## 1AC

### 1AC Credibility

#### US human rights promotion inevitable- but the double standard created by Guantanamo prevents that promotion from being credible

Hidayat 8/21 (Syarif- editor of the Mi’raj News Agency, 2013, “GITMO PRISON SHOWS THE US HYPOCRISY AND DOUBLE STANDARDS ON HUMAN RIGHTS”, http://mirajnews.com/en/article/opinion/7121-gitmo-prison-shows-the-us-hypocrisy-and-double-standards-on-human-rights.html)

The double standards of the renowned world preacher of human rights and the hypocrisy of US imperialism’s pretense of promoting human rights on the world arena is demonstrated in Washington’s decision to maintain Guantanamo prison and torture camps. President Barack Obama had decided to give $50 million to keep Guantanamo open indefinitely in a gross violation of his election promise. President Obama promised to close Guantanamo as part of his election campaign in 2008. Islamic community leaders in the UK and the US urge Obama to stop force-feeding Gitmo detainees during Ramadan.¶ “Anywhere that human rights are under threat, the United States will proudly stand up, unabashedly, and continue to promote greater freedom, greater openness, and greater opportunity for all people. And that means speaking up when those rights are imperiled. It means providing support and training to those who are risking their lives every day so that their children can enjoy more freedom. It means engaging governments at the highest levels and pushing them to live up to their obligations to do right by their people.” - Secretary of State John Kerry, April 2013.¶ Every year, the U.S. State Department releases a report on the status of human rights in countries around the world. Every year, one country is notably missing from this report — the United States.¶ “Our world is complex and increasingly influenced by non-state actors – brave civil society activists and advocates, but also violent extremists, transnational criminals, and other malevolent actors. In those places where human rights and fundamental freedoms are denied, it is far easier for these negative destabilizing influences to take hold, threatening international stability and our own national security.”¶ “It is in our interest to promote the universal rights of all persons. Governments that respect human rights are more peaceful and more prosperous. They are better neighbors, stronger allies, and better economic partners. Governments that enforce safe workplaces, prohibit exploitative child and forced labor, and educate their citizens create a more level playing field and broader customer base for the global marketplace. Conversely, governments that threaten regional and global peace, from Iran to North Korea, are also egregious human rights abusers, with citizens trapped in the grip of domestic repression, economic deprivation, and international isolation.” ¶ “The United States stands with people and governments that aspire to freedom and democracy, mindful from our own experience that the work of building a more perfect union – a sustainable and durable democracy – will never be complete. As part of this commitment, we advocate around the world for governments to adopt policies and practices that respect human rights regardless of ethnicity, religion, gender, race, sexual orientation, or disability; that allow for and honor the results of free and fair elections; that ensure safe and healthy workplaces; and that respect peaceful protests and other forms of dissent. The United States continues to speak out unequivocally on behalf of the fundamental dignity and equality of all persons.” - Secretary of State John F. Kerry's Preface on the Department of State’s Country Reports on Human Rights Practices for 2012.¶ The international organization Human Rights Watch has said that the US is “hypocritical” when it criticizes other countries for violating human rights, because the situation in the US itself is far from perfect. Deputy Director of the Europe and Central Asia Division of Human Rights Watch Rachel Denber criticized Obama’s administration for not investigating into cases of torture in prisons under Bush the junior and in Guantanamo prison. America’s human rights hypocrisy: The human rights record of the United States was put under an international microscope, as the UN Human Rights Council issued 228 recommendations on how Washington can address violations. America has long been the self appointed global leader on human rights, pointing out the shortcomings of others. But now the tables have turned. According to the United Nations Human Rights Council, incidents of injustice are taking place on US soil.¶ The point was made in Geneva, Switzerland at the Human Rights Council’s first comprehensive review of Washington’s record. The council released a Universal Periodic Review Tuesday, listing 228 recommendations on how the US can do better. “Close Guantanamo and secret detention centers throughout the world, punish those people who torture, disappear and execute detainees arbitrarily,” said Venezuelan delegate German Mundarain Hernan. The US has dismissed many recommendations calling them political provocations by hostile countries.¶ Yet even America’s allies are highlighting grave flaws. France and Ireland are demanding Obama follow through on the promise to close Guantanamo Bay. Britain, Belgium and dozens of others have called on the US to abolish the death penalty. For many, it’s the ultimate hypocrisy. How can a state with roughly 3,000 people on death row lecture the world about humanity? Many say the prime example is Mumia abu Jamal, viewed by some as America’s very own political prisoner.¶ “The United States, the perpetrator of gross human right violations is using human rights as a political football against its enemies. Its enemies are not enemies because they violate human rights necessarily, but because the US wants to change the government in their country,” said Brian Becker, Director of A.N.S.W.E.R Coalition in Washington, DC. The country often criticizing adversaries like Syria, Iran and North Korea for oppressing its citizens, is now faced with defending domestic practices like indefinite detention, poor prison conditions, and racial profiling.¶

