## 1AC

### 1AC---LEGITIMACY

#### CONTENTION 1 IS LEGITIMACY:

#### Current US detention policies are collapsing US legitimacy in the rule of law

Kate Martin 08, director of the Center for National Security Studies, July 16, "How the Administration's Failed Detainee Policies Have Hurt the Fight Against Terrorism: Putting the Fight Against Terrorism on Sound Legal Foundations," Statement before the Senate Judiciary Committee, https://www.fas.org/irp/congress/2008\_hr/detainees.html

As this Committee is well aware, since 2001, the Executive Branch has advanced extraordinary and unsupportable claims that the President is free to ignore and even violate established law in order to conduct the “war against terror.” These claims underlie the detention policies and the administration’s posture that neither Congress nor the judiciary have any role in legislating or overseeing detentions. While the Supreme Court has rejected that view on four occasions and Congress has since legislated, the administration continues to claim unprecedented authority to create new forms of detention and decide who may be detained without regard to established law or constitutional limits. ¶ On November 13, 2001, the President publicly instituted these policies with the issuance of Military Order No. 1. In addition to establishing military commissions, the Order authorized the military detention of any non- citizen found in the United States without charge solely on suspicion of being involved in terrorist activities. In May 2002, the President directed the military to seize a U.S. citizen in Chicago, who was then held for more than three years incommunicado without charge or access to a lawyer, solely on the say-so of the President. The administration also directed the military to ignore the Geneva Conventions and established military law and regulations when detaining individuals fighting in Afghanistan. It seized individuals in Bosnia, Europe and elsewhere and held them in secret prisons. It built a detention facility at Guantanamo in order to put detainees outside the reach of the law. ¶ The administration still claims the right to seize any individual anywhere in the world, hold him incommunicado in a secret prison indefinitely without trial. It is now clear that its core reason for doing so was to be able to use “enhanced interrogation techniques” that are internationally recognized and outlawed as torture. (In the case of U.S. citizen Jose Padilla who was held incommunicado for more than three years, the government confessed that it did so in order to interrogate him. 1) ¶ The result of this approach is the international view that the United States is not following the law, but is instead making up rules for detentions and interrogations. Most significantly, the argument that the United States is engaged in a “global war on terror” has been used to justify detentions that violate human rights and constitutional protections. Guantanamo Bay in particular, has come to be seen by the world as a symbol for lawlessness and abuse.¶ These detention policies have undermined rather than strengthened U.S. power. They have discouraged and interfered with, rather than advancing international cooperation and have provided fuel to al Qaeda efforts to recruit foreign terrorists. The universal calls to close Guantanamo reflect the recognition that these detention policies that are inconsistent with the U.S. commitment to the rule of law and human rights have also harmed our national security.

#### First, military courts hamper US credibility---the plan’s key

Marcia Pereira 08, Civil Litigation &Transactional Attorney and University of Miami School of Law Graduate, Spring, "ARTICLE: THE "WAR ON TERROR" SLIPPERY SLOPE POLICY: GUANTANAMO BAY AND THE ABUSE OF EXECUTIVE POWER," University of Miami International & Comparative Law Review, 15 U. Miami Int'l & Comp. L. Rev. 389, Lexis

As these examples reveal, many propositions have been advanced to provide for a solution to these detainees with no particular success. Meanwhile, human rights advocates have their eyes centered on our nation. The Human Rights Watch has recently expressed its concerns with respect to the MCA. It advanced that the military commissions "fall far short of international due process standards." n156 It has been articulated that U.S. "artificial" derogation from the Geneva Conventions by virtue [\*440] of the MCA leaves open the door for other States to "opt-out" as well. In other words, any step back from the Geneva Conventions could also provoke mistreatment of captured U.S. military personnel. In addition, scholars of international jurisprudence claim there have been over 50 years since Geneva was entered into force and it has been applied in every conflict. n157 However, U.S. current policies undercut the overarching principles under international law to strive for uniform human rights policies around the World. In the current state of affairs, the Executive branch becomes three branches in one: legislator, executive enforcer, and judge of its own actions. The lack of independent judicial oversight deprives detainees from the opportunity of impartial judicial review of verdicts, regardless of their arbitrariness or lack of legal soundness.¶ In response to the consequences of this expansive executive power, the U.N. Human Rights Committee stated that the use of military courts could present serious problems as far as the equitable, impartial, independent administration of justice is concerned. As detainees have increasingly been deemed non-enemy-combatants, it is possible to assess how the Executive, now Congressional actions, captures civilians who had no connection to the armed conflict. In other words, as a consequence of the disparate overreaching power of the political branches and a rather weakened Judiciary, the U.S. is substantially regarded by the international community with complete disapproval.¶ Thus, the impact of U.S. current polities in the International Community is, at the very least, alarming. If entitling the detainees to a unified due process approach seems unrealistic, at minimum, they should be treated in a manner consistent with the principles of the Geneva Conventions. Relevant provisions in the Third Convention provide that detainees are entitled to a presumption of protection thereunder, "until such time as their status has been determined by a competent tribunal." The detainees must first be designated as civilians, combatant, or criminals rather than lumped into a single composite group of unlawful combatants by presidential fiat. Moreover, the International Covenant on Civil and Political Rights mandates that "[n]o one shall be subjected to arbitrary arrest or detention and those deprived of liberty shall be entitled [\*441] to take proceedings before a court." n158 The meaning of "court" within the Covenant was aimed at civilian courts, not military, in the sense that the preoccupation was to provide them with a fair adjudication with respect to the detainees' status. Yet, the U.S. Government chose to ignore the requirements under international law despite apparently false claims that it would be followed. n159 Instead, as previously discussed in Part II of this Article, Congress made sure that international law does not provide a substantive basis of relief for these detainees' claims by virtue of the MCA.¶ The vast cultural, economic and political differences among signatory States were deemed as plausible justification for permitting reservations treaties. By this mechanism, the States are provided the opportunity to somewhat "tailor" multilateral treaties to their realities. It is evident that the U.S. Government has granted itself the right not to be entirely bound by international law. How wise the use of this mechanism was undertaken by U.S. may be reflected by the current the impact of U.S. policies toward international law mandates. As the detainees' situation develops, however, the U.S. image within the international community is in serious jeopardy. As a result a widespread criticism of the U.S. policies generated an atmosphere of wariness of U.S's ability and willingness to preserve individuals' fundamental rights at any time a situation is categorized as "emergency."¶ [\*442] V. CONCLUSION¶ All the problems outlined in this Article can be corrected. It would not take more than going back to the Constitution and reconstituting the Framers' intent in promoting the leadership of the country as an integral body composed by the three branches of Government. The U.S. Government should ensure that the wide gap between domestic law and the law of armed conflict is minimized by allowing those tried before military commissions to receive trials up to the level of American justice. If no action is taken, the American justice once internationally admired will give space to a stain in the American history. Congress should be more active in undertaking its role of making the law rather than merely voting on proposals based on their political agenda or the Executive's wishes. The Judiciary should step up and actively "say what the law is" rather than handing down amorphous rulings stigmatizing detainees on the basis of their citizenship status. Under basic constitutional principles, doing justice means equal protections of the laws. Using the claim of times of emergency to justify abusive treatment does not foster a democratic society. If the military is not able to advance legal grounds to hold these detainees, they should be released. The Judiciary should be eager to have a case challenging the MCA sooner rather than later and take the opportunity to lay down a clearly ruling on how these detainees should be accorded equal safeguards regardless of their race, national origin, or status. In other words, the Judiciary should take back what Congress has taken away, through implementing major modifications to the Executive's ill-conceived policies regarding commissions. In terms of meaningful separation of powers mandates, what the Constitution has given, Congress cannot take away.

#### Second, current US policy conveys xenophobia---independently decks legitimacy

Neal K. Katyal 07, Professor of Law, Georgetown University Law Center, "Equality in the War on Terror," Stanford Law Review, 59 Stan. L. Rev. 1365-1394, scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1408&context=facpub

There is simply no reason why the government must subject aliens who are alleged to have participated in acts of terrorism to military commissions, but need not do so for citizens suspected of the same crimes. If it is truly necessary to treat aliens this way to combat terrorism effectively, then the very same need would exist for citizens as well. A citizen who commits a terrorist act is just as culpable as the alien who commits that act. Indeed, there is an argument that the citizen’s actions are worse—since he is guilty of treason in addition to whatever else he has perpetrated.¶ The breakdown in parity between citizen and alien post-9/11 is a new, and disturbing, trend. Even the horrendous internment of Japanese Americans in World War II applied symmetrically to citizens and aliens. 98 The policy was memorably defended by Lieutenant General John DeWit before Congress: “A Jap’s a Jap. It makes no difference whether he is an American citizen or not.” 99 Some, such as former Chief Justice Rehnquist, have disagreed, arguing that the problem in World War II was applying these exclusion orders to citizens. His argument was grounded entirely upon the Alien Enemy Act, which he recognized permitted only the “‘summary arrest, internment and deportation wherever a declared war exists.’” 100 Entirely missing from this account was any discussion of whether a disparity between alien and citizen might have made matters worse, instead of better. After all, the one positive thing that can be said in the policy’s favor was that at least it affected a few people who could vote. 101¶ To say this is not to argue that liberty concerns are always inappropriate and that the government has carte blanch e when it acts evenhandedly. There are some substantive constitutional principles—such as prohibiting the mass detention of an entire race of people without any individualized basis—that properly should be frozen into constitutional law. But when the boundaries of liberty are uncertain, as they tend to be today, equality arguments offer a mechanism to prompt legislative reconsideration and democratic accountability.¶ Laws of general applicability are not only preferable, they also keep us safer. In affording the same process to alien and citizen detainees, we maintain the superiority of our judicial system. The federal courts have a tried and true record of discerning the guilty from the innocent without turning to arbitrary distinctions such as alienage. Our civilian courts have handled a variety of challenges and complicated cases—from the trial of the Oklahoma City bombers to the awful spying of Aldrich Ames and others. They have tried the 1993 World Trade Center bombers, Manuel Noriega, and dozens of other cases. They have prosecuted cases where the crimes were committed abroad. Indeed, the Justice Department has recently extolled its resounding success in terrorism cases in federal civilian court—where it has proceeded to charge nearly 500 individuals with crimes of terrorism. 102 Our national security policy requires adherence to a judicial process that works for all terrorist suspects. A two- tiered justice system jeopardizes not only the rights of alien suspects, but also the safety of American citizens.¶ As the world becomes even smaller, and the movement of people across borders becomes even more fluid, we need a unitary legal system that is capable of embracing all those in our jurisdiction: one that does not pick and choose who gets fundamental protections. Only then can we be assured that the real terrorists are brought to justice.¶ Moreover, legislation should not play on post-9/11 xenophobia. In the wake of terrorism, fears are heightened, rationality is muted, and it is the government’s responsibility to be the source of reason amidst the chaos, not to fan fears and stimulate even greater hatred. In pointing toward alien detainees as the sole source of danger, however, legislation such as the MCA fails to provide actual solutions to the threat of terrorism. Our policy cannot afford to dally under any delusions that foreigners are the sole source of terrorist impulses. The threat of terrorism permeates all borders, and only fair and evenhanded laws can effectively ferret out that threat. Allowing rank discrimination to drive policy takes attention away from national security and focuses on meaningless distinctions of “us” versus “them.” 103¶ Finally, in the wake of international disdain for the military tribunals authorized by President Bush, our country is already under global scrutiny for its disparate treatment of non-U.S. citizens. We must be careful not to further the perception that, in matters of justice, the U.S. government adopts special rules that single out foreigners for disfavor. Otherwise, the result will be more international condemnation and increased enmity about Americans worldwide. The predictable result will be less cooperation and intelligence sharing, and fewer extraditions to boot.¶ In this respect, the laws of war have changed markedly in recent years, and now reflect the basic equality principle. The Geneva Conventions, for example, require a signatory to treat enemy prisoners of war the same way as it treats its own soldiers. 104 Even for non-prisoners of war, the minimum requirements of Common Article 3 require trials to take place in a “regularly constituted court.” 105 As the International Committee of the Red Cross Commentary puts it:¶ [C]ourt proceedings should be carried out in a uniform manner, whatever the nationality of the accused. Nationals, friends, enemies, all should be subject to the same rules of procedure and judged by the same courts. There is therefore no question of setting up special tribunals to try war criminals of enemy nationality. 106¶ Again, the logic of such provisions is best understood as creating virtual representation—ensuring that the interests of accused enemies will be vindicated by the application of longstanding procedural rules for the trial of the signatory power’s own troops.¶ Fidelity to these precepts, far from undermining the war on terror, is the best way to win it. By demonstrating that America is not being unfair—and by subjecting those from other lands to the same justice Americans face for the same crimes—America projects not only benevolence, but strength. America’s soft power depends, in no small part, on being able to rise above pettiness and to highlight the vitality of our system. Carving out special rules for “them” and reserving different rules for “us” is no way to win respect internationally. ¶ The British experience provides a useful contrast. The House of Lords in A v. Secretary of State for the Home Department, 107 struck down the terrorist detention policy on equality grounds. They found that there was no reasonable or objective justification why a non-U.K. national suspected of being a terrorist could be detained while a U.K. national would be allowed to go free. The Lords rejected the Attorney General’s arguments that immigration law and international law justified differential treatment, including detention, of aliens in times of war or public emergency. 108 As Lord Nicholls put it, “The principal weakness in the Government’s case lies in the different treatment accorded to nationals and non-nationals. . . . The Government has vouchsafed no persuasive explanation of why national security calls for a power of indefinite detention in one case but not the other.” 109 The upshot was that it was “difficult to see how the extreme circumstances, which alone would justify such detention, can exist when lesser protective steps apparently suffice in the case of British citizens suspected of being international terrorists.” 110¶ Sadly, the experience of Britain under the European Convention on Human Rights is far truer to our backbone of equality than that of our own politicians under our own Constitution, who conveniently forget about equality even on fundamental decisions such as who would face a military trial with the death penalty at stake. Indeed, the United Kingdom reacted to the decision by adopting laws that treated citizens and foreigners alike. 111 Although our Founders broke away from Britain in part because of the King’s refusal to adhere to the basic proposition that “all men are created equal,” it is now Britain that is teaching us about the meaning of those words.¶ In sum, by splitting our legal standards on the basis of alienage, we are in effect jeopardizing our own safety and national interest. When terror policy is driven by anti-alien sentiment, the result is only our own isolation. It will not only chill relations with key allies abroad and disrupt extraditions, it will also alienate many of our own citizens who have relied on our country’s longstanding commitment to equal justice for all.

