passes human-to-human. This form of interspecies leap is not rare; about 60% of all human infectious diseases currently known either cross routinely or have recently crossed between other animals and us. Some of those - notably rabies - are familiar, widespread and still horrendously lethal, killing humans by the thousands despite centuries of efforts at coping with their effects. Others are new and inexplicably sporadic, claiming a few victims or a few hundred, and then disappearing for years. Zoonotic pathogens can hide. The least conspicuous strategy is to lurk within what's called a reservoir host: a living organism that carries the pathogen while suffering little or no illness. When a disease seems to disappear between outbreaks, it's often still lingering nearby, within some reservoir host. A rodent? A bird? A butterfly? A bat? To reside undetected is probably easiest wherever biological diversity is high and the ecosystem is relatively undisturbed. The converse is also true: ecological disturbance causes diseases to emerge. Shake a tree and things fall out. Michelle Barnes is an energetic, late 40s-ish woman, an avid rock climber and cyclist. Her auburn hair, she told me cheerily, came from a bottle. It approximates the original colour, but the original is gone. In 2008, her hair started falling out; the rest went grey "pretty much overnight". This was among the lesser effects of a mystery illness that had nearly killed her during January that year, just after she'd returned from Uganda. Her story paralleled the one Jaap Taal had told me about Astrid, with several key differences - the main one being that Michelle Barnes was still alive. Michelle and her husband, Rick Taylor, had wanted to see mountain gorillas, too. Their guide had taken them through Maramagambo Forest and into Python Cave. They, too, had to clamber across those slippery boulders. As a rock climber, Barnes said, she tends to be very conscious of where she places her hands. No, she didn't touch any guano. No, she was not bumped by a bat. By late afternoon they were back, watching the sunset. It was Christmas evening 2007. They arrived home on New Year's Day. On 4 January, Barnes woke up feeling as if someone had driven a needle into her skull. She was achy all over, feverish. "And then, as the day went on, I started developing a rash across my stomach." The rash spread. "Over the next 48 hours, I just went down really fast." By the time Barnes turned up at a hospital in suburban Denver, she was dehydrated; her white blood count was imperceptible; her kidneys and liver had begun shutting down. An infectious disease specialist, Dr Norman K Fujita, arranged for her to be tested for a range of infections that might be contracted in Africa. All came back negative, including the test for Marburg. Gradually her body regained strength and her organs began to recover. After 12 days, she left hospital, still weak and anaemic, still undiagnosed. In March she saw Fujita on a follow-up visit and he had her serum tested again for Marburg. Again, negative. Three more months passed, and Barnes, now grey-haired, lacking her old energy, suffering abdominal pain, unable to focus, got an email from a journalist she and Taylor had met on the Uganda trip, who had just seen a news article. In the Netherlands, a woman had died of Marburg after a Ugandan holiday during which she had visited a cave full of bats. Barnes spent the next 24 hours Googling every article on the case she could find. Early the following Monday morning, she was back at Dr Fujita's door. He agreed to test her a third time for Marburg. This time a lab technician crosschecked the third sample, and then the first sample. The new results went to Fujita, who called Barnes: "You're now an honorary infectious disease doctor. You've self-diagnosed, and the Marburg test came back positive." The Marburg virus had reappeared in Uganda in 2007. It was a small outbreak, affecting four miners, one of whom died, working at a site called Kitaka Cave. But Joosten's death, and Barnes's diagnosis, implied a change in the potential scope of the situation. That local Ugandans were dying of Marburg was a severe concern - sufficient to bring a response team of scientists in haste. But if tourists, too, were involved, tripping in and out of some python-infested Marburg repository, unprotected, and then boarding their return flights to other continents, the place was not just a peril for Ugandan miners and their families. It was also an international threat. The first team of scientists had collected about 800 bats from Kitaka Cave for dissecting and sampling, and marked and released more than 1,000, using beaded collars coded with a number. That team, including scientist Brian Amman, had found live Marburg virus in five bats. Entering Python Cave after Joosten's death, another team of scientists, again including Amman, came across one of the beaded collars they had placed on captured bats three months earlier and 30 miles away. "It confirmed my suspicions that these bats are moving," Amman said - and moving not only through the forest but from one roosting site to another. Travel of individual bats between far-flung roosts implied circumstances whereby Marburg virus might ultimately be transmitted all across Africa, from one bat encampment to another. It voided the comforting assumption that this virus is strictly localised. And it highlighted the complementary question: why don't outbreaks of Marburg virus disease happen more often? Marburg is only one instance to which that question applies. Why not more Ebola? Why not more Sars? In the case of Sars, the scenario could have been very much worse. Apart from the 2003 outbreak and the aftershock cases in early 2004, it hasn't recurred. . . so far. Eight thousand cases are relatively few for such an explosive infection; 774 people died, not 7 million. Several factors contributed to limiting the scope and impact of the outbreak, of which humanity's good luck was only one. Another was the speed and excellence of the laboratory diagnostics - finding the virus and identifying it. Still another was the brisk efficiency with which cases were isolated, contacts were traced and quarantine measures were instituted, first in southern China, then in Hong Kong, Singapore, Hanoi and Toronto. If the virus had arrived in a different sort of big city - more loosely governed, full of poor people, lacking first-rate medical institutions - it might have burned through a much larger segment of humanity. One further factor, possibly the most crucial, was inherent in the way Sars affects the human body: symptoms tend to appear in a person before, rather than after, that person becomes highly infectious. That allowed many Sars cases to be recognised, hospitalised and placed in isolation before they hit their peak of infectivity. With influenza and many other diseases, the order is reversed. That probably helped account for the scale of worldwide misery and death during the 1918-1919 influenza. And that infamous global pandemic occurred in the era before globalisation. Everything nowadays moves around the planet faster, including viruses. When the Next Big One comes, it will likely conform to the same perverse pattern as the 1918 influenza: high infectivity preceding notable symptoms. That will help it move through cities and airports like an angel of death. The Next Big One is a subject that disease scientists around the world often address. The most recent big one is Aids, of which the eventual total bigness cannot even be predicted - about 30 million deaths, 34 million living people infected, and with no end in sight. Fortunately, not every virus goes airborne from one host to another. If HIV-1 could, you and I might already be dead. If the rabies virus could, it would be the most horrific pathogen on the planet. The influenzas are well adapted for airborne transmission, which is why a new strain can circle the world within days. The Sars virus travels this route, too, or anyway by the respiratory droplets of sneezes and coughs - hanging in the air of a hotel corridor, moving through the cabin of an aeroplane - and that capacity, combined with its case fatality rate of almost 10%, is what made it so scary in 2003 to the people who understood it best. Human-to-human transmission is the crux. That capacity is what separates a bizarre, awful, localised, intermittent and mysterious disease (such as Ebola) from a global pandemic. Have you noticed the persistent, low-level buzz about avian influenza, the strain known as H5N1, among disease experts over the past 15 years? That's because avian flu worries them deeply, though it hasn't caused many human fatalities. Swine flu comes and goes periodically in the human population (as it came and went during 2009), sometimes causing a bad pandemic and sometimes (as in 2009) not so bad as expected; but avian flu resides in a different category of menacing possibility. It worries the flu scientists because they know that H5N1 influenza is extremely virulent in people, with a high lethality. As yet, there have been a relatively low number of cases, and it is poorly transmissible, so far, from human to human. It'll kill you if you catch it, very likely, but you're unlikely to catch it except by butchering an infected chicken. But if H5N1 mutates or reassembles itself in just the right way, if it adapts for human-to-human transmission, it could become the biggest and fastest killer disease since 1918. It got to Egypt in 2006 and has been especially problematic for that country. As of August 2011, there were 151 confirmed cases, of which 52 were fatal. That represents more than a quarter of all the world's known human cases of bird flu since H5N1 emerged in 1997. But here's a critical fact: those unfortunate Egyptian patients all seem to have acquired the virus directly from birds. This indicates that the virus hasn't yet found an efficient way to pass from one person to another. Two aspects of the situation are dangerous, according to biologist Robert Webster. The first is that Egypt, given its recent political upheavals, may be unable to staunch an outbreak of transmissible avian flu, if one occurs. His second concern is shared by influenza researchers and public health officials around the globe: with all that mutating, with all that contact between people and their infected birds, the virus could hit upon a genetic configuration making it highly transmissible among people. "As long as H5N1 is out there in the world," Webster told me, "there is the possibility of disaster. . . There is the theoretical possibility that it can acquire the ability to transmit human-to-human." He paused. "And then God help us." We're unique in the history of mammals. No other primate has ever weighed upon the planet to anything like the degree we do. In ecological terms, we are almost paradoxical: large-bodied and long-lived but grotesquely abundant. We are an outbreak. And here's the thing about outbreaks: they end. In some cases they end after many years, in others they end rather soon. In some cases they end gradually, in others they end with a crash. In certain cases, they end and recur and end again. Populations of tent caterpillars, for example, seem to rise steeply and fall sharply on a cycle of anywhere from five to 11 years. The crash endings are dramatic, and for a long while they seemed mysterious. What could account for such sudden and recurrent collapses? One possible factor is infectious disease, and viruses in particular.

#### Judicial involvement is key to the credibility of detention decisions

Matthew C Waxman 9, Professor of Law; Faculty Chair, Roger Hertog Program on Law and National Security, “Legislating the War on Terror: An Agenda for Reform”, November 3, Book

Judicial review can help safeguard liberty and enhance the credibility at home and abroad of administrative detention decisions by ensuring the neutrality of the decisionmaker and publicly certifying the legality of the detention in question. Most calls for reform of existing detention laws start with a 47 strong role for courts. Some commentators believe that a special court is needed, perhaps a “national security court” made up of designated judges who would build expertise in terrorism cases over time. 16 Others suggest that the Foreign Intelligence Surveillance Court already has judges with expertise in handling sensitive intelligence matters and mechanisms in place to ensure secrecy, so its jurisdiction ought to be expanded to handle detention cases. 17 Still others insist that specialized terrorism courts are dangerous; the legitimacy of a detention system can best be ensured by giving regular, generalist judges a say in each decision. ¶ Adversarial process and access to attorneys can help further protect liberty and enhance the perceived legitimacy of detention systems. As with judicial review, however, proposals tend to split over how best to organize and ensure that process. Some argue that habeas corpus suits are the best check on administrative detention. 18 Others argue that administrative detention decisions should be contested at an early stage by a lawyer of the detainee’s choosing. 19 Still others recognize an imperative need for secrecy and deep expertise in terrorism and intelligence matters that calls for designating a special “defense bar” operated by the government on detainees’ behalf.¶ The issue of secrecy runs in tension with a third common element of procedural and institutional reform proposals: openness and transparency. The Bush administration’s approach was considered by some to be prone to error in part because of its excessive secrecy and hostility to the prying courts and Congress as well as to the press and advocacy groups. Critics and reformists argue that hearings should be open or at least partially open and that judgments should be written so that they can be scrutinized later by the public or congressional oversight committees; that, they claim, would help put pressure on the executive branch to exercise greater care in deciding which detention cases to pursue and put pressure on adjudicators to act in good faith and with more diligence.¶ These three elements of procedural design reform— judicial review, adversarial process, and transparency— may help reduce the likelihood of mistakes and restore the credibility of detention decisionmaking. Rarely, though, do the discussions pause long on the antecedent question of what it is that the courts— however constituted— will evaluate. Judicial review of what? A meaningful opportunity to contest what with the assistance of counsel? Transparent determinations of what?

### 1AC – Democracy Advantage

#### CONTENTION 2: DEMOCRACY

#### Democratic liberalism is backsliding now---the US model of an unrestrained executive causes collapse

Larry Diamond 9, Professor of Political Science and Sociology @ Stanford, “The Impact of the Global Financial Crisis on Democracy”, Presented to the SAIS-CGD Conference on New Ideas in Development after the Financial Crisis, Conference Paper that can be found on his Vita

Concern about the future of democracy is further warranted by the gathering signs of a democratic recession, even before the onset of the global economic recession. During the past decade, the global expansion of democracy has essentially leveled off and hit an equilibrium While freedom (political rights and civil liberties) continued to expand throughout the post-Cold War era, that progress also halted in 2006, and 2007 and 2008 were the worst consecutive years for freedom since the end of the Cold War, with the number of countries declining in freedom greatly outstripping the number that improved. Two-thirds of all the breakdowns of democracy since the third wave began in 1974 have occurred in the last nine years, and in a number of strategically important states like Russia, Nigeria, Venezuela, Pakistan and Thailand. Many of these countries have not really returned to democracy. And a number of countries linger in a twilight zone between democracy and authoritarianism. While normative support for democracy has grown around the world, it remains in many countries, tentative and uneven, or is even eroding under the weight of growing public cynicism about corruption and the self-interested behavior of parties and politicians. Only about half of the public, on average, in Africa and Asia meets a rigorous, multidimensional test of support for democracy. Levels of distrust for political institutions—particularly political parties and legislatures, and politicians in general—are very high in Eastern Europe and Latin America, and in parts of Asia. In many countries, 30-50 percent of the public or more is willing to consider some authoritarian alternative to democracy, such as military or one-man rule. And where governance is bad or elections are rigged and the public cannot rotate leaders out of power, skepticism and defection from democracy grow. Of the roughly 80 new democracies that have emerged during the third wave and are still standing, probably close to three-quarters are insecure and could run some risk of reversal during adverse global and domestic circumstances. Less at risk—and probably mostly consolidated—are the more established developing country democracies (India, Costa Rica, Botswana, Mauritius), and the more liberal democracies of this group: the ten postcommunist states that have been admitted to the EU; Korea and Taiwan; Chile, Uruguay, Panama, Brazil, probably Argentina; a number of liberal island states in the Caribbean and Pacific. This leaves about 50 democracies and near democracies—including such big and strategically important states as Turkey, Ukraine, Indonesia, the Philippines, South Africa, certainly Pakistan and Bangladesh, and possibly even Mexico—where the survival of constitutional rule cannot be taken for granted. In some of these countries, like South Africa, the demise of democracy would probably come, if it happened, not as a result of a blatant overthrow of the current system, but rather via a gradual executive strangling of political pluralism and freedom, or a steady decline in state capacity and political order due to rising criminal and ethnic violence. Such circumstances would also swallow whatever hopes exist for the emergence of genuine democracy in countries like Iraq and Afghanistan and for the effective restoration of democracy in countries like Thailand and Nepal.