#### Lack of human rights application to detention policy limits SCOTUS influence and US human rights leadership

Gruber 11 (Aya- Professor of Law, University of Colorado Law School, 1/1, “An Unintended Casualty of the War on Terror”, http://scholarworks.gsu.edu/gsulr/vol27/iss2/12/)

As President Obama inches ever closer to embracing the “twilight zone” model of terrorism law, it would be wise to keep in mind the reputational harm the Bush administration’s war on terror caused the United States. One human rights advocate warned the Obama administration, “The results of the cases [tried in military commissions] will be suspect around the world. It is a tragic mistake to continue them.”200 More than just a source of embarrassment, there are real consequences to America’s sullied international reputation. Our experiments with “alternative” military justice not only affect our high court’s world influence, they operatively prevent the United States from assuming a leadership role in defining and defending international human rights. For example, in 2007, the Chinese government responded to the U.S. State Department’s annual human rights report by stating that America had no standing to comment on others’ human rights violations given its conduct of the war on terror. Specifically, the Chinese characterized the United States as “pointing the finger” at other nations while ignoring its “flagrant record of violating the Geneva Convention.”201 Supreme Court validation of treaty law would no doubt help repair the international reputation of the United States.202 The lesson here is about fear and missed opportunity. Guantánamo stands as a stark reminder of the great importance of international humanitarian law during times of crisis. The Geneva Conventions were the very barrier between terrorism detainees and a government regime singularly committed to national security through any means possible. Unfortunately, when international law mattered most, even the liberal Supreme Court justices avoided cementing its legal status. By contrast, Medellín, a convicted murderer, was apparently afforded the full panoply of constitutional protections, and in all likelihood, his inability to confer with consular officials did not prejudice his case. Much less was at stake, and those on the Supreme Court critical of humanitarian law impediments to waging the war on terror could fashion anti-internationalist rules with little public fanfare or liberal resistance. Consequently, although Hamdan will likely go down in history as evidence of the Court’s willingness to protect individual rights in the face of massive public fear and executive pressure, it also represents a failure to truly support the comprehensive international regime governing war-time detention, a regime in which the United States long ago vowed to participate. But all may not be lost. The Supreme Court might have another chance to rule on the status of the Geneva Conventions, and Medellín leaves some wiggle room on self-execution. If the Supreme Court is once again to be a beacon of judicial light, it must move beyond the xenophobic exceptionalism of the Bricker past and embrace the straightforward and fair principle that signed and ratified treaties are the law of the land.

#### Court application of customary international law is key to international credibility- forcing congressional clarification is key

Kundmueller 2 (Michelle University of Notre Dame, Candidate for J.D. and M.A. in Political Theory 2004, , 28 J. Legis. 359, p. lexis)