#### 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

Zhang and Shi 11 Yuhan Zhang is a researcher at the Carnegie Endowment for International Peace, Washington, D.C.; Lin Shi is from Columbia University. She also serves as an independent consultant for the Eurasia Group and a consultant for the World Bank in Washington, D.C., 1/22, “America’s decline: A harbinger of conflict and rivalry”, http://www.eastasiaforum.org/2011/01/22/americas-decline-a-harbinger-of-conflict-and-rivalry/

This does not necessarily mean that the US is in systemic decline, but it encompasses a trend that appears to be negative and perhaps alarming. Although the US still possesses incomparable military prowess and its economy remains the world’s largest, the once seemingly indomitable chasm that separated America from anyone else is narrowing. Thus, the global distribution of power is shifting, and the inevitable result will be a world that is less peaceful, liberal and prosperous, burdened by a dearth of effective conflict regulation. Over the past two decades, no other state has had the ability to seriously challenge the US military. Under these circumstances, motivated by both opportunity and fear, many actors have bandwagoned with US hegemony and accepted a subordinate role. Canada, most of Western Europe, India, Japan, South Korea, Australia, Singapore and the Philippines have all joined the US, creating a status quo that has tended to mute great power conflicts. However, 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

Barak Mendelsohn 10, assistant professor of political science at Haverford College and a senior fellow of FPRI. Author of Combating Jihadism: American Hegemony and Interstate Cooperation in the War on Terrorism, June 2010, “The Question of International Cooperation in the War on Terrorism”, http://www.fpri.org/enotes/201006.mendelsohn.cooperationwarterror.html

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

Don Flournoy 12, Citing Feng Hsu, PhD NASA Scientist @ the Goddard Space Flight Center and Don is a PhD and MA from UT, former Dean of the University College @ Ohio University, former Associate Dean at SUNY and Case Institute of Technology, Former Manager for University/Industry Experiments for the NASA ACTS Satellite, currently Professor of Telecommunications @ Scripps College of Communications, Ohio University, “Solar Power Satellites,” January 2012, Springer Briefs in Space Development, p. 10-11

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

#### CONTENTION 2 IS 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.

#### The plan reaffirms US commitment to the rule of law---modeled

Charles Swift 08, Navy's Lt. Commander and JAG lawyer in the Hamdan vs Rumsfeld, November 25, "The American Way of Justice," Esquire, www.esquire.com/features/ESQ0307swift-5

If we are to be a great nation, then we must be willing to be a nation bound by the rule of law in our treatment of all people. That means we have to be willing to be held accountable for our past actions. That means giving each detainee the fair and neutral hearing that was set out by the Supreme Court in another recent decision (Hamdan v. Rumsfeld). That means holding regular criminal trials as required by the Supreme Court in Hamdan. That means using something other than coerced confessions to convict our enemies. That means closing Guantánamo Bay, because in a nation dedicated to the rule of law, there is no need for a legal black hole.¶ Both Guantánamo Bay and the Military Commissions Act were deemed necessary because of a decision to interrogate prisoners in violation of both domestic and international law. To interrogate a handful of religious fanatics, we created this legal black hole and turned our back on 250 years of our jurisprudence. This is not a problem that can be fixed by trying to change the law after the fact in an effort to cover up what we did. This is not a problem that can be fixed by cutting off access to the courts so that we will not be held accountable. This is not a problem that can be fixed by building a $125 million court complex in an effort to create an illusion of justice. None of those things will solve the problem, because it is not a problem at all. As Dr. Kissinger might say, it is a dilemma. The question is not, Will we survive Guantánamo, because of course we will survive Guantánamo. The question is: Will we survive Guantánamo as a great nation?¶ When I was a kid, my father was a forest scientist, and we began to have a scientific exchange with Russia under Nixon, and these Russian scientists would come and stay with us. They were fascinated with toasters. They didn't have toasters. My mom had one. She pushed it down, the bread popped up toasted. They liked toast. They wanted a toaster, badly. They wanted a better life. It's what every human being wants for his children.¶ When I was in Yemen, I went to Hamdan's house with a female attorney. On the next-to-last night the grandmother called all the little girls living in the house together. There had to have been at least ten of them. They all had on blue jeans and tennis shoes and little T-shirts with Care Bears. It's not a rich family, but they're clean and they're dressed well and they look like little girls the world over. Their faces are shining and their eyes are bright and so full of promise. The grandmother pointed at my colleague and said, "She went to school and studied very, very hard and she got very good grades, and now she's a lawyer." And then she looked at them and said, "If you go to school and study very, very hard, you can be anything."¶ The toaster in my mother's kitchen was tangible evidence to the Soviet scientists that democracy and capitalism created a better life. Ultimately, the people of the Soviet Union saw what we had and rejected communism. The grandmother in Yemen wants her granddaughters to be treated not as rightless, faceless women but as people. If we are about equal rights, then the grandmother is with us.¶ President Ronald Reagan was right: In our best moments we are the shining city on the hill. The world is angry with us because they think we've failed in that promise. But if we are committed to the rule of law and remain faithful to our principles, then America will be a beacon to that grandmother, and her promise will have a chance of coming true.

#### 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.

### 1AC---PLAN

#### PLAN TEXT:

#### The United States Federal Government should grant Article III Courts exclusive jurisdiction over the United States’ indefinite detention policy as described in the 2001 Authorization for Use of Military Force.

### 1AC---SOLVENCY

#### CONTENTION 3 IS SOLVENCY

#### Federal courts are critical to resolving US legitimacy abroad

Hathaway et al 13, Oona Hathaway, Gerard C. and Bernice Latrobe Smith Professor of International Law, Yale Law School, Samuel Adelsberg, Spencer Amdur, and Freya Pitts, J.D. candidates at Yale Law School, Philip Levitz and Sirine Shebaya J.D.s Yale Law School (2012), Winter, "Article: The Power To Detain: Detention of Terrorism Suspects After 9/11," The Yale Journal of International Law, 38 Yale J. Int'l L. 123, Lexis

2. Legitimacy ¶ Federal courts are also generally considered more legitimate than military commissions. The stringent procedural protections reduce the risk of error and generate trust and legitimacy. n245 The federal courts, for example, provide more robust hearsay protections than the commissions. n246 In addition, jurors are [\*165] ordinary citizens, not U.S. military personnel. Indeed, some of the weakest procedural protections in the military commission system have been successfully challenged as unconstitutional. n247 Congress and the Executive have responded to these legal challenges - and to criticism of the commissions from around the globe - by significantly strengthening the commissions' procedural protections. Yet the remaining gaps - along with what many regard as a tainted history - continue to raise doubts about the fairness and legitimacy of the commissions. The current commissions, moreover, have been active for only a short period - too brief a period for doubts to be confirmed or put to rest. n248 Federal criminal procedure, on the other hand, is well-established and widely regarded as legitimate.¶ Legitimacy of the trial process is important not only to the individuals charged but also to the fight against terrorism. As several successful habeas corpus petitions have demonstrated, insufficient procedural protections create a real danger of erroneous imprisonment for extended periods. n249 Such errors can generate resentment and distrust of the United States that undermine the effectiveness of counterterrorism efforts. Indeed, evidence suggests that populations are more likely to cooperate in policing when they believe they have been treated fairly. n250 The understanding that a more legitimate detention regime will be a more effective one is reflected in recent statements from the Department of Defense and the White House. n251¶ 3. Strategic Advantages¶ ¶ There is clear evidence that other countries recognize and respond to the difference in legitimacy between civilian and military courts and that they are, indeed, more willing to cooperate with U.S. counterterrorism efforts when terrorism suspects are tried in the criminal justice system. Increased international cooperation is therefore another advantage of criminal prosecution.¶ Many key U.S. allies have been unwilling to cooperate in cases involving law-of-war detention or prosecution but have cooperated in criminal [\*166] prosecutions. In fact, many U.S. extradition treaties, including those with allies such as India and Germany, forbid extradition when the defendant will not be tried in a criminal court. n252 This issue has played out in practice several times. An al-Shabaab operative was extradited from the Netherlands only after assurances from the United States that he would be prosecuted in criminal court. n253 Two similar cases arose in 2007. n254 In perhaps the most striking example, five terrorism suspects - including Abu Hamza al-Masr, who is accused of providing material support to al-Qaeda by trying to set up a training camp in Oregon and of organizing support for the Taliban in Afghanistan - were extradited to the United States by the United Kingdom in October 2012. n255 The extradition was made on the express condition that they would be tried in civilian federal criminal courts rather than in the military commissions. n256 And, indeed, both the European Court of Human Rights and the British courts allowed the extradition to proceed after assessing the protections offered by the U.S. federal criminal justice system and finding they fully met all relevant standards. n257 An insistence on using military commissions may thus hinder extradition and other kinds of international prosecutorial cooperation, such as the sharing of testimony and evidence.