#### Democratic transitions are hanging in the balance---only empowering checks on executive power through rule of law can tip the scales

CJA 4 The Center for Justice and Accountability, Amici Curiae in support of petitioners in Al Odah et al. v USA, "Brief of the Center for Justice and Accountability, the International League for Human Rights, and Individual Advocates for the Independence of the Judiciary in Emerging Democracies," 3-10, Lexis

Many of the newly independent governments that have proliferated over the past five decades have adopted these ideals. They have emerged from a variety of less-than-free contexts, including the end of European colonial rule in the 1950's and 1960's, the end of the Cold War and the breakup of the former Soviet Union in the late 1980's and 1990's, the disintegration of Yugoslavia, and the continuing turmoil in parts of Africa, Latin America and southern Asia. Some countries have successfully transitioned to stable and democratic forms of government that protect individual freedoms and human rights by means of judicial review by a strong and independent judiciary. Others have suffered the rise of tyrannical and oppressive rulers who consolidated their hold on power in part by diminishing or abolishing the role of the judiciary. And still others hang in the balance, struggling against the onslaught of tyrants to establish stable, democratic governments. In their attempts to shed their tyrannical pasts and to ensure the protection of individual rights, emerging democracies have consistently looked to the United States and its Constitution in fashioning frameworks that safeguard the independence of their judiciaries . See Ran Hirschl, The Political Origins of Judicial Empowerment through Constitutionalization: Lessons from Four Constitutional Revolutions, 25 Law & Soc. Inquiry 91, 92 (2000) (stating that of the “[m]any countries . . . [that] have engaged in fundamental constitutional reform over the past three decades,” nearly all adopted “a bill of rights and establishe[d] some form of active judicial review”). Establishing judicial review by a strong and independent judiciary is a critical step in stabilizing and protecting these new democracies. See Christopher M. Larkins, Judicial Independence and Democratization: A Theoretical and Conceptual Analysis, 44 Am. J. Comp. L. 605, 605-06 (1996) (describing the judicial branch as having "a uniquely important role" in transitional countries, not only to "mediate conflicts between political actors but also [to] prevent the arbitrary exercise of government power; see also Daniel C. Prefontaine and Joanne Lee, The Rule of Law and the Independence of the Judiciary, International Centre for Criminal Law Reform and Criminal Justice Policy (1998) ("There is increasing acknowledgment that an independent judiciary is the key to upholding the rule of law in a free society . . . . Most countries in transition from dictatorships and/or statist economies recognize the need to create a more stable system of governance, based on the rule of law."), available at http://www.icclr.law.ubc.ca/Publications/Reports/RuleofLaw. pdf (last visited Jan. 8, 2004). Although the precise form of government differs among countries, “they ultimately constitute variations within, not from, the American model of constitutionalism . . . [a] specific set of fundamental rights and liberties has the status of supreme law, is entrenched against amendment or repeal . . . and is enforced by an independent court . . . .” Stephen Gardbaum, The New Commonwealth Model of Constitutionalism, 49 Am. J. Comp. L. 707, 718 (2001). This phenomenon became most notable worldwide after World War II when certain countries, such as Germany, Italy, and Japan, embraced independent judiciaries following their bitter experiences under totalitarian regimes. See id. at 714- 15; see also United States v. Then, 56 F.3d 464, 469 (2d Cir. 1995) (Calabresi, J., concurring) (“Since World War II, many countries have adopted forms of judicial review, which — though different from ours in many particulars — unmistakably draw their origin and inspiration from American constitutional theory and practice. See generally Mauro Cappelletti, The Judicial Process in Comparative Perspective (Oxford: Clarendon Press, 1989).”). It is a trend that continues to this day. It bears mention that the United States has consistently affirmed and encouraged the establishment of independent judiciaries in emerging democracies. In September 2000, President Clinton observed that "[w]ithout the rule of law, elections simply offer a choice of dictators. . . . America's experience should be put to use to advance the rule of law, where democracy's roots are looking for room and strength to grow." Remarks at Georgetown University Law School, 36 Weekly Comp. Pres. Doc. 2218 (September 26, 2000), available at http://clinton6.nara.gov/2000/09/2000-09-26- remarks-by-president-at-georgetown-international-lawcenter. html. The United States acts on these principles in part through the assistance it provides to developing nations. For example, the United States requires that any country seeking assistance through the Millenium Challenge Account, a development assistance program instituted in 2002, must demonstrate, among other criteria, an "adherence to the rule of law." The White House noted that the rule of law is one of the "essential conditions for successful development" of these countries. See http://www.whitehouse.gov/infocus/developingnations (last visited Jan. 8, 2004).12

#### US detention policy is key---it has justified democratic backsliding globally

CJA 4 The Center for Justice and Accountability, Amici Curiae in support of petitioners in Al Odah et al. v USA, "Brief of the Center for Justice and Accountability, the International League for Human Rights, and Individual Advocates for the Independence of the Judiciary in Emerging Democracies," 3-10, Lexis

While much of the world is moving to adopt the institutions necessary to secure individual rights, many still regularly abuse these rights. One of the hallmarks of tyranny is the lack of a strong and independent judiciary. Not surprisingly, where countries make the sad transition to tyranny, one of the first victims is the judiciary. Many of the rulers that go down that road justify their actions on the basis of national security and the fight against terrorism, and, disturbingly, many claim to be modeling their actions on the United States. Again, a few examples illustrate this trend. In Peru, one of former President Alberto Fujimori’s first acts in seizing control was to assume direct executive control of the judiciary, claiming that it was justified by the threat of domestic terrorism. He then imprisoned thousands, refusing the right of the judiciary to intervene. International Commission of Jurists, Attacks on Justice 2000-Peru, August 13, 2001, available at ttp://www.icj.org/news.php3?id\_article=2587&lang=en (last visited Jan. 8, 2004). In Zimbabwe, President Mugabe’s rise to dictatorship has been punctuated by threats of violence to and the co-opting of the judiciary. He now enjoys virtually total control over Zimbabweans' individual rights and the entire political system. R.W. Johnson, Mugabe’s Agents in Plot to Kill Opposition Chief, Sunday Times (London), June 10, 2001; International Commission of Jurists, Attacks on Justice 2002— Zimbabwe, August 27, 2002, available at http://www.icj.org/news.php3?id\_article=2695〈=en (last visited Jan. 8, 2004). While Peru and Zimbabwe represent an extreme, the independence of the judiciary is under assault in less brazen ways in a variety of countries today. A highly troubling aspect of this trend is the fact that in many of these instances those perpetuating the assaults on the judiciary have pointed to the United States’ model to justify their actions. Indeed, many have specifically referenced the United States’ actions in detaining persons in Guantánamo Bay. For example, Rais Yatim, Malaysia's "de facto law minister" explicitly relied on the detentions at Guantánamo to justify Malaysia's detention of more than 70 suspected Islamic militants for over two years. Rais stated that Malyasia's detentions were "just like the process in Guantánamo," adding, "I put the equation with Guantánamo just to make it graphic to you that this is not simply a Malaysian style of doing things." Sean Yoong, "Malaysia Slams Criticism of Security Law Allowing Detention Without Trial," Associated Press, September 9, 2003 (available from Westlaw at 9/9/03 APWIRES 09 :34:00). Similarly, when responding to a United States Government human rights report that listed rights violations in Namibia, Namibia's Information Permanent Secretary Mocks Shivute cited the Guantánamo Bay detentions, claiming that "the US government was the worst human rights violator in the world." BBC Monitoring, March 8, 2002, available at 2002 WL 15938703. Nor is this disturbing trend limited to these specific examples. At a recent conference held at the Carter Center in Atlanta, President Carter, specifically citing the Guantánamo Bay detentions, noted that the erosion of civil liberties in the United States has "given a blank check to nations who are inclined to violate human rights already." Doug Gross, "Carter: U.S. human rights missteps embolden foreign dictators," Associated Press Newswires, November 12, 2003 (available from Westlaw at 11/12/03 APWIRES 00:30:26). At the same conference, Professor Saad Ibrahim of the American University in Cairo (who was jailed for seven years after exposing fraud in the Egyptian election process) said, "Every dictator in the world is using what the United States has done under the Patriot Act . . . to justify their past violations of human rights and to declare a license to continue to violate human rights." Id. Likewise, Shehu Sani, president of the Kaduna, Nigeriabased Civil Rights Congress, wrote in the International Herald Tribune on September 15, 2003 that "[t]he insistence by the Bush administration on keeping Taliban and Al Quaeda captives in indefinite detention in Guantánamo Bay, Cuba, instead of in jails in the United States — and the White House's preference for military tribunals over regular courts — helps create a free license for tyranny in Africa. It helps justify Egypt's move to detain human rights campaigners as threats to national security and does the same for similar measures by the governments of Ivory Coast, Cameroon and Burkina Faso." Available at http://www.iht.com/ihtsearch.php?id=109927&owner=(IHT)&dat e=20030121123259. In our uni-polar world, the United States obviously sets an important example on these issues. As reflected in the foundational documents of the United Nations and many other such agreements, the international community has consistently affirmed the value of an independent judiciary to the defense of universally recognized human rights. In the crucible of actual practice within nations, many have looked to the United States model when developing independent judiciaries with the ability to check executive power in the defense of individual rights. Yet others have justified abuses by reference to the conduct of the United States. Far more influential than the words of Montesquieu and Madison are the actions of the United States. This case starkly presents the question of which model this Court will set for the world.

#### A detention court is crucial to the preservation of US democratic ideals

Glenn Sulmasy 9, Associate Professor of Law at the United States Coast Guard Academy and was a National Security and Human Rights Fellow at the Carr Center, Harvard Kennedy School, April 13, “THE NEED FOR A NATIONAL SECURITY COURT SYSTEM”, PDF

CONCLUSION¶ A new, statutorily created National Security Court system would afford an opportunity for U.S. policy makers to respond forcefully and effectively to both domestic and international calls for a way out of the myriad problems associated with the current system. Rather than have no credible solution, or merely engaging in attacks against the existing structure, policy makers need to emerge with fresh new ways to look at the proper detention and adjudication of captured al Qaeda fighters. It is time for the United States to regain the initiative and reaffirm our leadership in the humane prosecution of terrorists, a group that wishes to undermine the ideals of democracy. There is no better way to protect the ideals of democracy than to prosecute terrorists in a manner that is consistent with the democratic ideals that they seek to destroy. At a minimum, the next administration and Congress needs to create a commission to examine the possibilities that such a National Security Court system might afford.

#### That resolves future GITMO-like problems and is modeled globally

Anthony L. Kimery 9, Homeland Security Today's Online Editor and Online Media Division manager, draws on 30 years of experience and extensive contacts as he investigates homeland security, counterterrorism and border security, citing Glenn Sulmasy, first permanent commissioned military law professor at the Coast Guard Academy, where he is a Professor of Law teaching international, constitutional, and criminal law, "The Case For A 'National Security Court'", December 3, [www.hstoday.us/blogs/the-kimery-report/blog/the-case-for-a-national-security-court/a9333d82c11cecd35e74c8c0b65c2698.html](http://www.hstoday.us/blogs/the-kimery-report/blog/the-case-for-a-national-security-court/a9333d82c11cecd35e74c8c0b65c2698.html)

However, in interviews with HSToday.us, Sulmasy argued that “we have to be aware that the issue of captured fighters will not go away once GITMO is closed - it will continue with the Bagram detainees and other inevitable captures in the generational conflict against international terrorism.”¶ So, “rather than creating opportunities for ‘forum shopping’ - either employing military commissions for some and civilian courts for others - the nation needs ‘one’ system - a hybrid system that meets all needs associated with the unique legal status of these detainees” – and all future combatants captured or arrested in the WOAQ, Sulmasy argues.¶ Sulmasy insists that a National Security Court “offers the United States a ‘way out’ of GITMO-like problems” in the future.¶ In the July 2007 HSToday.us report, Toward a Homeland Security Court for Captured Terrorists, Sulmasy’s ideas about how best to resolve the dilemma GITMO and the Military Commissions Act (MCA) created were first discussed in detail. They are rooted in the spacious realization that the war on terrorism inherently presents complex new legalities as a consequence of the unparalleled, un-conventional war on terrorists - and it is a war.¶ Sulmasy says the approach he proposes would not only restore respect for America’s system of justice and legitimize the judicial handling of WOAQ prisoners, but it would serve as a template for other nations to emulate.¶ “Another need for [national security] courts is to deal with the latest issues,” Sulmasy explained. “US citizens who turn their backs on the government and seek to overthrow it by engaging in jihad right now are treated differently than jihadists from other countries. A homeland security court would remove this disparity … We cannot, once again, allow the sleeping giant to go back to sleep. We must remain vigilant and recognize that how we deal with the detention of the Al Qaeda jihadists [and like-minded jihadists] is critical to our winning this long war."¶ The Bush administration and Congress unquestionably rushed to conceive an ill-thought-out post-9/11 process for legally meting out the fate of suspected terrorists captured during combat in the WOAQ. But now the US requires a new judicial system for this new non-state war that likely will continue to be waged for decades to come, proponents for this system like Sulmasy argue.¶ “I think they were right, initially: We were being attacked and expecting flurries of attacks over the next few years … five to six years later, however, we need to look at fresh options,” Sulmasy said.

#### Global democratic transitions are inevitable---the only way for the US to bolster democracies is constitutionalism---prevents war

Fareed Zakaria 97, PhD Poli Sci @ Harvard, Managing Editor of Foreign Affairs, 1997, Lexis

Of course cultures vary, and different societies will require different frameworks of government. This is not a plea for the wholesale adoption of the American way but rather for a more variegated conception of liberal democracy, one that emphasizes both parts of that phrase. Before new policies can be adopted, there lies an intellectual task of recovering the constitutional liberal tradition, central to the Western experience and to the development of good government throughout the world. Political progress in Western history has been the result of a growing recognition over the centuries that, as the Declaration of Independence puts it, human beings have "certain inalienable rights" and that "it is to secure these rights that governments are instituted." If a democracy does not preserve liberty and law, that it is a democracy is a small consolation. LIBERALIZING FOREIGN POLICY A proper appreciation of constitutional liberalism has a variety of implications for American foreign policy. First, it suggests a certain humility. While it is easy to impose elections on a country, it is more difficult to push constitutional liberalism on a society. The process of genuine liberalization and democratization is gradual and long-term, in which an election is only one step. Without appropriate preparation, it might even be a false step. Recognizing this, governments and nongovernmental organizations are increasingly promoting a wide array of measures designed to bolster constitutional liberalism in developing countries. The National Endowment for Democracy promotes free markets, independent labor movements, and political parties. The U.S. Agency for International Development funds independent judiciaries. In the end, however, elections trump everything. If a country holds elections, Washington and the world will tolerate a great deal from the resulting government, as they have with Yeltsin, Akayev, and Menem. In an age of images and symbols, elections are easy to capture on film. (How do you televise the rule of law?) But there is life after elections, especially for the people who live there. Conversely, the absence of free and fair elections should be viewed as one flaw, not the definition of tyranny. Elections are an important virtue of governance, but they are not the only virtue. Governments should be judged by yardsticks related to constitutional liberalism as well. Economic, civil, and religious liberties are at the core of human autonomy and dignity. If a government with limited democracy steadily expands these freedoms, it should not be branded a dictatorship. Despite the limited political choice they offer, countries like Singapore, Malaysia, and Thailand provide a better environment for the life, liberty, and happiness of their citizens than do either dictatorships like Iraq and Libya or illiberal democracies like Slovakia or Ghana. And the pressures of global capitalism can push the process of liberalization forward. Markets and morals can work together. Even China, which remains a deeply repressive regime, has given its citizens more autonomy and economic liberty than they have had in generations. Much more needs to change before China can even be called a liberalizing autocracy, but that should not mask the fact that much has changed. Finally, we need to revive constitutionalism. One effect of the overemphasis on pure democracy is that little effort is given to creating imaginative constitutions for transitional countries. Constitutionalism, as it was understood by its greatest eighteenth century exponents, such as Montesquieu and Madison, is a complicated system of checks and balances designed to prevent the accumulation of power and the abuse of office. This is done not by simply writing up a list of rights but by constructing a system in which government will not violate those rights. Various groups must be included and empowered because, as Madison explained, "ambition must be made to counteract ambition." Constitutions were also meant to tame the passions of the public, creating not simply democratic but also deliberative government. Unfortunately, the rich variety of unelected bodies, indirect voting, federal arrangements, and checks and balances that characterized so many of the formal and informal constitutions of Europe are now regarded with suspicion. What could be called the Weimar syndrome -- named after interwar Germany's beautifully constructed constitution, which failed to avert fascism -- has made people regard constitutions as simply paperwork that cannot make much difference. (As if any political system in Germany would have easily weathered military defeat, social revolution, the Great Depression, and hyperinflation.) Procedures that inhibit direct democracy are seen as inauthentic, muzzling the voice of the people. Today around the world we see variations on the same majoritarian theme. But the trouble with these winner-take-all systems is that, in most democratizing countries, the winner really does take all. DEMOCRACY'S DISCONTENTS We live in a democratic age. Through much of human history the danger to an individual's life, liberty and happiness came from the absolutism of monarchies, the dogma of churches, the terror of dictatorships, and the iron grip of totalitarianism. Dictators and a few straggling totalitarian regimes still persist, but increasingly they are anachronisms in a world of global markets, information, and media. There are no longer respectable alternatives to democracy; it is part of the fashionable attire of modernity. Thus the problems of governance in the 21st century will likely be **problems within democracy**. This makes them more difficult to handle, wrapped as they are in the mantle of legitimacy. Illiberal democracies gain legitimacy, and thus strength, from the fact that they are reasonably democratic. Conversely, the greatest danger that illiberal democracy poses -- other than to its own people -- is that it will discredit liberal democracy itself, casting a shadow on democratic governance. This would not be unprecedented. Every wave of democracy has been followed by setbacks in which the system was seen as inadequate and new alternatives were sought by ambitious leaders and restless masses. The last such period of disenchantment, in Europe during the interwar years, was seized upon by demagogues, many of whom were initially popular and even elected. Today, in the face of a spreading virus of illiberalism, the most useful role that the international community, and most importantly the United States, can play is -- instead of searching for new lands to democratize and new places to hold elections -- to consolidate democracy where it has taken root and to encourage the gradual development of constitutional liberalism across the globe. Democracy without constitutional liberalism is not simply inadequate, but dangerous, bringing with it the erosion of liberty, the abuse of power, ethnic divisions, and even war. Eighty years ago, Woodrow Wilson took America into the twentieth century with a challenge, to make the world safe for democracy. As we approach the next century, our task is to make democracy safe for the world.