This Note has attempted to demonstrate some of the difficulties of applying customary international law in U.S. courts. At every level, there are unanswered questions. Many of these issues, like how "general" a practice or its acceptance must be in order to constitute customary international law, can only be given imprecise answers. Not only are these general problems inherent in all legal questions involving line-drawing in the defining of customary international law, but there is a virtual war being waged over where that line should be drawn and by whom. This issue, in turn, raises questions of constitutional importance, the gravity of which it is almost impossible to overstate. Practical concerns about the balance of powers, no less than theoretical misgivings over undermining our government's consent based authority and legitimacy, demand our attention as the possibility of directly incorporating customary international law, perhaps even when in direct contravention of federal statute, comes closer to becoming a reality.¶ Current cases do not present any of these possibilities as realities. They do, however, contain the beginnings of what could become fundamental structural changes in customary--and hence, United States--law should the judicial system prove dominant in determining customary international law. Current cases show U.S. courts, on a fairly modest level, defining, determining, and applying customary international law. The cases have yet to produce a real showdown between domestic, either constitutional or congressional, and customary law. To date, congressional and executive actions and statements have been taken as one type of evidence in determining the content of customary international law, but they have not served as dispositive or controlling in the face of overwhelming evidence that customary international law as a whole dictates a contrary outcome.¶ This, of course, is the real issue. What happens when the will of the people or a dictate of the Constitution conflicts directly with customary international law? No doubt, our courts will do their best to interpret creatively so as to avoid such a conflict, but, eventually, the conflict will come, and a decision will be made. The conflict is inevitable due to the nature of modern customary international law. No longer delegated to issues traditionally understood as exterior, modern customary international law is beginning to define relationships between governments and their citizens and amongst citizens. [\*378] ¶ The conclusions of this Note are three. First, there is an impending constitutional crisis, with the potential to alter the fundamental structure of our laws and the legal authority (if not the power) of the American people. Second, in this eminent struggle, Congress ought to take the lead, controlling through legislation the authority of customary international law in domestic matters and thus circumventing the potential conflict between international and domestic law by upholding the supremacy of U.S. law in domestic matters. The courts will by necessity play a crucial role, for they must concur that this role belongs to the legislature and that federal law is supreme. Third, U.S. courts must, in their role as interpreters of customary international law, hold ever present in their determinations the recognized definition of customary law, which encompasses both a custom and a convention element: the practice of nations ought not be ignored. By this means, they will be surer of applying customary international law as it exists, rather than as courts and commentators wish it to be.

#### US key to global international law frameworks

Schulz 9 (William F. Schulz 9 is Senior Fellow, Center for American Progress, "The Future of Human Rights: Restoring America’s Leadership," [www.policyarchive.org/handle/10207/bitstreams/10918.pdf](http://www.policyarchive.org/handle/10207/bitstreams/10918.pdf))

What has been far more problematic over the last few years than random disparities between domestic and international interpretations of human rights law has been a fundamental disparagement of the authority of the international community itself. Such depreciation started early: in 2000 Condoleezza Rice, then foreign policy advisor to candidate George W. Bush, wrote in Foreign Affairs magazine, “Foreign policy in a Republican administration…will proceed from the firm ground of the national interest, not from the interests of an illusory international community [emphasis added].” Over the past seven years the U.S. has repeatedly demonstrated its contempt for that allegedly chimerical community by doing such things as “unsigning” the Rome statute of the International Criminal Court (ICC); declaring the Geneva Conventions inapplicable to prisoners at Guantanamo Bay and other so-called “unlawful combatants;” ignoring UN findings and resolutions in the run-up to the Iraq War; or refusing to stand for election to the UN Human Rights Council. The consequences have been devastating for the reputations both of the U.S., which has seen its favorability ratings drop precipitously around the world,5 and, paradoxically, of human rights themselves. The U.S. has long prided itself on being a champion of human rights and with much good reason. We would have had no Universal Declaration of Human Rights had it not been for Eleanor and Franklin Roosevelt; the U.S. pushed hard for the civil rights provisions of the Helsinki Accords, thereby contributing to the eventual liberation of Eastern Europe; the U.S. judicial system with its wide array of due process protections has been a model emulated by newly emerging countries around the world; U.S. diplomats have frequently intervened on behalf of political dissidents; the Kosovo War was spearheaded by an American commitment to prevent ethnic cleansing; and the annual State Department human rights reports have long been an invaluable resource to the cause of human rights. The current U.S. administration’s commitment to battling HIV/AIDS in Africa and its outspokenness on Darfur are consistent with this tradition. But for the most powerful nation in the world, long looked to as a model of human rights virtue, to undermine the international system itself—the very framework upon which human rights are predicated—is to cause immeasurable damage to the struggle for liberty. Backtracking on our commitments to international treaties and norms in the name of defending human rights is not just ironic. One of the consequences of the Iraq War with its latter-day human rights rationale and of the “War on Terror” with its oft-stated goals of defending freedom and the rule of law is that human rights themselves have come to be identified with America’s worldwide ambitions. For human rights to be conflated with, fairly or not, in the words of the critic David Rieff, “the official ideology of American empire,”6 only exacerbates the customary suspicion in which human rights have been held by some in the developing world who see them as a guise for the imposition of Western values. The truth is that if human rights and the U.S.’s pursuit of them are discredited, American interests are put in peril. Reserving the option to torture prisoners, denying them habeas corpus, sending them into “black site” prisons—all this makes it harder to defend America against the charge of hypocrisy; the claim that we are carrying out a war in defense of the rule of law by abandoning that very rule. Such a charge hands fodder for recruitment to our adversaries and makes the world less safe for Americans. No country can claim protection for its own citizens overseas (be they soldiers taken as prisoners, nationals charged with crimes, or corporations faced with extortion) if it fails to respect international norms at home. . Nor can the U.S. offer effective objection to the human rights violations of others if it is guilty of those same violations itself or has shunned cooperation with international allies. No nation, no matter how powerful, can successfully pursue improvements in human rights around the world independent of the international community. Unilateral sanctions imposed upon a country to protest human rights abuses will inevitably fail if they lack the support of others