#### Federal courts are the most effective method---critics are fear-mongers

Dianne Feinstein 10, U.S. Senator from California and former chairman of the Senate Intelligence Committee, April 5, "Civilian Courts Can Prosecute Terrorists," The Wall Street Journal, ProQuest

Anyone who says America's federal courts can't bring terrorists to justice is overlooking the facts. In the Dirksen U.S. Courthouse in Chicago on March 18, David Headley pleaded guilty to a dozen terror-related felonies, including helping plan the 2008 attacks in Mumbai, India, that killed 164 people. He is also providing authorities with valuable intelligence about terrorist activities, according to the Justice Department.¶ Wearing leg shackles and heavily guarded by U.S. marshals, Headley admitted to scouting sites in Mumbai for the Pakistan-based terror group Lashkar-e-Tayyiba, and to plotting to attack a Danish newspaper. He faces life imprisonment when he is eventually sentenced for his crimes.¶ His guilty plea and his cooperation are significant victories for justice and our intelligence agencies. They demonstrate that federal criminal courts -- also called Article III courts in reference to the article of the Constitution establishing the federal judiciary -- can effectively prosecute terrorists and gather intelligence.¶ Some of the most well-known terrorists of the past decade -- "Shoe Bomber" Richard Reid, "Blind Sheik" Omar Abdel Rahman and the "20th Hijacker" Zacarias Moussaoui -- are serving life sentences after being tried in Article III criminal courts. Military commissions have prosecuted just three Guantanamo detainees since 9/11. Two of these terrorists served light sentences and are free.¶ This contrast between life sentences and light sentences leaves no doubt that federal criminal courts effectively punish terrorists.¶ There may be times when a military commission is the best venue for a trial. But the president should have the flexibility to choose which system in which to prosecute. The decision should hinge on which system is most likely to produce actionable intelligence, protect our national security, bring terrorists to justice quickly, and keep them behind bars for good. Prosecutions in Article III courts can achieve all of these objectives.¶ For example, Najibullah Zazi, accused of plotting to bomb New York City's subway system, pleaded guilty in federal court on Feb. 22 and is reported to be cooperating. In the case of 9/11 mastermind Khalid Sheikh Mohammed, the attorney general is confident that prosecutors can secure a conviction and a death sentence in federal court.¶ Hundreds of international terrorists have been convicted in our federal courts since 9/11 and are locked away in heavily fortified federal prisons. Federal courts are tried, tested and capable of dealing with extremely dangerous defendants and classified intelligence. In contrast, military commissions are slow, untested and have not yet overseen a death penalty trial since 9/11.¶ President Obama's fear-mongering critics make three false accusations in their bid to discredit America's federal courts:¶ -- First, they claim terrorists will have access to classified evidence. But the Classified Information Procedures Act sets up a process for federal judges to protect classified information during terrorist trials. The rules for how military commissions treat classified information are based on the rules used in federal criminal courts.¶ -- Second, they claim federal prosecutors can't properly try terrorists. Yet federal prosecutors have more experience handling terrorists than anyone else. According to a Bush-era Department of Justice document, "Since September 11, 2001, the Department has charged 512 individuals with terrorism or terrorism-related crimes and convicted or obtained guilty pleas in 319 terrorism-related and anti-terrorism cases." That's far more than the three convictions in military commissions.¶ -- Finally, they claim federal courts allow terrorists to take advantage of constitutional requirements for Miranda warnings and search warrants. But it is simply wrong to claim that a search warrant is required to obtain physical evidence from overseas, or that a criminal prosecution requires that detainees be immediately given Miranda warnings.¶ The record speaks for itself: Our criminal justice system is very effective at punishing terrorists. Headley's guilty plea in an Article III court has provided the most recent evidence of this. Headley admitted his crimes, is providing intelligence, and is likely to spend the rest of his life in federal prison. Case closed.

#### Comprehensive research proves federal courts solve

Richard B. Zabel and James J. Benjamin, Jr. 08, Deputy U.S. Attorney for the Southern District of New York AND partner in the New York office of Akin Gump Strause Hauer & Feld LLP, May, "In Pursuit of Justice: Prosecuting Terrorism Cases in the Federal Courts," Human Rights First, https://www.humanrightsfirst.org/wp-content/uploads/pdf/080521-USLS-pursuit-justice.pdf

In preparing this White Paper, we have relied not only on legal authorities such as judicial decisions and statutes, but also on docket sheets, indictments, and motion papers filed in numerous terrorism prosecutions around the country. We have also studied the views of academics and journalists and have sought out the personal perspectives of people who have firsthand experience in the litigation of international terrorism cases. 5 Our conclusion, based on the data we have examined and our review of the key legal and practical issues, is that the criminal justice system is reasonably well- equipped to handle most international terrorism cases. Specifically, prosecuting terrorism defendants in the court system appears as a general matter to lead to just, reliable results and not to cause serious security breaches or other problems that threaten the nation’s security. Of course, challenges arise from time to time—sometimes serious ones— but most of these challenges are not unique to international terrorism cases. One implication of our conclusion that the criminal justice system serves as an effective means of convicting and incapacitating terrorists is that the need for a “national security court” that would displace the criminal justice system is not apparent. However, there are several important qualifications on our conclusion. ¶ First, we firmly agree with those who say that the criminal justice system, by itself, is not “the answer” to the problem of international terrorism. Given the magnitude and complexity of the international terrorism threat, it is plain that the government must employ a multifaceted approach involving the use of military, intelligence, diplomatic, economic, and law enforcement resources in order to address the threat of international terrorism. Managing these different efforts is a challenging task that requires flexibility and creativity on the part of the government.¶ Second, we also agree with those who note that major terrorism cases pose strains and burdens on the criminal justice system. Some of the cases have presented challenges—both legal and practical—that are virtually unprecedented. The blockbuster international terrorism cases are extraordinarily complex. Managing them successfully requires navigating through thorny legal issues as well as challenging practical problems.¶ Third, we agree with those who argue that the criminal justice system sometimes stumbles. It is susceptible to errors of all kinds and may fairly be criticized, in different cases, as being too slow, too fast, too harsh, too lenient, too subtle, too blunt, too opaque, and too transparent. Yet for all of these well-justified criticisms, experience has shown that the justice system has generally remained a workable and credible system. Indeed, the justice system has shown a key characteristic in dealing with criminal terrorism cases: adaptability. The evolution of statutes, courtroom procedures, and efforts to balance security issues with the rights of the parties reveals a challenged but flexible justice system that generally has been able to address its shortcomings. Where appropriate, we have offered our constructive criticisms of the court system and our views on still-unsettled legal questions.

#### 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 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.

#### The plan is comparatively the best method

Eric Montalvo 10, J.D. Temple University School of Law, former US Marine Corps Major and JAG Officer, Partner at Puckett and Faraj, February 26, "US can restore legitimacy with federal trials of terror suspects at Guantanamo Bay," Jurist, jurist.org/hotline/2010/02/us-can-restore-legitimacy-with-federal.php#

"The careless approach to the issues surrounding all things Guantanamo Bay is an affront to the Constitution and the credibility of our legal institutions. As the most recent "flip flop" by Attorney General Holder regarding the prosecution of Khalid Sheik Mohammed (KSM) demonstrates, the original quick and forceful end of Guantanamo has not, by association, led to the end of "indefinite detention." The apparent conundrum is fractured into two basic issues which are the venue of the trial and the forum to be used. While the decision of where and how to prosecute is one of the most hotly contested contemporary political issues, there is a way ahead that will restore legitimacy to our broken system.¶ In a perfect world the conventional wisdom among legal scholars is that the United States should use the federal court system to prosecute KSM and do so in a location that provides for security while containing costs. The Obama administration spent close to a year figuring out that the federal court system provided the most credible and effective option for prosecution, however, they failed to foresee the incredibly high security costs, political backlash, and emotional anguish brought upon New York's citizens once again. This is where the plan derailed and now the Attorney General is contemplating the placement of KSM back into military commissions system. The answer lies in the fusion of these two ideas — holding federal court at Guantanamo Bay where a virtually brand new multimillion dollar state of the art court room awaits usage.¶ The legitimacy of federal courts compared to other prevailing options is truly without question. Federal courts have repeatedly demonstrated the ability to prosecute and successfully convict numerous alleged "terrorists" such as the "shoe bomber" Richard Reid, the "American Taliban" John Walker Lindh, Jose Padilla, the Lackawanna Six, and Zacarias Moussaoui. These examples demonstrate the capacity of our federal courts to handle the unique and complex issues latent in prosecuting alleged terrorists ranging from the pursuit of capital punishment to the national security legal morass.

## 2AC

### case

#### Heg is structurally sustainable but may be interrupted by bad policies

Beckley 12—Michael Charles Beckley, Assistant Professor of Political Science at Tufts University and a U.S. Foreign Policy and International Security fellow at Dartmouth’s Dickey Center for International Understanding, 12, The Unipolar Era: Why American Power Persists and China's Rise Is Limited, http://academiccommons.columbia.edu/item/ac:146399

First, I show that the United States is not in decline. Across most indicators of national power, the United States has maintained, and in some areas increased, its lead over other countries since 1991. Declinists often characterize the expansion of globalization and U.S. hegemonic burdens as sufficient conditions for U.S. relative decline. Yet, over the last two decades American economic and military dominance endured while globalization and U.S. hegemony increased significantly.¶ Second, I find that U.S. hegemony is profitable in certain areas. The United States delegates part of the burden of maintaining international security to others while channeling its own resources, and some of its allies resources, into enhancing its own military dominance. It imposes punitive trade measures against others while deterring such measures against its own industries. And it manipulates global technology flows in ways that enhance the technological and military capabilities of itself and allies. Such a privileged position has not provoked significant opposition from other countries. In fact, balancing against the United States has declined steadily since the end of the Cold War.¶ Third, I conclude that globalization benefits the United States more than other countries. Globalization causes innovative activity to concentrate in areas where it is done most efficiently. Because the United States is already wealthy and innovative, it sucks up capital, technology, and people from the rest of the world.¶ Paradoxically, therefore, the diffusion of technology around the globe helps sustain a concentration of technological and military capabilities in the United States.¶ Taken together, these results suggest that unipolarity will be an enduring feature of international relations, not a passing moment in time, but a deeply embedded material condition that will persist for the foreseeable future. The United States may decline because of some unforeseen disaster, bad policies, or from domestic decay. But the two chief features of the current international system -American hegemony and globalization - both reinforce unipolarity.

### 2AC XO CP

#### Obama literally tried to the do the CP and Congress rolled it back

WSJ 10, Congress Bars Gitmo Transfers, online.wsj.com/article/SB10001424052748704774604576036520690885858.html

Congress on Wednesday passed legislation that would effectively bar the transfer of Guantanamo detainees to the U.S. for trial, rejecting pleas from Obama administration officials who called the move unwise.¶ A defense authorization bill passed by the House and Senate included the language on the offshore prison, which President Barack Obama tried unsuccessfully to close in his first year in office.¶ The measure for fiscal year 2011 blocks the Department of Defense from using any money to move Guantanamo prisoners to the U.S. for any reason. It also says the Pentagon can't spend money on any U.S. facility aimed at housing detainees moved from Guantanamo, in a slap at the administration's study of building such a facility in Illinois.¶ The Guantanamo ban was originally included in a broad appropriations bill earlier this month in the House, which died for unrelated reasons. At the time, Attorney General Eric Holder sent a letter to congressional leaders calling the ban "an extreme and risky encroachment on the authority of the executive branch to determine when and where to prosecute terrorist suspects."¶ Republicans and some Democrats say the prison at Guantanamo Bay, Cuba, which the government has spent millions of dollars upgrading, is the most secure place to keep terror suspects.¶ By banning transfers to the U.S., Congress is blocking trials of detainees in U.S. civilian courts. Proponents of the ban say military tribunals, not civilian courts, are the proper forum for bringing to justice suspects accused of trying to attack the U.S.¶ Those contentions grew stronger last month when a New York federal jury acquitted a former Guantanamo detainee of all but one count in the 1998 bombings of U.S. embassies in Africa. The defendant, Ahmed Ghailani, still faces 20 years to life in prison.¶ [2justice]¶ ERIC HOLDER¶ Mr. Obama originally pledged to close the prison by January 2010. That goal has foundered amid congressional opposition, and some 174 detainees remain at Guantanamo.¶ At a news conference Wednesday, the president expressed renewed desire to close Guantanamo, saying it has "become a symbol" and a recruiting tool for "al Qaeda and jihadists." "That's what closing Guantanamo is about," he said, adding: "I think we can do just as good of a job housing [detainees] somewhere else.

