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## Advantage 1: Separation of Powers

The D.C. Circuit ruling on Al-Maqaleh v. Gates declared that habeas only applied to areas the U.S. permanently occupies

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The D.C. Circuit held that the Bagram detainees are not entitled to the writ for two reasons: the “location” and “practical difficulties” factors. In particular, the court found compelling its findings that (1) Bagram is a territory not under sufficient control of the United States, and (2) Bagram is in an active theater of war.107 These two pillars of the court’s opinion stand on flimsy ground. First, with respect to the “location” prong of the court’s decision, the D.C. Circuit suffers from what may be deemed an “essentialization” problem. In general terms, to “essentialize” is to believe that all things of a certain type must contain specific traits that all things of that type must possess.108 It is to assume, in other words, “that all examples of that particular thing share the same . . . defining characteristics.”109 In al Maqaleh, the panel decided, at bottom, that the Bagram case was more akin to Eisentrager, where the detainees were held in the twilight of World War II at a German facility not under the exclusive control of the United States and denied habeas rights, than to Boumediene, where the detainees were held at the Guantánamo military base under the plenary control of the United States far removed from a war zone and had their habeas rights recognized.110 The D.C. Circuit’s assessment of habeas jurisdiction appears to have turned on a simplistic comparison of the territorial characteristics of Bagram to those present in Eisentrager and Boumediene. That is—the court examined whether Bagram fit on the Eisentrager or Boumediene end of the spectrum. The problem with this approach is that the court assumed that, to reach the Boumediene/habeas-granting “end” of that spectrum, Bagram must contain those traits that Guantánamo possessed. Applied to the issue of “location,” it means that in the court’s estimation, the degree to which the United States must control the location must be equivalent to that exhibited at Guantánamo, otherwise one remains on the Eisentrager side of the equation.111 At Guantánamo, the D.C. Circuit noted, the United States “maintained its total control of Guantanamo Bay for over a century, even in the face of a hostile government maintaining de jure sovereignty over the property.”112 By contrast, the panel pointed out, “[i]n Bagram, while the United States has options as to duration of the lease agreement, there is no indication of any intent to occupy the base with permanence, nor is there hostility on the part of the ‘host’ country.”113 This difference proved fatal to the petitioners’ argument as to “control.” It is unclear, as a constitutional matter, why the Guantánamo traits with respect to “location”—permanent occupation of (or the intent to so occupy) territory—should serve as the benchmark for or otherwise determine whether the Executive has effective control of the petitioners who claim they have been wrongfully detained. Generally, a custodian need not have permanent or longstanding control over an entire area in order to have effective control over an individual,114 and, as the Supreme Court noted, it is the custodian whom the writ targets and operates against: The important fact to be observed in regard to the mode of procedure upon this writ is, that it is directed to, and served upon, not the person confined, but his jailer. It does not reach the former except through the latter. The officer or person who serves it does not unbar the prison doors, and set the prisoner free, but the court relieves him by compelling the oppressor to release his constraint. The whole force of the writ is spent upon the [custodian].115 We would not say that a custodian lacks control over prisoners simply because the prison was built only in the last year or two, because the prison may not last in perpetuity, or because the state does not also control the whole, surrounding area. Put differently, it would not be said that the prison must be established for decades, the prison must be there for decades to come, or that the prison must be part of a comprehensively held land mass for the custodian to have control over a prisoner. Consistent with the functional approach of Boumediene, the custodian in these circumstances possesses control—notwithstanding the nascent nature or uncertain duration of the prison facility itself—over the prisoners. The al Maqaleh court’s essentialization required that the United States permanently occupy, or demonstrate intent to permanently occupy, the Bagram land just as the United States has occupied Guantánamo on a lengthy, indefinite basis. The critical question, however, is not whether Bagram mimics Guantánamo in this respect, but rather whether the American custodian has effective control over the detainees at Bagram. The court’s focus on the nation’s permanent control over land, as opposed to the custodian’s stable control over the detainees, is a fundamental error in the D.C. Circuit’s reasoning.

Guarantees presidential and military adventurism – makes all impacts more probable. SCOTUS ruling key to solve

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In the wake of 9/11 and since the start of the War on Terror, the government – including the Obama administration – has justified its self-expanded powers with the security argument. The government, its supporters argue, requires such powers in order to adequately protect the American people. In other words, the President did not seek out expansion of powers because he wanted to; no, it was for the safety and wellbeing of the American people. To say the least, it is a difficult argument – that, we, the government, require greater discretion for your, the citizen’s, own good – to outright reject. After all, who doesn’t wish to feel safe, to feel protected, and well looked after? Are we to say, “No thanks, I’ll keep my freedom and take my chances with the terrorists.” Sure, some will; but the majority will not. Exploding bombs, collapsing skyscrapers, and the deaths of those we know are immediately cognizable and evoke strong emotional responses. Liberties, separation-of-powers concerns, on the other hand, are far less tangible and far more abstract. Yes, everybody can rally behind freedom as an idea; but when faced with the choice between continual fear and more restricted freedoms, most prefer to feel safe than sorry. As a result, our politics are skewed a certain way. As the greater public continually says, “Better safe than sorry,” in turn the government justifies its actions with “Better safe than sorry, that’s what America wants.” Put bluntly, this is not the case where the status quo is acceptable. We are not dealing with a situation in which we could or could not change – in which the wheel ain’t broke so don’t fix it. Preventive detention in the aftermath of emergency has time and time again shown itself to be abusive when allowed to be under the sole discretion of the executive. And in many ways, the practice is incompatible with our enduring values of freedom, transparency, due process, and minority protections. Remember, absolute power corrupts absolutely. Bruce Ackerman attempted with his emergency constitution to place it beneath the purview of the legislative branch, but as we have shown, such a solution does not adequately address the fundamental problem of preventive detention: mistaken imprisonment. Oftentimes, preventive paradigms cast broad dragnets which subsequently result in the imprisonment of countless innocents – that is, individuals of a targeted minority group, e.g. persons of Arab ancestry or Muslim faith. The national security theorists, the Jack Bauer enthusiasts, have tried to convince us that increased security is all we require in times of emergency – that everything else is secondary. Exceptional times call for exceptional measures. Rights can be recovered, but can lives? Can nations? The reality is, however, the terrorist threat is not nearly as grave as these security apologists make it out to be. Yes, a terrorist attack is undoubtedly tragic and may even result in the loss of thousands of lives; nonetheless, it is not capable of toppling or overtaking governments. Isolated terrorist attacks, in short, are not existential threats. Too often, the safety – bought at the price of liberty – the government offers is illusory. As Steven T. Wax observes, “The searches of baby strollers at airports does little or nothing for safety in the air and nothing at all for the safety of trains, trucks, shipping, and chemical and power plants.”20 We need to be smart about our security and not buy into the fallacy of the more intrusive security measures automatically leads to greater safety. Not to mention, as has been shown throughout this paper, rounding up people based on paranoia, profiling, or any other arbitrary reason, not only does nothing to help our security, but also harms us insofar as we fail to differentiate between the legitimate and the illegitimate. Indeed, such actions damage our integrity as a country that believes in the maxim “innocent until proven guilty,” as a country that believes there is more to life than feeling safe and secure in our physical and material being. We need to instead ask ourselves exactly how much freedom we are willing to give up in the name of increased security? We must keep in mind the long-term costs, and not just the short-term benefits, of granting our president, our law enforcement, and our military freer and freer reign. Small sacrifices inevitably accumulate, and subsequently can morph into much bigger sacrifices than we are actually willing to give up. Furthermore, we owe those harmed – those wrongly detained – better than just monetary compensation. They deserve more than a “sorry” or an “our mistake, here’s some cash to make you whole.” They warrant, at the very least, an apology which vows this is the last time we make this recurring mistake: “We sincerely apologize for your wrongful detention, we will do our very best to make sure this does not happen again.” And so, in arguing for a framework in which the Suspension Clause is the absolute minimum in the arena of preventive detention, we remain the most true to our American ideals.21 It is then, during times of crisis and emergency, the task of the judiciary – the most politically-insulated branch of government – to uphold the writ of habeas corpus in its constitutional form, i.e. the Suspension Clause, and thereby set the absolute minimum in times of exigency. It is the responsibility of judges to force the executive to justify his actions in a court of law as well as the court – domestic and international – of public opinion. Most importantly, it is the time-honored duty of this nation’s legal guardians to ensure that the ideals which informed our founding are not lost. In more colloquial terms, it is up to our judges – through the vehicle of habeas corpus – to be the good man in the storm. After all, in the age of terror, “[i]f anybody destroys our legacy of freedom, it will be us.”22 Thus, the upkeep and preservation of our freedom, our values and beliefs, is our responsibility – and ours alone. Indeed, by the time Al Maqaleh, or another case like it, comes before the Supreme Court of the United States, we – the people, the lawyers, the judges – should be prepared to not simply enforce the new habeas emergency paradigm by extending the writ to all those detained by the United States, but also to do better, with each subsequent generation, as a nation dedicated to an enduring legacy of freedom.

Presidential adventurism causes nuclear war

Symonds 4-5-13 [Peter, leading staff writer for the World Socialist Web Site and a member of its International Editorial Board. He has written extensively on Middle Eastern and Asian politics, contributing articles on developments in a wide range of countries, “Obama’s “playbook” and the threat of nuclear war in Asia,” http://www.wsws.org/en/articles/2013/04/05/pers-a05.html]

The Obama administration has engaged in reckless provocations against North Korea over the past month, inflaming tensions in North East Asia and heightening the risks of war. Its campaign has been accompanied by the relentless demonising of the North Korean regime and claims that the US military build-up was purely “defensive”. However, the Wall Street Journal and CNN revealed yesterday that the Pentagon was following a step-by-step plan, dubbed “the playbook”, drawn up months in advance and approved by the Obama administration earlier in the year. The flights to South Korea by nuclear capable B-52 bombers on March 8 and March 26, by B-2 bombers on March 28, and by advanced F-22 Raptor fighters on March 31 were all part of the script.¶ There is of course nothing “defensive” about B-52 and B-2 nuclear strategic bombers. The flights were designed to demonstrate, to North Korea in the first instance, the ability of the US military to conduct nuclear strikes at will anywhere in North East Asia. The Pentagon also exploited the opportunity to announce the boosting of anti-ballistic missile systems in the Asia Pacific and to station two US anti-missile destroyers off the Korean coast.¶ According to CNN, the “playbook” was drawn up by former defence secretary Leon Panetta and “supported strongly” by his replacement, Chuck Hagel. The plan was based on US intelligence assessments that “there was a low probability of a North Korean military response”—in other words, that Pyongyang posed no serious threat. Unnamed American officials claimed that Washington was now stepping back, amid concerns that the US provocations “could lead to miscalculations” by North Korea.¶ However, having deliberately ignited one of the most dangerous flashpoints in Asia, there are no signs that the Obama administration is backing off. Indeed, on Wednesday, Defence Secretary Hagel emphasised the military threat posed by North Korea, declaring that it presented “a real and clear danger”. The choice of words was deliberate and menacing—an echo of the phrase “a clear and present danger” used to justify past US wars of aggression.¶ The unstable and divided North Korean regime has played directly into the hands of Washington. Its bellicose statements and empty military threats have nothing to do with a genuine struggle against imperialism and are inimical to the interests of the international working class. Far from opposing imperialism, its Stalinist leaders are looking for a deal with the US and its allies to end their decades-long economic blockade and open up the country as a new cheap labour platform for global corporations.¶ As the present standoff shows, Pyongyang’s acquisition of a few crude nuclear weapons has in no way enhanced its defence against an American attack. The two B-2 stealth bombers that flew to South Korea could unleash enough nuclear weapons to destroy the country’s entire industrial and military capacity and murder even more than the estimated 2 million North Korean civilians killed by the three years of US war in Korea in the 1950s.¶ North Korea’s wild threats to attack American, Japanese and South Korean cities only compound the climate of fear used by the ruling classes to divide the international working class—the only social force capable of preventing war.¶ Commentators in the international media speculate endlessly on the reasons for the North Korean regime’s behaviour. But the real question, which is never asked, should be: why is the Obama administration engaged in the dangerous escalation of tensions in North East Asia? The latest US military moves go well beyond the steps taken in December 2010, when the US and South Korean navies held provocative joint exercises in water adjacent to both North Korea and China.¶ Obama’s North Korea “playbook” is just one aspect of his so-called “pivot to Asia”—a comprehensive diplomatic, economic and military strategy aimed at ensuring the continued US domination of Asia. The US has stirred up flashpoints throughout the region and created new ones, such as the conflict between Japan and China over the disputed Senkaku/Diaoyu islands in the East China Sea. Obama’s chief target is not economically bankrupt North Korea, but its ally China, which Washington regards as a dangerous potential rival. Driven by the deepening global economic crisis, US imperialism is using its military might to assert its hegemony over Asia and the entire planet.¶ The US has declared that its military moves against North Korea are designed to “reassure” its allies, Japan and South Korea, that it will protect them. Prominent figures in both countries have called for the development of their own nuclear weapons. US “reassurances” are aimed at heading off a nuclear arms race in North East Asia—not to secure peace, but to reinforce the American nuclear monopoly.¶ The ratcheting-up of tensions over North Korea places enormous pressures on China and the newly-selected leadership of the Chinese Communist Party. An unprecedented public debate has opened up in Beijing over whether or not to continue to support Pyongyang. The Chinese leadership has always regarded the North Korean regime as an important buffer on its northeastern borders, but now fears that the constant tension on the Korean peninsula will be exploited by the US and its allies to launch a huge military build-up.¶ Indeed, all of the Pentagon’s steps over the past month—the boosting of anti-missile systems and practice runs of nuclear capable bombers—have enhanced the ability of the US to fight a nuclear war against China. Moreover, the US may not want to provoke a war, but its provocations always run the risk of escalating dangerously out of control. Undoubtedly, Obama’s “playbook” for war in Asia contains many more steps beyond the handful leaked to the media. The Pentagon plans for all eventualities, including the possibility that a Korean crisis could bring the US and China head to head in a catastrophic nuclear conflict.

Judicial deference props up military adventurism and illegal arms sales

Scales and Spitz 12 (Ann Scales, prof at U Denver law school. Laura Spitz, prof at U Colorado Law School. The Jurisprudence of the Military-Industrial ComplexSeattle Journal for Social Justice Volume 1 | Issue 3 Article 51 10-11-2012)

First, our nation’s history and legitimacy rest upon a separation of military power from democratic governance. For that reason, the armed forces are subject to constitutional constraint. Second, however, as an aspect of separation of powers, courts try not to interfere in areas of foreign policy and military affairs. Often this is referred to as the “political question” doctrine, a determination that a matter is beyond the capabilities of judges. The strongest argument for this deference is that the political branches—or the military itself—have superior expertise in military matters. That may be true in some situations. I am not sure, for example, the Supreme Court would have been the best crowd to organize the invasion of Normandy. But what we now have is an increasingly irrational deference.7 Consider three cases: a. In Korematsu v. United States,8 the Supreme Court said the internment of Japanese-Americans at the beginning of 1942 was constitutional, based upon a military assessment of the possibility of espionage in preparation for a Japanese invasion of the United States. It turns out that the information provided by the military to the Supreme Court was falsified.9 But note two things: (1) the nation was in the midst of a declared world war, and (2) in subsequent less urgent circumstances, Korematsu would seem to argue strongly for military justifications to have to be based upon better, more reliable information than was offered there. b. In the 1981 case of Rostker v. Goldberg,10 the Supreme Court decided that it was constitutional for Congress to exclude women from the peacetime registration of potential draftees, even though both the Department of Defense and the Army Chief of Staff had testified that including women would increase military readiness. But Congress got the benefit of the military deference doctrine as a cover for what I think was a sinister political purpose—to protect the manliness of war—and the Supreme Court felt perfectly free to ignore what those with the real expertise had to say. c. Most recently, in Hamdi v. Rumsfeld,11 the Fourth Circuit held that a U.S. citizen who had been designated an “enemy combatant”12 could be detained indefinitely without access to counsel. In this case, however, not only is there no declared war,13 but also, the only evidence regarding Mr. Hamdi was a two-page affidavit by a Defense Department underling, Mr. Mobbs. Mobbs stated that Mr. Hamdi was captured in Afghanistan, and had been affiliated with a Taliban military unit. The government would not disclose the criteria for the “enemy combatant” designation, the statements of Mr. Hamdi that allegedly satisfied those criteria, nor any other bases for the conclusion of Taliban “affiliation.”14 And that is as good as the evidence for life imprisonment without trial has to be. Deference to the military has become abdication. In other words, what we presently have is not civilian government under military control, but something potentially worse, a civilian government ignoring military advice,15 but using the legal doctrine of military deference for its own imperialist ends. Third, the gigantic military establishment and permanent arms industry are now in the business of justifying their continued existences. This justification is done primarily, as you know, by retooling for post-Cold War enemies—the so-called “rogue states”—while at the same time creating new ones, for example by arming corrupt regimes in Southeast Asia.16 I was reminded of this recently when we went to see comedian Kate Clinton. She thought Secretary Powell had taken too much trouble in his presentation attempting to convince the Security Council that Iraq had weapons of mass destruction.17 Why not, she asked, “just show them the receipts?” Fourth, we have seen the exercise of extraordinary influence by arms makers on both domestic and foreign policy. For domestic pork barrel and campaign finance reasons, obsolete or unproven weapons systems continue to be funded even when the military does not want them!18 And, just when we thought we had survived the nuclear arms race nightmare, the United States has undertaken to design new kinds of nuclear weapons,19 even when those designs have little military value.20 Overseas, limitations on arms sales are being repealed, and arms markets that should not exist are being constantly expanded21 for the sake of dumping inventory, even if those weapons are eventually used for “rogue” purposes by rogue states. This system skews security considerations, and militarizes foreign policy. Force has to be the preferred option because other conduits of policy are not sufficiently well-funded. Plus, those stockpiled weapons have got to be used or sold so that we can build more. Fifth, enlarging upon this in a document entitled The National Security Policy of the United States, we were treated last September to “the Bush doctrine,” which for the first time in U.S. history declares a preemptive strike policy. This document states, “America will act against emerging threats before they are fully formed.”22 If they are only emerging and not fully formed, you may wonder, how will we know they are “threats”? Because someone in Washington has that perception, and when the hunch hits, it is the official policy of this country to deploy the military.23 All options—including the use of nuclear weapons—are always on the table.