#### The creation of an international standard for detention in accordance with humanitarian law solves multiple inevitable conflict scenarios- specifically climate change instability

Hilde 9 (Thomas C. Hilde is a professor at the university of Maryland school of Public Policy where he teaches seminars in ethics and policy and international environmental and development law and politics, 2009, “Beyond Guantánamo Restoring U.S. Credibility on Human Rights”, <http://www.lb.boell.org/downloads/Beyond_Guantanamo.pdf>) \*text amended after pasting troubles (g=>G)

There is also a difference in the legal treatment of captured “enemy combatants” and ordinary prisoners of war. While trying to prevent future killings, security agencies worried that existing instruments were insufficient to fulfill this task. to solve the dilemma, the former us administration tried to formulate a third category of law, aside from existing civil law and martial law with its respective international conventions. The military commissions, external detention camps like Guantánamo or Abu Ghraib and the euphemistically described “enhanced interrogation methods” are the practical results of that political approach. Former government officials argue that this policy prevented the country from another attack like the one the nation suffered on 9/11/2001. Even if this were true, however, this policy never solved the dilemma in asymmetrical wars of how to prosecute “enemy combatants” in accordance with humanitarian international law. Moreover, “enhanced interrogation methods” not only harmed human rights credibility and undermined the integrity of liberal democracies; the officially decreed use of torture in Abu Ghraib, Guantánamo and possibly other places in the early years of the Iraq war also led to counterproductive results. it played directly into the hands of extremist islamic recruiters, making their job much easier. As President Barack Obama said, “the existence of Guantánamo likely created more terrorists around the world than it ever detained.” The new us administration inherited this dilemma. closing down Guantánamo alone will not solve it. Even worse, conflicts in Afghanistan and Pakistan as well as with pirates off the east African coast continue to require the capture of combatants in asymmetric constellations. In the years ahead, an increase in new or outbreak of existing conflicts is to be expected. Climate change as a threat multiplier will contribute to the fight over resource access through food and water scarcities, natural disasters, and migration. Religion will continue to be misused as a pretext in conflicts about social injustice in the course of globalization. in other words, there is an urgent need for international legal arrangements to help provide security to citizens and prosecute those engaged in terrorism, while at the same time respecting the rule of law and thus the integrity of liberal democracies. As Thomas Hilde rightly explains, Guantánamo is not an American problem alone. Europeans also failed to live up to their own human rights standards. investigative committees of various institutions revealed that european governments did not oppose the us policy choices for treating “enemy combatants” in the “global War On terror.” they either quietly allowed secret activities of the CIA on European soil or made use of information gained through “harsh interrogations,”