#### Future presidents prevent solvency

Harvard Law Review 12, "Developments in the Law: Presidential Authority," Vol. 125:2057, www.harvardlawreview.org/media/pdf/vol125\_devo.pdf

The recent history of signing statements demonstrates how public opinion can effectively check presidential expansions of power by inducing executive self-binding. It remains to be seen, however, if this more restrained view of signing statements can remain intact, for **it relies on the promises of one branch — indeed of one person — to enforce and maintain the separation of powers**. To be sure, President Obama’s guidelines for the use of signing statements contain all the hallmarks of good executive branch policy: transparency, accountability, and fidelity to constitutional limitations. Yet, in practice, this apparent constraint (however well intentioned) may amount to little more than voluntary self-restraint. 146 Without a formal institutional check, it is unclear what mechanism will prevent the next President (or President Obama himself) from reverting to the allegedly abusive Bush-era practices. 147 Only time, and perhaps public opinion, will tell.

#### Congress key to democratic legitimacy and preventing future vacillation in executive policy

Benjamin Wittes 9, senior fellow and research director in public law at the Brookings Institution, Stuart Taylor, an American journalist, graduated from Princeton University and Harvard Law School, “Legislating the War on Terror: An Agenda for Reform”, November 3, Book, p. 329-330

While President Obama’s policy makes a clean break with the Bush record, it actually does not effectively answer the question of how best to handle this group. Indeed, the new policy seems likely to fail on both a substantive and a procedural level. First, it goes too far by banning all coercion all the time. Second, the rule is unstable because it can so easily be changed at the whim of the president, whether Obama or, perhaps, a successor more like Bush. An administration down the road that wanted to resume waterboarding could rescind the current order and adopt legal positions like those of the prior administration. Unless the Obama administration and Congress hammer out rules that provide interrogators with clear guidance about what is and is not allowed and write those rules into statute, the United States risks vacillating under the vagaries of current law between overly permissive and overly restrictive guidance. The general goals of new legislation should be threefold: —To make it a crime beyond cavil to use interrogation methods considered by reasonable people to be torture. The torture statute already does that to some degree, but the fact that it arguably permitted techniques as severe as waterboarding suggests that it may require some tightening. The key here is that the statute should cover all techniques the use of which ought to prompt criminal prosecution. —To subject CIA interrogators in almost all cases to rules that, without relaxing current law’s ban on cruel, inhuman, and degrading treatment, permit relatively mild forms of coercion that are properly off limits to military interrogators. —To allow the president, subject to strict safeguards, to authorize use of harsher methods short of torture (as defined in the revised criminal statute) in true emergencies or on extraordinarily high-value captives such as KSM. Only Congress can provide the democratic legitimacy and the fine-tuning of criminal laws that can deliver such a regime. Only Congress can, for example, pass a new law making it clear that waterboarding— or any other technique of comparable severity— will henceforth be a federal crime. Only Congress can offer clear assurances to operatives in the field that there exists a safe harbor against prosecution for conduct ordered by higher-ups in a crisis in the genuine belief that an attack may be around the corner. Only Congress, in other words, can create a regime that plausibly turns away from the past without giving up what the United States will need in the future.

### 2AC Debt Ceiling DA

#### McConnell primary challenge will prevent a deal

Stephanie Kirchgaessner 9/20, Financial Times, “Challenge to McConnell stymies deal on budget,” http://www.ft.com/cms/s/0/d2bb4f8c-21fd-11e3-9b55-00144feab7de.html#axzz2fUCcoopO

More significantly for the US economy and global markets, Mr McConnell’s political problems will make it more difficult for the White House to reach a deal to extend the nation’s debt limit. If no deal is reached by mid to late-October, it could lead to the first US debt default.¶ The high stakes were made clear on Friday when the Republican majority in the House of Representatives passed 230-189 a spending bill that would keep the government running until mid-December with one caveat: it would defund portions of the health reform law known as “Obamacare”.¶ The vote creates an impasse with no clear sign of a resolution given Democratic opposition to the defunding effort. Without a deal, the government will shut down on October 1.¶ The House proposal will be taken up next week by Democrats in the Senate, who are expected to send it back to the lower chamber after stripping out the defunding language. What happens next is unknown, and the uncertainty bodes badly for a separate fight over the debt ceiling increase. Conservative Republicans have said they will pass an increase only if it contains a one-year delay in a key provision of Obamacare. President Barack Obama has said he will not negotiate over the debt ceiling.¶ It is just the kind of quagmire that Mr McConnell has helped to defuse in the past.¶ The senator has never been an ally of Mr Obama. But his ultimately pragmatic nature, which reflects nearly three decades in the upper chamber of Congress, has made him an invaluable negotiating partner over the years.¶ It was Mr McConnell who clinched the deal with vice-president Joe Biden at the end of 2012 to avert the “fiscal cliff”. A year earlier, he was the senator who proposed the use of an arcane procedural mechanism to increase the debt ceiling without forcing Republicans to vote for it.¶ However, even as the lawmaker has touted his role in those deals and emphasised the important concessions he won on taxes and spending limits, he is nevertheless seen by conservative activists as a sellout.¶ “There is a conflict between his rhetoric and reality. He wants people to re-elect him because he has this power and the title, but he is not using it in a way that benefits them. These deals are very unpopular,” said Matt Hoskins, executive director of the Senate Conservatives Fund.¶ Now that the Kentucky lawmaker is engaged in a primary race against the largely unknown Matt Bevin – in which any co-operation with the White House will count against him among voters – it has put him “on the bench” for this round of fiscal fight.¶ “There was always a sense with McConnell of averting disaster. But you know now his focus is in Kentucky, not necessarily in pulling the Congress back from the brink the way he has in the last two big fights,” said Chris Krueger, an analyst at Guggenheim Securities.¶ Jennifer Duffy, of the Cook Political Report, added: “While McConnell may be inclined to be a dealmaker, I think getting a challenge from the right doesn’t give him a lot of incentive to be the dealmaker.”

#### 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.

#### No PC -- divided Dems backlashing – laundry list

Bloomberg 9/17 -- Mike Dorning and Kathleen Hunter, 2013, Obama Rifts with Allies on Summers-Syria Limit Debt Dealing, www.bloomberg.com/news/2013-09-17/obama-s-summers-syria-rifts-with-allies-limit-room-on-debt-…

The backlash President Barack Obama faced from Democrats on both Syria and the prospect of Lawrence Summers leading the Federal Reserve underscore intraparty rifts that threaten to limit his room to strike budget and debt deals.¶ “There’s a large and growing portion of the Democratic Party that’s not in a compromising mood,” said William Galston, a former domestic policy adviser to President Bill Clinton.¶ Summers, one of Obama’s top economic advisers during the first two years of his presidency, withdrew from consideration for Fed chairman after a campaign against him led by Democratic senators who criticized his role in deregulating the financial industry during the 1990s.¶ That came just days after the Senate postponed deliberation on a request by Obama to authorize U.S. force in Syria, amid opposition from Democratic and Republican lawmakers wary of a new military action in the Middle East.¶ The two controversies raised “central issues” that divide Democrats at a time when the president needs unity to confront Republicans, Galston said. “The White House better make sure it and congressional Democrats are on the same page” as lawmakers face deadlines on government spending and raising the debt limit, he said.¶ Party Divisions¶ Senator Richard Durbin of Illinois, the chamber’s second-ranking Democrat, said today that Democrats are united with Obama on the need for a “clean” debt-ceiling increase. The anti-Summers movement reflected “strong feelings that many of us have” about making the Fed more responsive on issues such as income inequality, he said.¶ Republican leaders are dealing with their own divisions. House Speaker John Boehner, an Ohio Republican, had to pull back a vote last week on a plan to avoid a partial government shutdown in October after it became clear it couldn’t win enough support from members of his own party.¶ Congress and the Obama administration are facing fiscal decisions that include funding the government by Sept. 30 to avoid a federal shutdown and raising the nation’s $16.7 trillion debt ceiling. Boehner said in July that his party wouldn’t increase the borrowing limit “without real cuts in spending” that would further reduce the deficit. The administration insists it won’t negotiate on the debt ceiling.¶ Building Dissent¶ For Obama, the dissent on the left was already brewing before the Syria and Summers debates.¶ Congressional Democrats and union leaders accused him of being too eager to compromise with Republican demands to cut entitlement spending after he released a budget proposal that called for lower annual Social Security cost-of-living adjustments.¶ Some early Obama supporters also were disappointed that the president, who has relied on drone strikes to kill suspected terrorists and failed to close the detention center at Guantanamo Bay, Cuba, hadn’t moved far enough from George W. Bush’s policies on civil liberties and national security. The complaints grew louder after the disclosure of National Security Agency surveillance practices this year.¶ Obama, who earlier this year watched his gun-control legislation fail in the Senate partly because of defections by Democrats from Republican-leaning states, also is limited in his capacity to enlist public support to win over lawmakers.

#### 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.

#### EPA regs cause firestorm against Obama

WT 9/20 -- Washington Times, EPA coal rules tighter than expected, will fuel backlash in Congress, 2013, Ben Wolfgang, www.washingtontimes.com/news/2013/sep/20/epa-coal-rules-tighter-expected-will-fuel-backlash/

The Environmental Protection Agency’s dramatic new power plant emissions standards already have touched off a firestorm within the coal industry and on Capitol Hill, with top Republicans promising to fight tooth-and-nail against President Obama’s climate-change agenda.¶ The EPA, the leading actor in the White House’s ambitious global-warming initiative, released the limits on Friday. Hopes that they’d be much less stringent than previous proposals proved to be misplaced.¶ Coal-state lawmakers from both parties are promising to push back.¶ “The president is leading a war on coal and what that really means for Kentucky families is a war on jobs. And the announcement by the EPA is another back door attempt by President Obama to fulfill his long-term commitment to shut down our nation’s coal mines,” said Senate Minority Leader Mitch McConnell, Kentucky Republican.