#### Democratic backsliding causes great power war

Azar Gat 11, the Ezer Weizman Professor of National Security at Tel Aviv University, 2011, “The Changing Character of War,” in The Changing Character of War, ed. Hew Strachan and Sibylle Scheipers, p. 30-32

Since 1945, the decline of major great power war has deepened further. Nuclear weapons have concentrated the minds of all concerned wonderfully, but no less important have been the institutionalization of free trade and the closely related process of rapid and sustained economic growth throughout the capitalist world. The communist bloc did not participate in the system of free trade, but at least initially it too experienced substantial growth, and, unlike Germany and Japan, it was always sufﬁciently large and rich in natural resources to maintain an autarky of sorts. With the Soviet collapse and with the integration of the former communist powers into the global capitalist economy, the prospect of a major war within the developed world seems to have become very remote indeed. This is one of the main sources for the feeling that war has been transformed: its geopolitical centre of gravity has shifted radically. The modernized, economically developed parts of the world constitute a ‘zone of peace’. War now seems to be conﬁned to the less-developed parts of the globe, the world’s ‘zone of war’, where countries that have so far failed to embrace modernization and its pacifying spin-off effects continue to be engaged in wars among themselves, as well as with developed countries.¶ While the trend is very real, one wonders if the near disappearance of armed conﬂict within the developed world is likely to remain as stark as it has been since the collapse of communism. The post-Cold War moment may turn out to be a ﬂeeting one. The probability of major wars within the developed world remains low—because of the factors already mentioned: increasing wealth, economic openness and interdependence, and nuclear deterrence. But the deep sense of change prevailing since 1989 has been based on the far more radical notion that the triumph of capitalism also spelled the irresistible ultimate victory of democracy; and that in an afﬂuent and democratic world, major conﬂict no longer needs to be feared or seriously prepared for. This notion, however, is fast eroding with the return of capitalist non-democratic great powers that have been absent from the international system since 1945. Above all, there is the formerly communist and fast industrializing authoritarian-capitalist China, whose massive growth represents the greatest change in the global balance of power. Russia, too, is retreating from its postcommunist liberalism and assuming an increasingly authoritarian character.¶ Authoritarian capitalism may be more viable than people tend to assume. 8 The communist great powers failed even though they were potentially larger than the democracies, because their economic systems failed them. By contrast, the capitalist authoritarian/totalitarian powers during the ﬁrst half of the twentieth century, Germany and Japan, particularly the former, were as efﬁcient economically as, and if anything more successful militarily than, their democratic counterparts. They were defeated in war mainly because they were too small and ultimately succumbed to the exceptional continental size of the United States (in alliance with the communist Soviet Union during the Second World War). However, the new non-democratic powers are both large and capitalist. China in particular is the largest player in the international system in terms of population and is showing spectacular economic growth that within a generation or two is likely to make it a true non-democratic superpower.¶ Although the return of capitalist non-democratic great powers does not necessarily imply open conﬂict or war, it might indicate that the democratic hegemony since the Soviet Union’s collapse could be short-lived and that a universal ‘democratic peace’ may still be far off. The new capitalist authoritarian powers are deeply integrated into the world economy. They partake of the development-open-trade-capitalist cause of peace, but not of the liberal democratic cause. Thus, it is crucially important that any protectionist turn in the system is avoided so as to prevent a grab for markets and raw materials such as that which followed the disastrous slide into imperial protectionism and conﬂict during the ﬁrst part of the twentieth century. Of course, the openness of the world economy does not depend exclusively on the democracies. In time, China itself might become more protectionist, as it grows wealthier, its labour costs rise, and its current competitive edge diminishes.¶ With the possible exception of the sore Taiwan problem, China is likely to be less restless and revisionist than the territorially conﬁned Germany and Japan were. Russia, which is still reeling from having lost an empire, may be more problematic. However, as China grows in power, it is likely to become more assertive, ﬂex its muscles, and behave like a superpower, even if it does not become particularly aggressive. The democratic and non-democratic powers may coexist more or less peacefully, albeit warily, side by side, armed because of mutual fear and suspicion, as a result of the so-called ‘security dilemma’, and against worst-case scenarios. But there is also the prospect of more antagonistic relations, accentuated ideological rivalry, potential and actual conﬂict, intensiﬁed arms races, and even new cold wars, with spheres of inﬂuence and opposing coalitions. Although great power relations will probably vary from those that prevailed during any of the great twentieth-century conﬂicts, as conditions are never quite the same, they may vary less than seemed likely only a short while ago.

#### Independently, the plan prevents eroding checks on executive power that creates global dissident crack-down

Matthew C Waxman 9, Professor of Law; Faculty Chair, Roger Hertog Program on Law and National Security, Legislating the War on Terror: An Agenda for Reform”, November 3, Book, p. 58

Opponents and skeptics of administrative detention rightly point out that creating new mechanisms for detention with procedural protections that are diluted compared with those granted criminal suspects may put liberty at risk. The most obvious concern is that innocent individuals will get swept up and imprisoned— the “false positive” problem. Civil libertarians rightly worry too that aside from the specific risk to particular individuals, any expansion of administrative detention— and I say “expansion” because, as noted earlier, it already exists in some nonterrorist contexts in U.S. law— risks eroding the checks on state power more generally. To some, the idea of administrative detention of suspected terrorists is the kind of “loaded weapon” that Justice Robert Jackson worried about at the time of Japanese internment. 52 Even if critics are satisfied that the U.S. government can use administrative detention responsibly, there are many unsavory foreign regimes that will not. The United States therefore needs to be cautious about justifying principles that might be used by less democratic regimes as a pretext to crack down, for example, on dissidents that they label “terrorists” or “national security threats.”

#### Chinese crackdowns on Uighurs make them stronger and cause Asian war

Dr. Elizabeth Van Wie Davis 8, division director and professor of liberal arts and international studies at Colorado School of Mines, 2008, "Uyghur Muslim Ethnic Separatism in Xinjiang, China," Asian Affairs: An American Review, 2008, Vol. 35, Issue 1, pg. 15-30, ebsco

Alternative Futures¶ The scenario most worrisome to the Chinese would be the Uyghur Muslim movement in Xinjiang externally joining with international Muslim movements throughout Asia and the Middle East, bringing an influx of Islamic extremism and a desire to challenge the central government. The Chinese also fear the Uyghur movement could internally radicalize other minorities, whether the ethnic Tibetans or the Muslim Hui. Beijing is currently successfully managing the separatist movements in China, but the possibility of increased difficulty is linked partly to elements outside Chinese control, such as political instability or increased Islamic extremism in neighboring Pakistan, Afghanistan, Tajikistan, Kyrgyzstan, and Kazakhstan. Chinese policies and reactions, however, will largely determine the progress of separatist movements in China. If “strike hard” campaigns are seen to discriminate against nonviolent Uyghurs and if the perception that economic development in Xinjiang aids Han Chinese at the expense of Uyghurs, the separatist movements will be fueled.¶ The whole region has concerns about growing Uyghur violence. Central Asian countries, especially those with sizable Uyghur minorities, already worry about Uyghur violence and agitation. Many of the regional governments, especially secular authoritarian governments in South Asia and Central Asia, are worried about the contagion of increasing Muslim radicalization. The governments of Southeast Asia are also worried about growing radical networks and training camps, but they also fear the idea of a fragmenting China. Political instability in China would impact all of Asia.

#### Asian war goes nuclear---no defense---interdependence and institutions don’t check

C. Raja Mohan 13, distinguished fellow at the Observer Research Foundation in New Delhi, March 2013, Emerging Geopolitical Trends and Security in the Association of Southeast Asian Nations, the People’s Republic of China, and India (ACI) Region,” background paper for the Asian Development Bank Institute study on the Role of Key Emerging Economies, <http://www.iadb.org/intal/intalcdi/PE/2013/10737.pdf>

Three broad types of conventional conflict confront Asia. The first is the prospect of war between great powers. Until a rising PRC grabbed the attention of the region, there had been little fear of great power rivalry in the region. The fact that all major powers interested in Asia are armed with nuclear weapons, and the fact that there is growing economic interdependence between them, has led many to argue that great power conflict is not likely to occur. Economic interdependence, as historians might say by citing the experience of the First World War, is not a guarantee for peace in Asia. Europe saw great power conflict despite growing interdependence in the first half of the 20th century. Nuclear weapons are surely a larger inhibitor of great power wars. Yet we have seen military tensions build up between the PRC and the US in the waters of the Western Pacific in recent years. The contradiction between the PRC’s efforts to limit and constrain the presence of other powers in its maritime periphery and the US commitment to maintain a presence in the Western Pacific is real and can only deepen over time.29 We also know from the Cold War that while nuclear weapons did help to reduce the impulses for a conventional war between great powers, they did not prevent geopolitical competition. Great power rivalry expressed itself in two other forms of conflict during the Cold War: inter-state wars and intra-state conflict. If the outcomes in these conflicts are seen as threatening to one or other great power, they are likely to influence the outcome. This can be done either through support for one of the parties in the inter-state conflicts or civil wars. When a great power decides to become directly involved in a conflict the stakes are often very high. In the coming years, it is possible to envisage conflicts of all these types in the ACI region. ¶ Asia has barely begun the work of creating an institutional framework to resolve regional security challenges. Asia has traditionally been averse to involving the United Nations (UN) in regional security arrangements. Major powers like the PRC and India are not interested in “internationalizing” their security problems—whether Tibet; Taipei,China; the South China Sea; or Kashmir—and give other powers a handle. Even lesser powers have had a tradition of rejecting UN interference in their conflicts. North Korea, for example, prefers dealing with the United States directly rather than resolve its nuclear issues through the International Atomic Energy Agency and the UN. Since its founding, the involvement of the UN in regional security problems has been rare and occasional.¶ The burden of securing Asia, then, falls squarely on the region itself. There are three broad ways in which a security system in Asia might evolve: collective security, a concert of major powers, and a balance of power system.30 Collective security involves a system where all stand for one and each stands for all, in the event of an aggression. While collective security systems are the best in a normative sense, achieving them in the real world has always been difficult. A more achievable goal is “cooperative security” that seeks to develop mechanisms for reducing mutual suspicion, building confidence, promoting transparency, and mitigating if not resolving the sources of conflict. The ARF and EAS were largely conceived within this framework, but the former has disappointed while the latter has yet to demonstrate its full potential. ¶ A second, quite different, approach emphasizes the importance of power, especially military power, to deter one’s adversaries and the building of countervailing coalitions against a threatening state. A balance of power system, as many critics of the idea point out, promotes arms races, is inherently unstable, and breaks down frequently leading to systemic wars. There is growing concern in Asia that amidst the rise of Chinese military power and the perception of American decline, many large and small states are stepping up their expenditure on acquiring advanced weapons systems. Some analysts see this as a structural condition of the new Asia that must be addressed through deliberate diplomatic action. 31 A third approach involves cooperation among the great powers to act in concert to enforce a broad set of norms—falling in between the idealistic notions of collective security and the atavistic forms of balance of power. However, acting in concert involves a minimum level of understanding between the major powers. The greatest example of a concert is the one formed by major European powers in the early 18th century through the Congress of Vienna after the defeat of Napoleonic France. The problem of adapting such a system to Asia is the fact that there are many medium-sized powers who would resent any attempt by a few great powers to impose order in the region.32 In the end, the system that emerges in Asia is likely to have elements of all the three models. In the interim, though, there are substantive disputes on the geographic scope and the normative basis for a future security order in Asia.

#### Independently, the plan reinvigorates due process in detention

Amos N. Guiora 12, Professor of Law, S.J. Quinney College of Law, University of Utah, "Due Process and Counterterrorism", Emory International Law Review, Vol. 26, www.law.emory.edu/fileadmin/journals/eilr/26/26.1/Guiora.pdf

While the public safety exception has been recommended as applicable to counterterrorism as justification for denying Miranda protections to post-9/11 detainees, 111 the danger of trampling on individual rights outweighs information that interrogators may conceivably receive. The rule of law is at its most vulnerable in the interrogation setting; to that extent, while public safety may be perceived as beneficial to society, the possible gain is, at best, short term with long-term dangers looming in the offing.¶ V. JUDICIAL FORUMS¶ The fundamental premise is that detainees must be afforded the opportunity to be brought before a court of law for purpose of adjudication of their guilt or innocence. Whether the paradigm adopted is the criminal law or a hybrid, the guiding principle must be trial rather than the abyss of permanent indefinite detention. While various proposals and articles have been put forth, 112 resolution has eluded decision-makers. The Bush Administration’s attempt 113 to establish military commissions was roundly criticized. 114 While subsequent instructions prepared by the Department of Defense 115 were intended to mollify the chorus of criticism, the practical reality is the commissions have been widely viewed as an overwhelming failure. 116 Neither in their original inception nor subsequent tweaking were rules, procedures, and criteria adequately delineated with respect to suspect (and subsequently, defendant) rights. 117 Nevertheless, the largely acknowledged failure of the military commissions has not resulted in the establishment of a viable alternative.¶ To that end, in addition to the military commissions, there are three options for bringing individuals suspected of involvement in terrorism before a court of law: treaty-based international terror court, Article III civilian court, and a national security court. While I have advocated the establishment of the latter, the other options have also garnered significant—and justified—public support. 118 The critical question, in determining which option most effectively meets rule of law requirements, is whether the due process rights of the defendant are protected. That question, however, cannot be asked nor answered in a vacuum, nor absolutely; for the reality of terrorism/counterterrorism is that legitimate operational realities justify minimizing certain rights, otherwise protected. 119 In particular, with respect to the trial process, protecting confidential sources is an absolute state requirement, and to that end, denying the defendant the right to confront all witnesses is legitimate. 120 Although controversial and suggestive of a rights minimization regime, bringing a suspected terrorist to trial requires submitting confidential information to the court. 121¶ While introducing classified information denies the defendant the right to confront his accuser, it is a reality of operational counterterrorism. 122 Similarly, in the American criminal law paradigm, the defendant has the right to a trial by a jury of his peers. 123 While proponents of Article III courts say they are appropriate for suspected terrorists, the critical question—yet to be resolved— is whether all individuals detained post-9/11 are to be tried. To the point: while President Obama promised to close Guantanamo, the issue extends significantly beyond the detention center in Cuba. 124 According to senior military commanders, the United States, directly and indirectly, detains approximately 25,000 detainees in detention centers in Iraq and Afghanistan in addition to Guantanamo. 125¶ While some have suggested that the Iraqi and Afghan judiciaries are appropriate forums for adjudicating guilt of detainees presently detained in both countries, significant and sufficient doubt has been raised regarding objectivity and judicial fairness. 126 Precisely because the Bush Administrations have ordered the American military to engage in Iraq and Afghanistan in accordance with the Authorization to Use Military Force resolution passed by Congress, the United States bears direct responsibility for ensuring adjudication in a court of law premised on the “rule of law.” 127 Simply put: core principles of due process and fundamental fairness demand the United States ensure resolution of individual accountability.¶ While imposing American judicial norms on Iraq and Afghanistan raise legitimate international law questions regarding violations of national sovereignty, the continued denial of due process raises questions and concerns no less legitimate. History suggests there is no perfect answer to this question; similarly, both basic legal principles and fundamental moral considerations suggest that in a balancing analysis the scale must tip in favor of trial, regardless of valid sovereignty and constitutional concerns. While justice is arguably not blind, continued detention of thousands of suspects without hope of trial is a blight on society that violates core due process principles.¶ Regardless of which proposal above is adopted, the fundamental responsibility is to articulate and implement a judicial policy facilitating trial before an impartial court of law. That is the minimum due process obligation owed the detainee. ¶ VI. MOVING FORWARD¶ Due process is the essence of a proper judicial process; denial of due process, whether in interrogation or trial, violates both the Constitution and moral norms. Denying suspects and defendants due process protections results in counterterrorism measures antithetical to the essence of democracies. While threats posed by terrorism must not be ignored, there is extraordinary danger in failing to carefully distinguish between real and perceived threats. Casting an extraordinarily wide net results in denying the individual rights; similarly, there is no guarantee that such an appr oach contributes to effective operational counterterrorism. Extending constitutional privileges and protections to non- citizens does not threaten the nation-state; rather, it illustrates the already slippery slope. In proposing that due process be an inherent aspect of counterterrorism, I am in full accordance with Judge Bates’ holding. The time has come to implement his words in spirit and law alike; habeas hearings are an important beginning but do not ensure adjudication of individual accountability. Determining innocence or guilt is essential to effective counterterrorism predicated on the rule of law.