#### Absent cooperation- climate change instability escalates

**Werz & Conley 12** - Senior Fellow @American Progress where his work as member of the National Security Team focuses on the nexus of climate change, migration, and security and emerging democracies & Research Associate for National Security and International Policy @ the Center for American Progress [Michael Werz & Laura Conley, “Climate Change, Migration, and Conflict: Addressing complex crisis scenarios in the 21st Century,” Center for American Progress, January 2012]

The costs and consequences of climate change on our world will define the 21st century. Even if nations across our planet were to take immediate steps to rein in carbon emissions—an unlikely prospect—a warmer climate is inevitable. As the U.N. Intergovernmental Panel on Climate Change, or IPCC, noted in 2007, human-created “warming of the climate system is unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice and rising global average sea level.”1¶ As these ill effects progress they will have serious implications for U.S. national security interests as well as global stability—extending from the sustainability of coastal military installations to the stability of nations that lack the resources, good governance, and resiliency needed to respond to the many adverse consequences of climate change. And as these effects accelerate, the stress will impact human migration and conflict around the world.¶ It is difficult to fully understand the detailed causes of migration and economic and political instability, but the growing evidence of links between climate change, migration, and conflict raise plenty of reasons for concern. This is why it’s time to start thinking about new and comprehensive answers to multifaceted crisis scenarios brought on or worsened by global climate change. As Achim Steiner, executive director of the U.N. Environment Program, argues, “The question we must continuously ask ourselves in the face of scientific complexity and uncertainty, but also growing evidence of climate change, is at what point precaution, common sense or prudent risk management demands action.”2 In the coming decades climate change will increasingly threaten humanity’s shared interests and collective security in many parts of the world, disproportionately affecting the globe’s least developed countries. Climate change will pose challenging social, political, and strategic questions for the many different multinational, regional, national, and nonprofit organizations dedicated to improving the human condition worldwide. Organizations as different as Amnesty International, the U.S. Agency for International Development, the World Bank, the International Rescue Committee, and the World Health Organization will all have to tackle directly the myriad effects of climate change.¶ Climate change also poses distinct challenges to U.S. national security. Recent intelligence reports and war games, including some conducted by the U.S. Department of Defense, conclude that over the next two or three decades, vulnerable regions (particularly sub-Saharan Africa, the Middle East, South and Southeast Asia) will face the prospect of food shortages, water crises, and catastrophic flooding driven by climate change. These developments could demand U.S., European, and international humanitarian relief or military responses, often the delivery vehicle for aid in crisis situations.¶ This report provides the foundation and overview for a series of papers focusing on the particular challenges posed by the cumulative effects of climate change, migration, and conflict in some of our world’s most complex environments. In the papers following this report, we plan to outline the effects of this nexus in northwest Africa, in India and Bangladesh, in the Andean region of South America, and in China. In this paper we detail that nexus across our planet and offer wide ranging recommendations about how the United States, its allies in the global community, and the community at large can deal with the coming climate-driven crises with comprehensive sustainable security solutions encompassing national security, diplomacy, and economic, social, and environmental development. ¶ Here, we briefly summarize our arguments and our conclusions.¶ The nexus¶ The Arab Spring can be at least partly credited to climate change. Rising food prices and efforts by authoritarian regimes to crush political protests were linked first to food and then to political repression—two important motivators in the Arab makeover this past year.¶ To be sure, longstanding economic and social distress and lack of opportunity for so many Arab youth in the Middle East and across North Africa only needed a spark to ignite revolutions across the region. But environmental degradation and the movement of people from rural areas to already overcrowded cities alongside rising food prices enabled the cumulative effects of long-term economic and political failures to sweep across borders with remarkable agility. It does not require much foresight to acknowledge that other effects of climate change will add to the pressure in the decades to come. In particular the cumulative overlays of climate change with human migration driven by environmental crises, political conflict caused by this migration, and competition for more scarce resources will add new dimensions of complexity to existing and future crisis scenarios. It is thus critical to understand how governments plan to answer and prioritize these new threats from climate change, migration, and conflict.