#### their authors exaggerate

Tom Raum 11, AP, “Record $14 trillion-plus debt weighs on Congress”, Jan 15, <http://www.mercurynews.com/news/ci_17108333?source=rss&nclick_check=1>

Democrats have use doomsday rhetoric about a looming government shutdown and comparing the U.S. plight to financial crises in Greece and Portugal. It's all a bit of a stretch. "We can't do as the Gingrich crowd did a few years ago, close the government," said Senate Majority Leader Harry Reid (D-Nev.), referring to government shutdowns in 1995 when Georgia Republican Newt Gingrich was House speaker. But those shutdowns had nothing to do with the debt limit. They were caused by failure of Congress to appropriate funds to keep federal agencies running. And there are many temporary ways around the debt limit. Hitting it does not automatically mean a default on existing debt. It only stops the government from new borrowing, forcing it to rely on other ways to finance its activities. In a 1995 debt-limit crisis, Treasury Secretary Robert Rubin borrowed $60 billion from federal pension funds to keep the government going. It wasn't popular, but it helped get the job done. A decade earlier, James Baker, President Ronald Reagan's treasury secretary, delayed payments to the Civil Service and Social Security trust funds and used other bookkeeping tricks to keep money in the federal till. Baker and Rubin "found money in pockets no one knew existed before," said former congressional budget analyst Stanley Collender. Collender, author of "Guide to the Federal Budget," cites a slew of other things the government can do to delay a crisis. They include leasing out government-owned properties, "the federal equivalent of renting out a room in your home," or slowing down payments to government contractors. Now partner-director of Qorvis Communications, a Washington consulting firm, Collender said such stopgap measures buy the White House time to resist GOP pressure for concessions. "My guess is they can go months after the debt ceiling is not raised and still be able to come up with the cash they need. But at some point, it will catch up," and raising the debt limit will become an imperative, he suggested.

#### No econ decline war---best and most recent data

Daniel W. Drezner 12, Professor, The Fletcher School of Law and Diplomacy, Tufts University, October 2012, “The Irony of Global Economic Governance: The System Worked,” <http://www.globaleconomicgovernance.org/wp-content/uploads/IR-Colloquium-MT12-Week-5_The-Irony-of-Global-Economic-Governance.pdf>

The final outcome addresses a dog that hasn’t barked: the effect of the Great Recession on cross-border conflict and violence. During the initial stages of the crisis, multiple analysts asserted that the financial crisis would lead states to increase their use of force as a tool for staying in power.37 Whether through greater internal repression, diversionary wars, arms races, or a ratcheting up of great power conflict, there were genuine concerns that the global economic downturn would lead to an increase in conflict. Violence in the Middle East, border disputes in the South China Sea, and even the disruptions of the Occupy movement fuel impressions of surge in global public disorder. ¶ The aggregate data suggests otherwise, however. The Institute for Economics and Peace has constructed a “Global Peace Index” annually since 2007. A key conclusion they draw from the 2012 report is that “The average level of peacefulness in 2012 is approximately the same as it was in 2007.”38 Interstate violence in particular has declined since the start of the financial crisis – as have military expenditures in most sampled countries. Other studies confirm that the Great Recession has not triggered any increase in violent conflict; the secular decline in violence that started with the end of the Cold War has not been reversed.39 Rogers Brubaker concludes, “the crisis has not to date generated the surge in protectionist nationalism or ethnic exclusion that might have been expected.”40¶ None of these data suggest that the global economy is operating swimmingly. Growth remains unbalanced and fragile, and has clearly slowed in 2012. Transnational capital flows remain depressed compared to pre-crisis levels, primarily due to a drying up of cross-border interbank lending in Europe. Currency volatility remains an ongoing concern. Compared to the aftermath of other postwar recessions, growth in output, investment, and employment in the developed world have all lagged behind. But the Great Recession is not like other postwar recessions in either scope or kind; expecting a standard “V”-shaped recovery was unreasonable. One financial analyst characterized the post-2008 global economy as in a state of “contained depression.”41 The key word is “contained,” however. Given the severity, reach and depth of the 2008 financial crisis, the proper comparison is with Great Depression. And by that standard, the outcome variables look impressive. As Carmen Reinhart and Kenneth Rogoff concluded in This Time is Different: “that its macroeconomic outcome has been only the most severe global recession since World War II – and not even worse – must be regarded as fortunate.”42

#### No food wars

Tetrais 12—Senior Research Fellow at the Fondation pour la Recherche Stratgique (FRS). Past positions include: Director, Civilian Affairs Committee, NATO Assembly (1990-1993); European affairs desk officer, Ministry of Defense (1993-1995); Visiting Fellow, the Rand Corporation (1995-1996); Special Assistant to the Director of Strategic Affairs, Ministry of Defense (1996-2001).(Bruno, The Demise of Ares, csis.org/files/publication/twq12SummerTertrais.pdf)

The Unconvincing Case for ‘‘New Wars’’ ¶ Is the demise of war reversible? In recent years, the metaphor of a new ‘‘Dark Age’’ or ‘‘Middle Ages’’ has flourished. 57 The rise of political Islam, Western policies in the Middle East, the fast development of emerging countries, population growth, and climate change have led to fears of ‘‘civilization,’’ ‘‘resource,’’ and ‘‘environmental’’ wars. We have heard the New Middle Age theme before. In 1973, Italian writer Roberto Vacca famously suggested that mankind was about to enter an era of famine, nuclear war, and civilizational collapse. U.S. economist Robert Heilbroner made the same suggestion one year later. And in 1977, the great Australian political scientist Hedley Bull also heralded such an age. 58 But the case for ‘‘new wars’’ remains as flimsy as it was in the 1970s.¶ Admittedly, there is a stronger role of religion in civil conflicts. The proportion of internal wars with a religious dimension was about 25 percent between 1940 and 1960, but 43 percent in the first years of the 21st century. 59 This may be an effect of the demise of traditional territorial conflict, but as seen above, this has not increased the number or frequency of wars at the global level. Over the past decade, neither Western governments nor Arab/Muslim countries have fallen into the trap of the clash of civilizations into which Osama bin Laden wanted to plunge them. And ‘‘ancestral hatreds’’ are a reductionist and unsatisfactory approach to explaining collective violence. Professor Yahya Sadowski concluded his analysis of post-Cold War crises and wars, The Myth of Global Chaos, by stating, ‘‘most of the conflicts around the world are not rooted in thousands of years of historythey are new and can be concluded as quickly as they started.’’ 60¶ Future resource wars are unlikely. There are fewer and fewer conquest wars. Between the Westphalia peace and the end of World War II, nearly half of conflicts were fought over territory. Since the end of the Cold War, it has been less than 30 percent. 61 The invasion of Kuwaita nationwide bank robberymay go down in history as being the last great resource war. The U.S.-led intervention of 1991 was partly driven by the need to maintain the free flow of oil, but not by the temptation to capture it. (Nor was the 2003 war against Iraq motivated by oil.) As for the current tensions between the two Sudans over oil, they are the remnants of a civil war and an offshoot of a botched secession process, not a desire to control new resources.¶ China’s and India’s energy needs are sometimes seen with apprehension: in light of growing oil and gas scarcity, is there not a risk of military clashes over the control of such resources? This seemingly consensual idea rests on two fallacies. One is that there is such a thing as oil and gas scarcity, a notion challenged by many energy experts. 62 As prices rise, previously untapped reserves and non-conventional hydrocarbons become economically attractive. The other is that spilling blood is a rational way to access resources. As shown by the work of historians and political scientists such as Quincy Wright, the economic rationale for war has always been overstated. And because of globalization, it has become cheaper to buy than to steal. We no longer live in the world of 1941, when fear of lacking oil and raw materials was a key motivation for Japan’s decision to go to war. In an era of liberalizing trade, many natural resources are fungible goods. (Here, Beijing behaves as any other actor: 90 percent of the oil its companies produce outside of China goes to the global market, not to the domestic one.) 63 There may be clashes or conflicts in regions in maritime resource-rich areas such as the South China and East China seas or the Mediterranean, but they will be driven by nationalist passions, not the desperate hunger for hydrocarbons.

### 2AC TERRORISM DA

#### WOT will never work---empirics prove military force cannot defeat AQ

Dan Kovalik 8, USW Counsel, Workers Uniting Colombia Committee, "Rand Corp -- War On Terrorism Is A Failure", July 31, www.huffingtonpost.com/dan-kovalik/rand-corp----war-on-terro\_b\_116107.html

The Rand Corporation, a conservative think-tank originally started by the U.S. Air Force, has produced a new report entitled, "How Terrorist Groups End - Lessons for Countering al Qaida." This study is important, for it reaches conclusions which may be surprising to the Bush Administration and to both presidential candidates. To wit, the study concludes that the "war on terrorism" has been a failure, and that the efforts against terrorism should not be characterized as a "war" at all. Rather, Rand suggests that the U.S. efforts at battling terrorism be considered, "counterterrorism" instead.¶ And, why is this so? Because, Rand concludes, after studying 648 terrorist groups between 1968 and 2006, that military operations against such groups are among the least effective means of success, achieving the desired effect in only 7% of the cases. As Rand explains, "[a]gainst most terrorist groups . . . military force is usually too blunt an instrument." Moreover, "[t]he use of substantial U.S. military power against terror groups also runs a significant risk of turning the local population against the government by killing civilians."¶ In terms of this latter observation, there is no better case-in-point right now than Afghanistan - the war that both candidates for President seem to embrace as a "the right war" contrary to all evidence. In Afghanistan, the U.S. military forces should properly be known as, "The Wedding Crashers," with the U.S. successfully bombing its fourth (4th) wedding party just this month, killing 47 civilians. According to the UN, 700 civilians have died in the Afghan conflict just this year. Human Rights Watch reports that 1,633 Afghan civilians were killed in 2007 and 929 in 2006. And, those killed in U.S. bomb attacks are accounting for a greater and greater proportion of the civilian deaths as that war goes on. As the Rand Corporation predicts in such circumstances, this has only led to an increase in popular support for those resisting the U.S. military onslaught. In short, the war is counterproductive.¶ Consequently, as the Rand study reports, the U.S. "war on terrorism" has been a failure in combating al Qaida, and indeed, that "[a]l Qaida's resurgence should trigger a fundamental rethinking of U.S. counterterrorism strategy." In the end, Rand concludes that the U.S. should rely much more on local military forces to police their own countries, and that this "means a light U.S. military footprint or none at all." If the politicians take this study seriously, and they should, they should abandon current plans for an increase in U.S. troop involvement in Afghanistan. Indeed, the U.S. military should be pulled out of Afghanistan altogether, just as it should be pulled out of Iraq.¶ Interestingly, the current study from Rand, a group not considered to be very dovish, mirrors its much earlier study which also declared that the U.S.'s "war on drugs" - that is, the effort to eradicate drugs at the source (e.g., cocaine in Colombia and heroin in Afghanistan) thorugh military operations -- is a failure. Instead, Rand opined, the U.S. would do better to concentrate its resources at home on drug addiction treatment - a measure the Rand Corporation concluded is 20 times more effective than the "war on drugs." Sadly, the U.S. did not pay attention to that study then, and it remains to be seen whether it will pay attention to Rand's current study.¶ Again, (and if you read my posts you will see me quote this passage often) Senator Obama was correct, both as a matter of morality as well as practicality, in calling for an "end [to] the mindset which leads us to war." This is so because war has profoundly failed us. Unfortunately however, the United States, and those running for its highest office, appear unable to escape from this mindset.¶ Instead, they continue to search for military options for problems which have no military solutions. In the process, U.S. soldiers die and thousands upon thousands of civilians are killed abroad. Meanwhile, the stated objective of the U.S., whether it be fighting drugs or fighting terror, is only further undermined. One look no further than Al Qaida itself -- which evolved from the U.S.'s military support for the Afghan mujahideen in pursuit of its "war on communism" -- as proof of this fact.¶ In short, we continue to create and re-create our own enemies through our addiction to war and force. It is indeed high time to "end the mindset which leads us to war." However, we as citizens in this ostensible democracy will have to work hard to push our leaders toward this end, for they appear unwilling and/or unable to even begin the process of moving toward such an objective.