#### That spills over to immigration detention policy

Farha Aziz Faisal 12, Harvard graduate with honors in Government, “Due Process Protections in the War on Terrorism: A Comparative Analysis of Security - Based Preventive Detention in the United States and the United Kingdom”, March, http://www.gov.harvard.edu/files/IR%20thesis%202.pdf

Overall, this thesis provides insight into how the structure of political institutions interacts with legal frameworks during emergencies to contribute to the formulation of preventive detention systems. Beyond explaining the mechanisms of such interactions, this thesis contributes to an understanding of how political structures impact human r ights within the broader context of security policy making. The findings of this investigation are instructive for answering a number of questions regarding the relationship between decision-making and the protection of human rights.¶ Beyond the theoretic al contributions of this study, this research has significant real - world implications. Given the rise of global terrorism within the past decade, states may need to create preventive detention systems. The findings of this research can identify the processes of such decision - making and selection of legal framework that are likely to result in preventive detention with sufficient due process protections for terrorist suspects. This is more important than ever before since an increase in the level of terrorism worldwide suggests that more suspects, including many innocent individuals, could be detained for purely security reasons. Accordingly, it is vital that states adopt detention systems that protect the fundamental human right to due process guaranteed under the rule of law. Moreover, the findings of this research can be generalized beyond security-detention, to the policy - formulation of detention regimes relating to immigration detention, pre-trial detention, and health-based quarantines. In each of these areas, the policy implications from this research could provide meaningful input in creating systems sensitive to and protective of due process.

#### Immigrant detainee rights are the key issue for US-Mexico relations

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The proliferation of stories in international media and in global forums about the Guantanamo-like problems in the country’s immigrant detention system- death, abuse and neglect at the hands of detention facility guards; prolonged and indefinite detention of immigrants (including children and families) denied habeas corpus and other fundamental rights; filthy, overcrowded and extremely unhealthy facilities; denial of basic health services – are again tarnishing the U.S. image abroad, according to several experts. As a result, reports from Arizona and immigrant detention facilities have created a unique problem: they are making it increasingly difficult for Obama to persuade the planet’s people that the United States is ready claim exceptional leadership on human rights in a soon-to-be-post-Guantanamo world. Consider the case of Mexico. Just last week, following news reports from Arizona, the Mexican government, which is traditionally silent or very tepid in its criticism of U.S. immigration and other policies, issued a statement in which it “energetically protested the undignified way in which the Mexicans were transferred to ‘Tent City’” in Maricopa County. David Brooks, U.S correspondent for Mexico’s La Jornada newspaper, believes that immigrant detention stories hit Mexicans closer to home because those reportedly being abused in detention are not from a far off country; they are family, friends, neighbors and fellow citizens. In the same way that Guantanamo erased the idea of U.S. leadership in human rights in the Bush era, says Brooks, who was born in Mexico, practices in immigrant detention facilities like those reported by global media in Maricopa County may begin to do so in the Obama era if something does not change. “Mexicans have never seen the U.S. as a great model for promotion of human rights. But with Obama we take him at his word. We’re expecting some change,” said Brooks. “But that will not last long if we see him continuing Bush’s [immigration] policies: raids, increasing detention, deportation. Regardless of his excuse, he will quickly become mas de lo mismo (more of the same) in terms of the experience down south.” If uncontested, the expression of such sentiments far beyond Mexico and Mexican immigrants could lead to the kind of American exceptionalism Obama doesn’t want. In a March 2008 report, Jorge Bustamante, the United Nations Special Rapporteur on Human Rights of Migrants, concluded that “the United States has failed to adhere to its international obligations to make the human rights of the 37.5 million migrants living in the country a national priority, using a comprehensive and coordinated national policy based on clear international obligations.” Asked how his report was received in different countries, Bustamante said, “The non-governmental organizations have really responded. In the United States and outside the United States- in Mexico, in Guatemala, in Indonesia and other countries- NGO’s are using my report to frame their concerns and demands in their own countries- and to raise criticism about the United States.” For her part, Alison Parker, deputy director of the U.S. program of Human Rights Watch, fears a global government “race to the bottom” around immigrant detention policies. “My concern is that as the rest of world sees the United States practices, we increase the risk that this will give the green light to other governments to be just as abusive or more abusive as the United States.” If there is a positive note to be heard in the growing global chorus of critique of and concern about U.S immigration policy, it is to be found among those human rights activists and groups doing what W.E.B. DuBois, Paul Robeson and other civil rights activists did in previous eras: bring their issues to the global stage. Government documents from the civil rights era, documents that were released just a few years ago, illustrate how members of the Kennedy and Johnson State departments and even Kennedy and Johnson themselves were acutely aware of and sensitive to how denunciations in global forums of racial discrimination in United States had a devastating impact on the U.S. prestige abroad. Such a situation around the rights of migrants today, says Oscar Chacon of the National Alliance of Latin American and Caribbean Communities, a Chicago-based global NGO run by and for immigrants, creates an opportunity out of the globalization of the images of both Sheriff Joe Arpaio and Barack Obama. “The world will be able to see him as the rogue sheriff that he is” said Chacon, who was in Mexico City attending a conference on immigration at which U.S. detention practices were criticized. “And it will be up to the Obama Administration to show the world that Arpaio is not a symbol of the rest of the country when it comes to immigration.”

#### US-Mexico relations are key to solving the drug war --- the impact is regional instability

**Shirk 11** (David A., Associate Professor, Political Science, and Director, Trans-Border Institute, University of San Diego, “The Drug War in Mexico Confronting a Shared Threat”, March 2011, pg. 26-27)

**The opportunity for effective U.S.-Mexico cooperation to address these shared concerns has grown,** thanks to the resolve of Mexican leaders to embrace the fight against transnational organized crime. The United States clearly has a vested interest in helping Mexico improve its governance, national security, economic productivity, and quality of life, which are integral to making Mexico a better neighbor and trade par ner in the longer term. Mexico is also eager to continue working toward these ends, and it has embraced unprecedented levels of collaboration.¶ Over the next five years, the best-case scenario will bring a turning point in which authorities gain the upper hand against organized crime, violence dies down to pre-2006 levels, and illicit drug flows diminish dramatically. This would require continued progress in disrupting organized crime groups, with the reduction in drug-related violence the primary metric of policy success. For now, at least, the nightmare scenarios of government collapse, widespread political insurgency, or sudden military takeover are as unlikely in Mexico as they are in Brazil and Colombia, which have even higher levels of violence. **Still, without progress** on the noted recommendations, Mexico’s drug war will drag onward and downward indefinitely, with greater and more geographically dispersed violence, more direct political influences by organized crime, rising instability and fear, growing human and capital flight, and increasing spillover effects to neighboring countries, including the United States.¶ **Challenges and setbacks are inevitable, and building greater trust and cooperation will require sustained efforts.** Events in late 2010 and early 2011, such as WikiLeaks’ disclosure of persistent skepticism within the U.S. embassy in Mexico City of Calderón’s government and military performance, and the death of a U.S. immigration and customs agent at the hands of drug traffickers, **led to an unexpected nadir in U.S.-Mexico relations.** The surprise Obama-Calderón summit of March 2011 reflects both countries’ desire to move past short-term diplomatic disruptions. **The United States can help shift the balance in Mexico’s battle against organized crime and prevent the further spread of violence within Mexico and to its neighbors.** **This will require a serious commitment to U.S. responsibilities** at home, long-term investments to make Mexico a more secure and prosperous neighbor, greater multilateral coopera- tion throughout the region, and a more sensible policy for managing the harms associated with drugs.

#### Latin America instability causes extinction

Manwaring 5 (Max G., 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

### 1AC – Plan

#### The United States federal government should create a National Security Court with exclusive jurisdiction over the United States’ indefinite detention policy in the area prescribed by the 2001 Authorization for Use of Military Force.

### 1AC – Solvency

#### CONTENTION 3: SOLVENCY

#### The creation of a National Security Court is crucial to restore legitimacy and rule of law in detention

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

In the context of the War on Terror, legitimacy is the critical missing element under the current U.S. detention regime. Legitimacy can be defined as “a psychological property of an authority, institution, or social arrangement that leads those connected to it to believe that it is appropriate, proper, and just.” 50 As far back as Plato and Aristotle, philosophers have recognized that influencing others merely through coercion and power is costly and inefficient. 51 Today, empirical evidence suggests that legitimacy, rather than deterrence, is primarily what causes individuals to obey the law. 52 Thus, while legal authorities may possess the immediate power to stop illegal action, long-term compliance requires that the general public perceives the law to be legitimate. 53 Terrorism is primarily an ideological war that cannot be won by technology that is more sophisticated or increased military force. 54 While nations combating terrorism must continue to address immediate threats by detaining suspected terrorists, they must also consider the prevention of future threats by analyzing how their policies are perceived by individuals throughout the world. Ultimately, in the War on Terror, “the benefits to be derived from maximizing legitimacy are too important to neglect.” 55¶ Over time, perceptions of legitimacy create a “reservoir of support” for an institution that goes beyond mere self -interest. 56 In the context of government:¶ Legitimacy is [an] endorphin of the democratic body politic; it is the substance that oils the machinery of democracy, reducing the friction that inevitably arises when people are not able to get everything they want from politics. Legitimacy is loyalty; it is a reservoir of goodwill that allows the institutions of government to go against what people may w ant at the moment without suffering debilitating consequences. 57¶ The widespread acceptance of highly controversial decisions by the U.S. Supreme Court illustrates the power of institutional legitimacy. 58 The Court itself noted that it “cannot buy support for its decisions by spending money and, except to a minor degree, it can- not independently coerce obedience to its decrees.” 59 “The Court’s power lies, rather, in its legitimacy . . . .” 60 For example, by empha- sizing “equal treatment,” “honesty and neutrality,” “gathering infor- mation before decision making,” and “making princip led, or rule based, decisions instead of political decisions,” the Court maintained legitimacy through the controversial abortion case Planned Parent- hood of Southeastern Pennsylvania v. Casey in 1992 . 61 Thus, al- though approximately half of Americans oppose abort ion, 62 the vast majority of these individuals give deference to the Court’s ruling on this issue. 63¶ In the post-World War II era, the United States built up a world- wide reservoir of support based upon four pillars: “its commitment to international law, its acceptance of consensual decision-making, its reputation for moderation, and its identification with the preservation of peace.” 64 Although some U.S. policies between 1950 and 2001 did not align with these pillars, on a whole the United States legitimized itself as a world superpower during this period. 65 In the 1980s, President Ronald Reagan spoke of America as a “shining city on a hill,” suggesting that it was a model for the nations of the world to look to. 66 While the United States received a virtually unprecedented outpouring of support from the international community following 9/11, a nation’s reservoir of support will quickly evaporate when its government overreacts. Across the globe, individuals have expressed a growing dissatisfaction with U.S. conduct in the War on Terror, and by 2006, even western allies of the Uni ted States lobbied for the immediate closure of Guantanamo Bay, callin g it “an embar- rassment.” 67 Former Secretary of State Colin Powell proclaimed that “Guantanamo has become a major, major problem . . . in the way the world perceives America and if it were up to me I would close Guantanamo not tomorrow but this afternoon . . . .” 68 Similarly, President Obama noted in his campaign that “Guantanamo has become a recruiting tool for our enemies.” 69¶ Current U.S. detention policies erode each of the four pillars on which the United States established global legitimacy. In fact, critics have argued that the “United States has assumed man y of the very features of the ‘rogue nations’ against which it has rhetorically—and sometimes literally—done battle over the years.” 70 While legitimacy cannot be regained overnight, the recent election o f President Barack Obama presents a critical opportunity for a re-articulation of U.S. detention policies. Although President Obama issued an executive order calling for the closure of Guantanamo Bay only two days after being sworn into office, 71 significant controversy remains about the kind of alternate detention system that will replace it. 72 In contrast to the current model, which has largely rendered in efficient decisions based on ad hoc policies, I argue for the establishment of a domestic terror court (DTC) created specifically to deal with the unique procedural issues created by a growing number of suspected terrorists.

#### The court’s procedural justice is vital to solve

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

Recent research highlights two reasons why procedural justice may be particularly important in the context of detentions. First, judgments of procedural fairness are particularly important to individuals experiencing uncertainty. 83 Detainees lack the procedural certainties guaranteed in a regular criminal proceeding in that they frequently do not know how long they will be held, why they are being held, what evidence exists against them, and what degree of punishment they may face. 84 Second, the greater the unfavorableness of the outcome and the larger the potential ha rm, the more individuals care about fair process. 85 These findings are reflected in U.S. criminal law provisions requiring certain elements of procedural due process when serious sanctions are involved. 86¶ It is also critical to extend procedural justice judgments beyond the individual detainee to the perspective of a worldwide audience. While it is easy to overlook how an alleged terrori st feels about the degree of procedural fairness he or she is receivin g, the perceptions of governments, human rights organizations, politic al groups (in- cluding terrorist organizations), and millions of individuals (particu- larly those who closely identify with that individu al’s race, religion, or nationality) cannot be ignored. Individuals become upset when they observe unfairness, and such observations motivate them to help victims of this unfairness. 87 Thus, it would be a mistake to think that procedural injustice against a single in dividual will affect the perceptions of that individual alone. 88 Additionally, efforts to hide procedural injustices, such as the abuse of detainees by U.S. soldiers, 89 have only backfired by creating sympathy for the types of individuals that the United States seeks to dehumanize. 90 In the next section, I identify six rules of procedural justice, evaluate the current detention regime based on these rules, and make recommendations about how these rules could be implemented in a DTC model.

#### NSC is the best solution to the detainee issue---other options fail

Anthony L. Kimery 9, Homeland Security Today's Online Editor and Online Media Division manager, draws on 30 years of experience and extensive contacts as he investigates homeland security, counterterrorism and border security, citing Glenn Sulmasy, first permanent commissioned military law professor at the Coast Guard Academy, where he is a Professor of Law teaching international, constitutional, and criminal law, "The Case For A 'National Security Court'", December 3, [www.hstoday.us/blogs/the-kimery-report/blog/the-case-for-a-national-security-court/a9333d82c11cecd35e74c8c0b65c2698.html](http://www.hstoday.us/blogs/the-kimery-report/blog/the-case-for-a-national-security-court/a9333d82c11cecd35e74c8c0b65c2698.html)

“The administration is now fully aware that this is a vastly complex issue – and one that requires a complex solution,” Sulmasy said.¶ “The President, in an eloquent speech at the National Archives in late May, identified there would be various options to consider for the detainees: diplomatic re-patriation, the use of military commissions, civilian Article III federal courts, and that he was still reviewing what to do with the 75-100 detainees that do not fit neatly in any of these regimes. That is where the National Security Court system provides the best, most pragmatic alternative for those difficult cases, as well as those inevitable future captures in the War on al Qaeda,” Sulmasy said.¶ Sulmasy continued: “Recent reports discuss the possibility of a hybrid court held on military bases within the US. Of course, I am delighted to hear of such ideas and progress. However, the nation needs to go further and create one court system that is best suited for this unique Al Qaeda fighter once captured. Rather than offering options to the detainees of either choosing a military commission or a civilian court, the National Security Court system provides one forum to attain the necessary balance between human rights, due process, and national security."¶ “We have to move forward, and recognize that the two existing paradigms – use of our traditional federal courts or the use of the law of war model (military commissions) – are simply jamming a square peg in a round hole. The administration now has the opportunity to statutorily create a legal system that best serves the needs of the nation, as well as the detainees.”¶ “The key distinction with my system from those now proposed by various commentators and scholars … is that the NSCS must be presumptively adjudicatory – and not used as a means of preventative detention,” Sulmasy said, noting that “the presumption should be to try, and if determined by the Commander-in-Chief and the military that such a trial would be either too risky or not possible, then as an exception such a decision can be made. This distinction is important and vital to ensure we fully support the rule of law, promote the national security, and still garner and maintain international support for our efforts.”