Arms sales rapidly escalate Middle East war – that’s the most likely scenario for escalation in the region

Cunningham 12 (Erin, Erin Cunningham is GlobalPost’s editor for the Middle East, Africa, Afghanistan and Pakistan. Erin has reported from the Middle East, South Asia and the Balkans for five years, covering Kosovo's independence, the military surge in Afghanistan, protests in Cairo's Tahrir Square, the first democratic elections in Tunisia, and Israeli military operations in Gaza. Small arms fuel Middle East conflicts http://www.globalpost.com/dispatch/news/regions/middle-east/121128/small-arms-middle-east-conflict-weapons)

From Libya to Syria, Yemen and the Gaza Strip, everything from shotguns and semi-automatic rifles to anti-tank and anti-aircraft weapons are making local and regional conflicts more lethal, scarring the societies where the weapons end up. And analysts say the problem is only getting worse. “Things have intensified since the Arab Spring,” said Martin Butcher, arms policy adviser at London-based Oxfam, about the region’s weapons trade. “There were particularly troubled hotspots in the Middle East, where illegal or grey market transfers were the norm,” he said, referring to a type of weapons transaction that may begin as legal but diverts arms to illegal end-markets. As the unrest spread, he said, so did the illicit weapons flows. “It’s starting to get worse,” he concluded. Long-term conflicts in the Middle East have helped flood the region with small arms. Some of the weapons arrive as bribes from Western governments to oppressive regimes for maintaining peace with Israel or are acquired by armed groups challenging state power, such as Kurdish separatists in Turkey and Iraq. Gathering comprehensive, accurate data on the region’s small arms trade is difficult because regional governments lack transparency. But according to the Congressional Research Service, the US Congress’s public policy research arm, the Middle East is the developing world’s largest arms market. The United States is the leading exporter of legal small arms to governments across the region. It sold $1.1 billion of weapons to Bahrain, Egypt and Yemen from 2005 to 2010. Some of the arms have ended up on the black market and in the hands of smugglers like Abu Ibrahim. His Bedouin kin in Sinai’s north have engaged in a low-intensity conflict with heavy-handed security forces for years. The conflict is fueled largely by the presence of illicit small arms, including recent shipments from post-Gaddafi Libya, where ordinary people joined rebels pillaging arsenals during the civil war. During the tumult that accompanied the Arab Spring, weakened or toppled governments in Egypt, Libya and Syria withdrew from borders and other guarded areas, giving up weapons stocks as they fled rebel fighters. Across the Sinai Peninsula — where police and intelligence forces recently retreated under fire from armed protesters — smugglers, Islamic militants, criminal networks and armed gangs are amassing even more weapons that have poured across Egypt’s porous border with Libya. Locals say that in addition to assault rifles, Soviet-made large-caliber machine guns, US-manufactured Glock pistols, Chinese shotguns, anti-tank weapons and rocket-propelled grenade launchers are all feeding the frequent armed confrontations between militants, locals and Egyptian security forces. “This has always been a passageway for wars,” Ibrahim said. “We’re not treated well by the authorities. If we were, we wouldn’t need weapons.” Illegal weapons shipments from Libya and Iran are helping fuel the full-scale civil war in Syria, where a peaceful uprising developed into an armed conflict that’s killed around 30,000 people, according to anti-government activists. Oxfam’s Butcher pointed to reports saying weapons are being shipped directly from Benghazi, the cradle of Libya’s uprising, to the rebel Free Syria Army via Lebanon. “It is absolutely clear that the sustained battle in Aleppo couldn’t possibly have happened without a large amount of arms coming in from outside,” he said. Syria’s largest city has been at the center of a pitched battle between the Free Syrian Army and the forces of President Bashar al-Assad for months. “There is a very steady flow of arms going in — from Lebanon, Iraq, Turkey and even Jordan,” said Nicolas Marsh, an arms researcher at the Norwegian Initiative for Small Arms Transfers, a coalition of civil society groups seeking to reduce armed violence. “If the opposition in Syria had run out of ammunition, they would have lost right away.” Illegal small arms can tilt the balance of power in some conflicts, but they often help entrench stalemates in which the breakdown of infrastructure and services increases perceptions of insecurity — and intensifies violence.

Middle East wars cause extinction

Russell, 9 (James A. Russell, Senior Lecturer, National Security Affairs, Naval Postgraduate School, ‘9 (Spring)  
“Strategic Stability Reconsidered: Prospects for Escalation and Nuclear War in the Middle East” IFRI, Proliferation Papers//, #26, \_\_http://www.ifri.org/downloads/PP26\_Russell\_2009.pdf\_\_)

Strategic stability in the region is thus undermined by various factors: (1) asymmetric interests in the bargaining framework that can introduce unpredictable behavior from actors; (2) the presence of non-state actors that introduce unpredictability into relationships between the antagonists; (3) incompatible assumptions about the structure of the deterrent relationship that makes the bargaining framework strategically unstable; (4) perceptions by Israel and the United States that its window of opportunity for military action is closing, which could prompt a preventive attack; (5) the prospect that Iran’s response to pre-emptive attacks could involve unconventional weapons, which could prompt escalation by Israel and/or the United States; (6) the lack of a communications framework to build trust and cooperation among framework participants. These systemic weaknesses in the coercive bargaining framework all suggest that escalation by any the parties could happen either on purpose or as a result of miscalculation or the pressures of wartime circumstance. Given these factors, it is disturbingly easy to imagine scenarios under which a conflict could quickly escalate in which the regional antagonists would consider the use of chemical, biological, or nuclear weapons. It would be a mistake to believe the nuclear taboo can somehow magically keep nuclear weapons from being used in the context of an unstable strategic framework. Systemic asymmetries between actors in fact suggest a certain increase in the probability of war – a war in which escalation could happen quickly and from a variety of participants. Once such a war starts, events would likely develop a momentum all their own and decision-making would consequently be shaped in unpredictable ways. The international community must take this possibility seriously, and muster every tool at its disposal to prevent such an outcome, which would be an unprecedented disaster for the peoples of the region, with substantial risk for the entire world.

Judicial deference justifies military medical and bioweapons research

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

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

That risks bioweapons use—theft, arms racing, tradeoff

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

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

War escalates and spreads diseases, collapses defensive infrastructures

Dudley and Woodford, 2002 (Joseph P. Dudley is a consultant on military environmental and conservation policy issues with Versar, Inc., and a research associate at the Institute of Arctic Biology, University of Alaska Fairbanks, and at the Department of Earth Sciences, University of Alaska Museum. Michael H. Woodford is a fellow of the Royal College of Veterinary Surgeons, London, and chair of the Working Group on Wildlife Diseases at the Office International des Epizooties, World Organization for Animal Health, Algarve, Portugal: "Bioweapons, Biodiversity, and Ecocide: Potential Effects of Biological Weapons on Biological Diversity"; BioScience Vol. 52 No. 7, posted online January 5, 2009, http://caliber.ucpress.net/doi/full/10.1641/0006-3568%282002%29052%5B0583%3ABBAEPE%5D2.0.CO%3B2)

**Breakdowns in medical and veterinary support systems during wars** and civil conflicts have **resulted in** epidemic **outbreaks of diseases** within and among human, livestock, and wildlife populations (Lawrence et al. 1980, Kobuch et al. 1990). **Recent outbreaks** of several lethal epizootic diseases (monkeypox, Marburg fever, plague) in Central Africa **have been linked** to increased human **consumption of species of wild animals** (e.g., squirrels and rodents) as **the result of wartime food shortages**, coupled with the disappearance of preferred bushmeat species (primates, duikers) caused by overharvesting for the bushmeat trade (Fenner 1993, IRIN 1997, Dudley et al. 2002). **The Iran–Iraq war and the Gulf war precipitated rinderpest epizootics** among livestock populations in that region, which may have been caused or aggravated by war-related displacements of pastoralists and their flocks (Roeder 1999). **Disruption of government veterinary** **services** during the civil war in Southern Rhodesia is believed to **have contributed to** epidemic outbreaks of **anthrax and rabies** among wild and domesticated animals in that country, now named Zimbabwe. Anthrax mortality among humans and livestock reached epidemic proportions in 1979 and 1980 and continued to proliferate for more than 4 years following the end of the civil war in 1980 (Lawrence et al. 1980, Kobuch et al. 1990). Control and containment of the disease may have been hindered by internal ethnic and political conflicts in the Matabeleland region during the early postwar era (1980–1984). Anthrax ultimately spread through six of Zimbabwe's eight provinces, with more than 10,000 recorded human cases before effective control of the disease was finally reestablished in 1987 (Pugh and Davies 1990). Although anthrax is endemic to the Matabeleland region of Zimbabwe, where the outbreak first appeared and proliferated, widely publicized speculation has it that the 1979–1987 anthrax epidemic may have been linked to covert operations of the apartheid South African Defense Force, the Rhodesian Central Intelligence Organization, or rival guerrilla factions (Carus 2001).

Bioweapons risk extinction

Ochs, 2 (Richard, BS in Natural Resource Management from Rutgers University, with honors, BIOLOGICAL WEAPONS MUST BE IMMEDIATELY ABOLISHED, <http://www.freefromterror.net/other_articles/abolish.html>)

Of all the weapons of mass destruction, the genetically engineered biological weapons, many without a known cure or vaccine, are an extreme danger to the continued survival of life on earth. Any perceived military value or deterrence pales in comparison to the great risk these weapons pose just sitting in vials in laboratories. **While a "nuclear winter**," resulting from a massive exchange of nuclear weapons, **could also kill off most of life** on earth and severely compromise the health of future generations, **they are easier to control.** Biological weapons, on the other hand, can get out of control very easily, as the recent anthrax attacks has demonstrated. There is no way to guarantee the security of these doomsday weapons because very tiny amounts can be stolen or accidentally released and then grow or be grown to horrendous proportions. The Black Death of the Middle Ages would be small in comparison to the potential damage bioweapons could cause**. Abolition of chemical weapons is less of a priority** because, while they can also kill millions of people outright, **their persistence in the environment would be less than** nuclear or **biological agents or more localized**. Hence, chemical weapons would have a lesser effect on future generations of innocent people and the natural environment. Like the Holocaust, once a localized chemical extermination is over, it is over. **With** nuclear and **biological weapons, the killing will** probably **never end**. Radioactive elements last tens of thousands of years and will keep causing cancers virtually forever. Potentially worse than that, **bio-engineered agents by the hundreds with no known cure could wreck** even **greater calamity** on the human race **than** could **persistent radiation.** AIDS and ebola viruses are just a small example of recently emerging plagues with no known cure or vaccine. Can we imagine hundreds of such plagues? HUMAN EXTINCTION IS NOW POSSIBLE**.**

## Advantage 2: Legitimacy

Denying habeas corpus kills US leadership and alienates allies – only rule of law application solves

Yang ’11 (Christina – dissertation @ Emory, advised by Michael Sullivan - PhD, Vanderbilt University, 2000 JD, Yale Law School, 1998 “Reconstructing Habeas: Towards a New Emergency Scheme!”

In this global war on terror, America cannot stand alone. But in the aftermath of 9/11, we have become more and more alone. “Once a leading exponent of the rule of law,” David Cole observes, “the United States is now widely viewed as a systematic and arrogant violator of the most basic norms of human rights law – including the prohibitions against torture, disappearances, and arbitrary detention.”104 We cannot afford to alienate our friends with our actions. This loss of legitimacy is not simply harmful because it paints us in hypocritical colors, but because it also leaves us more vulnerable to terrorist attack inasmuch our governmental abuses in the arena of detention “fuels the animus and resentment that inspire the attacks against us in the first place.”105 We only confirm what the terrorists have been saying all along. In the end, the fight against terrorism is fundamentally a battle for hearts and minds.106 The more we win over our enemies, the fewer enemies we have to be concerned about. But the battle is not won with money; it is not won with victory. It is won by a long term commitment to civil liberties and the rule of law – everything that America was once known to stand for – as well as proof that even in the short term, we will act with legitimacy, fairness, and within the constraints of law. “As any leader instinctively knows,” Cole advises, “it is far better to have people follow your lead because they view you as legitimate than to have to try to compel others by force to adhere to your will.”107 Our allies were once willing to aid us in our cause – for the cause, the fight against terrorism, is neither illegitimate nor unworthy of pursuit. They are more reluctant now because we have compromised our legitimacy – i.e., the sincerity of our reasons for fighting this fight – when we employ illegitimate means to reach our ends. We require the help of our allies; and so in order to keep them on our side, we need to maintain “our historic position of leadership in the global spread of the rule of law,” thus reminding them of the “virtue of [the] legal commitments they [too] have made.”108

SCOTUS ruling solves legitimacy

Ghosh ’11 (Saurav - Stanford Law School, J.D. Candidate, 2011) “BOUMEDIENE APPLIED BADLY: THE EXTRATERRITORIAL CONSTITUTION AFTER AL-MAQALEH V. GATES”

B. The Changed International System Beyond a basic need for fairness and consistency, the Supreme Court should articulate a functional test for extraterritoriality generally because the changed international system requires it. The world has radically changed in the six decades since Eisentrager was decided; in many important ways, it has even changed since 1990 (the year Verdugo was decided). Commentators note that non-state actors occupy an increasingly significant position in international affairs today.137 Technological development and globalization have allowed these entities, which are often unaffiliated with any particular state, to exercise tremendous power and influence. The al-Qaeda terrorist network provides the most visible example of a non-state group that operates fluidly across state boundaries without hesitation. Its operatives hail from nations around the world, and its operations target countries from England to Indonesia. In short, non- state actors like al-Qaeda transcend both territorial borders and nationality. An al-Qaeda terrorist can be defined only by his allegiance and conduct, not as a citizen of any particular nationality or as an agent operating within the borders of any particular state. In response, governments have recognized the increased need to disregard once clear boundaries, like territorial borders and nationality, to deal with the new security challenges presented by non-state actors.138 After the terrorist attacks of 9/11, the U.S. commenced both a traditional international armed conflict within Afghanistan and a broader military effort (a transnational armed conflict)139 to counter terrorism globally. U.S. forces today are engaged in a concerted effort to apprehend terrorist operatives of any nationality, wherever they might be,140 and as part of that effort, U.S. forces could detain anyone, anywhere, who they believe is engaging in or supporting acts of terrorism. Just as the U.S. has recognized the need to extend its power overseas to combat the danger of terrorism, it must similarly recognize the imperative of extending substantive and procedural rights to limit the danger of unlawfully detaining innocents. In a world where non-state actors transcend both territoriality and nationality, and where government operations have responded by becoming equally global in scope, territorial sovereignty and nationality/citizenship have become outmoded principles by which to define the outer limits of extraterritoriality jurisprudence. For example, a French national could be captured in Australia, taken to Bagram, classified as an enemy combatant by a UECRB and detained without access to meaningful judicial review.141 Neither his citizenship nor his physical location precipitated this series of events.142 But his ability to meaningfully challenge his classification and detention would be entirely circumscribed because of his citizenship and the location of his capture and detention.143 Moreover, the fact that he is being detained in an active conflict zone—a matter entirely out of his hands and within the Executive branch’s control—will be the decisive factor in denying him access to habeas review (if one follows the D.C. Circuit’s interpretation in Al- Maqaleh).144 Finally, even if he could seek habeas relief, he would be unable to claim the basic due process rights necessary to do so.145 By contrasting this detainee’s experience with a U.S. citizen’s experience in a similar situation, the inequity becomes apparent. An American accused of being an al-Qaeda member and detained at Bagram would be permitted to challenge his detention and claim the substantive rights protections of the Due Process clause, even if all other circumstances of his capture and detention were the same as in the above example. Even a non-citizen residing in the U.S. would most likely be able to seek habeas review and challenge his detention.146 These examples strongly suggest that attaching strong importance to territorial sovereignty and nationality leads to arbitrary outcomes for non- citizens subjected to U.S. action abroad. In combating non-state organizations like al-Qaeda, U.S. agents must cast their net widely and will inevitably capture and detain individuals entirely innocent of wrongdoing. A bright-line rule that denies non-citizens outside the U.S. the ability to meaningfully challenge their detention, while allowing citizens or those held on U.S. territory to do so, erodes the legitimacy of the system. A changing international order requires a new approach to extraterritoriality, one that extends substantive and procedural protections to those who need them most: foreigners who are detained and branded as enemies without proper judicial process, in places where the U.S. exercises exclusive and plenary control. In the case of the procedural right, the Supreme Court has articulated an appropriate test in Boumediene; that test has simply been applied badly by the D.C. Circuit. With regard to substantive rights, the Supreme Court should articulate another functional, pragmatic test, to ensure that even non-citizen detainees held abroad can claim Due Process protection.