¶ Climate change¶ Climate change alone poses a daunting challenge. No matter what steps the global community takes to mitigate carbon emissions, a warmer climate is inevitable. The effects are already being felt today and will intensify as climate change worsens. All of the world’s regions and nations will experience some of the effects of this transformational challenge.¶ Here’s just one case in point: African states are likely to be the most vulnerable to multiple stresses, with up to 250 million people projected to suffer from water and food insecurity and, in low-lying areas, a rising sea level.3 As little as 1 percent of Africa’s land is located in low-lying coastal zones but this land supports 12 percent of its urban population.4¶ Furthermore, a majority of people in Africa live in lower altitudes—including the Sahel, the area just south of the Sahara—where the worst effects of water scarcity, hotter temperatures, and longer dry seasons are expected to occur.5 These developments may well be exacerbated by the lack of state and regional capacity to manage the effects of climate change. These same dynamics haunt many nations in Asia and the Americas, too, and the implications for developed countries such as the United States and much of Europe will be profound.¶ Migration¶ Migration adds another layer of complexity to the scenario. In the 21st century the world could see substantial numbers of climate migrants—people displaced by either the slow or sudden onset of the effects of climate change. The United Nations’ recent Human Development Report stated that, worldwide, there are already an estimated 700 million internal migrants—those leaving their homes within their own countries—a number that includes people whose migration isrelated to climate change and environmental factors. Overall migration across national borders is already at approximately 214 million people worldwide,6 with estimates of up to 20 million displaced in 2008 alone because of a rising sea level, desertification, and flooding.7¶ One expert, Oli Brown of the International Institute for Sustainable Development, predicts a tenfold increase in the current number of internally displaced persons and international refugees by 2050.8 It is important to acknowledge that there is no consensus on this estimate. In fact there is major disagreement among experts about how to identify climate as a causal factor in internal and international migration. But even though the root causes of human mobility are not always easy to decipher, the policy challenges posed by that movement are real. A 2009 report by the International Organization for Migration produced in cooperation with the United Nations University and the Climate Change, Environment and Migration Alliance cites numbers that range from “200 million to 1 billion migrants from climate change alone, by 2050,”9 arguing that “environmental drivers of migration are often coupled with economic, social and developmental factors that can accelerate and to a certain extent mask the impact of climate change.”¶ The report also notes that “migration can result from different environmental factors, among them gradual environmental degradation (including desertification, soil and coastal erosion) and natural disasters (such as earthquakes, floods or tropical storms).”10 (See box on page 15 for a more detailed definition of climate migrants.) Clearly, then, climate change is expected to aggravate many existing migratory pressures around the world. Indeed associated extreme weather events resulting in drought, floods, and disease are projected to increase the number of sudden humanitarian crises and disasters in areas least able to cope, such as those already mired in poverty or prone to conflict.11¶ Conflict¶ This final layer is the most unpredictable, both within nations and transnationally, and will force the United States and the international community to confront climate and migration challenges within an increasingly unstructured local or regional security environment. In contrast to the great power conflicts and the associated proxy wars that marked most of the 20th century, the immediate post- Cold War decades witnessed a diffusion of national security interests and threats. U.S. national security policy is increasingly integrating thinking about nonstate actors and nontraditional sources of conflict and instability, for example in the fight against Al Qaeda and its affiliated groups.¶ Climate change is among these newly visible issues sparking conflict. But because the direct link between conflict and climate change is unclear, awareness of the indirect links has yet to lead to substantial and sustained action to address its security implications. Still the potential for the changing climate to induce conflict or exacerbate existing instability in some of the world’s most vulnerable regions is now recognized in national security circles in the United States, although research gaps still exists in many places.