#### Plan restores legitimacy and outweighs benefits from indefinite detention

Harvey Rishikof 8, Professor of Law and Former Chair of the Department of National Security Strategy at the National War College and Kevin E Lunday, Captain and judge advocate in the US Coast Guard, "Due Process Is a Strategic Choice: Legitimacy and the Establishment of an Article III National Security Court", December 19, www.cwsl.edu/content/journals/Rishikof.pdf

The purpose of the current preventive detention regime, based primarily on a law of armed conflict approach, appears to be twofold: to incapacitate unlawful enemy combatants for the duration of hostilities, and to obtain intelligence information from those detainees. However, the benefit of indefinite—perhaps permanent— incapacitation through detention under the GWOT framework is outweighed by the damage the policy causes to U.S. legitimacy. Further, it is unclear that lengthy detention and interrogation of suspected terrorists provides greater intelligence value than other options. 61 The value of intelligence, particularly operational details, held by a detainee without access to associates or means of communication typically diminishes with time. 62 These realities undermine the justification for indefinite administrative detentions for broader intelligence purposes. 63¶ The current preventive detention regime also damages the strategic legitimacy of the United States because it applies a legal double standard for treatment and interrogation of detainees, depending not upon the status of the detainee but the agency affiliation of the government custodian. The DTA established a minimum standard for detainee treatment and interrogation for all persons detained under the control of the Department of Defense (DoD), requiring that no person under DoD control may be subjected to a list of specific interrogation techniques not authorized by the standing U.S. Army Field Manual on interrogation. 64 For non-DoD agencies however, the DTA applies only a minimum constitutional standard, prohibiting “cruel, inhuman or degrading treatment or punishment” that, considered under a totality of the circumstances, violates the Fifth, Eighth, or Fourteenth Amendments. 65 This dichotomy allows non-DoD personnel to conceivably engage in coercive interrogation methods that may be otherwise prohibited for use by DoD personnel. 66 The MCA not only reaffirmed this dual standard for detainee treatment, but also specifically authorized the use of a detainee’s coerced testimony before a military commission. 67¶ Despite the arguments against the current detention policy, there are legitimate purposes for detention that further both short- and long- term national security objectives. A detention regime should serve the purpose of temporary incapacitation when necessary to prevent a suspected terrorist from conducting or aiding an imminent or looming attack and should provide the government reasonable time to complete pre-trial investigation and preparations in advance of criminal prosecution. Such a detention policy must consider such factors as the degree and nature of the threat posed by the individual and the progress of the government in investigating and prosecuting criminal charges. Additionally, it should provide the detainee a right to challenge the basis for the state’s detention and the conditions of the detention facility. These purposes are consistent with domestic and international legal norms and do not undermine U.S. strategic legitimacy.¶

Some have argued for stronger executive authority to employ indefinite preventive detention of suspected terrorists, including U.S. citizens, with restricted judicial review, such as the initial approach used to detain Padilla or Hamdi. 68 However, such a preventive detention scheme would require compelling emergency circumstances that Congress has not determined currently exist. Although the United States faces a significant threat of terrorist attacks by Islamic extremists, there has been insufficient evidence to warrant providing the executive with this authority. The U.S. Constitution provides Congress with the “suspension power” to address such circumstances, 69 and the sweeping but general language of the 2001 Authorization for the Use of Military Force (AUMF) fails to provide the executive with that emergency authority. 70¶ Given the constant potential for government overreaching to achieve security interests, and a need for appropriate balancing of governmental and individual interests, a detention regime should include greater participation by Article III courts. Article III judges are uniquely qualified and positioned to perform this interest balancing. 71 But detention of terrorist suspects also requires judges with specialized national security expertise and an appropriate forum that ensures government interests in security of the proceedings and information.

# 2AC

## Legitimacy

#### DTC model best for legitimacy

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 War on Terrorism is an ideological struggle that can only be won through legitimizing the rule of law and undermining extremism. While governments often overreact in periods of crisis by trampling individual rights in the name of national security, governmental excess undermines the principle of legitimacy. In the context of terrorism, legitimacy, rather than deterrence, is primarily what shapes compliance with government policies. The DTC model enhances perceptions of legitimacy by providing a procedurally fair process designed specifically to try detainees. By properly balancing fairness, effectiveness, and efficiency, this model provides a workable solution that is better suited to the unique challenges involved in trying suspected terrorists than the vague standards employed by the current U.S. detention regime.

## T

### 2AC T – Prohibit

#### Restriction means a limit or qualification, 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.

#### “Statutory restriction” means limits imposed by legislation

Black’s Law

“statutory restriction”, <http://thelawdictionary.org/statutory-restriction/>, accessed 6-2-13

Limits or controls that have been placed on activities by its ruling legislation.

#### “Area” means a field of study – their def is about LOST

Dictionary.Com – No specific Date Included

Updated in 2013 but no specific date given, http://dictionary.reference.com/browse/area

ar•e•a [air-ee-uh] noun¶ 1.¶ any particular extent of space or surface; part: the dark areas in the painting; the dusty area of the room.¶ 2.¶ a geographical region; tract: the Chicago area; the unsettled areas along the frontier.¶ 3.¶ any section reserved for a specific function: the business area of a town; the dining area of a house.¶ 4.¶ extent, range, or scope: inquiries that embrace the whole area of science.¶ 5.¶ field of study, or a branch of a field of study: Related areas of inquiry often reflect borrowed notions.

#### “In” means within a set of limits

Dictionary.Com – No specific Date Included

Updated in 2013 but no specific date given, http://dictionary.reference.com/browse/in

In [in] preposition, adverb, adjective, noun, verb, inned, in·ning.¶ preposition¶ 1.¶ (used to indicate inclusion within space, a place, or limits): walking in the park.¶ 2.¶ (used to indicate inclusion within something abstract or immaterial): in politics; in the autumn.¶ 3.¶ (used to indicate inclusion within or occurrence during a period or limit of time): in ancient times; a task done in ten minutes.¶ 4.¶ (used to indicate limitation or qualification, as of situation, condition, relation, manner, action, etc.): to speak in a whisper; to be similar in appearance.¶ 5.¶ (used to indicate means): sketched in ink; spoken in French.¶ 6.¶ (used to indicate motion or direction from outside to a point within) into: Let's go in the house.¶ 7.¶ (used to indicate transition from one state to another): to break in half.¶ 8.¶ (used to indicate object or purpose): speaking in honor of the event.

## CP

### 2AC Article III Courts

#### CP decks legitimacy

Glenn Sulmasy 9, Associate Professor of Law at the United States Coast Guard Academy and was a National Security and Human Rights Fellow at the Carr Center, Harvard Kennedy School, April 13, “THE NEED FOR A NATIONAL SECURITY COURT SYSTEM”, PDF

Thank you Professor, and special thanks to the Journal as well as Chris Borgen for his kind invitation to have me here to speak – and to his expert organization of this conference. The use of military commissions in the war on al Qaeda has been, to say the least, unsuccessful and disastrous as a matter of policy. Although some now advocate for the use of the Article III court system to try terror suspects, such a policy would be equally unsuccessful and potentially more problematic. Our ability to successfully—and humanely—detain and prosecute those who wish to undermine our ideals will inevitably be an issue upon which history will judge the great “American experiment.” It now is clear that the best approach is to reject the two prevailing rigid paradigms and pursue a more flexible, realistic approach – a “third way” is needed. An alternative, hybrid court system will be required to successfully deal with these suspects in the future. In doing so, we remain on the right side of history, restore our reputation abroad, and continue to make progress in the war on al Qaeda.¶ THE CURRENT SITUATION¶ The West, whether we accept this reality or not, is fighting and engaged in an armed conflict against violent, international terrorists. This is exemplified by the current situation in Afghanistan, Iraq, parts of Pakistan, numerous other areas of the world, and even in the homeland. Coalition military forces have been largely successful on the battlefield against al Qaeda and other terrorist organizations, however, the current war involves so much more than victory on the battlefield. Winning the war against al Qaeda means the defeat of an ideology of hate, the removal of state sponsors of terror, and the spread of democracy in new regions of the world. We must also remember that defeating terrorists does not just mean victory in combat, but victory for the rule of law, and the adjudication of terror suspects within these very same processes of law. Again, although the West has been largely militarily successful in action(s) against al Qaeda, the road to justice in the courtroom has been a strategic shortfall.¶ The administration has long advocated,1 and it has now become exceedingly clear, that this conflict is dissimilar to those wars fought by previous generations of Americans. Indeed, it is an armed conflict of some sort, but again, not a traditional one. Al Qaeda fighters do not wear uniforms, do not fight under a flag, and they certainly are not parties to any of the conventions related to warfare that America and the rest of the civilized world are bound by. America’s enemies hide among civilian populations, roam along international borders, target innocent civilian populations with indiscriminate weapons of slaughter and chaos, and vow to fight until the end. The military is constantly changing tactics and adapting to be able to best combat the enemy. Although the fight against al Qaeda and international terrorism involves the use of the American military, unlike prior conflicts, the so called “war on terror” now involves the FBI, the CIA, and even local law enforcement. The terrorist attacks of September 11, as well as the ensuing fight against al Qaeda and other terrorist organizations abroad, contributed to the largest reorganization of the Federal government since the National Security Act of 1947,2 resulting in the creation of the Department of Homeland Security.3¶ Rather than sitting in a “war room,” planning the movement of large brigades of tanks, plotting wide-scale aerial bombardment of enemy territory, planning to control strategic areas on the high seas, and other traditional tactics, today’s war is being fought through use of the Terrorist Surveillance Program, large scale intelligence operations, and even the training of local police. Thus, the current military approach implements a hybrid model, one that involves both a military and a law enforcement response. While these tactical changes have resulted in a great deal of military success abroad, in particular the troop “surge” in Iraq,4 parallel strategic adaptations have not taken place in America’s legal approach to fighting this war. Seven years later, America is using a universally discredited military commission system to adjudicate suspected terrorists held in Guantanamo. Simply put, perceptions matter in 21st century warfare, or “fourth generation conflicts.” The longer this system continues, the more harm comes to America’s reputation and credibility abroad on other critical, humanitarian issues.

#### Perm do the CP---NSC includes Article III judges

Andrew McCarthy 9, Director of the Center for Law & Counterterrorism at the Foundation for the Defense of Democracies. From 1985 through 2003, he was a federal prosecutor at the U.S. Attorney’s Office for the Southern District of New York, and was the lead prosecutor in the seditious conspiracy trial against Sheikh Omar Abdel Rahman and eleven others, described subsequently. AND Alykhan Velshi, a staff attorney at the Center for Law & Counterterrorism, where he focuses on the international law of armed conflict and the use of force, 8/20/09, “Outsourcing American Law,” AEI Working Paper, http://www.aei.org/files/2009/08/20/20090820-Chapter6.pdf

Similarly, the demonstrated weaknesses in the military commission system would be ameliorated by the unique assets of federal judges. The commissions have developed at a snail’s pace, and, in addition, been bogged down over procedural confusion, the need to revise the rules, and allegations of conflicts of interest.74 Federal judges routinely handle and bring to conclusion matters of greater complexity than war crimes tribunals, and we could with confidence entrust the Chief Justice to select jurists with demonstrated ability in this regard. Judges are expert at working through novel and complex procedural rules, and at ensuring that the rules are followed when they are clear. They are highly experienced at dealing with aggressive prosecutors and self-styled activist lawyers, both of which are wont to be drawn to national security cases. Most significantly, their independence would make them unstinting in the face of claimed conflicts. It would instantly mean decisions could be made, and the proceedings moved forward, unburdened by any appearance of impropriety. There would no longer be any colorable complaint that the authority advancing the allegations was the same authority determining the legal and factual validity of the allegations.¶ Essentially, NSC trials would add the Article III judges to the existing military commission format. The enabling legislation, as suggested above, would illuminate that their function is to preside over these legal proceedings, not take any action to expand or restructure them. In addition, the government would be given a right of interlocutory appeal, at any point in the proceedings, to challenge any order, discovery or otherwise, by which the court deviates from the procedural rules.

#### Delays and security issues kill due process---plan solves but funding doesn’t

Amos N. Guiora 9, Professor of Law at the S.J. Quinney College of Law, University of Utah, served in the Judge Advocate General's Corps of the Israel Defense Forces where he held senior command positions related to the legal and policy aspects of operational counterterrorism, “Creating a Domestic Terror Court”, PDF

As mentioned above, this article assumes that both traditional Article III courts and international treaty-based courts are inadequate to try suspected terrorists. With respect to Article III courts, the reasons are primarily two-fold. First, constituting jury trials for thousands of detainees who have been held in detention for years awaiting trial would take an additional, substantial period of time, unnecessarily prolonging the pre-trial detention period (not to mention, all the inherent problems- if not impossibilities-of convening a "jury of your peers" for detainee trials). Second, terrorism trials necessarily involve unique and confidential intelligence information in a manner qualitatively different from that envisioned in the Classified Information Protection Act,9 and how such information is used as evidence in trial clearly affects national security concerns.10¶ To that end, as subsequently explained, the introduction of classified information -necessary to prosecuting terrorists-will be most effectively facilitated by a DTC. Although advocates of Article III courts suggest the success of previous trials proves their claims regarding the efficacy of their approach, I suggest the mere handful of cases tried (including the highly problematic Moussaoui trial) does not strengthen the argument in the least.1 Perhaps the opposite; for by highlighting the success of trials before juries in an extraordinarily limited number of cases, the proponents suggest-inadvertently-that the logistical nightmare of the sheer number of potential trials is something they have not fully internalized.¶ This was abundantly clear to me when I testified before the Senate Judiciary Committee,'12 where the proponents of Article III courts repeatedly emphasized how well the process had worked in one particular case. My response was: We are talking about thousands of trials, not one. Jury trials and traditional processes are not going to provide defendants with speedy trials, but in fact, quite the opposite. Bench trials- with judges trained in understanding and analyzing intelligence information- will much more effectively guarantee terrorism suspects their rights. That is, the traditional Article III courts will be less effective in preserving the rights and protections of thousands of detainees than the proposed DTC. I predicate this assumption on a "numbers analysis": not establishing an alternative judicial paradigm will all but ensure the continued denial of the right to trial to thousands of detainees.¶ A recent report published by Human Rights First defends traditional Article III courts' abilities to try individuals suspected of terrorism. 13 The authors demonstrate confidence in the courts' abilities to maintain a balance between upholding defendants' rights while simultaneously keeping confidential information secure.'4 Nevertheless, the report recognizes the limitations inherent in trying terrorist suspects in traditional courts as illustrated by the discussion concerning Zacarias Moussaoui's trial. 15¶ Moussaoui was brought to trial in the United States District Court for the Eastern District of Virginia after he was suspected of training with al Qaeda in preparation for the terrorist attacks of September 11, 2001.16 Although Moussaoui eventually pled guilty and admitted that he intended to fly a fifth plane into the White House, the trial itself reached a standstill when Moussaoui refused to proceed unless given access to "notorious terrorism figures who were in government custody.' 17 Because of its constitutional obligations to criminal defendants, the court was faced with an irreconcilable choice: either allow national security to be compromised or violate Moussaoui's guaranteed constitutional rights. Despite the fact that the United States Court of Appeals for the Fourth Circuit determined that "carefully crafted summaries of interviews"' 8 would satisfy constitutional requirements, the fact that the terrorist suspects in federal custody are even allowed to give deposition testimony could alone compromise security. 19¶ Regardless of the attempted solution, because of the special nature of prosecuting terrorist suspects, traditional Article III courts will always either compromise at least some national security or violate defendants' constitutional rights. My proposed DTC bridges the gap in that it allows the introduction of classified intelligence in conjunction with traditional criminal law evidence. This, then, meets Confrontation Clause requirements. The intelligence information can only be used to bolster the available evidence for conviction purposes but cannot under any circumstances-be the sole basis of conviction.

#### CP weakens warfighting and juries/judges not adequate---NSC is best

Glenn Sulmasy 9, Associate Professor of Law at the United States Coast Guard Academy and was a National Security and Human Rights Fellow at the Carr Center, Harvard Kennedy School, April 13, “THE NEED FOR A NATIONAL SECURITY COURT SYSTEM”, PDF

ARTICLE III COURTS¶ There are some, many of whom are here today at St. John’s Law School for this symposium, who advocate the use of the current civilian court system to try these suspects.13 The civilian court system as established in Article III of the Constitution, however, is not the appropriate system to adjudicate these hybrid cases. There are numerous substantive and procedural problems with trying terror suspects in Article III courts.¶ Constitutional Criminal Procedure¶ Applications of the Fourth and Fifth Amendments to the War on al Qaeda are prime examples of reasons why this construct is as unworkable as the military commissions have been (albeit for very different reasons). Combat officers in Afghanistan and Iraq are not police officers – nor should they ever be required to function in this capacity. They are there overseas to fight and win wars. It is unreasonable to expect soldiers to issue Miranda warnings to detainees, or require them to obtain search warrants before searches or seizing evidence. Simply, such law enforcement requirements are not issues on the mind of soldiers fighting stateless enemies in Iraq and Afghanistan who have evidence that could be used for prosecutions later. Although these concerns would be unthinkable seven years ago, since the Court’s Boumediene14 decision, it is debatable whether other Constitutional rights would be afforded to these suspects. American soldiers should be concerned with combating the enemy, not with providing Miranda statements upon the initiation of battle, or storming an al Qaeda safe house and the subsequent detention of suspected terrorists. Such notions are ludicrous.¶ Juries¶ Furthermore, consider the jury issues associated with trying the alleged international terrorists in our Article III courts. Imagine the attempts made to empanel an unbiased jury for any of these cases. A “jury of your peers” in accordance with U.S. jurisprudence for trying Khalid Sheik-Mohamed would be impossible within the continental United States. Additionally, any juries would require lifetime protective details.¶ Judges¶ Also, it appears ill advised to use traditional Article III judges to make determinations on such matters of nuanced and niche areas of the law, such as the law of armed conflict, intelligence law, human rights law, etc. In other areas of so called “niche law” – immigration, bankruptcy – we have created separate court systems with specialized judges presiding. The reality is that not all U.S. district court judges have the experience in the law of war, intelligence law, international law, human rights, etc., that would be required to properly conduct a trial for an alleged enemy of the United States (and part of an ongoing armed conflict). If we are serious about using a civilian system to try the detainees, we need judges that are versed in these areas of the law to preside.¶ Protective Details¶ Also, like the jury issues, the impractical reality of protecting judges has emerged. The issues of judge protection may sound mundane right now, but they are considerable in terms of cost and time, becoming more important within the realistic framework of 21st century jurisprudence. Few would contend with the fact that judges trying these suspects would be targets for future terrorist attacks. Using the existing district courts across the country would require the adoption of new security procedures, massive structural overhauls, additional security personnel, and the expenditure of large amounts of money that the federal government does not have.¶ Civilian Prisons¶ Not only would the trial of these suspects in district courts present major problems, the actual physical detention of these suspects using domestic prisons is also highly problematic. It seems unlikely that many members of Congress would actually volunteer to have these detainees moved from Guantanamo Bay to their legislative districts. In fact, in July of 2007, the Senate voted 94 to 3 to not move the detainees into the United States.15¶ With all of the potential downsides of the current system and the impracticalities of using the civilian court system, some wonder if there is another way forward. Several scholars, from multiple sides of the political spectrum, have continued to argue for creating some sort of a new terrorist court – a national security court if you will. Those who desire the actual trial of these suspects, the closing of Guantanamo, the protection of state secrets, and the most efficient use of government resources—while still upholding the Rule of Law and promoting human rights—can take comfort in knowing that there is an effective alternative available.