#### No terrorism impact

John Mueller and Mark G. Stewart 12, Senior Research Scientist at the Mershon Center for International Security Studies and Adjunct Professor in the Department of Political Science, both at Ohio State University, and Senior Fellow at the Cato Institute AND Australian Research Council Professorial Fellow and Professor and Director at the Centre for Infrastructure Performance and Reliability at the University of Newcastle, "The Terrorism Delusion," Summer, International Security, Vol. 37, No. 1, politicalscience.osu.edu/faculty/jmueller//absisfin.pdf

In 2009, the U.S. Department of Homeland Security (DHS) issued a lengthy report on protecting the homeland. Key to achieving such an objective should be a careful assessment of the character, capacities, and desires of potential terrorists targeting that homeland. Although the report contains a section dealing with what its authors call “the nature of the terrorist adversary,” the section devotes only two sentences to assessing that nature: “The number and high profile of international and domestic terrorist attacks and disrupted plots during the last two decades underscore the determination and persistence of terrorist organizations. Terrorists have proven to be relentless, patient, opportunistic, and flexible, learning from experience and modifying tactics and targets to exploit perceived vulnerabilities and avoid observed strengths.”8¶ This description may apply to some terrorists somewhere, including at least a few of those involved in the September 11 attacks. Yet, it scarcely describes the vast majority of those individuals picked up on terrorism charges in the United States since those attacks. The inability of the DHS to consider this fact even parenthetically in its fleeting discussion is not only amazing but perhaps delusional in its single-minded preoccupation with the extreme.¶ In sharp contrast, the authors of the case studies, with remarkably few exceptions, describe their subjects with such words as incompetent, ineffective, unintelligent, idiotic, ignorant, inadequate, unorganized, misguided, muddled, amateurish, dopey, unrealistic, moronic, irrational, and foolish.9 And in nearly all of the cases where an operative from the police or from the Federal Bureau of Investigation was at work (almost half of the total), the most appropriate descriptor would be “gullible.”¶ In all, as Shikha Dalmia has put it, would-be terrorists need to be “radicalized enough to die for their cause; Westernized enough to move around without raising red flags; ingenious enough to exploit loopholes in the security apparatus; meticulous enough to attend to the myriad logistical details that could torpedo the operation; self-sufficient enough to make all the preparations without enlisting outsiders who might give them away; disciplined enough to maintain complete secrecy; and—above all—psychologically tough enough to keep functioning at a high level without cracking in the face of their own impending death.”10 The case studies examined in this article certainly do not abound with people with such characteristics. ¶ In the eleven years since the September 11 attacks, no terrorist has been able to detonate even a primitive bomb in the United States, and except for the four explosions in the London transportation system in 2005, neither has any in the United Kingdom. Indeed, the only method by which Islamist terrorists have managed to kill anyone in the United States since September 11 has been with gunfire—inflicting a total of perhaps sixteen deaths over the period (cases 4, 26, 32).11 This limited capacity is impressive because, at one time, small-scale terrorists in the United States were quite successful in setting off bombs. Noting that the scale of the September 11 attacks has “tended to obliterate America’s memory of pre-9/11 terrorism,” Brian Jenkins reminds us (and we clearly do need reminding) that the 1970s witnessed sixty to seventy terrorist incidents, mostly bombings, on U.S. soil every year.12¶ The situation seems scarcely different in Europe and other Western locales. Michael Kenney, who has interviewed dozens of government officials and intelligence agents and analyzed court documents, has found that, in sharp contrast with the boilerplate characterizations favored by the DHS and with the imperatives listed by Dalmia, Islamist militants in those locations are operationally unsophisticated, short on know-how, prone to making mistakes, poor at planning, and limited in their capacity to learn.13 Another study documents the difficulties of network coordination that continually threaten the terrorists’ operational unity, trust, cohesion, and ability to act collectively.14¶ In addition, although some of the plotters in the cases targeting the United States harbored visions of toppling large buildings, destroying airports, setting off dirty bombs, or bringing down the Brooklyn Bridge (cases 2, 8, 12, 19, 23, 30, 42), all were nothing more than wild fantasies, far beyond the plotters’ capacities however much they may have been encouraged in some instances by FBI operatives. Indeed, in many of the cases, target selection is effectively a random process, lacking guile and careful planning. Often, it seems, targets have been chosen almost capriciously and simply for their convenience. For example, a would-be bomber targeted a mall in Rockford, Illinois, because it was nearby (case 21). Terrorist plotters in Los Angeles in 2005 drew up a list of targets that were all within a 20-mile radius of their shared apartment, some of which did not even exist (case 15). In Norway, a neo-Nazi terrorist on his way to bomb a synagogue took a tram going the wrong way and dynamited a mosque instead.15

#### CIPA causes intel cooperation from foreign agencies

Richard B. Zabel and James J. Benjamin, Jr. 08, Deputy U.S. Attorney for the Southern District of New York AND partner in the New York office of Akin Gump Strause Hauer & Feld LLP, May, "In Pursuit of Justice: Prosecuting Terrorism Cases in the Federal Courts," Human Rights First, https://www.humanrightsfirst.org/wp-content/uploads/pdf/080521-USLS-pursuit-justice.pdf

As a result of CIPA’s effectiveness, the government has been able to use information obtained from foreign law- enforcement and intelligence sources without compromising the integrity of those sources. For example, in the Embassy Bombings case, the government offered the testimony of L’Houssaine Kherchtou, a former al Qaeda member. See Turner & Schulhofer, The Secrecy Problem in Terrorism Trials , at 24. Prior to Kherchtou becoming a cooperating witness, he had been questioned by a foreign intelligence service for five days concerning his knowledge of al Qaeda. That questioning was taped, provided to the United States, and contained information relevant to the case, but the foreign intelligence service insisted that its involv ement not be disclosed. “CIPA effectively resolved the issue: in discovery, a transcript of the debriefing was provided to defense counsel with references to the foreign intelligence service blacked out; at trial, defense counsel’s questioning of Kherchtou on the witness stand was monitored to ensure that the foreign intelligence service was not identified.” Id. It is our understanding that foreign intelligence agencies have become more willing to share information with the United States over time, as CIPA has proved to be effective in a number of cases. Even in cases where CIPA’s procedures have not been involved, Courts have permitted the government to maintain the secrecy of sensitive law-enforcement information. For example, in United States v. al-Moayad , Judge Sterling Johnson granted motions in limine to preclude defense cross-examination of German law- enforcement witnesses on sensitive, technical aspects of electronic surveillance that had been employed in Germany. See Motion in Limine, United States v. al-Moayad , No. 03-cr- 01322 (E.D.N.Y. Dec. 22, 2004) (Dkt. No. 100); Interview with Kelly Anne Moore, former Assistant U.S. Att’y in the E.D.N.Y. (Oct. 8, 2007).¶ As those who have worked with it can attest, however, CIPA is not particularly efficient. “Crafting substitutions that are both fair and effective can be a time-consuming, labor-intensive process, as can be the task of monitoring trial proceedings to ensure that classified information is not released through witness testimony.” Turner & Schulhofer, The Secrecy Problem in Terrorism Trials, at 25. According to a former CIA general counsel, “CIPA is awkward and cumbersome, but it works.” Id. (citing Consultation with Jeffrey Smith (Sept. 21, 2004)). Nevertheless, courts and counsel have repeatedly exhibited the patience and care that is necessary to use the CIPA procedures effectively.

#### Long sentences incentivize cooperation from suspects---causes effective intelligence gathering

Richard B. Zabel and James J. Benjamin, Jr. 08, Deputy U.S. Attorney for the Southern District of New York AND partner in the New York office of Akin Gump Strause Hauer & Feld LLP, May, "In Pursuit of Justice: Prosecuting Terrorism Cases in the Federal Courts," Human Rights First, https://www.humanrightsfirst.org/wp-content/uploads/pdf/080521-USLS-pursuit-justice.pdf

In all federal criminal cases, defendants who plead guilty prior to trial may be granted limited leniency under the Guidelines, and the harsh penalties meted out by federal courts following conviction on terrorism-related charges provide additional incentive for defendants to choose to plead guilty. Defendants who plead guilty in advance of trial are granted a two to three level reduction in their offense level guidelines in recognition of their acceptance of responsibility. See U.S.S.G. §3E1.1. In addition, the Guidelines provide an even greater incentive for defendants who agree to forego trial and cooperate with the government by providing information and intelligence to law enforcement. Under the Guidelines, the court may, on the motion of the government, depart from the Guidelines range for a defendant who has “provided substantial assistance in the investigation of another person who has committed an offense.” U.S.S.G. §5K1.1. 323 Moreover, a cooperating defendant may also avoid mandatory minimum sentences imposed by statute. See id. ; 18 U.S.C. § 3553(e). The prospect of lengthy sentences of incarceration often motivates defendants with valuable information about criminal conduct to cooperate with the government in hopes of leniency.¶ In practice, the government wields considerable control over the cooperation process. A defendant commences the cooperation process by meeting with the government in private—accompanied, of course, by his counsel. In this session, known as a “proffer,” the defendant typically must confess first to his own criminal conduct and provide the government with information about the criminal conduct of others. The government typically takes the information provided by the defendant in these proffer sessions and attempts through its own investigation to verify the defendant’s truthfulness and the utility of the information provided. ¶ Usually after multiple proffers, if the government is satisfied with the defendant’s truthfulness regarding his own criminal conduct and the conduct of others, the government enters into a written cooperation agreement with the defendant. The government requires the defendant to forego his right to trial and plead guilty to many or all of the crimes that he admitted during his proffer sessions. 324 The defendant is required as a part of this cooperation agreement to continue to cooperate with the government, truthfully respond to its inquiries and, if asked, testify truthfully in court against other defendants. In exchange, the government agrees to make a motion under Guidelines § 5K1.1 to inform the court of the defendant’s cooperation at sentencing, a motion that permits the court under the Guidelines to reduce the defendant’s sentence. 325 This letter is commonly known in criminal justice circles as a “5K1 Letter,” after the Guidelines section upon which it is based. 326 Armed with the 5K1 letter, the judge has absolute discretion to grant the defendant a sentence reduction if the judge deems it appropriate after measuring the defendant’s cooperation, irrespective of the Guidelines range normally applicable to the defendant’s criminal culpability.¶ The cooperation process has proven historically to be one of the government’s most powerful tools in gathering intelligence. In many instances, it is only through the narrative of a cooperating defendant—a true insider speaking with first-hand knowledge—that law enforcement can fully decode criminal conspiracies and effectively prosecute other wrongdoers. Indeed, the government recognizes that cultivating cooperation pleas is an effective intelligence gathering tool for all types of criminal investigations, including significant terrorist cases. In a webpage devoted to “Waging the War on Terror,” the Department of Justice touts that it is “gathering information by leveraging criminal charges and long prison sentences.” Website, U.S. Dept’t of Justice, Waging the War on Terror. 327 According to the site, individuals pleading guilty in exchange for shorter sentences “have provided critical intelligence about al-Qaida and other terrorist groups, safehouses, training camps, recruitment, and tactics in the United States, and the operations of those terrorists who mean to do Americans harm.” Id.¶ Although opinions differ, some experienced lawyers believe that defendants in terrorism cases are no less likely to cooperate than other defendants charged with serious offenses. One widely publicized example is Yahya Goba, one of six defendants indicted in the Lackawanna Six case. Goba pled guilty in March 2003 to providing material support to al Qaeda, in violation of 18 U.S. C. § 2339B, in connection with his attendance at an al Qaeda training camp in Afghanistan. See Plea Agreement, United States v. Goba , No. 02-00214 (W.D.N.Y. Mar. 25, 2003) (Dkt . No. 113); Change of Plea, Goba (W.D.N.Y. Mar. 25, 2003) (Dkt. No. 116); Press Release, U.S. Dep’t of Justice, Defendant Yahya Goba Pleads Guilty to Providing Material Support to Al Qaeda (March 25, 2003). 328 As part of the plea agreement, Goba pled to conduct, and agreed to a Guidelines calculation, that would have resulted in a sentence under the Guidelines of 188 to 235 months. See Plea Agreement at 6-8, Goba (W.D.N.Y. Mar. 25, 2003) (Dkt. No. 113). After pleading guilty to a violation of 18 U.S.C. § 2339B , Goba was sentenced to 120 months in prison. See id. at 1-2; Judgment as to Yahya Goba, Goba (W.D.N.Y. Dec. 22, 2003) (Dkt. No. 224). 329