US leadership key to prevent loss of hegemony and major power wars – controls escalation of every impact

Knowles, 2009 (Robert, Acting assistant Professor, New York University School of Law, “American Hegemony and the Foreign Affairs Constitution,” Arizona State Law Journal, 41 Ariz. St. L.J. 87, October)

International relations scholars are still struggling to define the current era. The U.S.-led international order is unipolar, hegemonic, and, in some ways, imperial. In any event, this order diverges from traditional realist assumptions in important respects. It is unipolar, but stable. It is more hierarchical. The U.S. is not the same as other states; it performs unique functions in the world and has a government open and accessible to foreigners. And the stability and legitimacy of the system depends more on successful functioning of the U.S. government as a whole than it does on balancing alliances crafted by elite statesmen practicing realpolitik. “[W]orld power politics are shaped primarily not by the structure created by interstate anarchy but by the foreign policy developed in Washington.”368 These differences require a new model for assessing the institutional competences of the executive and judicial branches in foreign affairs. One approach would be to adapt an institutional competence model using insights from a major alternative theory of international relations – liberalism. Liberal IR theory generally holds that internal characteristics of states – in particular, the form of government – dictate states behavior, and that democracies do not go to war against one another.369 Liberalists also regard economic interdependence and international institutions as important for maintaining peace and stability in the world.370 Dean Anne-Marie Slaughter has proposed a binary model that distinguishes between liberal, democratic states and non-democratic states.371 Because domestic and foreign issues are “more convergent” among liberal democracies, Slaughter reasons, the courts should decide issues concerning the scope of the political branches’ powers.372 With respect to non-liberal states, the position of the U.S. is more “realist,” and courts should deploy a high level of deference.373 A strength of Dean Slaughter’s binary approach is that it would tend to reduce the uncertainty in foreign affairs adjudication. Professor Nzelibe has criticized this approach because it would put courts in the difficult position of determining which countries are liberal democracies.374 But even if courts are capable of making these determinations, they would still face the same dilemmas adjudicating controversies regarding non-liberal states. Where is the appropriate boundary between foreign affairs and domestic matters? How much discretion should be afforded the executive when individual rights and accountability values are at stake? To resolve these dilemmas, an institutional competence model should be applicable to foreign affairs adjudication across the board. In constructing a new realist model, it is worth recalling that the functional justifications for special deference are aimed at addressing problems of a particular sort of role effectiveness—which allocation of power among the branches will best achieve general governmental effectiveness in foreign affairs. In the 21st Century, America’s global role has changed, and the best means of achieving effectiveness in foreign affairs have changed as well. The international realm remains highly political—if not as much as in the past— but it is American politics that matters most. If the U.S. is truly an empire— and in some respects it is—the problems of imperial management will be far different from the problems of managing relations with one other great power or many great powers. Similarly, the management of hegemony or unipolarity requires a different set of competences. Although American predominance is recognized as a salient fact, there is no consensus among realists about the precise nature of the current international order.375 The hegemonic model I offer here adopts common insights from the three IR frameworks—unipolar, hegemonic, and imperial—described above. First, the “hybrid” hegemonic model assumes that the goal of U.S. foreign affairs should be the preservation of American hegemony, which is more stable, more peaceful, and better for America’s security and prosperity, than the alternatives. If the United States were to withdraw from its global leadership role, no other nation would be capable of taking its place.376 The result would be radical instability and a greater risk of major war.377 In addition, the United States would no longer benefit from the public goods it had formerly produced; as the largest consumer, it would suffer the most. Second, the hegemonic model assumes that American hegemony is unusually stable and durable.378 As noted above, other nations have many incentives to continue to tolerate the current order.379 And although other nations or groups of nations—China, the European Union, and India are often mentioned—may eventually overtake the United States in certain areas, such as manufacturing, the U.S. will remain dominant in most measures of capability for decades to come. In 2025, the U.S. economy is projected to be twice the size of China’s.380 The U.S. accounted for half of the world’s military spending in 2007 and holds enormous advantages in defense technology that far outstrip would-be competitors.381 Predictions of American decline are not new, and they have thus far proved premature.382 Third, the hegemonic model assumes that preservation of American hegemony depends not just on power, but legitimacy.383 All three IR frameworks for describing predominant states—although unipolarity less than hegemony or empire—suggest that legitimacy is crucial to the stability and durability of the system. Although empires and predominant states in unipolar systems can conceivably maintain their position through the use of force, this is much more likely to exhaust the resources of the predominant state and to lead to counter-balancing or the loss of control.384 Legitimacy as a method of maintaining predominance is far more efficient. The hegemonic model generally values courts’ institutional competences more than the anarchic realist model. The courts’ strengths in offering a stable interpretation of the law, relative insulation from political pressure, and power to bestow legitimacy are important for realizing the functional constitutional goal of effective U.S. foreign policy. This means that courts’ treatment of deference in foreign affairs will, in most respects, resemble its treatment of domestic affairs. Given the amorphous quality of foreign affairs deference, this “domestication” reduces uncertainty. The increasing boundary problems caused by the proliferation of treaties and the infiltration of domestic law by foreign affairs issues are lessened by reducing the deference gap. And the dilemma caused by the need to weigh different functional considerations—liberty, accountability, and effectiveness—against one another is made less intractable because it becomes part of the same project that the courts constantly grapple with in adjudicating domestic disputes.

New negotiations are coming that will make or break the protocol

Grabiel & Comerford 13

Danielle Fest Grabiel, IGSD Law Fellow, and Ms. Lia Comerford, IGSD Law Clerk¶ Enforcement Strategies for ¶ Combating the Illegal Trade¶ in HCfCs and Methyl Bromide¶ http://inece.org/wp-content/uploads/2013/06/Illegal\_Trade\_HCFCs\_Methyl-Bromide.pdf

Last year the world celebrated the Protocol’s 25th anniversary and its remarkable success. Parties to this agreement ¶ have much to celebrate; through concerted international effort, they phased out 98% of production and consumption ¶ of nearly 100 ozone depleting substances (ODS), setting the ozone layer on the path to recovery. Because these ¶ chemicals also caused global warming, reducing them has made a significant contribution to climate protection.¶ All governments know, however, that their job is not yet complete. Continued implementation of commitments and ¶ vigilance in enforcement are essential to ensuring that their good work is not undone in the coming years. ¶ A burgeoning illegal trade in ozone-depleting substances regulated under the Montreal Protocol could undermine ¶ its success. It is a challenge—and a growing challenge - facing many multilateral environmental agreements and ¶ initiatives trying to assist in a transition to a Green Economy and achieve sustainable development including those ¶ trying to regulate trade in wildlife, timber and other chemicals and hazardous wastes.¶ In respect to the Montreal Protocol, as the reduction schedules for HCFCs and methyl bromide draw near, and as ¶ worldwide supplies of these chemicals become scarce, the incidence of smuggling is expected to rise. The world ¶ faced a similar threat in the early 1990’s when a significant black market trade in chlorofluorocarbons (CFCs) and ¶ other ODS arose as an unintended result of Montreal Protocol controls. Fortunately, the Parties, together with their ¶ partners in industry and civil society rose to the challenge and the illegal trade in CFCs and other ODS declined ¶ significantly. ¶ As the Parties confront the challenge of preventing and detecting illegal trade in HCFCs and methyl bromide, much ¶ can be learned from how the world responded to the CFC smuggling crisis. Although the rapid globalization of ¶ trade and the advent of the Internet have created additional enforcement challenges, the pillars of an effective ¶ enforcement program remain the same. Now it is more important than ever that enforcement officers are trained ¶ and prepared to effectively address smuggling.

Only maintaining effective treaty cooperation can prevent extinction from Ozone depletion

Gareau 13

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Whatever Happened to Ozone Layer Politics?

<http://www.e-ir.info/2013/01/29/whatever-happened-to-ozone-layer-politics/>

The Montreal Protocol on Substances that Depletes the Ozone Layer (1997) is arguably the most successful global environmental agreement ever created. The ozone layer is the Earth’s sunscreen, absorbing up to 99 per cent of the sun’s ultraviolet (UV) radiation. Without it, life on earth would not exist. The Montreal Protocol was created to eliminate human-made chemicals that destroy the ozone layer, what we call “ozone-depleting substances” (ODSs). ODSs destroy the ozone layer, thus allowing more UV radiation to hit the surface and increasing skin cancer and skin disease rates, eye cataracts, damage to the immune system, and sunburn in humans and other animals. The Protocol sought to put a halt to such harmful effects, chiefly to rid the world of chlorofluorocarbons, or CFCs.¶ ¶ The most famous ozone holes occur over the Antarctic. In 2006, an Antarctic ozone hole reached a record 11.4 million square miles wide, larger than all of North America. While it mostly covers uninhabited land, the Antarctic ozone hole does reach some populated areas in South America as it is quite mobile. The Arctic hole, a newer phenomenon, has a potentially larger impact on humans. The 2011 Arctic ozone hole moved from the North Pole into Scandinavia and Greenland. The World Meteorological Organization cautioned habitants to protect themselves from the strong UV rays. Parts of Canada and Russia have also been affected lately. It is possible that “ozone depleted air” will move south with the Arctic polar vortex, potentially reaching northern Italy, New York, and San Francisco.¶ ¶ The US Environmental Protection Agency estimates that increased UV exposure will lead to “150 million cases of skin cancer and three million deaths during the course of the 21st century at an economic cost of $6 trillion.”[1] Beyond skin cancer, reduced ozone has also been shown to “increase rates of malaria and other infectious diseases.”[2] According to the American Cancer Society, in 2010 in the US alone more than 1 million new cases of skin cancer were expected, 68,000 of which would be melanoma. The odds of contracting melanoma increased from 1:250 to 1:84 over the last quarter century. By the age of 70, 2/3 of Australians will be diagnosed with skin cancer, accounting for “80% of all new cancers diagnosed each year in Australia.”[3] More than 1,000 people in Australia are treated for skin cancer daily. In southern Chile, where ozone layer thinning is extreme, skin cancer rates have escalated 66 per cent since 1994. UV radiation also contributes to genetic disorders – especially in small aquatic species and amphibians. While plants require solar energy to photosynthesize, too much UV radiation stunts plant growth and can lead to a decrease in yields for important crops. Additionally, more UV radiation creates other economic costs by accelerating the degradation of materials such as plastics, paints, and rubber.¶ ¶ ODSs such as CFCs were used as early on as the late nineteenth century, when they became chief ingredients for fire extinguishers. By the 1970s, 200,000 metric tons of CFCs were used in aerosols annually in the US alone. Soon after, it became increasingly evident that CFCs had a major side-effect: they depleted the ozone layer. CFC and other ODSs are being eliminated through the Montreal Protocol because these and other ODSs threaten life on earth. Today, every single country on the planet has ratified the Montreal Protocol.¶ ¶ Since the Montreal Protocol first entered into force in 1989, CFC levels in the atmosphere have declined. Scientific research predicts that, without the Montreal Protocol, by 2050 even the middle latitudes of the Northern Hemisphere would have lost half of their ozone layer, and the Southern Hemisphere would have lost 70 percent. As Jonathan Shanklin of the British Antarctic Survey put it, the Montreal Protocol “is working. We can quite clearly see that the amount of ozone-destroying substances in the atmosphere is declining.”[4] Because of the high level of compliance and cooperation among countries, it is no exaggeration to state that the Montreal Protocol is the most successful global environmental treaty ever created.¶ Montreal versus Kyoto: Insights for the Climate Regime?¶ ¶ Many scholars working in global environmental governance have rightly welcomed the unparalleled successes of the Montreal Protocol. Many believe that the Protocol contains all the ingredients necessary for any successful global environmental regime: scientific consensus and good networking among those scientists; cooperative nation-states willing to put global health ahead of national concerns; and an involved global civil society. Global climate change, we are told, presents an obvious example where the successes of the Montreal Protocol may shed light on global treaties such as the Kyoto Protocol, where attempts at real action to thwart climate change remain stalled. Recognizing that the Montreal Protocol arose out of specific circumstances, many ozone scholars maintain that it is possible that those circumstances could be duplicated in other global environmental treaties.¶ ¶ However, if we look at the Montreal Protocol in its more recent past, we can see that it has suffered significantly from major setbacks that more closely resemble the ruinous state of global climate change politics than the flourishing early days of ozone politics. Comparisons could even be made between the Climate Gate scandal, where climatologists were accused by climate skeptics of “acting political” by manipulating climate data, and the Montreal Protocol, where ozone scientists were also accused of “acting political” and manipulating MeBr data by the US government.¶ ¶ Urgency regarding global environmental challenges like global climate change has only grown over the years. This even applies to the ozone situation today. In 2011 the BBC reported on how “ozone depletion is often viewed as an environmental problem that has been solved,” but much uncertainty remains with regards to ozone layer recovery, especially since climate change science is so complicated and interconnected with the ozone layer.[5] “The ozone layer remains vulnerable to large depletions because total stratospheric chlorine levels are still high, in spite of the regulation of ozone-depleting substances by the Montreal Protocol” warns Paul Newman, an atmospheric scientist at NASA’s Goddard Space Flight Center.[6]¶ ¶ Today, interest groups attempting to hold back global and regional environmental governance appear to be up against a growing wall of scientific evidence that humans are having serious negative effects on the global environment. Ironically, at such a moment of heightened environmental awareness, the Montreal Protocol entered its own moment of uncertainty.

The Montreal Protocol is at risk and the U.S. is trying to lead efforts to strengthen it

US-EPA 12

U.S. Environmental Protection Agency¶ June 2012¶ 2¶ Benefits of Addressing HFCs under the Montreal Protocol¶ June 2012 <http://www.epa.gov/ozone/downloads/Benefits%20of%20Addressing%20HFCs%20Under%20the%20Montreal%20Protocol,%20June%202012.pdf>

The Montreal Protocol has been an unparalleled environmental success story. It is the only international agreement to achieve universal ratification. It has completed an enormous task in the phaseout of CFCs and halons—chemicals that had become pervasive in multiple industries. It established a schedule to phaseout the remaining important ODS (namely, HCFCs). Under the Montreal Protocol, Article 5 and non-Article 5 countries together have not only set the ozone layer on a path to recovery by mid-century but have reduced greenhouse gases by over 11 Gigatons CO2eq per year, providing an approximate 10-year delay in the onset of the effects of climate change.34 This legacy is now at risk. Although safe for the ozone layer, the continued emissions of HFCs— primarily as alternatives to ODS but also from the continued production of HCFC-22—will have an immediate and significant effect on the Earth’s climate system. Without further controls, it is predicted that HFC emissions could negate the entire climate benefits achieved under the Montreal Protocol. HFCs are rapidly increasing in the atmosphere. HFC-use is forecast to grow, mostly due to increased demand for refrigeration and air conditioning, particularly in Article 5 countries. There is a clear connection to the Montreal Protocol’s CFC and HCFC phaseout and the increased use of HFCs. However, it is possible to maintain the climate benefits achieved by the Montreal Protocol by using climate-friendly alternatives and addressing HFC consumption. Recognizing the concerns with continued HFC consumption and emissions, the actions taken to date to address them, the need for continued HFC use in the near future for certain applications, and the needed for better alternatives, Canada, Mexico and the United States have proposed an amendment to phase down HFC consumption and to reduce byproduct emissions of HFC-23, the HFC with the highest GWP. The proposed Amendment would build on the success of the Montreal Protocol, rely on the strength of its institutions, and realize climate benefits in both the near and long-term. Table 10 displays the projected benefits from the Amendment.

That is key to avoiding climate tipping points

AP 9

AP, Fox News, “Obama Administration to Push For Major Initiative to Fight Global Warming”, 4/30/9

http://www.foxnews.com/politics/2009/04/30/obama-administration-push-major-initiative-fight-global-warming/#ixzz2eoLvyx00

The Obama administration, in a major environmental policy shift, is leaning toward asking 195 nations that ratified the U.N. ozone treaty to enact mandatory reductions in hydrofluorocarbons, according to U.S. officials and documents obtained by The Associated Press.¶ ¶ "We're considering this as an option," Environmental Protection Agency spokeswoman Adora Andy said Wednesday, emphasizing that while a final decision has not been made it was accurate to describe this as the administration's "preferred option."¶ ¶ The change -- the first U.S.-proposed mandatory global cut in greenhouse gases -- would transform the ozone treaty into a strong tool for fighting global warming.¶ ¶ "Now it's going to be a climate treaty, with no ozone-depleting materials, if this goes forward," an EPA technical expert said Wednesday, speaking on condition of anonymity because a final decision is pending.¶ ¶ The expert said the 21-year-old ozone treaty known as the Montreal Protocol created virtually the entire market for hydrofluorocarbons, or HFCs, so including them in the treaty would take care of a problem of its own making.¶ ¶ It's uncertain how that would work in conjunction with the Kyoto Protocol, the world's climate treaty, which now regulates HFCs and was rejected by the Bush administration. Negotiations to replace Kyoto, which expires in 2012, are to be concluded in December in Denmark.¶ ¶ The Montreal Protocol is widely viewed as one of the most successful environmental treaties because it essentially eliminated the use of chlorofluorocarbons, or CFCs, blamed for damaging the ozone layer over Antarctica.¶ ¶ Because they do not affect the ozone layer, HFCs broadly replaced CFCs as coolants in everything from refrigerators, air conditioners and fire extinguishers to aerosol sprays, medical devices and semiconductors.¶ ¶ But experts say the solution to one problem is now worsening another.¶ ¶ As a result, the U.S. is calling HFCs "a significant and growing source of emissions" that could be eliminated more quickly in several ways, including amending the ozone treaty or creating "a legally distinct agreement" linked to the Montreal Protocol, says a March 27 State Department briefing paper presented at one of two recent meetings on the topic.¶ ¶ State Department officials told participants at one of last month's meetings that the United States wants to amend the Montreal Protocol to phase out the use of HFCs, a change praised by environmentalists. But there appear to be some interagency snags.¶ ¶ Though the State Department secured backing from the Pentagon and other agencies for amending the Montreal Protocol, some opposition remains within the administration, U.S. officials say. It is not clear if the proposal to eliminate HFCs will be submitted by next week, in time to be considered at a meeting in November by parties to the Montreal Protocol.¶ ¶ Proponents say eliminating HFCs would have an impact within our lifetimes. HFCs do most of their damage in their first 30 years in the atmosphere, unlike carbon dioxide which spreads its impact over a longer period of time.¶ ¶ "Retiring HFCs is our best hope of avoiding a near-term tipping point for irreversible climate change. It's an opportunity the world simply cannot afford to miss, and every year we delay action on HFCs reduces the benefit," said Alexander von Bismarck, executive director of the Environmental Investigation Agency, a nonprofit watchdog group in Washington that first pitched the idea two years ago.¶ ¶ Globally, a huge market has sprung up around the use of HFCs, a man-made chemical, as a result of their promotion under the Montreal Protocol. Several billion dollars have been spent through an affiliated fund to prod countries to stop making and using CFCs and other ozone-damaging chemicals and to instead use cheap and effective chemicals like HFCs.¶ ¶ Scientists say eliminating use of HFCs would spare the world an amount of greenhouse gases up to about a third of all CO2 emissions about two to four decades from now. Manufacturers in both Europe and the U.S. have begun to replace HFCs with so-called natural refrigerants such as hydrocarbons, ammonia or carbon dioxide.¶ ¶ HFCs can be up to 10,000 times more powerful than carbon dioxide as climate-warming chemicals, according to U.S. government data.¶ ¶ Currently they account for only about 2 percent of all greenhouse-gas emissions, but the U.N.'s Intergovernmental Panel on Climate Change warned in 2005 that use of HFCs was growing at 8.8 percent per year.¶ ¶ More recent studies concur and show that HFCs are on a path to reach about 11 billion tons of greenhouse gases, which would constitute up to a third of all greenhouse gas emissions by sometime within 2030 and 2040 under some CO2-reduction scenarios.¶ ¶ House Democrats also are adding to the pressure on HFCs.¶ ¶ In an April 3 letter to President Barack Obama, California Rep. Henry Waxman, chairman of the House Energy and Commerce Committee, and Massachusetts Rep. Edward Markey, chairman of the energy and environment subcommittee, urged the White House to offer an amendment to the Montreal Protocol this year.¶ ¶ "Although we strongly support a comprehensive international agreement on climate change, we believe that adding HFCs to the existing Montreal Protocol would be a sensible, cost-effective method of addressing a small but growing piece of the problem," they wrote.¶ ¶ Waxman and Markey also have drafted legislation laying out a broad outline for phasing out HFCs in the United States.¶ ¶ Worldwide, phasing out HFCs under the Montreal Protocol could prevent 90 billion tons of greenhouse gases by 2040, by including nations like India and China that were not part of the Kyoto treaty.¶ ¶ Nations such as Argentina, the Federated States of Micronesia, Mauritius and Mexico have recently pushed for climate protections under the Montreal Protocol, arguing every possible tool must be used to combat climate change.¶ ¶ The EPA in April determined that hydrofluorocarbons were one of six greenhouse gases endangering human health and welfare, a ruling that could eventually lead to mandatory reductions in the U.S. under the Clean Air Act.¶ ¶ "This is a strong sign of new American leadership in atmospheric protection," said von Bismarck.