## DA

### AT: SVio Impact

**Heg solves their impact**

Thomas P.M. **Barnett 11**, Former Senior Strategic Researcher and Professor in the Warfare Analysis & Research Department, Center for Naval Warfare Studies, U.S. Naval War College American military geostrategist and Chief Analyst at Wikistrat, worked as the Assistant for Strategic Futures in the Office of Force Transformation in the Department of Defense, September 12, 2011, “The New Rules: The Rise of the Rest Spells U.S. Strategic Victory,” World Politics Review, online: http://www.worldpoliticsreview.com/articles/9973/the-new-rules-the-rise-of-the-rest-spells-u-s-strategic-victory

First the absurdity: A few of the most over-the-top Bush-Cheney neocons did indeed promote a vision of U.S. primacy by which America shouldn't be afraid to wage war to keep other rising powers at bay. **It was a nutty concept then**, and it **remains a nutty concept today**. But since it feeds a lot of major military weapons system purchases, especially for the China-centric Air Force and Navy, don't expect it to disappear so long as the Pentagon's internal budget fights are growing in intensity. ¶ Meanwhile, the Chinese do their stupid best to fuel this outdated logic by building a force designed to keep America out of East Asia just as their nation's dependency on resources flowing from unstable developing regions skyrockets. With America's fiscal constraints now abundantly clear, the world's primary policing force is pulling back, while that force's implied successor is nowhere close to being able to field a similar power-projection capacity -- and never will be. So with NATO clearly stretched to its limits by the combination of Afghanistan and Libya, a lot of future fires in developing regions will likely be left to burn on their own. We'll just have to wait and see how much foreign commentators delight in that G-Zero dynamic in the years ahead. ¶ That gets us to the original "insult": the U.S. did not lord it over the world in the 1990s. Yes, it did argue for and promote the most rapid spread of globalization possible. But **the "evil" of the Washington Consensus** only yielded the **most rapid growth of a truly global middle class that the world has ever seen**. Yes, we can, in our current economic funk, somehow cast that development as the "loss of U.S. hegemony," in that the American consumer is no longer the demand-center of globalization's universe. But this is without a doubt the most amazing achievement of U.S. foreign policy, surpassing even our role in World War II. ¶ Numerous world powers served as global or regional hegemons before we came along, **and their record on economic development was painfully transparent**: **Elites got richer, and the masses got poorer**. Then America showed up after World War II and engineered an international liberal trade order, one that was at first admittedly limited to the West. But within four decades it went virally global, and now for the first time in history, more than half of our planet's population lives in conditions of modest-to-mounting abundance -- **after millennia of mere sustenance**. ¶ You may choose to interpret this as some sort of cosmic coincidence, but the historical sequence is undeniable: **With its unrivaled power, America made the world a far better place**. ¶ That spreading wave of global abundance has reformatted all sorts of traditional societies that lay in its path. Some, like the Chinese, have adapted to it magnificently in an economic and social sense, with the political adaptation sure to follow eventually. Others, being already democracies, have done far better across the board, like Turkey, Indonesia and India. But there are also numerous traditional societies where that reformatting impulse from below has been met by both harsh repression from above and violent attempts by religious extremists to effect a "counterreformation" that firewalls the "faithful" from an "evil" outside world.¶ Does this violent blowback constitute the great threat of our age? Not really. As I've long argued, this "friction" from globalization's tectonic advance is merely what's left over now that great-power war has gone dormant for 66 years and counting, with interstate wars now so infrequent and so less lethal as to be dwarfed by the civil strife that plagues those developing regions still suffering weak connectivity to the global economy. ¶ Let's remember what the U.S. actually did across the 1990s after the Soviet threat disappeared. It went out of its way to police the world's poorly governed spaces, battling rogue regimes and answering the 9-1-1 call repeatedly when disaster and/or civil strife struck vulnerable societies. **Yes, playing globalization's bodyguard made America public enemy No. 1 in the eyes of its most violent rejectionist movements**, including al-Qaida, but we made the effort because, in our heart of hearts, we knew that this is what blessed powers are supposed to do. ¶ Some, like the Bush-Cheney neocons, were driven by more than that sense of moral responsibility. They saw a chance to remake the world so as to assure U.S. primacy deep into the future. The timing of their dream was cruelly ironic, for it blossomed just as America's decades-in-the-making grand strategy reached its apogee in the peaceful rise of so many great powers at once. Had Sept. 11 not intervened, the neocons would likely have eventually targeted rising China for strategic demonization. Instead, they locked in on Osama bin Laden. The rest, as they say, is history. ¶ The follow-on irony of the War on Terror is that its operational requirements actually revolutionized a major portion of the U.S. military -- specifically the Army, Marines and Special Forces -- in such a way as to redirect their strategic ethos from big wars to small ones. It also forged a new operational bond between the military's irregular elements and that portion of the Central Intelligence Agency that pursues direct action against transnational bad actors. The up-front costs of this transformation were far too high, largely because the Bush White House stubbornly refused to embrace counterinsurgency tactics until after the popular repudiation signaled by the 2006 midterm election. But the end result is clear: **We now have the force we actually need to manage this global era**.¶ But, of course, **that can all be tossed into the dumpster** if we convince ourselves that our "loss" of hegemony was somehow the result of our own misdeed, instead of being our most profound gift to world history. Again, we grabbed the reins of global leadership and patiently engineered not only the **greatest redistribution -- and expansion -- of global wealth ever seen,** but also the **greatest consolidation of global peace ever seen**. ¶ Now, if we can sensibly realign our strategic relationship with the one rising great power, China, whose growing strength upsets us so much, then in combination with the rest of the world's rising great powers we can collectively wield enough global policing power to manage what's yet to come. ¶ As always, **the choice is ours**.

#### The status quo is structurally improving

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The world is getting better, faster, than we could ever have imagined. For those of us who are fortunate enough to live in wealthy communities or countries, we have a common set of reference points we use to describe the world's most intractable, upsetting, unimaginable injustices. Often, we only mention these horrible realities in minimizing our own woes: "Well, that's annoying, but it's hardly as bad as children starving in Africa." Or "Yeah, this is important, but it's not like it's the cure for AIDS." Or the omnipresent description of any issue as a "First World Problem". But let's, for once, look at **the** actual **data** around developing world problems. Not our condescending, world-away displays of **emotion**, or our slacktivist tendencies to see a retweet as meaningful action, but the actual numbers and metrics about how progress is happening for the world's poorest people. Though metrics and measurements are always fraught and flawed, Gates' single biggest emphasis was the idea that measurable progress and metrics are necessary for any meaningful improvements to happen in the lives of the world's poor. So how are we doing? THE WORLD HAS CHANGED The results are astounding. Even if we caveat that every measurement is imprecise, that billionaire philanthropists are going to favor data that strengthens their points, and that some of the most significant problems are difficult to attach metrics to, it's inarguable that the past two decades have seen the greatest leap forward in the lives of the global poor in the history of humanity. Some highlights: Children are 1/3 less likely to die before age five than they were in 1990. The global childhood mortality rate for kids under 5 has dropped from 88 in 1000 in 1990 to 57 in 1000 in 2010. The global infant mortality rate for kids dying before age one has plunged from 61 in 1000 to 40 in 1000. Now, any child dying is of course one child too many, but this is astounding progress to have made in just twenty years. In the past 30 years, the percentage of children who receive key immunizations such as the DTP vaccine has quadrupled. The percentage of people in the world living on less than $1.25 per day has been cut in half since 1990, ahead of the schedule of the Millennium Development Goals which hoped to reach this target by 2015. The number of deaths to tuberculosis has been cut 40% in the past twenty years. The consumption of ozone-depleting substances has been cut 85% globally in the last thirty years. The percentage of urban dwellers living in slums globally has been cut from 46.2% to 32.7% in the last twenty years. And there's more progress in hunger and contraception, in sustainability and education, against AIDS and illiteracy. After reading the Gates annual letter and following up by reviewing the UN's ugly-but-data-rich Millennium Development Goals statistics site, I was surprised by how much progress has been made in the years since I've been an adult, and just how little I've heard about the big picture despite the fact that I'd like to keep informed about such things. I'm not a pollyanna — there's a lot of work to be done. But I can personally attest to the profound effect that basic improvements like clean drinking water can have in people's lives. Today, we often use the world's biggest problems as metaphors for impossibility. But the evidence shows that, actually, we're really good at solving even the most intimidating challenges in the world. What we're lacking is the ability to communicate effectively about how we make progress, so that we can galvanize even more investment of resources, time and effort to tackling the problems we have left.

### 2AC Detention Pounder

#### Congress has already passed detention restrictions---pounds DA

Janet Cooper Alexander 13, professor of law at Stanford University, March 21st, 2013, "The Law-Free Zone and Back Again," Illinois Law Review, [illinoislawreview.org/wp-content/ilr-content/articles/2013/2/Alexander.pdf](http://illinoislawreview.org/wp-content/ilr-content/articles/2013/2/Alexander.pdf)

Congress also passed legislation requiring suspected members of al- Qaeda or “associated forces” to be held in military custody, again making it difficult to prosecute them in federal court. The bill as passed contained some moderating elements, including the possibility of presidential waiver of the military custody requirement, 7 recognition of the FBI’s ability to interrogate suspects, 8 and a disclaimer stating that the statute was not intended to change existing law regarding the authority of the President, the scope of the Authorization for Use of Military Force, 9 or the detention of U.S. citizens, lawful residents, or persons captured in the United States. 10 All the while, Republican presidential hopefuls were vying to see who could be the most vigorous proponent of indefinite detention, barring trials in civilian courts, and reinstating a national policy of interrogation by torture.¶ 11¶ During the same period, the D.C. Circuit issued a series of decisions that effectively reversed the Supreme Court’s habeas decisions of 2004 and 2008. 12 The Supreme Court’s failure to review these decisions has left detainees with essentially no meaningful opportunity to challenge their custody. ¶ Thus, a decade that began with the executive branch’s assertion of sole and exclusive power to act unconstrained by law or the other branches ended, ironically, with Congress asserting its power to countermand the executive branch’s decisions, regardless of detainee claims of legal rights, in order to maintain those law-free policies. And although the Supreme Court had blocked the Bush administration’s law-free zone strategy by upholding detainees’ habeas rights, the D.C. Circuit has since rendered those protections toothless.

### 2AC Debt Ceiling DA

#### Won’t pass---no compromise

Jim Kuhnhenn 9-15, September 15th, 2013, "Obama to use Lehman anniversary to cite progress," www.usatoday.com/story/money/business/2013/09/14/obama-lehman-anniversary/2813687/

Obama and Republicans are at a stalemate, however.¶ Obama has proposed some changes that would reduce spending on Social Security and Medicare, including an adjustment that would lower cost-of-living adjustments. But he has insisted on more tax revenue by closing what he says are loopholes for the rich, a step Republicans won't take.¶ The impasse has revived threats of a government shutdown after the current budget year ends Sept. 30 and, more economically damaging, a default if Congress can't agree to raise the debt ceiling later in October.¶ Some conservative Republicans say they will only extend current spending levels or increase the debt ceiling if Obama delays putting in place his health care law, a condition Obama has flatly rejected.¶ House Speaker John Boehner, R-Ohio, has tried to keep the focus on spending reductions, even as some on his right insist on defunding or delaying the health care law.¶ "This year the federal government will bring in more revenue than any year in the history of our government, and yet we will still have nearly a $700 billion budget deficit," he said. "We have a spending problem. It must be addressed, period."

#### Won’t pass---Obamacare impasse

Denver Post 9-14, September 14th, 2013, "Political games on the debt ceiling and Obamacare," www.denverpost.com/politics/ci\_24082710/political-games-debt-ceiling-and-obamacare

In an ominous sign, Republican leaders in the U.S. House last week had to delay a vote to keep the government running through mid-December because they didn't have enough support. Once again, unfortunately, budget hard-liners in the GOP caucus are threatening to shut down the government in order to extract spending concessions.¶ In this case, however, the desired concession — defunding the Affordable Care Act, aka Obamacare — is beyond unlikely. It has essentially no chance of occurring without a major change in the political landscape in Washington.¶ So long as President Obama resides in the White House and the Senate is controlled by Democrats, Obamacare is not going away.¶ In contrast with some of their backbenchers, House Republican leaders had proposed — and hope to revive this week — a plan to continue funding the government through mid-December that includes the same level of sequester cuts. Meanwhile, they'd float a separate measure to defund Obamacare.¶ That second measure would, of course, be ignored in the Senate, but that is the sort of thing that happens in a divided Congress. Each side is often able to check the other.¶ It's not as if the GOP leadership is squishy on Obamacare. As The New York Times reported last week, those leaders have signaled that "Republicans would support an essential increase in the nation's debt limit in mid-October only if President Obama and Democrats agree to delay putting his health insurance program into full effect."

#### PC low and fails for fiscal fights

Greg Sargent 9-12, September 12th, 2013, "The Morning Plum: Senate conservatives stick the knife in House GOP leaders," Washington Post, factiva

All of this underscores a basic fact about this fall's fiscal fights: Far and away the dominant factor shaping how they play out will be the divisions among Republicans. There's a great deal of chatter (see Senator Bob Corker for one of the most absurd examples yet) to the effect that Obama's mishandling of Syria has diminished his standing on Capitol Hill and will weaken him in coming fights. But those battles at bottom will be about whether the Republican Party can resolve its internal differences. Obama's "standing" with Republicans -- if it even could sink any lower -- is utterly irrelevant to that question.¶ The bottom line is that, when it comes to how aggressively to prosecute the war against Obamacare, internal GOP differences may be unbridgeable. Conservatives have adopted a deliberate strategy of deceiving untold numbers of base voters into believing Obamacare will be stopped outside normal electoral channels. Central to maintaining this fantasy is the idea that any Republican leader who breaks with this sacred mission can only be doing so because he or she is too weak and cowardly to endure the slings and arrows that persevering against the law must entail. GOP leaders, having themselves spent years feeding the base all sorts of lies and distortions about the law, are now desperately trying to inject a does of reality into the debate by pointing out that the defund-Obamacare crusade is, in political and practical terms alike, insane. But it may be too late. The time for injecting reality into the debate has long since passed.