#### Intelligence cooperation inevitable

Nick Perry 7/16/13, AP Correspondent for New Zealand and the South Pacific, and Paisley Dodds, London Bureau Chief for AP,

http://www.military.com/daily-news/2013/07/16/experts-say-us-spy-alliance-will-survive-snowden.html

WELLINGTON, New Zealand - Britain needed U.S. intelligence to help thwart a major terror attack. New Zealand relied on it to send troops to Afghanistan. And Australia used it to help convict a would-be bomber.¶ All feats were the result of a spying alliance known as Five Eyes that groups together five English-speaking democracies, and they point to a vital lesson: American information is so valuable, experts say, that no amount of global outrage over secret U.S. surveillance powers would cause Britain, Canada, Australia and New Zealand to ditch the Five Eyes relationship.¶ The broader message is that the revelations from NSA leaker Edward Snowden are unlikely to stop or even slow the global growth of secret-hunting - an increasingly critical factor in the security and prosperity of nations.¶ "Information is like gold," Bruce Ferguson, the former head of New Zealand's foreign spy agency, the Government Communications Security Bureau, told The Associated Press. "If you don't have it, you don't survive."¶ The Five Eyes arrangement underscores the value of this information - as well as the limitations of the information sharing.¶ The collaboration began during World War II when the allies were trying to crack German and Japanese naval codes and has endured for more than 70 years. The alliance helps avoid duplication in some instances and allows for greater penetration in others. The five nations have agreed not to spy on each other, and in many outposts around the world, Five Eyes agencies work side by side, allowing for information to be shared quickly.¶ But Richard Aldrich, who spent a decade researching a book on British surveillance, said some Five Eyes nations have spied on each other, violating their own rules.¶ The five countries "generally know what's in each other's underwear drawers so you don't need to spy, but occasionally there will be issues when they don't agree" - and when that happens they snoop, Aldrich said.¶ In Five Eyes, the U.S. boasts the most advanced technical abilities and the biggest budget. Britain is a leader in traditional spying, thanks in part to its reach into countries that were once part of the British Empire. Australia has excelled in gathering regional signals and intelligence, providing a window into the growing might of Asia. Canadians, Australians and New Zealanders can sometimes prove useful spies because they don't come under the same scrutiny as their British and American counterparts.¶ "The United States doesn't share information," said Bob Ayers, a former CIA officer, "without an expectation of getting something in return."¶ Britain is home to one of the world's largest eavesdropping centers, located about 300 kilometers (186 miles) northwest of London at Menwith Hill. It's run by the NSA but hundreds of British employees are employed there, including analysts from Britain's eavesdropping agency, the Government Communications Headquarters - or GCHQ. Australia is home to Pine Gap, a sprawling satellite tracking station located in the remote center of the country, where NSA officials work side-by-side with scores of locals. The U.S. also posts three or four analysts at a time in New Zealand, home to the small Waihopai and Tangimoana spy stations.¶ The intelligence-sharing relationship enabled American and British security and law enforcement officials to thwart a major terror attack in 2006 - the trans-Atlantic liquid bomb plot to blow up some 10 airliners.¶ The collaboration, sometimes called ECHELON, takes place within strict parameters. Two U.S. intelligence officials, who spoke on condition of anonymity because they weren't authorized to speak about the program to the news media, said only U.S. intelligence officers can directly access their own vast database.¶ A Five Eyes ally can ask to cross-check, say, a suspicious phone number it has independently collected to see if there is any link to the U.S., the officials said. But the ally must first show the request is being made in response to a potential threat to Western interests.¶ Ferguson said that in New Zealand, cooperation with the U.S. improved markedly after the Sept. 11, 2001, terrorist attacks. Still, he said, his agency was kept on a need-to-know basis. He said he never knew what information was being provided to other Five Eyes nations, and none of the countries would have shared all their intelligence anyway.¶ Ferguson said a small country like New Zealand benefited by a ratio of about five-to-one in the information it received compared to what it provided. He said that as chief of the defense force, a role he held before taking over the spy agency in 2006, he could never have sent troops to Afghanistan without the on-the-ground intelligence provided by the U.S. and other allies. He said New Zealand continues to rely on Five Eyes information for most of its overseas deployments, from peacekeeping to humanitarian efforts. The intelligence is vital, he added, for thwarting potential cyber threats.¶ In Australia, prosecutors in 2009 used evidence from a U.S. informant who had been at a terrorist training camp in Pakistan to help convict one of nine Muslim extremists found guilty of planning to bomb an unspecified Sydney target. The Australian Security Intelligence Organisation wrote in an email to The AP that "intelligence sharing between countries is critical to identifying and preventing terrorism and other transnational security threats."¶ Canada's Department of National Defence had a similar response, saying it "takes an active role in building relationships with allies. Collaborating with the personnel of the Five Eyes community in support of mutual defense and security issues is part of this relationship building."¶ Both agencies declined requests to provide more specific information.¶ In the decades since World War II, the allies have formed various other intelligence allegiances, although few as comprehensive or deep as Five Eyes. While the Snowden revelations will test the relationship, it has survived tests in the past.¶ New Zealand has long asserted an independent foreign policy by banning nuclear ships, and some are now calling for the country to go further and opt out of Five Eyes. Lawmaker Russel Norman, co-leader of New Zealand's Green Party, is one of many people calling for a public review of the relationship.¶ "I want to live in a free society, not a total surveillance state," he said. "The old Anglo-American gang of five no longer runs the world."¶ But John Blaxland, a senior fellow at the Australian National University's Strategic and Defence Studies Centre, said politicians Down Under have often criticized the security relationship until they've gotten into power and been briefed on its benefits.¶ Then, he said, they tend to go silent.¶ "The perception is that the advantages are so great, they'd be crazy to give it up," he said.

#### The same evidence for preventative detention can be used for conspiracy convictions

Kenneth Roth 8, former federal prosecutor in New York and Washington, D.C., is Executive Director of Human Rights Watch, Foreign Affairs, “After Guantánamo”, May/June, Vol. 87 Issue 3, p. 9-16, EBSCO

The most common argument against criminal prosecutions is that they examine crimes that were already committed, whereas the threat of terrorism is said to be so dangerous that it requires preventing acts before they occur. But the crime of conspiracy is sufficient to address today's terrorist threat because it is both backward and forward looking. Under U.S. law, a conspiracy can occur whether or not an intended illegal act has been carried out. Much as with the French crime of association de malfaiteurs, all that must be proved is that two or more people agreed to pursue an illegal plan and took at least one step to advance it. This should cover most terrorist plans: the lone wolf terrorist is rare, and al Qaeda and its spinoffs have typically relied on numerous participants to agree on a plan and pursue it. The same intelligence that allows investigators to identify and prevent a terrorist plot should allow them to prosecute the participants for conspiracy. Similarly, the crime of providing material support to terrorists can occur even when a terrorist act is only in preparation and has not yet been committed.

#### Long sentences solve their preventative internals

Richard B. Zabel and James J. Benjamin, Jr. 08, Deputy U.S. Attorney for the Southern District of New York AND partner in the New York office of Akin Gump Strause Hauer & Feld LLP, May, "In Pursuit of Justice: Prosecuting Terrorism Cases in the Federal Courts," Human Rights First, https://www.humanrightsfirst.org/wp-content/uploads/pdf/080521-USLS-pursuit-justice.pdf

Though a particular offense may have an established maximum sentence, courts maintain a great deal of discretion in determining whether defendants convicted of multiple counts should serve the sentence associated with each count concurrently or consecutively. For example, following Ramzi Yousef’s conviction in connection with the first World Trade Center bombing and other criminal acts, Judge Kevin Thomas Duffy of the Southern District of New York sentenced him to consecutive prison terms on several counts resulting in a term of imprisonment of life plus 240 years. See Judgment, United States v. Yousef , No. 93-cr-00180 (S.D.N.Y. Jan. 8, 1998) (Dkt. No. 655).¶ Within the outer boundaries of the statutory maximums, a court’s sentencing discretion is informed by 18 U.S.C. § 3553. Section 3553(a) states that “the court shall impose a sentence sufficient, but not greater than necessary” to comply with the objectives of sentencing: i.e., the need for the sentence to reflect the seriousness of the offense, promote respect for the law, provide just punishment, afford deterrence, protect the public, and provide the defendant with needed education, training, or medical care. 18 U.S.C. § 3553(a). In determining the pa rticular sentence to be imposed, a court must consider, in addition to the foregoing factors, (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the kinds of sentences available; (3) the kinds of sentence and the sentencing range established by the Guidelines; (4) policy statements issued by the Sentencing Commission; (5) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (6) the need to provide restitution to victims of the offense. See id.¶ The third component of the federal sentencing regime is the Sentencing Guidelines, which operate within the statutory maximums described above and are informed by the factors of § 3553. The Guidelines were first promulgated by the United States Sentencing Commission in 1989 and are updated regularly. Under the landmark Booker decision, the Guidelines are now only advisory, rather than mandatory. See United States v. Booker , 543 U.S. 220, 258-65 (2005). Federal judges are required to consider the applicable Sentencing Guidelines Range along with other generalized sentencing factors described by § 3553 (e.g., the need for deterrence), but are no longer bound to impose a Guidelines sentence. At the same time, a sentence within the Guidelines range has been held to be presumptively reasonable on appeal and still carries persuasive force. See Rita v. United States , 127 S. Ct. 2456, 2472-73 (2007). ¶ The Guidelines assign a value to each federal statutory crime—the “offense level”—and a value to each defendant’s criminal history—the “criminal history.” The defendant’s offense level and criminal history taken together yield a specific sentencing range on the Guidelines’ Sentencing Table, calculated in months. For example, a defendant convicted of violating 18 U.S.C. § 2339B, one of the material support statutes, is assigned a “base offense level” of twenty- six, which corresponds to a range of imprisonment between sixty-three and 150 months, depending on the individual’s criminal history. Thus, a defendant lacking any prior convictions could be sentenced to a term of sixty-three to seventy-eight months, barring the application of certain offense-specific enhancements or reductions. However, when a defendant is found to have committed a specific crime in a certain manner or under certain specified conditions, enhancements or reductions to the offense level are included—called “specific offense characteristics”—thereby increasing or decreasing the total offense level. ¶ In the terrorism context, the Sentencing Commission adopted a severe enhancement provision that is applicable to a host of terrorism cases, including material support prosecutions. Section 3A1.4 of the Guidelines states that: ¶ If the offense is a felony that involved, or was intended to promote, a federal crime of terrorism, increase [the offense level] by 12 levels; but if the resulting offense level is less than level 32, increase to level 32. ¶ In each such case, the defendant’s criminal history category ... shall be Category VI. ¶ U.S.S.G § 3A1.4. In increasing the offense level to a minimum offense level of thirty-two and elevating the defendant’s criminal history category to Category VI—the highest criminal history category available—the Guidelines dictate that a defendant who qualifies for the terrorism enhancement will face a Guidelines range of no less than 210 to 262 months.¶ This sentencing enhancement provides the government with a potentially devastating weapon in prosecuting cases that involved a terrorism crime or were intended to promote one. In order to convince a federal judge to apply the terrorism enhancement, the government must only prove that the enhancement is appropriate by a preponderance of evidence. The government must meet this reduced burden in a separate sentencing hearing before only a federal judge, in which hearsay evidence and forms of proof inadmissible at trial are permitted. What results is an opportunity for the government to charge a suspected terror defendant with a lesser, non- terrorism specific crime that would typically carry lesser penalties, and subsequently seek the sentencing enhancement to ensure a lengthy sentence of incarceration.