Warming is anthropogenic – most comphrensive analysis to date proves

Green 13 – Professor of Chemistry @ Michigan Tech,

\*John Cook – Fellow @ Global Change Institute, produced climate communication resources adopted by organisations such as NOAA and the U.S. Navy

\*\*Dana Nuccitelli – MA in Physics @ UC-Davis

\*\*\*Mark Richardson – PhD Candidate in Meteorology, et al.,

(“Quantifying the consensus on anthropogenic global warming in the scientific literature,” Environmental Research Letters, 8.2)

An accurate perception of the degree of scientific consensus is an essential element to public support for climate policy (Ding et al 2011). Communicating the scientific consensus also increases people's acceptance that climate change (CC) is happening (Lewandowsky et al 2012). Despite numerous indicators of a consensus, there is wide public perception that climate scientists disagree over the fundamental cause of global warming (GW; Leiserowitz et al 2012, Pew 2012). In the most comprehensive analysis performed to date, we have extended the analysis of peer-reviewed climate papers in Oreskes (2004). We examined a large sample of the scientific literature on global CC, published over a 21 year period, in order to determine the level of scientific consensus that human activity is very likely causing most of the current GW (anthropogenic global warming, or AGW). Surveys of climate scientists have found strong agreement (97–98%) regarding AGW amongst publishing climate experts (Doran and Zimmerman 2009, Anderegg et al 2010). Repeated surveys of scientists found that scientific agreement about AGW steadily increased from 1996 to 2009 (Bray 2010). This is reflected in the increasingly definitive statements issued by the Intergovernmental Panel on Climate Change on the attribution of recent GW (Houghton et al 1996, 2001, Solomon et al 2007). The peer-reviewed scientific literature provides a ground-level assessment of the degree of consensus among publishing scientists. An analysis of abstracts published from 1993–2003 matching the search 'global climate change' found that none of 928 papers disagreed with the consensus position on AGW (Oreskes 2004). This is consistent with an analysis of citation networks that found a consensus on AGW forming in the early 1990s (Shwed and Bearman 2010). Despite these independent indicators of a scientific consensus, the perception of the US public is that the scientific community still disagrees over the fundamental cause of GW. From 1997 to 2007, public opinion polls have indicated around 60% of the US public believes there is significant disagreement among scientists about whether GW was happening (Nisbet and Myers 2007). Similarly, 57% of the US public either disagreed or were unaware that scientists agree that the earth is very likely warming due to human activity (Pew 2012). Through analysis of climate-related papers published from 1991 to 2011, this study provides the most comprehensive analysis of its kind to date in order to quantify and evaluate the level and evolution of consensus over the last two decades. 2. Methodology This letter was conceived as a 'citizen science' project by volunteers contributing to the Skeptical Science website (www.skepticalscience.com). In March 2012, we searched the ISI Web of Science for papers published from 1991–2011 using topic searches for 'global warming' or 'global climate change'. Article type was restricted to 'article', excluding books, discussions, proceedings papers and other document types. The search was updated in May 2012 with papers added to the Web of Science up to that date. We classified each abstract according to the type of research (category) and degree of endorsement. Written criteria were provided to raters for category (table 1) and level of endorsement of AGW (table 2). Explicit endorsements were divided into non-quantified (e.g., humans are contributing to global warming without quantifying the contribution) and quantified (e.g., humans are contributing more than 50% of global warming, consistent with the 2007 IPCC statement that most of the global warming since the mid-20th century is very likely due to the observed increase in anthropogenic greenhouse gas concentrations). Table 1. Definitions of each type of research category. Category Description Example (1) Impacts Effects and impacts of climate change on the environment, ecosystems or humanity '...global climate change together with increasing direct impacts of human activities, such as fisheries, are affecting the population dynamics of marine top predators' (2) Methods Focus on measurements and modeling methods, or basic climate science not included in the other categories 'This paper focuses on automating the task of estimating Polar ice thickness from airborne radar data...' (3) Mitigation Research into lowering CO2 emissions or atmospheric CO2 levels 'This paper presents a new approach for a nationally appropriate mitigation actions framework that can unlock the huge potential for greenhouse gas mitigation in dispersed energy end-use sectors in developing countries' (4) Not climate-related Social science, education, research about people's views on climate 'This paper discusses the use of multimedia techniques and augmented reality tools to bring across the risks of global climate change' (5) Opinion Not peer-reviewed articles 'While the world argues about reducing global warming, chemical engineers are getting on with the technology. Charles Butcher has been finding out how to remove carbon dioxide from flue gas' (6) Paleoclimate Examining climate during pre-industrial times 'Here, we present a pollen-based quantitative temperature reconstruction from the midlatitudes of Australia that spans the last 135 000 years...' Table 2. Definitions of each level of endorsement of AGW. Level of endorsement Description Example (1) Explicit endorsement with quantification Explicitly states that humans are the primary cause of recent global warming 'The global warming during the 20th century is caused mainly by increasing greenhouse gas concentration especially since the late 1980s' (2) Explicit endorsement without quantification Explicitly states humans are causing global warming or refers to anthropogenic global warming/climate change as a known fact 'Emissions of a broad range of greenhouse gases of varying lifetimes contribute to global climate change' (3) Implicit endorsement Implies humans are causing global warming. E.g., research assumes greenhouse gas emissions cause warming without explicitly stating humans are the cause '...carbon sequestration in soil is important for mitigating global climate change' (4a) No position Does not address or mention the cause of global warming (4b) Uncertain Expresses position that human's role on recent global warming is uncertain/undefined 'While the extent of human-induced global warming is inconclusive...' (5) Implicit rejection Implies humans have had a minimal impact on global warming without saying so explicitly E.g., proposing a natural mechanism is the main cause of global warming '...anywhere from a major portion to all of the warming of the 20th century could plausibly result from natural causes according to these results' (6) Explicit rejection without quantification Explicitly minimizes or rejects that humans are causing global warming '...the global temperature record provides little support for the catastrophic view of the greenhouse effect' (7) Explicit rejection with quantification Explicitly states that humans are causing less than half of global warming 'The human contribution to the CO2 content in the atmosphere and the increase in temperature is negligible in comparison with other sources of carbon dioxide emission' Abstracts were randomly distributed via a web-based system to raters with only the title and abstract visible. All other information such as author names and affiliations, journal and publishing date were hidden. Each abstract was categorized by two independent, anonymized raters. A team of 12 individuals completed 97.4% (23 061) of the ratings; an additional 12 contributed the remaining 2.6% (607). Initially, 27% of category ratings and 33% of endorsement ratings disagreed. Raters were then allowed to compare and justify or update their rating through the web system, while maintaining anonymity. Following this, 11% of category ratings and 16% of endorsement ratings disagreed; these were then resolved by a third party. Upon completion of the final ratings, a random sample of 1000 'No Position' category abstracts were re-examined to differentiate those that did not express an opinion from those that take the position that the cause of GW is uncertain. An 'Uncertain' abstract explicitly states that the cause of global warming is not yet determined (e.g., '...the extent of human-induced global warming is inconclusive...') while a 'No Position' abstract makes no statement on AGW. To complement the abstract analysis, email addresses for 8547 authors were collected, typically from the corresponding author and/or first author. For each year, email addresses were obtained for at least 60% of papers. Authors were emailed an invitation to participate in a survey in which they rated their own published papers (the entire content of the article, not just the abstract) with the same criteria as used by the independent rating team. Details of the survey text are provided in the supplementary information (available at stacks.iop.org/ERL/8/024024/mmedia). 3. Results The ISI search generated 12 465 papers. Eliminating papers that were not peer-reviewed (186), not climate-related (288) or without an abstract (47) reduced the analysis to 11 944 papers written by 29 083 authors and published in 1980 journals. To simplify the analysis, ratings were consolidated into three groups: endorsements (including implicit and explicit; categories 1–3 in table 2), no position (category 4) and rejections (including implicit and explicit; categories 5–7). We examined four metrics to quantify the level of endorsement: (1) The percentage of endorsements/rejections/undecideds among all abstracts. (2) The percentage of endorsements/rejections/undecideds among only those abstracts expressing a position on AGW. (3) The percentage of scientists authoring endorsement/ rejection abstracts among all scientists. (4) The same percentage among only those scientists who expressed a position on AGW (table 3). Table 3. Abstract ratings for each level of endorsement, shown as percentage and total number of papers. Position % of all abstracts % among abstracts with AGW position (%) % of all authors % among authors with AGW position (%) Endorse AGW 32.6% (3896) 97.1 34.8% (10 188) 98.4 No AGW position 66.4% (7930) — 64.6% (18 930) — Reject AGW 0.7% (78) 1.9 0.4% (124) 1.2 Uncertain on AGW 0.3% (40) 1.0 0.2% (44) 0.4 3.1. Endorsement percentages from abstract ratings Among abstracts that expressed a position on AGW, 97.1% endorsed the scientific consensus. Among scientists who expressed a position on AGW in their abstract, 98.4% endorsed the consensus. The time series of each level of endorsement of the consensus on AGW was analyzed in terms of the number of abstracts (figure 1(a)) and the percentage of abstracts (figure 1(b)). Over time, the no position percentage has increased (simple linear regression trend 0.87% ± 0.28% yr−1, 95% CI, R2 = 0.66,p < 0.001) and the percentage of papers taking a position on AGW has equally decreased. Reset Figure 1. (a) Total number of abstracts categorized into endorsement, rejection and no position. (b) Percentage of endorsement, rejection and no position/undecided abstracts. Uncertain comprise 0.5% of no position abstracts. Export PowerPoint slide Download figure: Standard (154 KB)High-resolution (248 KB) The average numbers of authors per endorsement abstract (3.4) and per no position abstract (3.6) are both significantly larger than the average number of authors per rejection abstract (2.0). The scientists originated from 91 countries (identified by email address) with the highest representation from the USA (N = 2548) followed by the United Kingdom (N = 546), Germany (N = 404) and Japan (N = 379) (see supplementary table S1 for full list, available at stacks.iop.org/ERL/8/024024/mmedia). 3.2. Endorsement percentages from self-ratings We emailed 8547 authors an invitation to rate their own papers and received 1200 responses (a 14% response rate). After excluding papers that were not peer-reviewed, not climate-related or had no abstract, 2142 papers received self-ratings from 1189 authors. The self-rated levels of endorsement are shown in table 4. Among self-rated papers that stated a position on AGW, 97.2% endorsed the consensus. Among self-rated papers not expressing a position on AGW in the abstract, 53.8% were self-rated as endorsing the consensus. Among respondents who authored a paper expressing a view on AGW, 96.4% endorsed the consensus. Table 4. Self-ratings for each level of endorsement, shown as percentage and total number of papers. Position % of all papers % among papers with AGW position (%) % of respondents % among respondents with AGW position (%) Endorse AGWa 62.7% (1342) 97.2 62.7% (746) 96.4 No AGW positionb 35.5% (761) — 34.9% (415) — Reject AGWc 1.8% (39) 2.8 2.4% (28) 3.6 aSelf-rated papers that endorse AGW have an average endorsement rating less than 4 (1 =explicit endorsement with quantification, 7 = explicit rejection with quantification). bUndecided self-rated papers have an average rating equal to 4. cRejection self-rated papers have an average rating greater than 4. Figure 2(a) shows the level of self-rated endorsement in terms of number of abstracts (the corollary to figure 1(a)) and figure 2(b) shows the percentage of abstracts (the corollary to figure 1(b)). The percentage of self-rated rejection papers decreased (simple linear regression trend −0.25% ± 0.18% yr−1, 95% CI, R2 = 0.28,p = 0.01, figure 2(b)). The time series of self-rated no position and consensus endorsement papers both show no clear trend over time. Reset Figure 2. (a) Total number of endorsement, rejection and no position papers as self-rated by authors. Year is the published year of each self-rated paper. (b) Percentage of self-rated endorsement, rejection and no position papers. Export PowerPoint slide Download figure: Standard (149 KB)High-resolution (238 KB) A direct comparison of abstract rating versus self-rating endorsement levels for the 2142 papers that received a self-rating is shown in table 5. More than half of the abstracts that we rated as 'No Position' or 'Undecided' were rated 'Endorse AGW' by the paper's authors. Table 5. Comparison of our abstract rating to self-rating for papers that received self-ratings. Position Abstract rating Self-rating Endorse AGW 791 (36.9%) 1342 (62.7%) No AGW position or undecided 1339 (62.5%) 761 (35.5%) Reject AGW 12 (0.6%) 39 (1.8%) Figure 3 compares the percentage of papers endorsing the scientific consensus among all papers that express a position endorsing or rejecting the consensus. The year-to-year variability is larger in the self-ratings than in the abstract ratings due to the smaller sample sizes in the early 1990s. The percentage of AGW endorsements for both self-rating and abstract-rated papers increase marginally over time (simple linear regression trends 0.10 ± 0.09% yr−1, 95% CI, R2 = 0.20,p = 0.04 for abstracts, 0.35 ± 0.26% yr−1, 95% CI, R2 = 0.26,p = 0.02 for self-ratings), with both series approaching approximately 98% endorsements in 2011. Reset Figure 3. Percentage of papers endorsing the consensus among only papers that express a position endorsing or rejecting the consensus. Export PowerPoint slide Download figure: Standard (83 KB)High-resolution (128 KB) 4. Discussion Of note is the large proportion of abstracts that state no position on AGW. This result is expected in consensus situations where scientists '...generally focus their discussions on questions that are still disputed or unanswered rather than on matters about which everyone agrees' (Oreskes 2007, p 72). This explanation is also consistent with a description of consensus as a 'spiral trajectory' in which 'initially intense contestation generates rapid settlement and induces a spiral of new questions' (Shwed and Bearman 2010); the fundamental science of AGW is no longer controversial among the publishing science community and the remaining debate in the field has moved to other topics. This is supported by the fact that more than half of the self-rated endorsement papers did not express a position on AGW in their abstracts. The self-ratings by the papers' authors provide insight into the nature of the scientific consensus amongst publishing scientists. For both self-ratings and our abstract ratings, the percentage of endorsements among papers expressing a position on AGW marginally increased over time, consistent with Bray (2010) in finding a strengthening consensus. 4.1. Sources of uncertainty The process of determining the level of consensus in the peer-reviewed literature contains several sources of uncertainty, including the representativeness of the sample, lack of clarity in the abstracts and subjectivity in rating the abstracts. We address the issue of representativeness by selecting the largest sample to date for this type of literature analysis. Nevertheless, 11 944 papers is only a fraction of the climate literature. A Web of Science search for 'climate change' over the same period yields 43 548 papers, while a search for 'climate' yields 128 440 papers. The crowd-sourcing techniques employed in this analysis could be expanded to include more papers. This could facilitate an approach approximating the methods of Doran and Zimmerman (2009), which measured the level of scientific consensus for varying degrees of expertise in climate science. A similar approach could analyze the level of consensus among climate papers depending on their relevance to the attribution of GW. Another potential area of uncertainty involved the text of the abstracts themselves. In some cases, ambiguous language made it difficult to ascertain the intended meaning of the authors. Naturally, a short abstract could not be expected to communicate all the details of the full paper. The implementation of the author self-rating process allowed us to look beyond the abstract. A comparison between self-ratings and abstract ratings revealed that categorization based on the abstract alone underestimates the percentage of papers taking a position on AGW. Lastly, some subjectivity is inherent in the abstract rating process. While criteria for determining ratings were defined prior to the rating period, some clarifications and amendments were required as specific situations presented themselves. Two sources of rating bias can be cited: first, given that the raters themselves endorsed the scientific consensus on AGW, they may have been more likely to classify papers as sharing that endorsement. Second, scientific reticence (Hansen 2007) or 'erring on the side of least drama' (ESLD; Brysse et al 2012) may have exerted an opposite effect by biasing raters towards a 'no position' classification. These sources of bias were partially addressed by the use of multiple independent raters and by comparing abstract rating results to author self-ratings. A comparison of author ratings of the full papers and abstract ratings reveals a bias toward an under-counting of endorsement papers in the abstract ratings (mean difference 0.6 in units of endorsement level). This mitigated concerns about rater subjectivity, but suggests that scientific reticence and ESLD remain possible biases in the abstract ratings process. The potential impact of initial rating disagreements was also calculated and found to have minimal impact on the level of consensus (see supplemental information, section S1 available at stacks.iop.org/ERL/8/024024/mmedia). 4.2. Comparisons with previous studies Our sample encompasses those surveyed by Oreskes (2004) and Schulte (2008) and we can therefore directly compare the results. Oreskes (2004) analyzed 928 papers from 1993 to 2003. Over the same period, we found 932 papers matching the search phrase 'global climate change' (papers continue to be added to the ISI database). From that subset we eliminated 38 papers that were not peer-reviewed, climate-related or had no abstract. Of the remaining 894, none rejected the consensus, consistent with Oreskes' result. Oreskes determined that 75% of papers endorsed the consensus, based on the assumption that mitigation and impact papers implicitly endorse the consensus. By comparison, we found that 28% of the 894 abstracts endorsed AGW while 72% expressed no position. Among the 71 papers that received self-ratings from authors, 69% endorse AGW, comparable to Oreskes' estimate of 75% endorsements. An analysis of 539 'global climate change' abstracts from the Web of Science database over January 2004 to mid-February 2007 found 45% endorsement and 6% rejection (Schulte 2008). Our analysis over a similar period (including all of February 2007) produced 529 papers—the reason for this discrepancy is unclear as Schulte's exact methodology is not provided. Schulte estimated a higher percentage of endorsements and rejections, possibly because the strict methodology we adopted led to a greater number of 'No Position' abstracts. Schulte also found a significantly greater number of rejection papers, including 6 explicit rejections compared to our 0 explicit rejections. See the supplementary information (available at stacks.iop.org/ERL/8/024024/mmedia) for a tabulated comparison of results. Among 58 self-rated papers, only one (1.7%) rejected AGW in this sample. Over the period of January 2004 to February 2007, among 'global climate change' papers that state a position on AGW, we found 97% endorsements. 5. Conclusion The public perception of a scientific consensus on AGW is a necessary element in public support for climate policy (Ding et al 2011). However, there is a significant gap between public perception and reality, with 57% of the US public either disagreeing or unaware that scientists overwhelmingly agree that the earth is warming due to human activity (Pew 2012). Contributing to this 'consensus gap' are campaigns designed to confuse the public about the level of agreement among climate scientists. In 1991, Western Fuels Association conducted a $510 000 campaign whose primary goal was to 'reposition global warming as theory (not fact)'. A key strategy involved constructing the impression of active scientific debate using dissenting scientists as spokesmen (Oreskes 2010). The situation is exacerbated by media treatment of the climate issue, where the normative practice of providing opposing sides with equal attention has allowed a vocal minority to have their views amplified (Boykoff and Boykoff 2004). While there are indications that the situation has improved in the UK and USA prestige press (Boykoff 2007), the UK tabloid press showed no indication of improvement from 2000 to 2006 (Boykoff and Mansfield 2008). The narrative presented by some dissenters is that the scientific consensus is '...on the point of collapse' (Oddie 2012) while '...the number of scientific "heretics" is growing with each passing year' (Allègre et al 2012). A systematic, comprehensive review of the literature provides quantitative evidence countering this assertion. The number of papers rejecting AGW is a miniscule proportion of the published research, with the percentage slightly decreasing over time. Among papers expressing a position on AGW, an overwhelming percentage (97.2% based on self-ratings, 97.1% based on abstract ratings) endorses the scientific consensus on AGW.