#### Obama won’t push the plan---it restricts his authority so he wouldn’t expend PC

N.Y.T. ’12 – Becker and Shane – NYT Staff

Secret ‘Kill List’ Proves a Test of Obama’s Principles and Will, By JO BECKER and SCOTT SHANE, Published: May 29, 2012, New York Times, http://www.nytimes.com/2012/05/29/world/obamas-leadership-in-war-on-al-qaeda.html?pagewanted=all&\_r=0

Walking out of the Archives, the president turned to his national security adviser at the time, Gen. James L. Jones, and admitted that he had never devised a plan to persuade Congress to shut down the prison.¶ “We’re never going to make that mistake again,” Mr. Obama told the retired Marine general.¶ General Jones said the president and his aides had assumed that closing the prison was “a no-brainer — the United States will look good around the world.” The trouble was, he added, “nobody asked, ‘O.K., let’s assume it’s a good idea, how are you going to do this?’ “¶ It was not only Mr. Obama’s distaste for legislative backslapping and arm-twisting, but also part of a deeper pattern, said an administration official who has watched him closely: the president seemed to have “a sense that if he sketches a vision, it will happen — without his really having thought through the mechanism by which it will happen.”¶ In fact, both Secretary of State Hillary Rodham Clinton and the attorney general, Mr. Holder, had warned that the plan to close the Guantánamo prison was in peril, and they volunteered to fight for it on Capitol Hill, according to officials. But with Mr. Obama’s backing, his chief of staff, Rahm Emanuel, blocked them, saying health care reform had to go first.

#### Plan’s bipartisan---previous proposals prove support

Nick Sibilla 12, "Bipartisan effort to ban indefinite detention, amend the NDAA", May 18, www.constitutioncampaign.org/blog/?p=7479#.UjHhXz8uhuk

Democrats and Tea Party Republicans are advocating a new proposal to ban indefinite detention on American soil. After President Obama signed the National Defense Authorization Act (NDAA) last year, anyone accused of being a terrorist, committing any “belligerent act” or even providing “material support,” can now be detained indefinitely by the military without a trial. This includes American citizens.¶ Fortunately, a bipartisan coalition is working to stop the NDAA. Congressmen Adam Smith (D-WA), a Ranking Member of the House Armed Services Committee, and Justin Amash (R-MI), who Reason magazine called “the next Ron Paul,” have sponsored an amendment to the latest defense authorization bill, currently on the House floor.¶ If adopted, the Smith-Amash Amendment would make three significant changes to the NDAA. First, it would amend Section 1021 (which authorizes indefinite detention) to ensure that those detained will not be subject to military commissions, but civilian courts established under Article III of the Constitution. As Congressman Smith put it, this would “restore due process rights.”¶ Second, the Smith-Amash Amendment would ban “transfer to military custody:”¶ No person detained, captured, or arrested in the United States, or a territory or possession of the United States, may be transferred to the custody of the Armed Forces for detention…¶ Finally, their amendment would repeal Section 1022 of the NDAA, which mandates military custody for those accused of foreign terrorism.¶ Both Smith and Amash have criticized the NDAA. Amash blasted the NDAA as “one of the most anti-liberty pieces of legislation of our lifetime.” In a letter urging his Republican colleagues to support the amendment, Amash writes:¶ A free country is defined by the rule of law, not the government’s whim. Americans demand that we protect their right to a charge and trial.¶ Meanwhile, in an interview with The Hill, Smith was concerned about the potential abuses of power:¶ It is very, very rare to give that amount of power to the president [and] take away any person’s fundamental freedom and lock them up without the normal due process of law…Leaving this on the books is a dangerous threat to civil liberties.¶ The Smith-Amash Amendment is expected to be voted on later this week. So far, it has 60 co-sponsors in the House. Meanwhile, Senators Mark Udall (D-CO) and Patrick Leahy (D-VT) have introduced a similar bill in the Senate.

#### Syria will cost Obama PC and wreck the agenda, even without a vote

Naureen Khan, 9-11-2013, “Obama pays high political price for fumbling on Syria,” Aljazeera, http://america.aljazeera.com/articles/2013/9/11/obama-pays-high-politicalpriceforhandlingofsyria.html

The Obama administration may have found a temporary way to stave off defeat on the question of Syria, but the long-term political prognosis for the president’s handling of the crisis is dimmer: He will not emerge unscathed from one of the biggest foreign policy challenges of his time in office. For the moment, the administration has pulled back from its original proposal to launch limited air strikes against Syrian President Bashar al-Assad, in the face of mounting opposition on Capitol Hill and around the country. In a prime-time address Tuesday night, the president asked Congress to postpone votes on a possible strike as the administration vetted a diplomatic solution put forward by Russia at the United Nations that would allow Syria to avert the attack by turning over its chemical weapons stockpiles to international control. Nine senators, meanwhile, worked on an alternate resolution to put Congress’ stamp of approval on the new international plan. The speech on Tuesday night capped off weeks of dizzying developments on Syria during which Obama seemed to be walking a tightrope -- selling the idea of military force to a war-weary public and Congress while also feverishly trying to avoid it. “Obviously, this has not been well handled, and the president’s made a couple of 180-degree turns, from the 'red line' to doing nothing to then the military action, and now this diplomatic solution,” said Larry Sabato, political scientist at the University of Virginia. “Here’s his problem: Democrats, Republicans, conservatives, liberals, independents are all opposed to going into Syria. Good luck.” Sabato said that the diplomatic solution looks like the best exit strategy for the president but that there have already been holes punched in his credibility. “Some damage is done because he does look indecisive,” Sabato said. All probable resolutions are still rife with peril for a president who was elected, as he said last week, “to end wars, not start them.” Syria's War A diplomatic agreement with Russia and Syria will allow the White House to save face and scrap an intensely unpopular plan for military action but will almost certainly be viewed by some as a retreat. There are legitimate questions about how such disarmament would work in practice and whether Syria or Russia should be trusted. If Obama overrides Congress and pursues strikes over lawmakers' objections, he would burn all good will with a body he must work with to reach a deal on the debt ceiling and pass a budget in the fall. There would also almost certainly be increased rumblings about impeachment proceedings if, after extolling the virtues of a constitutional democracy, he decided to do as he wanted. Public-opinion polls showed disapproval of the strikes actually hardening as Obama pushed for authorization. A poll released by the Pew Research Center for the People and the Press Monday showed American opposition to the strikes surging within the last week from 48 percent to 63 percent. The president's approval rating is also in negative territory at 44 percent, with only a third of Americans favoring his approach to foreign policy -- an all-time low. Opponents of the administration seized on the less-than-flattering moment to criticize Obama's entire approach to engaging with the world as well as his blunders on Syria. “The world just hasn’t cooperated with the president’s vision or his hopes,” Senate Minority Leader Mitch McConnell, R-Ky., said on the Senate floor Tuesday shortly after announcing that he would oppose the strikes. “We’ve learned the hard way that being nice to our enemies doesn’t make them like you.” During a testy exchange at a House Armed Services Committee hearing Tuesday morning, Rep. Jeff Miller, R-Fla., rebuked Secretary of State John Kerry for the administration’s course changes. When Kerry said the Senate was delaying votes in light of a possible diplomatic resolution, Miller interjected, “Because they don’t have the votes, Mr. Secretary. That’s why they’ve delayed. You know that.“ Fire came from usually friendly quarters too. Liberal Sen. Bernie Sanders, I-Vt., assailed the president and Congress for not focusing on a domestic agenda. “What about our kids?” he asked. “What kind of future are they going to have in a country where the middle class continues to disappear?” Obama’s priorities are indeed on hold for the short term. Immigration reform has not been discussed at all this week, and even pressing debt-ceiling negotiations are on the back burner. Ron Bonjean, a former GOP aide to House and Senate leadership, said the president has weakened his hand on upcoming issues by burning his political capital on Syria. “If members of Congress are willing to stand up to him on Syria, and it looks like they can win, then there’s no reason they wouldn’t take him on other issues as well -- over the debt ceiling and the budget talks that will happen this fall,” said Bonjean. “Accidental diplomacy,” he said, was no way to exude leadership.

#### No debt econ impact

Michael Tanner 11, National Review, “No Surrender on Debt Ceiling”, Jan 19, <http://www.nationalreview.com/articles/257433/no-surrender-debt-ceiling-michael-tanner>

Of course the Obama administration is already warning of Armageddon if Congress doesn’t raise the debt ceiling. Certainly it would be a shock to the economic system. The bond market could crash. The impact would be felt at home and abroad. But would it necessarily be worse than the alternative? While Congress has never before refused to raise the debt ceiling, it has in fact frequently taken its time about doing so. In 1985, for example, Congress waited nearly three months after the debt limit was reached before it authorized a permanent increase. In 1995, four and a half months passed between the time that the government hit its statutory limit and the time Congress acted. And in 2002, Congress delayed raising the debt ceiling for three months. It took three months to raise the debt limit back in 1985 as well. In none of those cases did the world end. More important, what will be the consequences if the U.S. government fails to reduce government spending? What happens if we raise the debt ceiling then continue merrily on our way spending more and running up ever more debt? Already Moody’s and Standard & Poor’s have warned that our credit rating might be reduced unless we get a handle on our national debt. We’ve heard a lot recently about the European debt crisis, but, as one senior Chinese banking official recently noted, in some ways the U.S. financial position is more perilous than Europe’s. “We should be clear in our minds that the fiscal situation in the United States is much worse than in Europe,” he recently told reporters. “In one or two years, when the European debt situation stabilizes, [the] attention of financial markets will definitely shift to the United States. At that time, U.S. Treasury bonds and the dollar will experience considerable declines.” Moreover, unless we do something, federal spending is on course to consume 43 percent of GDP by the middle of the century. Throw in state and local spending, and government at all levels will take 60 cents out of every dollar produced in this country. Our economy will not long survive government spending at those levels.

#### Mexican relations are vital to US economic growth

Shifter 12 Michael is the President of Inter-American Dialogue. “Remaking the Relationship: The United States and Latin America,” April, IAD Policy Report, http://www.thedialogue.org/PublicationFiles/IAD2012PolicyReportFINAL.pdf

There are compelling reasons for the United States and Latin America to pursue more robust ties. Every country in the Americas would benefit from strengthened and expanded economic relations, with improved access to each other’s markets, investment capital, and energy resources. Even with its current economic problems, the United States’ $16-trillion economy is a **vital** market and source of capital (including remittances) and technology **for Latin America**, and it could contribute more to the region’s economic performance. For its part, **Latin America’s rising economies will** inevitably **become** more and more **crucial to the U**nited **S**tates’ economic future. The United States and many nations of Latin America and the Caribbean would also gain a great deal by more cooperation on such global matters as climate change, nuclear non-proliferation, and democracy and human rights.With a rapidly expanding US Hispanic population of more than 50 million, the cultural and demographic integration of the United States and Latin America is proceeding at an accelerating pace, setting a firmer basis for hemispheric partnership Despite the multiple opportunities and potential benefits, relations between the United States and Latin America remain disappointing . If new opportunities are not seized, relations will likely continue to drift apart . The longer the current situation persists, the harder it will be to reverse course and rebuild vigorous cooperation . Hemispheric affairs require urgent attention—both from the United States and from Latin America and the Caribbean.

# 1AR

### 1AR XT – Article III Courts Fail

#### Civilian courts fail---NSC is best option

Anthony L. Kimery 9, Homeland Security Today's Online Editor and Online Media Division manager, draws on 30 years of experience and extensive contacts as he investigates homeland security, counterterrorism and border security, citing Glenn Sulmasy, first permanent commissioned military law professor at the Coast Guard Academy, where he is a Professor of Law teaching international, constitutional, and criminal law, "The Case For A 'National Security Court'", December 3, [www.hstoday.us/blogs/the-kimery-report/blog/the-case-for-a-national-security-court/a9333d82c11cecd35e74c8c0b65c2698.html](http://www.hstoday.us/blogs/the-kimery-report/blog/the-case-for-a-national-security-court/a9333d82c11cecd35e74c8c0b65c2698.html)

“Prosecuting these individuals in our US courts simply will not work and there is too much at stake to grant the unprecedented benefit of our legal system's complex procedural safeguards to foreign nationals who were captured outside the United States during a time of war," Sen. Saxby Chambliss (R-GA) recently said.¶ Sulmasy stressed that “the political branches must first recognize that we are still dealing with a relatively new threat and must enact laws and procedures appropriate to the captured Al Qaeda fighters … We are dealing with a mixture of law enforcement and warfare, and thus, any legal system created must necessarily be a mix of both. The Al Qaeda fighter is a hybrid or a warrior and an international criminal; the war itself is a hybrid of traditional armed conflict and law enforcement operations; thus, it logically follows that we need a hybrid court – a mix of our Article III courts and the existing military commissions.”¶ “Of all options available,” Sulmasy said, “and with the benefit of 20/20 hindsight, this is the best construct from which to begin the task of creating a viable, long-term legal solution to the ambiguities so prevalent in the current legal landscape.”¶ “The truth is, our current court system is ill-equipped for the difficult task of trying non-state actors who strike civilian targets,” wrote Harvey Rishikof, professor of law and national security studies and former chair of the Department of National Security Strategy at the National War College, and former legal counsel to the deputy director of the FBI, focusing on policies concerning national security and terrorism and acting as liaison to the Office of the Attorney General.¶ “The thrust of the idea,” Rishikof wrote, “is to have a dedicated set of federal trial judges working with an expert bar of federal and military prosecutors and defense counsel - all with high-level security clearances. Such a court could accommodate the particular challenges of prosecuting terrorism cases in a manner wholly consistent with the Constitution, the common law, international conventions, and the relevant statutes.”¶ “The military, diplomatic, and judicial tools we’ve used for so long seem incapable of dealing with the 21st Century terrorist with his lack of traceable identity to a nation-state,” said former Department of Homeland Security Secretary, Admiral James Loy, and Commandant of the US Coast Guard from May 1998 to May 2002. In voicing his support of the National Security Court system, Loy said “it’s long overdue that we redesign the processes and venues that can dispense internationally recognized justice.”

#### Article III courts bad---can’t handle secret issues and allows detainees to return to battlefield

Stephen I. Vladeck 7, Professor of Law at Washington College of Law at American University, "Due Process and Terrorism: A Post-Workshop Report", November, www.nationalstrategy.com/portals/0/due.process.and.terrorism.aba.scolns.nsf.mtf.nov.2007.pdf

With respect to Article III courts, the objections raised largely fell into two categories: First, several discussants suggested that Article III courts were poorly suited to handle the secrecy issues that would arise in the context of these types of prosecutions, and would unduly burden the military, which would have to produce witnesses, account for the chain of evidence, and so on. Second, some discussants also emphasized that trying the detainees defeats the perceived justification for holding most of them—pursuant to the LOAC to prevent them from returning to the battlefield. From the government’s perspective, the need to gather intelligence on future terrorist acts in order to save lives, is a higher priority than developing criminal cases against enemy combatants.

#### Article III courts fail

Andrew C. McCarthy 9, Director of the Center for Law & Counterterrorism at the Foundation for the Defense of Democracies and Alykhan Velshi, staff attorney at the Center for Law & Counterterrorism, “Outsourcing American Law: We Need A National Security Court”, AEI Working Paper #156, http://www.aei.org/files/2009/08/20/20090820-Chapter6.pdf

The handling of detainees captured in international military operations is precisely such a national security matter, and it has long been deemed part of the conduct of war, which is a predominantly executive branch function, 23 supported and given structure by Congress in the coordinate exercise of its Article I regulatory authority. 24 The judicial function here is counterintuitive, and especially undesirable in matters of national security is the sort of free- wheeling judicial rule-making that commonly—and often beneficially—fills in the procedural interstices of the domestic criminal justice system.¶ This does not mean that there could be no conceivable, valuable role for Article III courts in national security matters. But the post-Rasul experience demonstrates that any such role would have to be heavily regulated (that is, it would leave little room for judicial creativity). The presumptions intentionally favoring the accused in the criminal justice system would be utterly inappropriate in a system designed to deal with alien enemy combatants. The latter system would not exist for the benefit of those vested with constitutional protections and, more centrally, would be conceived for the purpose of providing the minimum of due process necessary to ensure integrity in the outcome—not, as is the case in the judicial system, to ensure that the guilty go free to the extent necessary to avoid a single wrongful conviction. Such a reversal of the presumptions would be antithetical to the everyday practice of judging, and would consequently have to be spelled out with rigor.