#### Indefinite detention hurts our ability to fight terrorism---bureaucratic confusion and wrecks intel sharing

WB 11 Washington's Blog, "Indefinite Detention Hurts Our National Security and Increases the Risk of Terrorism", December 15, www.washingtonsblog.com/2011/12/indefinite-detention-hurts-our-national-security-and-increases-the-risk-of-terrorism.html

Indefinite Detention Bill Hurts Our Ability to Fight Terrorism¶ Top counter-terrorism officials have said that indefinite detention increases terrorism.¶ A former Admiral and Judge Advocate General says that indefinite detention of Americans hands a big win to the terrorists.¶ And as Huffington Post notes today, indefinite detention is opposed by our own military and intelligence and police:¶ FBI Director Robert Mueller just this morning told the Senate that he fears the proposed law will create confusion over who has authority to investigate terrorism cases.¶ Defense Secretary Leon Panetta said the National Defense Authorization Act will restrain the Executive Branch’s ability to use “all the counterterrorism tools that are now legally available” and “needlessly complicate efforts by frontline law enforcement professionals to collect critical intelligence concerning operations and activities within the United States.”¶ Director of National Intelligence James Clapper has written that it “would introduce unnecessary rigidity at a time when our intelligence, military and law enforcement professionals are working more closely than ever to defend our nation effectively and quickly from terrorist attacks.”¶ Still, ignoring the advice from his most senior federal military and law enforcement professionals, President Obama is expected to sign the 2012 law, according to his senior advisors.¶ The concerns aren’t limited to federal officials. Earlier this week the 20,000-member International Association of Chiefs of Police wrote to Congress expressing concern that the law could “undermine the ability of our law enforcement counterterrorism experts, in particular those involved with Joint Terrorism Task Forces, to conduct effective investigations of suspected terrorists.”¶ A bipartisan group of 26 retired generals and admirals recently wrote that the legislation “both reduces the options available to our Commander-in-Chief to incapacitate terrorists and violates the rule of law” and “would seriously undermine the safety of the American people.”¶ The U.K. and Germany have said they won’t share intelligence or turn over suspected terrorists to the U.S. if they know they’ll be headed to indefinite military custody.¶ So not only will the bill allowing indefinite detention of Americans more or less create an overt police state, but it will also make us more vulnerable to terrorism.

#### Plan’s external oversight prevents executive overreach that radicalizes terrorists---squo hurts intel more

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. 59-61

Besides posing risks to liberty, administrative detention can also be counterproductive from the security standpoint. Again, the substantive criteria of detention law may help mitigate the risk. Historically, detention policies— especially those viewed as overbroad by the communities in which they were implemented— have sometimes proven ill-suited to combating terrorism and radicalization of individuals or communities. The British government learned painfully that internment of suspected Northern Ireland terrorists was viewed among some communities as a form of collective punishment that fueled violent nationalism and helped dry up the supply of community informants. 54 And in Iraq and Afghanistan, though the circumstances are exceptional because combat still rages there, detention has played an important role in neutralizing threats to coalition forces, but it has also contributed to anticoalition radicalization, especially when it is perceived as being used indiscriminately.¶ One role that well-crafted definitional criteria can play is in mitigating an executive’s propensity to overuse the power to detain. Observers from both the right and the left worry correctly that in the face of terrorist threats the executive is likely to push detention powers to or even past their outer bounds in order to prevent catastrophe as well as to head off any political backlash for having failed to take sufficient action. 56 Such overbroad use of detention risks further radicalizing and alienating communities from which terrorists are likely to emerge or whose assistance is vital in identifying or penetrating extremist groups. Moreover, several important studies of counterterrorism strategy have emphasized the need to target coercive policies, including military and law enforcement efforts, narrowly precisely to avoid playing into al Qaeda propaganda efforts to aggregate local grievances into a common global movement. 57 These are fundamentally policy, not legal, problems, and they will require sound executive judgment no matter what the legal regime looks like. But once the role of detention is firmly situated in a broader counterterrorism strategy that seeks to balance the many competing policy priorities, a carefully drawn administrative detention statute can help mitigate long-term strategic damage from the propensity to overreach in the short term. ¶ The danger that administrative detention poses to liberty and security points against emphasizing deterrence or information gathering as its primary strategic purpose. Virtually any very dangerous terrorist or supporter of terrorism that the government could hope to deter through detention would be deterred already by the threat of criminal prosecution or military attack or would be sufficiently committed to violent extremism to render the marginal deterrent threat of administrative detention negligible. 58 As for information gathering, an administrative detention law premised on detaining individuals with valuable knowledge regardless of whether they have engaged in nefarious activities sets a precedent that is too easily abused or overused at home or abroad. Information gathering, including through lawful interrogation, will undoubtedly be a strong motive for almost any administrative detention scheme, and an individual’s knowledge of terrorist planning or operations could be a reason not to release the person if he or she has been validly detained on other grounds. 59 But using a person’s suspected knowledge alone as the basis for detention, completely delinking detention from the individual’s voluntary and purposeful actions, cuts even deeper into traditional civil liberties principles and safeguards than most other reasons for administrative detention. 60 A detention law that allows incarceration based on knowledge could also perversely deter individuals with important information from coming forward voluntarily to the government.

#### The worst case scenario happened – no extinction

Dove 12 [Alan Dove, PhD in Microbiology, science journalist and former Adjunct Professor at New York University, “Who’s Afraid of the Big, Bad Bioterrorist?” Jan 24 2012, http://alandove.com/content/2012/01/whos-afraid-of-the-big-bad-bioterrorist/]

The second problem is much more serious. Eliminating the toxins, we’re left with a list of infectious bacteria and viruses. With a single exception, these organisms are probably near-useless as weapons, and history proves it.¶ There have been at least three well-documented military-style deployments of infectious agents from the list, plus one deployment of an agent that’s not on the list. I’m focusing entirely on the modern era, by the way. There are historical reports of armies catapulting plague-ridden corpses over city walls and conquistadors trying to inoculate blankets with Variola (smallpox), but it’s not clear those “attacks” were effective. Those diseases tended to spread like, well, plagues, so there’s no telling whether the targets really caught the diseases from the bodies and blankets, or simply picked them up through casual contact with their enemies.¶ Of the four modern biowarfare incidents, two have been fatal. The first was the 1979 Sverdlovsk anthrax incident, which killed an estimated 100 people. In that case, a Soviet-built biological weapons lab accidentally released a large plume of weaponized Bacillus anthracis (anthrax) over a major city. Soviet authorities tried to blame the resulting fatalities on “bad meat,” but in the 1990s Western investigators were finally able to piece together the real story. The second fatal incident also involved anthrax from a government-run lab: the 2001 “Amerithrax” attacks. That time, a rogue employee (or perhaps employees) of the government’s main bioweapons lab sent weaponized, powdered anthrax through the US postal service. Five people died.¶ That gives us a grand total of around 105 deaths, entirely from agents that were grown and weaponized in officially-sanctioned and funded bioweapons research labs. Remember that.¶ Terrorist groups have also deployed biological weapons twice, and these cases are very instructive. The first was the 1984 Rajneeshee bioterror attack, in which members of a cult in Oregon inoculated restaurant salad bars with Salmonella bacteria (an agent that’s not on the “select” list). 751 people got sick, but nobody died. Public health authorities handled it as a conventional foodborne Salmonella outbreak, identified the sources and contained them. Nobody even would have known it was a deliberate attack if a member of the cult hadn’t come forward afterward with a confession. Lesson: our existing public health infrastructure was entirely adequate to respond to a major bioterrorist attack.¶ The second genuine bioterrorist attack took place in 1993. Members of the Aum Shinrikyo cult successfully isolated and grew a large stock of anthrax bacteria, then sprayed it as an aerosol from the roof of a building in downtown Tokyo. The cult was well-financed, and had many highly educated members, so this release over the world’s largest city really represented a worst-case scenario.¶ Nobody got sick or died. From the cult’s perspective, it was a complete and utter failure. Again, the only reason we even found out about it was a post-hoc confession. Aum members later demonstrated their lab skills by producing Sarin nerve gas, with far deadlier results. Lesson: one of the top “select agents” is extremely hard to grow and deploy even for relatively skilled non-state groups. It’s a really crappy bioterrorist weapon.¶ Taken together, these events point to an uncomfortable but inevitable conclusion: our biodefense industry is a far greater threat to us than any actual bioterrorists.

#### bolstering democratic reform in Russia prevents violent revolution

Freeland and Gutterman 12 Chrystia and Steve, Writers for Reuters, January 17, 2012, “Russia faces violent revolution if it doesn’t embrace democracy, billionaire Putin challenger declares”, <http://news.nationalpost.com/2012/01/17/russia-faces-violent-revolution-if-it-doesnt-embrace-democracy-billionaire-putin-challenger-declares/>

MOSCOW — Mikhail Prokhorov, a super-rich tycoon challenging Vladimir Putin for Russia’s presidency in March, said his country faced the danger of violent revolution if it did not break conservative resistance and move quickly to democracy. Prokhorov, a billionaire bachelor long seen more as playboy than politician, told The Freeland File on reuters.com Russians had shaken off a post-Soviet apathy and were now “just crazy about politics.” He denied accusations he was a Kremlin tool, let into the race to split the opposition and lend democratic legitimacy to a vote Putin seems almost certain to win. Putin is seeking to return to the Kremlin and rule until at least 2018, but protests against alleged fraud in a December 4 parliamentary vote have exposed growing discontent with the system he has dominated for 12 years. “What worked before does not work now. Look in the streets. People are not happy,” Prokhorov, 46, said in the interview beneath the windowed dome that soars above his spacious office on a central Moscow boulevard close to the Kremlin. “It is time to change,” said Prokhorov, ranked by Forbes magazine as Russia’s third-richest person, with an $18-billion metals-to-banking empire that includes the New Jersey Nets basketball team in the United States. “Stability at any price is no longer acceptable for Russians.” But Prokhorov made clear he considers revolution equally unacceptable for a country with grim memories of a century of hardship, war and upheaval starting with Vladimir Lenin’s 1917 Bolshevik Revolution, instead calling for “very fast evolution.” “I am against any revolution, because I know the history of Russia. Every time we have revolution, it was a very bloody period,” he said. The son of a Soviet sports official, Prokhorov has a basketball player’s 204-cm (6-foot-8) frame, a narrow face and a head of short-cut hair graying around the edges. In a dark suit and blue shirt that looked modest for a Russian tycoon, he sat straight and spoke in English. Public political consciousness is on the rise after years of apathy. The Soviet mentality is fading as a generation of Russians who “don’t know who Lenin was” grows up, he said. The country was finally ripe for change. “We now have all the pieces in place to move very fast to being a real democracy,” Prokhorov said. But he suggested there was a mounting battle in the ruling elite between liberals like himself and conservatives “ready to pay any price” to maintain the status quo. Russia, he said, could face a bloody revolution if opponents of reform prevail. “If there are no changes in Russia, from day to day this risk will increase,” Prokhorov said. “Because 15, 20 percent of the population, the most active ones living in the big cities, want to live in a democratic country.”

#### That causes miscalculation and nuclear war

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

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