Causes extinction—4 degree projections trigger a laundry list of extinction scenarios

Roberts 13—citing the World Bank Review’s compilation of climate studies

- 4 degree projected warming, can’t adapt

- heat wave related deaths, forest fires, crop production, water wars, ocean acidity, sea level rise, climate migrants, biodiversity loss

David, “If you aren’t alarmed about climate, you aren’t paying attention” [http://grist.org/climate-energy/climate-alarmism-the-idea-is-surreal/] January 10 //mtc

We know we’ve raised global average temperatures around 0.8 degrees C so far. We know that 2 degrees C is where most scientists predict catastrophic and irreversible impacts. And we know that we are currently on a trajectory that will push temperatures up 4 degrees or more by the end of the century. What would 4 degrees look like? A recent World Bank review of the science reminds us. First, it’ll get hot: Projections for a 4°C world show a dramatic increase in the intensity and frequency of high-temperature extremes. Recent extreme heat waves such as in Russia in 2010 are likely to become the new normal summer in a 4°C world. Tropical South America, central Africa, and all tropical islands in the Pacific are likely to regularly experience heat waves of unprecedented magnitude and duration. In this new high-temperature climate regime, the coolest months are likely to be substantially warmer than the warmest months at the end of the 20th century. In regions such as the Mediterranean, North Africa, the Middle East, and the Tibetan plateau, almost all summer months are likely to be warmer than the most extreme heat waves presently experienced. For example, the warmest July in the Mediterranean region could be 9°C warmer than today’s warmest July. Extreme heat waves in recent years have had severe impacts, causing heat-related deaths, forest fires, and harvest losses. The impacts of the extreme heat waves projected for a 4°C world have not been evaluated, but they could be expected to vastly exceed the consequences experienced to date and potentially exceed the adaptive capacities of many societies and natural systems. [my emphasis] Warming to 4 degrees would also lead to “an increase of about 150 percent in acidity of the ocean,” leading to levels of acidity “unparalleled in Earth’s history.” That’s bad news for, say, coral reefs: The combination of thermally induced bleaching events, ocean acidification, and sea-level rise threatens large fractions of coral reefs even at 1.5°C global warming. The regional extinction of entire coral reef ecosystems, which could occur well before 4°C is reached, would have profound consequences for their dependent species and for the people who depend on them for food, income, tourism, and shoreline protection. It will also “likely lead to a sea-level rise of 0.5 to 1 meter, and possibly more, by 2100, with several meters more to be realized in the coming centuries.” That rise won’t be spread evenly, even within regions and countries — regions close to the equator will see even higher seas. There are also indications that it would “significantly exacerbate existing water scarcity in many regions, particularly northern and eastern Africa, the Middle East, and South Asia, while additional countries in Africa would be newly confronted with water scarcity on a national scale due to population growth.” Also, more extreme weather events: Ecosystems will be affected by more frequent extreme weather events, such as forest loss due to droughts and wildfire exacerbated by land use and agricultural expansion. In Amazonia, forest fires could as much as double by 2050 with warming of approximately 1.5°C to 2°C above preindustrial levels. Changes would be expected to be even more severe in a 4°C world. Also loss of biodiversity and ecosystem services: In a 4°C world, climate change seems likely to become the dominant driver of ecosystem shifts, surpassing habitat destruction as the greatest threat to biodiversity. Recent research suggests that large-scale loss of biodiversity is likely to occur in a 4°C world, with climate change and high CO2 concentration driving a transition of the Earth’s ecosystems into a state unknown in human experience. Ecosystem damage would be expected to dramatically reduce the provision of ecosystem services on which society depends (for example, fisheries and protection of coastline afforded by coral reefs and mangroves.) New research also indicates a “rapidly rising risk of crop yield reductions as the world warms.” So food will be tough. All this will add up to “large-scale displacement of populations and have adverse consequences for human security and economic and trade systems.” Given the uncertainties and long-tail risks involved, “there is no certainty that adaptation to a 4°C world is possible.” There’s a small but non-trivial chance of advanced civilization breaking down entirely. Now ponder the fact that some scenarios show us going up to 6 degrees by the end of the century, a level of devastation we have not studied and barely know how to conceive. Ponder the fact that somewhere along the line, though we don’t know exactly where, enough self-reinforcing feedback loops will be running to make climate change unstoppable and irreversible for centuries to come. That would mean handing our grandchildren and their grandchildren not only a burned, chaotic, denuded world, but a world that is inexorably more inhospitable with every passing decade.

## Solvency

SCOTUS ruling key to domestic and international spill over

Chesney ’11 (Robert M – UT Law School) “Who May Be Held? Military Detention Through the Habeas Lens” http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=3161&context=bclr

First, the answers judges give to this question have spillover effects beyond the immediate context of habeas.29 They overhang any other detention operations conducted under the rubric of the same underlying detention authority, regardless of whether those operations are subject to judicial review; government and military lawyers will not simply ignore judicial pronouncements regarding the scope of that authority, and may be expected to advise commanders and policymakers accordingly.30 By the same token, judicial decisions regarding the notional scope of detention authority may be applied to questions of targeting with lethal force in the field pursuant to that same authority, notwithstanding that targeting decisions ordinarily are not directly subject to judicial review.31 Future conflicts unrelated to 9/11 may also be impacted because many of the habeas decisions have included interpretations of key terms and concepts from both international and domestic law—such as “direct participation in hostilities” (“DPH”) and “all necessary and appropriate force” —that will be relevant in most if not all future armed conflicts.32 The judges involved in the habeas litigation have thus become, for better or worse, the central U.S. government institution engaged in the critical—and ultimately unavoidable—task of tailoring the laws governing military activity to suit the increasingly important scenario in which states classify clandestine non-state actors as strategic threats requiring a military response. In addition, the detention-scope question will remain relevant well into the future because the habeas litigation story—as it relates to this question—functions as a case study in the dynamic relationship between law and strategic context.33 More specifically, habeas litigation exemplifies two significant trends in the legal regulation of hostilities, one that is somewhat familiar and one that is somewhat novel.34 The first and somewhat-familiar trend involves the increasing significance of national courts in developing the international laws of war (at a time when the prospects for revisions to foundational treaties, such as the Geneva Conventions, are exceedingly slim, and when the role of international courts remains constrained).35 The second and more novel trend involves the emergence of domestic law as a rival to the international laws of war in the context of extraterritorial conflict (at a time when most scholarly attention focuses instead on the rivalry between the laws of war and international human rights law).36 From this point of view, the habeas litigation may herald increasing fragmentation of the law relating to hostilities—and, for good or ill, more occasions for national courts to grapple with the consequences.

It’s the only way to influence future US policy

Elsea & Garcia ’12 (Jennifer & Michael – legislative attorneys) “Judicial Activity Concerning

Enemy Combatant Detainees: Major Court Rulings” http://www.fas.org/sgp/crs/natsec/R41156.pdf

Although the political branches of government have been primarily responsible for shaping U.S. wartime detention policy in the conflict with Al Qaeda and the Taliban, the judiciary has also played a significant role in clarifying elements of the rights and privileges owed to detainees under the Constitution and existing federal statutes and treaties. These rulings may have longterm consequences for U.S. detention policy, both in the conflict with Al Qaeda and the Taliban and in future armed conflicts. Judicial decisions concerning the meaning and effect of existing statutes and treaties may compel the executive branch to modify its current practices to conform with judicial opinion. For example, judicial opinions concerning the scope of detention authority conferred by the AUMF may inform executive decisions as to whether grounds exist to detain an individual suspected of involvement with Al Qaeda or the Taliban. Judicial decisions concerning statutes applicable to criminal prosecutions in Article III courts or military tribunals may influence executive determinations as to the appropriate forum in which to try detainees for criminal offenses. Judicial rulings may also invite response from the legislative branch, including consideration of legislative proposals to modify existing authorities governing U.S. detention policy. The 2012 NDAA, for example, contains provisions which arguably codify aspects of existing jurisprudence regarding U.S. authority to detain persons in the conflict with Al Qaeda. Judicial activity with respect to the present armed conflict may also influence legislative activity in future hostilities. For example, Congress may look to judicial rulings interpreting the meaning and scope of the 2001 AUMF for guidance when drafting legislation authorizing the executive to use military force in some future conflict. While the Supreme Court has issued definitive rulings concerning certain issues related to wartime detainees, many other issues related to the capture, treatment, and trial of suspected enemy belligerents are either the subject of ongoing litigation or are likely to be addressed by the judiciary. Accordingly, the courts appear likely to play a significant role in shaping U.S. policies relating to enemy belligerents in the foreseeable future.

Failure to articulate habeas standards for lower court judges makes indefinite detention inevitable and triggers your disads

Sparrow 11 (Indefinite Detention After Boumediene: Judicial Trailblazing in Uncharted and Unfamiliar Territory SUFFOLK UNIVERSITY LAW REVIEW [Vol. XLIV:261 p lexis Tyler Sparrow is an associate in the Securities Department, and a member of the Litigation and Enforcement Practice Group]

This section will argue that the current guidance on detainee habeas corpus actions offered by the Supreme Court as well as the Executive and Legislative branches is vague and inadequate.100 Because of this inadequacy, federal district court judges cannot proceed with any confidence that their judgments will stand, nor can the litigants form any reasonable predictions from the case law.101 This section will then examine how more definitive Supreme Court precedent would help to unify the case law dealing with detainee habeas corpus actions.102 Finally, this section will argue that adoption of legislation clearly addressing the substantive scope of the government’s detention authority would clarify the law for the public, the federal courts, and most importantly those detained without charge.103 The Supreme Court’s holding in Boumediene was limited to the constitutional issues regarding Guantanamo detainees’ access to the writ of habeas corpus, leaving all questions of procedure and substantive scope-ofdetention authority to the lower federal courts.104 This lack of guidance has drawn criticism from legal scholars and federal judges alike.105 A group of noted legal scholars observed that, in holding Guantanamo detainees were entitled to seek the writ of habeas corpus, the Supreme Court “gave only the barest sketch of what such proceedings should look like, leaving a raft of questions open for the district and appellate court judges.”106 Furthermore, the Obama Administration has stated that it will not seek further legislation from Congress to justify or clarify its detention authority.107 This lack of guidance has led to disparate results in detainee habeas corpus actions with similar facts, based not on the merits of the cases, but rather on which particular judge hears the petition.108 B. Need for Supreme Court Precedent Addressing Standards and Procedure for Detainee Habeas Corpus Actions The Supreme Court’s refusal to address the substantive scope of the government’s detention authority in Boumediene has left the task to federal district court judges, who are free to apply whichever standard they see fit, regardless of its disparity from the standard being applied down the hall of the very same courthouse.109 For instance, it is up to the district judges whether to analyze detention authority under the rubric of “substantial support” for the Taliban and/or Al Qaeda, or the rubric pertaining to being a “part of” either of these groups.110 There are also differing opinions as to when, and how long, a detainee’s relationship with the Taliban and/or Al Qaeda must have existed to justify detention, under either the “part of” or “substantial support” rationales.111 Differing judicial approaches can also be seen in the weight of evidence required to justify detention, as well as how to treat hearsay and evidence obtained in the face of coercion.112 This creates a situation where neither the government nor the detainee “can be sure of the rules of the road in the ongoing litigation, and the prospect that allocation of a case to a particular judge may prove dispositive on the merits can cut in either direction.”113 The Supreme Court has the opportunity to unify these divergent paths by finally ruling on questions such as the substantive scope of the government’s detention authority, the standard and weight of evidence required for continued detention, whether a relationship with the Taliban and/or Al Qaeda can be sufficiently vitiated, and the reliability of hearsay evidence and statements made under coercion.114

# 2AC

## 2AC: ADV

Bioweapons use risks escalating to nuclear war - anonymous attacks can be used to pit powers against each other

Koblentz 4**,** (Gregory, PhD Political Science @ MIT, MA Public Policy @ Kennedy School, Harvard, Visiting Assistant Professor in the School of Foreign Service at Georgetown University and a Research Fellow with the Security Studies Program at the Massachusetts Institute of Technology. "Pathogens as Weapons, The International Security Implications of Biological Warfare", http://belfercenter.ksg.harvard.edu/files/koblentz.pdf)

A second potential consequence of the anonymous use of biological weapons is catalytic war: a war between two states secretly initiated by a third party. The spread of nuclear weapons in the 1960s created concern that **a third party could attack either superpower and make it appear to be the work of its rival, sparking a** crisis or **war**.117 **This worry faded** in the 1970s **with the signing of the** nuclear **[NPT]** Nonproliferation Treaty**, which helped to forestall the spread of nuclear weapons**, and the advent of advanced early warning systems that allowed the superpowers to detect and track aircraft and ballistic missiles, the primary delivery systems for nuclear weapons. **No such measures exist** today **with** regards to **biological weapons, so the possibility of a catalytic war sparked by the use of these weapons remains a possibility**. For example, **a hostile** state or terrorist group **in the Middle East could stage an attack on U.S. forces in the region that points to another state as the culprit.**

Bioweapons use draws in larger military powers

Koblentz 4**,** (Gregory, PhD Political Science @ MIT, MA Public Policy @ Kennedy School, Harvard, Visiting Assistant Professor in the School of Foreign Service at Georgetown University and a Research Fellow with the Security Studies Program at the Massachusetts Institute of Technology. "Pathogens as Weapons, The International Security Implications of Biological Warfare", http://belfercenter.ksg.harvard.edu/files/koblentz.pdf)

The second potential rebuttal is that biological weapons will have their greatest impact on the relations and conflicts of smaller and nonnuclear states. This objection is based on the false premise that these are the only types of states interested in biological weapons and that the strategic consequences of these weapons can be contained to this group of states. Virtually **all of the nuclear states**, however, **developed biological weapons at some point**—for purposes ranging from counterinsurgency to operational military employment to strategic attack. Even nuclear states with weak conventional forces may be tempted to use these weapons as force multipliers. In addition, possession of nuclear weapons will not necessarily deter the use of biological weapons by actors that do not believe they will be identified or that are insensitive to retaliatory threats. Moreover, **the use of biological weapons in a regional conflict is likely to involve the ally of a major power and lead to outside intervention or escalation. Like a contagious disease, the security implications of biological weapons will affect some states more than others, but they spread easily and no state is immune**.