### AT: No Terror

#### Future terror attacks cause extinction- increasing tech and lack of effective US response

Nathan Myhrvold '13, Phd in theoretical and mathematical physics from Princeton, and founded Intellectual Ventures after retiring as chief strategist and chief technology officer of Microsoft Corporation , July 2013, "Stratgic Terrorism: A Call to Action," The Lawfare Research Paper Series No.2, <http://www.lawfareblog.com/wp-content/uploads/2013/07/Strategic-Terrorism-Myhrvold-7-3-2013.pdf>

Technology contains no inherent moral directive—it empowers people, whatever their intent, good or evil. This fact, of course, has always been true: when bronze implements supplanted those made of stone, the ancient world got swords and battle-axes as well as scythes and awls. Every technology has violent applications because that is one of the first things we humans ask of our tools. The novelty of our present situation is that modern technology can provide small groups of people with much greater lethality than ever before. We now have to worry that private parties might gain access to weapons that are as destructive as—or possibly even more destructive than—those held by any nation-state. A handful of people, perhaps even a single individual, now have the ability to kill millions or even billions. Indeed, it is perfectly feasible, from a technological standpoint, to kill every man, woman, and child on earth. The gravity of the situation is so extreme that getting the concept across without seeming silly or alarmist is challenging. Just thinking about the subject with any degree of seriousness numbs the mind. Worries about the future of the human race are hardly novel. Indeed, the notion that terrorists or others might use weapons of mass destruction is so commonplace as to be almost passé. Spy novels, movies, and television dramas explore this plot frequently. We have become desensitized to this entire genre, in part because James Bond always manages to save the world in the end. Reality may be different. In my estimation, the U.S. government, although well-meaning, is unable to protect us from the greatest threats we face. The other nations of the world are also utterly unprepared. Even obvious and simple steps are not being taken. The gap between what is necessary and what is being contemplated, much less being done, is staggering. My appraisal of the present situation does not discount the enormous efforts of many brave men and women in law enforcement, intelligence services, and the military. These people are doing what they can, but the resources that we commit to defense and the gathering of intelligence are mostly squandered on problems that are far less dangerous to the American public than the ones we are ignoring. Addressing the issue in a meaningful way will ultimately require large structural changes in many parts of the government. So far, however, our political leaders have had neither the vision to see the enormity of the problem nor the will to combat it. These weaknesses are not surprising: bureaucracies change only under extreme duress. And despite what some may say, the shocking attacks of September 11th, 2001, have not served as a wake-up call to get serious. Given the meager response to that assault, every reason exists to believe that sometime in the next few decades America will be attacked on a scale that will make 9/11 look trivial by comparison.

#### Terrorism causes extinction- improving tech and inefficient response mechanisms

Nathan Myhrvold '13, Phd in theoretical and mathematical physics from Princeton, and founded Intellectual Ventures after retiring as chief strategist and chief technology officer of Microsoft Corporation , July 2013, "Stratgic Terrorism: A Call to Action," The Lawfare Research Paper Series No.2, <http://www.lawfareblog.com/wp-content/uploads/2013/07/Strategic-Terrorism-Myhrvold-7-3-2013.pdf>

Several powerful trends have aligned to profoundly change the way that the world works. Technology ¶ now allows stateless groups to organize, recruit, and fund ¶ themselves in an unprecedented fashion. That, coupled ¶ with the extreme difficulty of finding and punishing a stateless group, means that stateless groups are positioned to be ¶ lead players on the world stage. They may act on their own, ¶ or they may act as proxies for nation-states that wish to ¶ duck responsibility. Either way, stateless groups are forces ¶ to be reckoned with.¶ At the same time, a different set of technology trends ¶ means that small numbers of people can obtain incredibly ¶ lethal power. Now, for the first time in human history, a ¶ small group can be as lethal as the largest superpower. Such ¶ a group could execute an attack that could kill millions of ¶ people. It is technically feasible for such a group to kill billions of people, to end modern civilization—perhaps even ¶ to drive the human race to extinction. Our defense establishment was shaped over decades to ¶ address what was, for a long time, the only strategic threat ¶ our nation faced: Soviet or Chinese missiles. More recently, ¶ it has started retooling to address tactical terror attacks like ¶ those launched on the morning of 9/11, but the reform ¶ process is incomplete and inconsistent. A real defense will ¶ require rebuilding our military and intelligence capabilities from the ground up. Yet, so far, strategic terrorism has ¶ received relatively little attention in defense agencies, and ¶ the efforts that have been launched to combat this existential threat seem fragmented.¶ History suggests what will happen. The only thing ¶ that shakes America out of complacency is a direct threat ¶ from a determined adversary that confronts us with our ¶ shortcomings by repeatedly attacking us or hectoring us for ¶ decades.

### Link

#### That spills over to broader info sharing

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5. The discovery requirements endanger national security by discouraging cooperation from our allies. As illustrated by the recent investigations conducted by Congress, the Silberman/Robb Commission, and the 9/11 Commission regarding pre-9/11 intelligence failures, the United States relies heavily on cooperation from foreign intelligence services, particularly in areas of the world from which threats to American interests are known to stem and where our own human intelligence resources have been inadequate. It is vital that we keep that pipeline flowing. Clearly, however, foreign intelligence services (understandably, much like our own CIA) will necessarily be reluctant to share information with our country if they have good reason to believe that information will be revealed under the generous discovery laws that apply in U.S. criminal proceedings.

#### Security measures won’t deter terrorists

Andrew C. McCarthy 9, Director of the Center for Law & Counterterrorism at the Foundation for the Defense of Democracies and Alykhan Velshi, staff attorney at the Center for Law & Counterterrorism, “Outsourcing American Law: We Need A National Security Court”, AEI Working Paper #156, http://www.aei.org/files/2009/08/20/20090820-Chapter6.pdf

It is freely conceded that this trove of government intelligence is routinely surrendered along with appropriate judicial warnings: defendants may use it only in preparing for trial and may not disseminate it for other purposes. To the extent classified information is implicated, it is also theoretically subject to the constraints of the Classified Information Procedures Act. 17 Nevertheless, and palpably, people who commit mass murder, who face the death penalty or life imprisonment, and who are devoted members of a movement whose animating purpose is to damage the United States, are certain to be relatively unconcerned about violating court orders (or, for that matter, about being hauled into court at all). Our congenial rules of access to attorneys, paralegals, investigators, and visitors make it a very simple matter for accused terrorists to transmit what they learn in discovery to their confederates—and we know that they do so. 18 (Footnote 18 Begins Here) A single example here is instructive. In 1995, just before trying the aforementioned seditious conspiracy case against the blind sheik and eleven others, one of the authors duly complied with Second Circuit discovery law by writing a letter to defense counsel listing 200 names of people and entities who might be alleged as unindicted coconspirators—i.e., people who were on the government’s radar screen but against whom there was insufficient evidence to charge. Six years later, that letter became evidence in the trial of those who had bombed our embassies in Africa. Within a short time of its being sent, the letter had found its way to Bin Laden in Sudan. It had been fetched for him by al Qaeda operative Ali Mohammed who, upon obtaining it from one of his associates, forwarded it to al Qaeda operative Wadih El Hage in Kenya for subsequent transmission to bin Laden. Mohammed and El Hage were both convicted in the embassy bombing case.

#### Using the criminal justice system to review detainees causes more terrorism

Andrew C. McCarthy 9, Director of the Center for Law & Counterterrorism at the Foundation for the Defense of Democracies and Alykhan Velshi, staff attorney at the Center for Law & Counterterrorism, “Outsourcing American Law: We Need A National Security Court”, AEI Working Paper #156, http://www.aei.org/files/2009/08/20/20090820-Chapter6.pdf

3. Terrorism prosecutions create the conditions for more terrorism. The treatment of a national security problem as a criminal justice issue has consequences that imperil Americans. To begin with, there are the obvious numerical and motivational results. As noted above, the 7 justice system is simply incapable, given its finite resources, of meaningfully countering the threat posed by international terrorism. Of equal salience, prosecution in the justice system actually increases the threat because of what it conveys to our enemies. Nothing galvanizes an opposition, nothing spurs its recruiting, like the combination of successful attacks and a conceit that the adversary will react weakly. (Hence, bin Laden’s well-known allusion to people’s instinctive attraction to the “strong horse” rather than the “weak horse,” and his frequent citation of the U.S. military pullout from Lebanon after Hezbollah’s 1983 attack on the Marine bar racks, and from Somalia after the 1993 “Black Hawk Down” incident). For militants willing to immolate themselves in suicide-bombing and hijacking operations, mere prosecution is a provocatively weak response. Put succinctly, where they are the sole or principal response to terrorism, trials in the criminal justice system inevitably cause more terrorism: they leave too many militants in place and they encourage the notion that the nation may be attacked with relative impunity. ¶ 4. Prosecutions in the criminal justice system arm international terrorist organizations with a trove of intelligence that both identifies methods and sources of inf ormation and improves their ability to harm Americans. The nuts and bolts of trial practice is as perilous to national security as the general philosophy of combating terror by trials.¶ Under discovery rules, the government is required to provide to accused persons, among many other things, any information in its possession that can be deemed “materia l to preparing the defense.” 10 Moreover, under current construction of the Brady doctrine, the prosecution must disclose any information that is even arguably material and exculpatory, 11 and, in capital cases, any information that might induce the jury to vote against a death sentence, whether it is exculpatory or not (imagine, for example, the government is in possession of reports by vital, deep-cover informants explaining that a defendant committed a terrorist ac t but was a hapless pawn in the chain-of-command). 12 The more broadly indictments are drawn, the more revelation of precious intelligence due-process demands—and, for obvious reasons, terrorism indict ments tend to be among the broadest. 13 The government must also disclose all prior statements made by witnesses it calls, 14 and, often, statements of even witnesses it does not call. 15¶ This is a staggering quantum of information, certain to illuminate not only what the government knows about terrorist organizations but the intelligence community’s methods and sources for obtaining that information. When, moreover, there is any dispute about whether a sensitive piece of information needs to be disclosed, the decision ends up being made by a judge on the basis of what a fair trial dictates, rather than by the executive branc h on the basis of what public safety demands.

### CP Spills Over

#### Judicial oversight won’t have constraints

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2. While alien enemy combatants, who are neither U.S. citizens nor lawful aliens, have no rights under the U.S. constitution, judicial oversight of their cases without thoughtful consideration of the standards and procedures under which those cases should proceed, is a prescription for turning those cases into full-blown criminal trials. Even the Rasul decision recognized the inarguable point that persons who are neither citizens nor aliens lawfully resident in the United States do not enjoy the protections of our Constitution, including its habeas corpus provision. The majority argued that the alien combatants’ right of access to U.S. courts for the purpose of challenging their detention under habeas corpus was statutory (i.e., derived from the federal habeas statute, 28 U.S.C., 2241 et seq.).26¶ This distinction, though seemingly salient, proved in the event to be of little moment. Regardless of their lack of constitutional entitlements, experience shows that once alien combatants are permitted access to our courts, judges, under the rubric of due process, will effectively treat them as if they are every bit as vested as citizens with substantive and procedural protections – even in wartime and regardless of the what this portends for national security. Only firm instructions to the contrary could have bucked this inevitability. The Supreme Court’s decision in Rasul failed to provide any guidance to lower courts, and the guidance provided in this regard by Congress since late 2005 has been insufficient.¶ Some explanation is in order here. In the other 2004 Supreme Court case noted above, Hamdi v. Rumsfeld, at issue was the very different scenario of the rights of American citizens captured and detained in the course of fighting against the U.S. in wartime. The Justice Department did not dispute that such citizen combatants had a constitutional right to file habeas claims. To the contrary, at issue were the questions whether they could compel a judicial review of the executive’s decision to detain, and how searching that review should be. The case is instructive for present purposes because the court, in holding that judicial review was available, also indicated that the habeas proceedings in connection with U.S. citizens would be very deferential to the executive branch, to the point of indicating that a military determination would be accepted by the court as long as the citizen combatant had received adequate notice and a meaningful opportunity in the military proceeding to contest his detention.27¶ Of course, the entitlement of alien enemy combatants – assuming they have any rights (other than the right not to be tortured, which is provided by both U.S. and international law28) – should be dramatically less substantial than the very limited rights the Supreme Court accorded to American citizens in Hamdi. Predictably, however, that is not what developed in the district courts when they considered alien combatants detained at Guantanamo Bay on the basis of a decision, Rasul, which opened the courthouse doors but gave district judges no substantive or procedural guidance. Until Congress finally stepped in and put a stop to the experiment, the trajectory was toward an array of judicially fashioned rights approximating not merely those of citizens but, indeed, those accorded to American criminal defendants.

### 2NC Turns Case/AT Impact D

#### High risk of nuke terror—an attack turns multilat and makes the US hardline

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Hundreds of scientific papers and reports have been published on nuclear terrorism. International conferences have been held on this threat with participation of Russian organizations, including IMEMO and the Institute of U.S. and Canadian Studies. Recommendations on how to combat the threat have been issued by the International Luxembourg Forum on Preventing Nuclear Catastrophe, Pugwash Conferences on Science and World Affairs, Russian-American Elbe Group, and other organizations. The UN General Assembly adopted the International Convention for the Suppression of Acts of Nuclear Terrorism in 2005 and cooperation among intelligence services of leading states in this sphere is developing.¶ At the same time, these efforts fall short for a number of reasons, partly because various acts of nuclear terrorism are possible. Dispersal of radioactive material by detonation of conventional explosives (“dirty bombs”) is a method that is most accessible for terrorists. With the wide spread of radioactive sources, raw materials for such attacks have become much more accessible than weapons-useable nuclear material or nuclear weapons. The use of “dirty bombs” will not cause many immediate casualties, but it will result into long-term radioactive contamination, contributing to the spread of panic and socio-economic destabilization.¶ Severe **consequences can be caused by sabotaging nuclear power plants, research reactors, and radioactive materials storage facilities. Large cities are especially vulnerable to such attacks. A large city may host dozens of research reactors with a nuclear power plant or a couple of spent nuclear fuel storage facilities and dozens of large radioactive materials storage facilities located nearby.** The past few years have seen significant efforts made to enhance organizational and physical aspects of security at facilities, especially at nuclear power plants. Efforts have also been made to improve security culture. But these efforts do not preclude the possibility that well-trained terrorists may be able to penetrate nuclear facilities.¶ Some estimates show that sabotage of a research reactor in a metropolis may expose hundreds of thousands to high doses of radiation. A formidable part of the city would become uninhabitable for a long time.¶ Of all the scenarios, it is building an improvised nuclear device by terrorists that poses the maximum risk. **There are no engineering problems that cannot be solved if terrorists decide to build a simple “gun-type” nuclear device.** Information on the design of such devices, as well as implosion-type devices, is available in the public domain. It is the acquisition of weapons-grade uranium that presents the sole serious obstacle. Despite numerous preventive measures taken, we cannot rule out the possibility that such materials can be bought on the black market. Theft of weapons-grade uranium is also possible. Research reactor fuel is considered to be particularly vulnerable to theft, as it is scattered at sites in dozens of countries. There are about 100 research reactors in the world that run on weapons-grade uranium fuel, according to the International Atomic Energy Agency (IAEA).¶ A terrorist “gun-type” uranium bomb can have a yield of least 10-15 kt, which is comparable to the yield of the bomb dropped on Hiroshima. The explosion of such a bomb in a modern metropolis can kill and wound hundreds of thousands and cause serious economic damage. There will also be long-term sociopsychological and political consequences.¶ The vast majority of states have introduced unprecedented security and surveillance measures at transportation and other large-scale public facilities after the terrorist attacks in the United States, Great Britain, Italy, and other countries. These measures have proved burdensome for the countries’ populations, but the public has accepted them as necessary. A nuclear terrorist attack will make the public accept further measures meant to enhance control even if these measures significantly restrict the democratic liberties they are accustomed to. Authoritarian states could be expected to adopt even more restrictive measures.¶ If a nuclear terrorist act occurs, nations will delegate tens of thousands of their secret services’ best personnel to investigate and attribute the attack. Radical Islamist groups are among those capable of such an act. We can imagine what would happen if they do so, given the anti-Muslim sentiments and resentment that conventional terrorist attacks by Islamists have generated in developed democratic countries. Mass deportation of the non-indigenous population and severe sanctions would follow such an attack in what will cause **violent protests in the Muslim world**. **Series of armed clashing terrorist attacks may follow**. The prediction that Samuel Huntington has made in his book “The Clash of Civilizations and the Remaking of World Order” may come true. Huntington’s book clearly demonstrates that it is not Islamic extremists that are the cause of the Western world’s problems. Rather there is a deep, intractable conflict that is rooted in the fault lines that run between Islam and Christianity. This is especially dangerous for Russia because these fault lines run across its territory. To sum it up, the political leadership of Russia has every reason to revise its list of factors that could undermine strategic stability.  BMD does not deserve to be even last on that list because its effectiveness in repelling massive missile strikes will be extremely low. BMD systems can prove useful only if deployed to defend against launches of individual ballistic missiles or groups of such missiles. Prioritization of other destabilizing factors—that could affect global and regional stability—merits a separate study or studies. But even without them I can conclude that nuclear terrorism should be placed on top of the list. The threat of nuclear terrorism is real, and a successful nuclear terrorist attack would lead to a radical transformation of the global order.  All of the threats on the revised list must become a subject of thorough studies by experts. States need to work hard to forge a common understanding of these threats and develop a strategy to combat them.