## 2AC: OLC

2. Obama ignores OLC

Posner 11 - Kirkland & Ellis Professor, University of Chicago Law School (Eric A. Posner, “Deference To The Executive In The United States After September 11: Congress, The Courts, And The Office Of Legal Counsel”, http://www.harvard-jlpp.com/wp-content/uploads/2012/01/PosnerFinal.pdf)

In the early years of the Bush Administration, the Office of Legal Counsel (OLC), an office within the Department of Jus‐ tice, issued a series of memoranda arguing that certain counter‐ terrorism practices—including surveillance of U.S. citizens and coercive interrogation—did not violate the law. 37 These memos were later leaked to the public, causing an outcry. 38 In 2011, the head of the OLC told President Obama that continued U.S. military presence in Libya would violate the War Powers Act. The President disregarded this advice, relying in part on contrary advice offered by other officials in the government.  These two events neatly encapsulate the dilemma for the OLC, and indeed all the President’s legal advisers. If the OLC tries to block the President from acting in the way he sees fit, it takes the risk that he will disregard its advice and marginalize the institution. If the OLC gives the President the advice that he wants to hear, it takes the risk that it will mislead him and fail to prepare him for adverse reactions from the courts, Congress, and the public. Many scholars, most notably Professor Jack Goldsmith, argue that the OLC can constrain the executive. 39 The underlying idea here is that even if Congress and the courts cannot constrain the executive, perhaps offices within the executive can. The opposite view, advanced by Professor Bruce Ackerman, is that the OLC is a rubber stamp. 40 I advocate a third view: The OLC does not constrain the executive but enables him to accomplish goals that he would not otherwise be able to accomplish. It is more accurate to say that the OLC enables rather than constrains.

3. Here’s evidence to support that- even Obama would ignore it

Posner 11 - Kirkland & Ellis Professor, University of Chicago Law School (Eric A. Posner, “Deference To The Executive In The United States After September 11: Congress, The Courts, And The Office Of Legal Counsel”, http://www.harvard-jlpp.com/wp-content/uploads/2012/01/PosnerFinal.pdf)

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No precedence, congress and courts can overturn or eliminate executive orders.

William G. Howell, Associate Prof Gov Dep @ Harvard 2005(Unilateral Powers: A Brief

Overview; Presidential Studies Quarterly, Vol. 35, Issue: 3, Pg 417)

Plainly, presidents cannot institute every aspect of their policy agenda by decree. The checks and balances that define our system of governance are alive, though not always well, when presidents contemplate unilateral action. Should the president proceed without statutory or constitutional authority, the courts stand to overturn his actions, just as Congress can amend them, cut funding for their operations, or eliminate them outright. (4) Even in those moments when presidential power reaches its zenith--namely, during times of national crisis--judicial and congressional prerogatives may be asserted (Howell and Pevehouse 2005, forthcoming; Kriner, forthcoming; Lindsay 1995, 2003; and see Fisher's contribution to this volume). In 2004, as the nation braced itself for another domestic terrorist attack and images of car bombings and suicide missions filled the evening news, the courts extended new protections to citizens deemed enemy combatants by the president, (5) as well as noncitizens held in protective custody abroad. (6) And while Congress, as of this writing, continues to authorize as much funding for the Iraq occupation as Bush requests, members have imposed increasing numbers of restrictions on how the money is to be spent.

CP will get rolled back by future presidents

Friedersdorf 13

(CONOR FRIEDERSDORF, staff writer, “Does Obama Really Believe He Can Limit the Next President's Power?” MAY 28 2013, http://www.theatlantic.com/politics/archive/2013/05/does-obama-really-believe-he-can-limit-the-next-presidents-power/276279/, KB)

Obama doesn't seem to realize that his legacy won't be shaped by any perspicacious limits he places on the executive branch, if he ever gets around to placing any on it. The next president can just undo those "self-imposed" limits with the same wave of a hand that Obama uses to create them. His influence in the realm of executive power will be to expand it. By 2016 we'll be four terms deep in major policy decisions being driven by secret memos from the Office of Legal Counsel. The White House will have a kill list, and if the next president wants to add names to it using standards twice as lax as Obama's, he or she can do it, in secret, per his precedent.

Links to politics – immense opposition to bypassing debate

Hallowell 13

(Billy Hallowell, writer for The Blaze, B.A. in journalism and broadcasting from the College of Mount Saint Vincent in Riverdale, New York and an M.S. in social research from Hunter College in Manhattan, “HERE’S HOW OBAMA IS USING EXECUTIVE POWER TO BYPASS LEGISLATIVE PROCESS” Feb. 11, 2013, http://www.theblaze.com/stories/2013/02/11/heres-how-obamas-using-executive-power-to-bylass-legislative-process-plus-a-brief-history-of-executive-orders/, KB)

“In an era of polarized parties and a fragmented Congress, the opportunities to legislate are few and far between,” Howell said. “So presidents have powerful incentive to go it alone. And they do.”¶ And the political opposition howls.¶ Sen. Marco Rubio, R-Fla., a possible contender for the Republican presidential nomination in 2016, said that on the gun-control front in particular, Obama is “abusing his power by imposing his policies via executive fiat instead of allowing them to be debated in Congress.”¶ The Republican reaction is to be expected, said John Woolley, co-director of the American Presidency Project at the University of California in Santa Barbara.¶ “For years there has been a growing concern about unchecked executive power,” Woolley said. “It tends to have a partisan content, with contemporary complaints coming from the incumbent president’s opponents.”

## 2AC: Terrorism

Denying habeas review makes the US appear weak in the WOT

Dziengowski ‘7 (David – JD candidate at Rutgers) “THINKING GLOBALLY WHILE ACTING GLOBALLY: HABEAS CORPUS, INTERNATIONAL LAW, AND THE MILITARY COMMISSIONS ACT OF 2006” http://lawjournal.rutgers.edu/sites/lawjournal.rutgers.edu/files/issues/v39/1/Dziengowski.pdf.pdf

Notwithstanding the strong likelihood of indefinite detention, stripping habeas also prevents U.S. courts from reviewing claims of Geneva Convention violations.50 While the status of al Qaeda with respect to the Geneva Conventions is hotly contested among legal scholars,51 most agree that Common Article 3 of the Conventions affords a minimum set of rights to all parties engaged in an armed conflict not of an international character.52 By stripping these detainees of the writ, a level of oversight and transparency is removed from the detainment camps. Of course, this is not to say that soldiers guarding the detainees will resort to inhumane or cruel treatment as a result.53 There are international organizations which provide adequate human rights oversight irrespective of judicial capacity to do so.54 The more likely effect of the denial of judicial oversight is the appearance of impropriety. By shirking longstanding, international treaty obligations, the appearance of impropriety may ultimately lead to the weakening of the U.S. Coalition Against Global Terror.55 The American Bar Association (“ABA”) recognized the likelihood of this detrimental effect, and has called on the political branches to be mindful of allies when drafting legislation on detainees.56 Thus, granting habeas review for Geneva Convention oversight may actually serve to increase national security by strengthening the U.S. Coalition Against Global Terror.57

ROL key to solve terrorism

Feldman, 2008 (Noah, Law professor at Harvard University and adjunct senior fellow at the Council on Foreign Relaitons, “When judges make foreign policy,” September 28, NYT, http://www.nytimes.com/2008/09/28/magazine/28law-t.html?\_r=3&oref=slogin&ref=magazine&pagewanted=print)

So what do we need the Constitution to do for us now? The answer, I think, is that the Constitution must be read to help us remember that while the war on terror continues, we are also still in the midst of a period of rapid globalization. An enduring lesson of the Bush years is the extreme difficulty and cost of doing things by ourselves. We need to build and rebuild alliances — and law has historically been one of our best tools for doing so. In our present precarious situation, it would be a terrible mistake to abandon our historic position of leadership in the global spread of the rule of law. Our leadership matters for reasons both universal and national. Seen from the perspective of the world, the fragmentation of power after the cold war creates new dangers of disorder that need to be mitigated by the sense of regularity and predictability that only the rule of law can provide. Terrorists need to be deterred. Failed states need to be brought under the umbrella of international organizations so they can govern themselves. And economic interdependence demands coordination, so that the collapse of one does not become the collapse of all.

Zero risk of terrorism- their impact is alarmism

Mueller ’12 (John, 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. Mark G. Stewart is Australian Research Council Professorial Fellow and Professor and Director at the Centre for Infrastructure Performance and Reliability at the University of Newcastle in Australia, The Terrorism Delusion, International Security, Vol. 37, No. 1, pp. 81–110, Summer 2012)

Over the course of time, such essentially delusionary thinking has been internalized and institutionalized in a great many ways. For example, an extrapolation of delusionary proportions is evident in the common observation that, because terrorists were able, mostly by thuggish means, to crash airplanes into buildings, they might therefore be able to construct a nuclear bomb. In 2005 an FBI report found that, despite years of well-funded sleuthing, the Bureau had yet to uncover a single true al-Qaida sleeper cell in the United States. The report was secret but managed to be leaked. Brian Ross, “Secret FBI Report Questions Al Qaeda Capabilities: No ‘True’ Al Qaeda Sleeper Agents Have Been Found in U.S.,” ABC News, March 9, 2005. Fox News reported that the FBI, however, observed that “just because there’s no concrete evidence of sleeper cells now, doesn’t mean they don’t exist.” “FBI Can’t Find Sleeper Cells,” Fox News, March 10, 2005. Jenkins has run an internet search to discover how often variants of the term “al-Qaida” appeared within ten words of “nuclear.” There were only seven hits in 1999 and eleven in 2000, but the number soared to 1,742 in 2001 and to 2,931 in 2002. 47 By 2008, Defense Secretary Robert Gates was assuring a congressional committee that what keeps every senior government leader awake at night is “the thought of a terrorist ending up with a weapon of mass destruction, especially nuclear.” 48 Few of the sleepless, it seems, found much solace in the fact that an al-Qaida computer seized in Afghanistan in 2001 indicated that the group’s budget for research on weapons of mass destruction (almost all of it focused on primitive chemical weapons work) was $2,000 to $4,000. 49 In the wake of the killing of Osama bin Laden, officials now have many more al-Qaida computers, and nothing in their content appears to suggest that the group had the time or inclination, let alone the money, to set up and staff a uranium-seizing operation, as well as a fancy, super-high-technology facility to fabricate a bomb. This is a process that requires trusting corrupted foreign collaborators and other criminals, obtaining and transporting highly guarded material, setting up a machine shop staffed with top scientists and technicians, and rolling the heavy, cumbersome, and untested finished product into position to be detonated by a skilled crew—all while attracting no attention from outsiders. 50 If the miscreants in the American cases have been unable to create and set off even the simplest conventional bombs, it stands to reason that none of them were very close to creating, or having anything to do with, nuclear weapons—or for that matter biological, radiological, or chemical ones. In fact, with perhaps one exception, none seems to have even dreamed of the prospect; and the exception is José Padilla (case 2), who apparently mused at one point about creating a dirty bomb—a device that would disperse radiation—or even possibly an atomic one. His idea about isotope separation was to put uranium into a pail and then to make himself into a human centrifuge by swinging the pail around in great arcs. Even if a weapon were made abroad and then brought into the United States, its detonation would require individuals in-country with the capacity to receive and handle the complicated weapons and then to set them off. Thus far, the talent pool appears, to put mildly, very thin. There is delusion, as well, in the legal expansion of the concept of “weapons of mass destruction.” The concept had once been taken as a synonym for nuclear weapons or was meant to include nuclear weapons as well as weapons yet to be developed that might have similar destructive capacity. After the Cold War, it was expanded to embrace chemical, biological, and radiological weapons even though those weapons for the most part are incapable of committing destruction that could reasonably be considered “massive,” particularly in comparison with nuclear ones. 52

No scenario for nuclear terror---consensus of experts

Matt Fay 13, PhD student in the history department at Temple University, has a Bachelor’s degree in Political Science from St. Xavier University and a Master’s in International Relations and Conflict Resolution with a minor in Transnational Security Studies from American Military University, 7/18/13, “The Ever-Shrinking Odds of Nuclear Terrorism”, webcache.googleusercontent.com/search?q=cache:HoItCUNhbgUJ:hegemonicobsessions.com/%3Fp%3D902+&cd=1&hl=en&ct=clnk&gl=us&client=firefox-a

For over a decade now, one of the most oft-repeated threats raised by policymakers—the one that in many ways justified the invasion of Iraq—has been that of nuclear terrorism. Officials in both the Bush and Obama administrations, including the presidents themselves, have raised the specter of the atomic terrorist. But beyond mere rhetoric, how likely is a nuclear terrorist attack really?¶ While pessimistic estimates about America’s ability to avoid a nuclear terrorist attack became something of a cottage industry following the September 11th attacks, a number of scholars in recent years have pushed back against this trend. Frank Gavin has put post-9/11 fears of nuclear terrorism into historical context (pdf) and argued against the prevailing alarmism. Anne Stenersen of the Norwegian Defence Research Establishment has challenged the idea that al Qaeda was ever bound and determined to acquire a nuclear weapon. John Mueller ridiculed the notion of nuclear terrorism in his book Atomic Obsessions and highlighted the numerous steps a terrorist group would need to take—all of which would have to be successful—in order to procure, deliver, and detonate an atomic weapon. And in his excellent, and exceedingly even-handed, treatment of the subject, On Nuclear Terrorism, Michael Levi outlined the difficulties terrorists would face building their own nuclear weapon and discussed how a “system of systems” could be developed to interdict potential materials smuggled into the United States—citing a “Murphy’s law of nuclear terrorism” that could possibly dissuade terrorists from even trying in the first place.¶ But what about the possibility that a rogue state could transfer a nuclear weapon to a terrorist group? That was ostensibly why the United States deposed Saddam Hussein’s regime: fear he would turnover one of his hypothetical nuclear weapons for al Qaeda to use.¶ Enter into this discussion Keir Lieber and Daryl Press and their article in the most recent edition of International Security, “Why States Won’t Give Nuclear Weapons to Terrorists.” Lieber and Press have been writing on nuclear issues for just shy of a decade—doing innovative, if controversial work on American nuclear strategy. However, I believe this is their first venture into the debate over nuclear terrorism. And while others, such as Mueller, have argued that states are unlikely to transfer nuclear weapons to terrorists, this article is the first to tackle the subject with an empirical analysis.¶ The title of their article nicely sums up their argument: states will not turn over nuclear weapons terrorists. To back up this claim, Lieber and Press attack the idea that states will transfer nuclear weapons to terrorists because terrorists operate of absent a “return address.” Based on an examination of attribution following conventional terrorist attacks, the authors conclude:¶ [N]either a terror group nor a state sponsor would remain anonymous after a nuclear attack. We draw this conclusion on the basis of four main findings. First, data on a decade of terrorist incidents reveal a strong positive relationship between the number of fatalities caused in a terror attack and the likelihood of attribution. Roughly three-quarters of the attacks that kill 100 people or more are traced back to the perpetrators. Second, attribution rates are far higher for attacks on the U.S. homeland or the territory of a major U.S. ally—97 percent (thirty-six of thirty-seven) for incidents that killed ten or more people. Third, tracing culpability from a guilty terrorist group back to its state sponsor is not likely to be difficult: few countries sponsor terrorism; few terrorist groups have state sponsors; each sponsor terrorist group has few sponsors (typically one); and only one country that sponsors terrorism, has nuclear weapons or enough fissile material to manufacture a weapon. In sum, attribution of nuclear terror incidents would be easier than is typically suggested, and passing weapons to terrorists would not offer countries escape from the constraints of deterrence.¶ From this analysis, Lieber and Press draw two major implications for U.S. foreign policy: claims that it is impossible to attribute nuclear terrorism to particular groups or potential states sponsors undermines deterrence; and fear of states transferring nuclear weapons to terrorist groups, by itself, does not justify extreme measures to prevent nuclear proliferation.¶ This is a key point. While there are other reasons nuclear proliferation is undesirable, fears of nuclear terrorism have been used to justify a wide-range of policies—up to, and including, military action. Put in its proper perspective however—given the difficulty in constructing and transporting a nuclear device and the improbability of state transfer—nuclear terrorism hardly warrants the type of exertions many alarmist assessments indicate it should.

## 2AC: Budget

3. Obama’s pol cap is dead with republicans and dems will follow his lead no matter what

Kilgore 9/5 (Ed - contributing writer to the Washington Monthly. He is managing editor for The Democratic Strategist and a senior fellow at the Progressive Policy Institute) “Obama’s Political Capital” http://www.washingtonmonthly.com/political-animal-a/2013\_09/obamas\_political\_capital046735.php#

An even hoarier meme than the no-win-war complaint is naturally emerging in Washington as everyone recalibrates his or her assumptions about how the year will end: Obama’s limited “political capital” that he might have used on the fiscal front will now be “spread thin” or “stretched to the breaking point” by the need to make a case for military action against Syria. Politico’s Brown and Sherman give it a full airing today: President Barack Obama faced a heavy lift in Congress this fall when his agenda included only budget issues and immigration reform. Now with Syria in the mix, the president appears ready to spend a lot of the political capital that he would have kept in reserve for his domestic priorities. A resolution authorizing the use of force in Syria won’t make it through the House or the Senate without significant cajoling from the White House. That means Obama, who struggles to get Congress to follow his lead on almost everything, could burn his limited leverage convincing Democrats and Republicans to vote for an unpopular military operation that even the president says he could carry out with or without their approval. Now this may be true with respect to congressional Democrats if Obama ultimately needs them to swallow hard and accept some fiscal deal to avoid a government shutdown or debt default. But seriously, what sort of “political capital” does the president have with congressional Republicans? They committed to a policy of total obstruction from the day he became president and picked up right where they had left off the day he was re-elected. Obama’s only options in dealing with the GOP are to offer them cover for compromise when he must and hand them an anvil to speed their self-destruction when he can. But he has no “political capital” to spend.

4. Plan’s popular with republicans

White 2012 (Jeremy White, March 30, 2012, “Republicans Join Fight Against Indefinite Detention In NDAA,” International Business Times, http://www.ibtimes.com/republicans-join-fight-against-indefinite-detention-ndaa-432196)

Some Republican members of the House have rallied behind the same principle, according to the Associated Press. They are motivated by a concern that the provisions will vastly expand the scope of executive power without imposing important checks.¶ I intend to help put as much political pressure on this issue as possible, Rep. Justin Amash (R-Mich.) told the Associated Press. I intend to spend a lot of time - and I already have been doing so - making the public aware of this issue so we can get the change we need to address it.¶ Presidential Power Concerns Since 9/11¶ Concerns about presidential power in post-911 era are nothing new. During the Bush administration, Democrats warned vociferously about what they saw grave civil liberties violations for those accused of terrorism, abuses that were epitomized by the military prison at Guantanamo Bay.¶ But rather than allay those concerns, the Obama administration has embraced and in some ways expanded an assertive view of executive authority. Obama has issued waivers that shield most terrorism suspects from mandatory detention, but some of his other actions -- including authorizing a lethal strike in Yemen on the radical Al Qaeda cleric Anwar al-Awlaki, a U.S. citizen -- have faced legal scrutiny.¶ The Republican opposition to the detention provisions in the NDAA is in part fueled by the influx of Tea Party-affiliated House members who emphasize the primacy of the Constitution. Half of the House Republicans voting against the legislation were part of the Tea Party-inflected wave of first-term representatives elected in 2010, including Amash.

have supported Democrats in recent elections.

6. Courts shield

Stoutenborough et al. 6 (James, Political Science Dept @ Utah, Reassessing the Impact of Supreme Court Decisions on Public Opinion, Political Research Quarterly, p. 419)

In many cases, courts have been empowered by and served the interests of other political actors. While this undermines the countermajoritarian difficulty as an empirical hypothesis, it is not at all reassuring from a democratic perspective. Judicial review can provide an opportunity for elected political actors to evade responsibilities or to pursue policies while evading electoral consequences. Such actions may enhance or enable domination by letting those actors pursue policies that might lead to domination without suffering electoral consequences. The possibility that judicial review can provide another outlet that permits legislators to "run from daylight"85 and effect important policy changes with a minimum of public scrutiny is a serious concern, and may especially contribute to domination by powerful economic elites. An additional concern is that judicial review can have the perverse effect of making legislators less attentive to their constitutional responsibilities, as they may vote for legislation they believe to be unconstitutional under the assumption that the courts will correct their mistake.86

8. Political capital’s irrelevant and winners win—

Hirsch 2-7-13. Michael Hirsh “There’s No Such Thing as Political Capital.” chief correspondent for National Journal. He also contributes to 2012 Decoded. Hirsh previously served as the senior editor and national economics correspondent for Newsweek, based in its Washington bureau. [http://www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207]

The point is not that “political capital” is a meaningless term. Often it is a synonym for “mandate” or “momentum” in the aftermath of a decisive election—and just about every politician ever elected has tried to claim more of a mandate than he actually has. Certainly, Obama can say that because he was elected and Romney wasn’t, he has a better claim on the country’s mood and direction. Many pundits still defend political capital as a useful metaphor at least. “It’s an unquantifiable but meaningful concept,” says Norman Ornstein of the American Enterprise Institute. “You can’t really look at a president and say he’s got 37 ounces of political capital. But the fact is, it’s a concept that matters, if you have popularity and some momentum on your side.” The real problem is that the idea of political capital—or mandates, or momentum—is so poorly defined that presidents and pundits often get it wrong. “Presidents usually over-estimate it,” says George Edwards, a presidential scholar at Texas A&M University. “The best kind of political capital—some sense of an electoral mandate to do something—is very rare. It almost never happens. In 1964, maybe. And to some degree in 1980.” For that reason, political capital is a concept that misleads far more than it enlightens. It is distortionary. It conveys the idea that we know more than we really do about the ever-elusive concept of political power, and it discounts the way unforeseen events can suddenly change everything. Instead, it suggests, erroneously, that a political figure has a concrete amount of political capital to invest, just as someone might have real investment capital—that a particular leader can bank his gains, and the size of his account determines what he can do at any given moment in history. Naturally, any president has practical and electoral limits. Does he have a majority in both chambers of Congress and a cohesive coalition behind him? Obama has neither at present. And unless a surge in the economy—at the moment, still stuck—or some other great victory gives him more momentum, it is inevitable that the closer Obama gets to the 2014 election, the less he will be able to get done. Going into the midterms, Republicans will increasingly avoid any concessions that make him (and the Democrats) stronger. But the abrupt emergence of the immigration and gun-control issues illustrates how suddenly shifts in mood can occur and how political interests can align in new ways just as suddenly. Indeed, the pseudo-concept of political capital masks a larger truth about Washington that is kindergarten simple: You just don’t know what you can do until you try. Or as Ornstein himself once wrote years ago, “Winning wins.” In theory, and in practice, depending on Obama’s handling of any particular issue, even in a polarized time, he could still deliver on a lot of his second-term goals, depending on his skill and the breaks. Unforeseen catalysts can appear, like Newtown. Epiphanies can dawn, such as when many Republican Party leaders suddenly woke up in panic to the huge disparity in the Hispanic vote. Some political scientists who study the elusive calculus of how to pass legislation and run successful presidencies say that political capital is, at best, an empty concept, and that almost nothing in the academic literature successfully quantifies or even defines it. “It can refer to a very abstract thing, like a president’s popularity, but there’s no mechanism there. That makes it kind of useless,” says Richard Bensel, a government professor at Cornell University. Even Ornstein concedes that the calculus is far more complex than the term suggests. Winning on one issue often changes the calculation for the next issue; there is never any known amount of capital. “The idea here is, if an issue comes up where the conventional wisdom is that president is not going to get what he wants, and he gets it, then each time that happens, it changes the calculus of the other actors” Ornstein says. “If they think he’s going to win, they may change positions to get on the winning side. It’s a bandwagon effect.”

9. Detention debate in congress inevitable- NDAA vote this fall

Obsburn 9/11 (C. Dixon Obsburn Law and Security ProgramTwelve Years Later: 9/11 Demands Justice, Not GTMO http://www.humanrightsfirst.org/2013/09/11/twelve-years-later-911-demands-justice-not-gtmo/)

Congress has taken note.  The Senate is set to debate Guantanamo again when the National Defense Authorization Act hits the Senate floor this fall.  The bill reported out of committee removes restrictions on transfers from Guantanamo to the United States for prosecution, incarceration or medical treatment.  The bill also permits transfers for purposes of repatriation or resettlement so long as the Secretary of Defense notifies Congress and takes steps to mitigate the risks associated with transfers.  There are some fresh factors that may convince Members of Congress that it is finally time to close Guantanamo.

10. Hedges appeal coming out- the court will rule on INDEFINITE DETENTION

RT 9/3 (Supreme Court to rule on fate of indefinite detention for Americans under NDAA http://rt.com/usa/ndaa-scotus-hedges-suit-359/)

The United States Supreme Court is being asked to hear a federal lawsuit challenging the military’s legal ability to indefinitely detain persons under the National Defense Authorization Act of 2012, or NDAA. According to Pulitzer Prize-winning journalist Chris Hedges — a co-plaintiff in the case — attorneys will file paperwork in the coming days requesting that the country’s high court weigh in on Hedges v. Obama and determine the constitutionality of a controversial provision that has continuously generated criticism directed towards the White House since signed into law by President Barack Obama almost two years ago and defended adamantly by his administration in federal court in the years since.

11. Independent courts solves the impact

Charles M Cameron Professor of Politics and Public Affairs Woodrow Wilson School, Princeton University Judicial Independence at the Crossroads: An Interdisciplinary Approach ed Stephen B. Burbank (Editor), Barry Friedman 2002

This one study is, at best, suggestive but it is compatible with the weak argument for judicial independence: A set of somewhat independent courts complements the other branches in a liberal democratic order, so that all the institutions hang together in a way that has good economic consequences. Of course, economic activity can still take place in the face of a rapacious executive and weak, ineffective courts, partly because private organizations spring up to provide protection services. But this social arrange vent carries a cost in economic growth. Micro-oriented studies like this one are impractical to conduct over many countries but one can examine aggregate evidence in search of broad, systematic patterns. Barro (2000) examines economic growth in 100 countries during the 1960s, 1970s, and 1980s. He finds a positive, statistically significant, and substantively important link between economic growth and "rule of law values as measured by surveys and reported in the International Country Risk Guide. "A rise of one category (among the seven used) n the Political Risk Services Index is estimated to raise the growth rate on impact by 0.5 percent per year. A change from the worst rule of law (0.0) to the best (1.0) would contribute an enormous 3.0 per-cent per year to the growth rate" (Barro, 2000, p. 222).

12. US isn’t key and collapse won’t cause war

Barnet, 2009 (Thomas P.M., senior managing director of Enterra Solutions LLC and a contributing , “the new rules: security remains stable amid financial crisis,” APN, August 25, http://www.aprodex.com/the-new-rules--security-remains-stable-amid-financial-crisis-398-bl.aspx)

When the global financial **crisis struck** roughly a year ago, **the blogosphere was ablaze** **with** all sorts of scary **predictions of**, and commentary regarding, ensuing conflict and **wars** -- a rerun of the Great Depression leading to world war, as it were. Now, **as** global **economic news brightens and recovery** -- surprisingly **led by** China and **emerging markets** -- is the talk of the day, it's interesting to look back over the past year and realize how **globalization's first** truly **worldwide recession has had** virtually **no impact** whatsoever **on th**e international **security landscape**. **None of the** more than three-dozen **ongoing conflicts** listed by GlobalSecurity.org **can be** clearly **attributed to the global recession**. Indeed, the last new entry (civil conflict between Hamas and Fatah in the Palestine) predates the economic crisis by a year, and three quarters of the chronic struggles began in the last century. Ditto for the 15 low-intensity conflicts listed by Wikipedia (where the latest entry is the Mexican "drug war" begun in 2006). Certainly, the Russia-Georgia conflict last August was specifically timed, but by most accounts the opening ceremony of the Beijing Olympics was the most important external trigger (followed by the U.S. presidential campaign) for that sudden spike in an almost two-decade long struggle between Georgia and its two breakaway regions. Looking over the various databases, then, we see a most familiar picture: the usual mix of civil conflicts, insurgencies, and liberation-themed terrorist movements. Besides the recent Russia-Georgia dust-up, **the only two potential state-on-state wars** (North v. South Korea, Israel v. Iran) **are both tied to one side acquiring** a **nuclear** weapon **capacity** -- a process wholly **unrelated to** global **economic trends.** And with the United States effectively tied down by its two ongoing major interventions (Iraq and Afghanistan-bleeding-into-Pakistan), our involvement elsewhere around the planet has been quite modest, both leading up to and following the onset of the economic crisis: e.g., the usual counter-drug efforts in Latin America, the usual military exercises with allies across Asia, mixing it up with pirates off Somalia's coast). Everywhere else we find serious instability we pretty much let it burn, occasionally pressing the Chinese -- unsuccessfully -- to do something. Our new Africa Command, for example, hasn't led us to anything beyond advising and training local forces. So, **to sum up:** No significant uptick in mass violence or unrest (remember the smattering of urban riots last year in places like Greece, Moldova and Latvia?); The usual frequency maintained in civil conflicts (in all the usual places); **Not a single** state-on-state **war directly caused** (and no great-power-on-great-power crises even triggered); **No great** improvement or **disruption in great-power cooperation regarding** the emergence of **new nuclear powers** (despite all that diplomacy); A modest scaling back of international policing efforts by the system's acknowledged Leviathan power (inevitable given the strain); and **No** serious **efforts by any rising great power to challenge that Leviathan** or supplant its role. (The worst things we can cite are Moscow's occasional deployments of strategic assets to the Western hemisphere and its weak efforts to outbid the United States on basing rights in Kyrgyzstan; but the best include China and India stepping up their aid and investments in Afghanistan and Iraq.)

## 2AC: Security

3. Deconstructing law fails to regulate detention

Jenks and Talbot-Jensen 11 (INDEFINITE DETENTION UNDER THE LAWS OF WAR Chris Jenks\* & Eric Talbot Jensen\*\* Lieutenant Colonel, U.S. Army Judge Advocate General's Corps. Presently serving as the Chief of the International Law Branch, Office of The Judge Advocate General, Washington D.C. The views expressed in this Article are those of the author and not The Judge Advocate General's Corps, the U.S. Army, or the Department of Defense. \*\* Visiting Assistant Professor, Fordham Law School. The authors wish to thank Sue Ann Johnson for her exceptional research and editing skills, and the organizers and attendees at both the 3rd Annual National Security Law Jtinior Faculty Workshop at the University of Texas School of Law, where we first discussed the ideas for this article, and the Stanford Law and Policy Review National Defense Symposium, where we first presented the finished product. STANFORD LAW & POLICY REVIEW [Vol. 22:1] Page Lexis)

Those who would deconstruct the law of war as applied to detention stemming from armed conflict with non state actors may achieve victory, but in an academic, and, practically speaking, pyrrhic sense. Arguing that the Geneva Conventions for Prisoners and Civilians do not, on their face, apply to members of al-Qaeda or the Taliban may be correct, and in more than one way. But in so arguing, the deconstructionist approach removes a large portion of intemationally recognized and accepted provisions for regulating detention associated with armed conflict—^the Geneva Conventions—^while leaving the underlying question of how to govern detention unanswered. At some point, even the deconstmctionist must shift to positivism and propose an altemative, an altemative we submit would inevitably resemble that which is already extant in the law of war. Moreover, while there has been discussion about the strained application of the Geneva Conventions and Additional Protocols to states combating transnational terrorism, attempts at a new convention have gained little traction. Our approach is more an attempt at pragmatism than radicalism—there are individuals currently detained, purportedly indefinitely and under the law of war. Yet despite years of such detention, two administrations have provided little if any information on what exactly such detention means, how and by what it is govemed, and if and how it ends. Conflating aspects of intemationally recognized law of war conventions allows for a transparent process that could be promulgated now. Whether for the up to fifty or so individuals currently detained at Guantanamo or for those who may be detained in the future, we posit that the law of war provides a legitimate model for indefinite detention. And, as the Walsh Report recognized,^' the longer detainees are held, the more concern for their individual situations must be given. We therefore analyze the complete protections provided by the law of war and advocate that all of them, over time and to varying degrees, be applied to the detainees in Guantanamo. In this way, detention under the laws of war can provide a humane system of indefinite detention that strikes the right balance between the security of the nation and the rights of individuals

5. Exclusive focus on reps erodes the reversal of the structures of exploitation – only the perm solves by supplementing discourse with discussion of material reform

Giroux, 6. Henry (Penn State Chair of Education and Cultural Studies), *Dirty Democracy and States of Terrorism: The Politics of the New Authoritarianism in the United States* in Comparative Studies of South Asia Volume 26 Number 6, p 176-177.

Abstracted from the ideal of public commitment, the new authoritarianism represents a political and economic practice and form of militarism that loosen the connections among substantive democracy, critical agency, and critical education. In opposition to the rising tide of authoritarianism, educators across the globe must make a case for linking learning to progressive social change while struggling to pluralize and critically engage the diverse sites where public pedagogy takes place. In part, this suggests forming alliances that can make sure every sphere of social life is recognized as an important site of the political, social, and cultural struggle that is so crucial to any attempt to forge the knowledge, identifications, effective investments, and social relations that constitute political subjects and social agents capable of energizing and spreading the basis for a substantive global democracy. Such circumstances require that pedagogy be embraced as a moral and political practice, one that is directive and not dogmatic, an outgrowth of struggles designed to resist the increasing depoliticization of political culture that is the hallmark of the current Bush revolution. Education is the terrain where consciousness is shaped, needs are constructed, and the capacity for individual self-reflection and broad social change is nurtured and produced. Education has assumed an unparalleled significance in shaping the language, values, and ideologies that legitimize the structures and organizations that support the imperatives of global capitalism. Efforts to reduce it to a technique or methodology set aside, education remains a crucial site for the production and struggle over those pedagogical and political conditions that provide the possibilities for people to develop forms of agency that enable them individually and collectively to intervene in the processes through which the material relations of power shape the meaning and practices of their everyday lives. Within the current historical context, struggles over power take on a symbolic and discursive as well as a material and institutional form. The struggle over education is about more than the struggle over meaning and identity; it is also about how meaning, knowledge, and values are produced, authorized, and made operational within economic and structural relations of power. Education is not at odds with politics; it is an important and crucial element in any definition of the political and offers not only the theoretical tools for a systematic critique of authoritarianism but also a language of possibility for creating actual movements for democratic social change and a new biopolitics that affirms life rather than death, shared responsibility rather than shared fears, and engaged citizenship rather than the stripped-down values of consumerism. At stake here is combining symbolic forms and processes conducive to democratization with broader social contexts and the institutional formations of power itself. The key point here is to understand and engage educational and pedagogical practices from the point of view of how they are bound up with larger relations of power. Educators, students, and parents need to be clearer about how power works through and in texts, representations, and discourses, while at the same time recognizing that power cannot be limited to the study of representations and discourses, even at the level of public policy. Changing consciousness is not the same as altering the institutional basis of oppression; at the same time, institutional reform cannot take place without a change in consciousness capable of recognizing not only injustice but also the very possibility for reform, the capacity to reinvent the conditions and practices that make a more just future possible. In addition, it is crucial to raise questions about the relationship between pedagogy and civic culture, on the one hand, and what it takes for individuals and social groups to believe that they have any responsibility whatsoever even to address the realities of class, race, gender, and other specific forms of domination, on the other hand. For too long, the progressives have ignored that the strategic dimension of politics is inextricably connected to questions of critical education and pedagogy, to what it means to acknowledge that education is always tangled up with power, ideologies, values, and the acquisition of both particular forms of agency and specific visions of the future. The primacy of critical pedagogy to politics, social change, and the radical imagination in such dark times is dramatically captured by the internationally renowned sociologist Zygmunt Bauman. He writes, Adverse odds may be overwhelming, and yet a democratic (or, as Cornelius Castoriadis would say, an autonomous) society knows of no substitute for education and self-education as a means to influence the turn of events that can be squared with its own nature, while that nature cannot be preserved for long without "critical pedagogy"—an education sharpening its critical edge, "making society feel guilty" and "stirring things up" through stirring human consciences. The fates of freedom, of democracy that makes it possible while being made possible by it, and of education that breeds dissatisfaction with the level of both freedom and democracy achieved thus far, are inextricably connected and not to be detached from one another. One may view that intimate connection as another specimen of a vicious circle—but it is within that circle that human hopes and the chances of humanity are inscribed, and can be nowhere else.

6. Floating PIKS are a voting issue – kills education because we don’t debate the merits of the plan and policy procedures which is uniquely key to becoming good activists and/or policy makers

7. Rejection of primacy and securitization causes the state to become more interventionist

Tara McCormack, ’10, is Lecturer in International Politics at the University of Leicester and has a PhD in International Relations from the University of Westminster. 2010, (Critique, Security and Power: The political limits to emancipatory approaches, page 127-129)

The following section will briefly raise some questions about the rejection of the old security framework as it has been taken up by the most powerful institutions and states. Here we can begin to see the political limits to critical and emancipatory frameworks. In an international system which is marked by great power inequalities between states, the rejection of the old narrow national interest-based security framework by major international institutions, and the adoption of ostensibly emancipatory policies and policy rhetoric, has the consequence of problematising weak or unstable states and allowing international institutions or major states a more interventionary role, yet without establishing mechanisms by which the citizens of states being intervened in might have any control over the agents or agencies of their emancipation. Whatever the problems associated with the pluralist security framework there were at least formal and clear demarcations. This has the consequence of entrenching international power inequalities and allowing for a shift towards a hierarchical international order in which the citizens in weak or unstable states may arguably have even less freedom or power than before. Radical critics of contemporary security policies, such as human security and humanitarian intervention, argue that we see an assertion of Western power and the creation of liberal subjectivities in the developing world. For example, see Mark Duffield’s important and insightful contribution to the ongoing debates about contemporary international security and development. Duffield attempts to provide a coherent empirical engagement with, and theoretical explanation of, these shifts. Whilst these shifts, away from a focus on state security, and the so-called merging of security and development are often portrayed as positive and progressive shifts that have come about because of the end of the Cold War, Duffield argues convincingly that these shifts are highly problematic and unprogressive. For example, the rejection of sovereignty as formal international equality and a presumption of nonintervention has eroded the division between the international and domestic spheres and led to an international environment in which Western NGOs and powerful states have a major role in the governance of third world states. Whilst for supporters of humanitarian intervention this is a good development, Duffield points out the depoliticising implications, drawing on examples in Mozambique and Afghanistan. Duffield also draws out the problems of the retreat from modernisation that is represented by sustainable development. The Western world has moved away from the development policies of the Cold War, which aimed to develop third world states industrially. Duffield describes this in terms of a new division of human life into uninsured and insured life. Whilst we in the West are ‘insured’ – that is we no longer have to be entirely self-reliant, we have welfare systems, a modern division of labour and so on – sustainable development aims to teach populations in poor states how to survive in the absence of any of this. Third world populations must be taught to be self-reliant, they will remain uninsured. Self-reliance of course means the condemnation of millions to a barbarous life of inhuman bare survival. Ironically, although sustainable development is celebrated by many on the left today, by leaving people to fend for themselves rather than developing a society wide system which can support people, sustainable development actually leads to a less human and humane system than that developed in modern capitalist states. Duffield also describes how many of these problematic shifts are embodied in the contemporary concept of human security. For Duffield, we can understand these shifts in terms of Foucauldian biopolitical framework, which can be understood as a regulatory power that seeks to support life through intervening in the biological, social and economic processes that constitute a human population (2007: 16). Sustainable development and human security are for Duffield technologies of security which aim to *create* self-managing and self-reliant subjectivities in the third world, which can then survive in a situation of serious underdevelopment (or being uninsured as Duffield terms it) without causing security problems for the developed world. For Duffield this is all driven by a neoliberal project which seeks to control and manage uninsured populations globally. Radical critic Costas Douzinas (2007) also criticises new forms of cosmopolitanism such as human rights and interventions for human rights as a triumph of American hegemony. Whilst we are in agreement with critics such as Douzinas and Duffield that these new security frameworks cannot be empowering, and ultimately lead to more power for powerful states, we need to understand why these frameworks have the effect that they do. We can understand that these frameworks have political limitations without having to look for a specific plan on the part of current powerful states. In new security frameworks such as human security we can see the political limits of the framework proposed by critical and emancipatory theoretical approaches.

8. Refusing to use the state empowers its worst aspects

Barbrook, 97-professor at the Hypermedia Research Centre at the University of Westminster, 1997  (Richard, message to a list serve, http://www.nettime.org/Lists-Archives/nettime-l-9706/msg00034.html)

I thought that this position is clear from my remarks about the ultra-left posturing of the 'zero-work' demand. In Europe, we have real social problems of deprivation and poverty which, in part, can only be solved by state action. This does not make me a statist, but rather an anti-anti-statist. By opposing such intervention because they are carried out by the state, anarchists are tacitly lining up with the neo-liberals. Even worse, refusing even to vote for the left, they acquiese to rule by neo-liberal parties.   I deeply admire direct action movements. I was a radio pirate and we provide server space for anti-roads and environmental movements. However, this doesn't mean that I support political abstentionism or, even worse, the mystical nonsense produced by Hakim Bey. It is great for artists and others to adopt a marginality as a life style choice, but most of the people who are economically and socially marginalised were never given any choice. They are excluded from society as a result of deliberate policies of deregulation, privatisation and welfare cutbacks carried out by neo-liberal governments. During the '70s, I was a pro-situ punk rocker until Thatcher got elected. Then we learnt the hard way that voting did change things and lots of people suffered if state power was withdrawn from certain areas of our life, such as welfare and employment. Anarchism can be a fun artistic pose. However, human suffering is not.

9. Pragmatic reasoning is correct- prior questions cause policy failure

Kratochwil, IR Prof @ Columbia, 8 [Friedrich Kratochwil is Assistant Professor of International Relations at Columbia University, Pragmatism in International Relations “Ten points to ponder about pragmatism” p11-25]

Firstly, a pragmatic approach does not begin with objects or “things” (ontology), or with reason and method (epistemology), but with “acting” ( *prattein*), thereby preventing some false starts. Since, as historical beings placed in a specific situations, we do not have the luxury of deferring decisions until we have found the “truth”, we have to act and must do so always under time pressures and in the face of incomplete information. Precisely because the social world is characterised by strategic interactions, what a situation “is”, is hardly ever clear *ex ante*, because it is being “produced” by the actors and their interactions, and the multiple possibilities are rife with incentives for (dis)information. This puts a premium on quick diagnostic and cognitive shortcuts informing actors about the relevant features of the situation, and on leaving an alternative open (“plan B”) in case of unexpected difficulties. Instead of relying on certainty and universal validity gained through abstraction and controlled experiments, we know that completeness and attentiveness to detail, rather than to generality, matter.

10. Alt is comparatively worse - Enemy creation is critical to avoid a violent state of psychosis that creates comparatively more violence

Kenneth Reinhard (professor at UCLA) 2004“Towards a Political Theology of the Neighbor” http://www.humnet.ucla.edu/humnet/jewishst/Mellon/Towards\_Political\_Theology.pdf

If the concept of the political is defined, as Carl Schmitt does, in terms of the Enemy/Friend opposition, the world we find ourselves in today is one from which the political may have already disappeared, or at least has mutated into some strange new shape. A world not anchored by the “us” and “them” binarisms that flourished as recently as the Cold War is one subject to radical instability, both subjectively and politically, as Jacques Derrida points out in The Politics of Friendship: The effects of this destructuration would be countless: the ‘subject’ in question would be looking for new reconstitutive enmities; it would multiply ‘little wars’ between nation-states; it would sustain at any price so-called ethnic or genocidal struggles; it would seek to pose itself, to find repose, through opposing still identifiable adversaries – China, Islam? Enemies without which … it would lose its political being … without an enemy, and therefore without friends, where does one then find oneself, qua a self? (PF 77) If one accepts Schmitt’s account of the political, the disappearance of the enemy results in something like global psychosis: since the mirroring relationship between Us and Them provides a form of stablility, albeit one based on projective identifications and repudiations, the loss of the enemy threatens to destroy what Lacan calls the “imaginary tripod” that props up the psychotic with a sort of pseudo-subjectivity, until something causes it to collapse, resulting in full-blown delusions, hallucinations, and paranoia. Hence, for Schmitt, a world without enemies is much more dangerous than one where one is surrounded by enemies; as Derrida writes, the disappearance of the enemy opens the door for “an unheard-of violence, the evil of a malice knowing neither measure nor ground, an unleashing incommensurable in its unprecedented – therefore monstrous – forms; a violence in the face of which what is called hostility, war, conflict, enmity, cruelty, even hatred, would regain reassuring and ultimately appeasing contours, because they would be identifiable” (PF 83).

11. China already sees the US as a threat – must acknowledge the China threat before it is too late

Schmitt 5 – Gary Schmitt, executive director of the Project for the New American Century and Dan Blumenthal, resident fellow in Asian studies at the American Enterprise Institute, Weekly Standard, August 8, 2005, p. http://www.newamericancentury.org/china20050808.htm

In reality, it is more accurate to say that the United States is at a strategic crossroads when it comes to China. With our plate full around the globe, we are understandably reluctant to raise publicly the prospect of a new great power competition. Nevertheless, **the administration is doing quite a bit to contain Chinese military power**--our upgraded relations with Japan, India, Vietnam, Singapore, and Australia are cases in point. But our **reluctance to admit this** publicly to ourselves or to our allies, **and our rosy rhetoric** about our "constructive" relationship with Beijing, **leave us at a disadvantage as China ratchets up** the **competition. As a practical matter, this attitude often leaves us a day late and a dollar short when it comes to matching new Chinese initiatives**. Nor is our position sustainable. Beijing is not blind to our reaching out to the powers in the region. For it, the competition has already begun. The Pentagon's report provides ample evidence that this is the case, but then ducks the obvious conclusion. Preparing the Congress and the public for that competition should be a priority of the administration. Unfortunately, this year's report, for all its substantive merit, fails the test.

# 1AR

#### Youd be lucky if you get that high.

**Schneidmiller 9** (Chris, Experts Debate Threat of Nuclear, Biological Terrorism, 13 January 2009, http://www.globalsecuritynewswire.org/gsn/nw\_20090113\_7105.php, AMiles)

There is an "almost **vanishingly small" likelihood** that terrorists would ever be able to acquire and detonate a nuclear weapon, one expert said here yesterday (see GSN, Dec. 2, 2008). In even the most likely scenario of nuclear terrorism, there are 20 barriers between extremists and a successful nuclear strike on a major city, said John Mueller, a political science professor at Ohio State University. The process itself is seemingly straightforward but exceedingly difficult -- buy or steal highly enriched uranium, manufacture a weapon, take the bomb to the target site and blow it up. Meanwhile, variables strewn across the path to an attack would increase the complexity of the effort, Mueller argued. Terrorists would have to bribe officials in a state nuclear program to acquire the material, while avoiding a sting by authorities or a scam by the sellers. The material itself could also turn out to be bad. "Once the purloined material is purloined, [police are] going to be chasing after you. They are also going to put on a high reward, extremely high reward, on getting the weapon back or getting the fissile material back," Mueller said during a panel discussion at a two-day Cato Institute conference on counterterrorism issues facing the incoming Obama administration. Smuggling the material out of a country would mean relying on criminals who "are very good at extortion" and might have to be killed to avoid a double-cross, Mueller said. The terrorists would then have to find scientists and engineers willing to give up their normal lives to manufacture a bomb, which would require an expensive and sophisticated machine shop. Finally, further technological expertise would be needed to sneak the weapon across national borders to its destination point and conduct a successful detonation, Mueller said. Every obstacle is "difficult but not impossible" to overcome, Mueller said, putting the chance of success at no less than one in three for each. The likelihood of successfully passing through each obstacle, in sequence, would be roughly one in 3 1/2 billion, he said, but for argument's sake dropped it to 3 1/2 million. "It's a total gamble. This is a very expensive and difficult thing to do," said Mueller, who addresses the issue at greater length in an upcoming book, Atomic Obsession. "So unlike buying a ticket to the lottery ... you're basically putting everything, including your life, at stake for a gamble that's maybe one in 3 1/2 million or 3 1/2 billion." Other scenarios are even less probable, Mueller said. A nuclear-armed state is "exceedingly unlikely" to hand a weapon to a terrorist group, he argued: "States just simply won't give it to somebody they can't control." Terrorists are also not likely to be able to steal a whole weapon, Mueller asserted, dismissing the idea of "loose nukes." Even Pakistan, which today is perhaps the nation of greatest concern regarding nuclear security, keeps its bombs in two segments that are stored at different locations, he said (see GSN, Jan. 12). Fear of an "extremely improbable event" such as nuclear terrorism produces support for a wide range of homeland security activities, Mueller said. He argued that there has been a major and costly overreaction to the terrorism threat -- noting that the Sept. 11 attacks helped to precipitate the invasion of Iraq, which has led to far more deaths than the original event. Panel moderator Benjamin Friedman, a research fellow at the Cato Institute, said academic and governmental discussions of acts of nuclear or biological terrorism have tended to focus on "worst-case assumptions about terrorists' ability to use these weapons to kill us." There is need for consideration for what is probable rather than simply what is possible, he said. Friedman took issue with the finding late last year of an experts' report that an act of WMD terrorism would "more likely than not" occur in the next half decade unless the international community takes greater action. "I would say that the report, if you read it, actually offers no analysis to justify that claim, which seems to have been made to change policy by generating alarm in headlines." One panel speaker offered a partial rebuttal to Mueller's presentation. Jim Walsh, principal research scientist for the Security Studies Program at the Massachusetts Institute of Technology, said he agreed that nations would almost certainly not give a nuclear weapon to a nonstate group, that most terrorist organizations have no interest in seeking out the bomb, and that it would be difficult to build a weapon or use one that has been stolen.

#### No scenario for nuclear terror---consensus of experts

Matt Fay 13, PhD student in the history department at Temple University, has a Bachelor’s degree in Political Science from St. Xavier University and a Master’s in International Relations and Conflict Resolution with a minor in Transnational Security Studies from American Military University, 7/18/13, “The Ever-Shrinking Odds of Nuclear Terrorism”, webcache.googleusercontent.com/search?q=cache:HoItCUNhbgUJ:hegemonicobsessions.com/%3Fp%3D902+&cd=1&hl=en&ct=clnk&gl=us&client=firefox-a

For over a decade now, one of the most oft-repeated threats raised by policymakers—the one that in many ways justified the invasion of Iraq—has been that of nuclear terrorism. Officials in both the Bush and Obama administrations, including the presidents themselves, have raised the specter of the atomic terrorist. But beyond mere rhetoric, how likely is a nuclear terrorist attack really?¶ While pessimistic estimates about America’s ability to avoid a nuclear terrorist attack became something of a cottage industry following the September 11th attacks, a number of scholars in recent years have pushed back against this trend. Frank Gavin has put post-9/11 fears of nuclear terrorism into historical context (pdf) and argued against the prevailing alarmism. Anne Stenersen of the Norwegian Defence Research Establishment has challenged the idea that al Qaeda was ever bound and determined to acquire a nuclear weapon. John Mueller ridiculed the notion of nuclear terrorism in his book Atomic Obsessions and highlighted the numerous steps a terrorist group would need to take—all of which would have to be successful—in order to procure, deliver, and detonate an atomic weapon. And in his excellent, and exceedingly even-handed, treatment of the subject, On Nuclear Terrorism, Michael Levi outlined the difficulties terrorists would face building their own nuclear weapon and discussed how a “system of systems” could be developed to interdict potential materials smuggled into the United States—citing a “Murphy’s law of nuclear terrorism” that could possibly dissuade terrorists from even trying in the first place.¶ But what about the possibility that a rogue state could transfer a nuclear weapon to a terrorist group? That was ostensibly why the United States deposed Saddam Hussein’s regime: fear he would turnover one of his hypothetical nuclear weapons for al Qaeda to use.¶ Enter into this discussion Keir Lieber and Daryl Press and their article in the most recent edition of International Security, “Why States Won’t Give Nuclear Weapons to Terrorists.” Lieber and Press have been writing on nuclear issues for just shy of a decade—doing innovative, if controversial work on American nuclear strategy. However, I believe this is their first venture into the debate over nuclear terrorism. And while others, such as Mueller, have argued that states are unlikely to transfer nuclear weapons to terrorists, this article is the first to tackle the subject with an empirical analysis.¶ The title of their article nicely sums up their argument: states will not turn over nuclear weapons terrorists. To back up this claim, Lieber and Press attack the idea that states will transfer nuclear weapons to terrorists because terrorists operate of absent a “return address.” Based on an examination of attribution following conventional terrorist attacks, the authors conclude:¶ [N]either a terror group nor a state sponsor would remain anonymous after a nuclear attack. We draw this conclusion on the basis of four main findings. First, data on a decade of terrorist incidents reveal a strong positive relationship between the number of fatalities caused in a terror attack and the likelihood of attribution. Roughly three-quarters of the attacks that kill 100 people or more are traced back to the perpetrators. Second, attribution rates are far higher for attacks on the U.S. homeland or the territory of a major U.S. ally—97 percent (thirty-six of thirty-seven) for incidents that killed ten or more people. Third, tracing culpability from a guilty terrorist group back to its state sponsor is not likely to be difficult: few countries sponsor terrorism; few terrorist groups have state sponsors; each sponsor terrorist group has few sponsors (typically one); and only one country that sponsors terrorism, has nuclear weapons or enough fissile material to manufacture a weapon. In sum, attribution of nuclear terror incidents would be easier than is typically suggested, and passing weapons to terrorists would not offer countries escape from the constraints of deterrence.¶ From this analysis, Lieber and Press draw two major implications for U.S. foreign policy: claims that it is impossible to attribute nuclear terrorism to particular groups or potential states sponsors undermines deterrence; and fear of states transferring nuclear weapons to terrorist groups, by itself, does not justify extreme measures to prevent nuclear proliferation.¶ This is a key point. While there are other reasons nuclear proliferation is undesirable, fears of nuclear terrorism have been used to justify a wide-range of policies—up to, and including, military action. Put in its proper perspective however—given the difficulty in constructing and transporting a nuclear device and the improbability of state transfer—nuclear terrorism hardly warrants the type of exertions many alarmist assessments indicate it should.