¶ The climate-conflict nexus was highlighted with particular effect by the current U.S. administration’s security-planning reviews over the past two years, as well as the Center for Naval Analysis, which termed climate change a “threat multiplier,” indicating that it can exacerbate existing stresses and insecurity.12 The Pentagon’s latest Quadrennial Defense Review also recognized climate change as an “accelerant of instability or conflict,” highlighting the operational challenges that will confront U.S. and partner militaries amid a rising sea level, growing extreme weather events, and other anticipated effects of climate change.13 The U.S. Department of Defense has even voiced concern for American military installations that may be threatened by a rising sea level.14¶ There is also well-developed international analysis on these points. The United Kingdom’s 2010 Defense Review, for example, referenced the security aspects of climate change as an evolving challenge for militaries and policymakers. Additionally, in 2010, the Nigerian government referred to climate change as the “greatest environmental and humanitarian challenge facing the country this century,” demonstrating that climate change is no longer seen as solely scientific or environmental, but increasingly as a social and political issue cutting across all aspects of human development.15¶ As these three threads—climate change, migration, and conflict—interact more intensely, the consequences will be far-reaching and occasionally counterintuitive. It is impossible to predict the outcome of the Arab Spring movement, for example, but the blossoming of democracy in some countries and the demand for it in others is partly an unexpected result of the consequences of climate change on global food prices. On the other hand, the interplay of these factors will drive complex crisis situations in which domestic policy, international policy, humanitarian assistance, and security converge in new ways.¶ Areas of concern¶ Several regional hotspots frequently come up in the international debate on climate change, migration, and conflict. Climate migrants in northwest Africa, for example, are causing communities across the region to respond in different ways, often to the detriment of regional and international security concerns. Political and social instability in the region plays into the hands of organizations such as Al Qaeda in the Islamic Maghreb. And recent developments in Libya, especially the large number of weapons looted from depots after strongman Moammar Qaddafi’s regime fell— which still remain unaccounted for—are a threat to stability across North Africa. Effective solutions need not address all of these issues simultaneously but must recognize the layers of relationships among them. And these solutions must also recognize that these variables will not always intersect in predictable ways. While some migrants may flee floodplains, for example, others may migrate to them in search of greater opportunities in coastal urban areas.16¶ Bangladesh, already well known for its disastrous floods, faces rising waters in the future due to climate-driven glacial meltdowns in neighboring India. The effects can hardly be over. In December 2008 the National Defense University in Washington, D.C., ran an exercise that explored the impact of a flood that sent hundreds of thousands of refugees into neighboring India. The result: the exercise predicted a new wave of migration would touch off religious conflicts, encourage the spread of contagious diseases, and cause vast damage to infrastructure. India itself is not in a position to absorb climate-induced pressures—never mind foreign climate migrants. The country will contribute 22 percent of global population growth and have close to 1.6 billion inhabitants by 2050, causing demographic developments that are sure to spark waves of internal migration across the country.¶ Then there’s the Andean region of South America, where melting glaciers and snowcaps will drive climate, migration, and security concerns. The average rate of glacial melting has doubled over the past few years, according to the World Glacier Monitoring Service.17 Besides Peru, which faces the gravest consequences in Latin America, a number of other Andean countries will be massively affected, including Bolivia, Ecuador, and Colombia. This development will put water security, agricultural production, and power generation at risk—all factors that could prompt people to leave their homes and migrate. The IPCC report argues that the region is especially vulnerable because of its fragile ecosystem.18¶ Finally, China is now in its fourth decade of ever-growing internal migration, some of it driven in recent years by environmental change. Today, across its vast territory, China continues to experience the full spectrum of climate change related consequences that have the potential to continue to encourage such migration. The Center for a New American Security recently found that the consequences of climate change and continued internal migration in China include “water stress; increased droughts, flooding, or other severe events; increased coastal erosion and saltwater inundation; glacial melt in the Himala as that could affect hundreds of millions; and shifting agricultural zones”—all of which will affect food supplies. 19 Pg. 1-7

#### Effective international institutions solve disease spread- also puts a cap of warfare

Deudney and Ikenberry 9 (Daniel and John, Professor of Political Science at Johns Hopkins University and Professor of Politics and International Affairs at Princeton, "The Myth of Autocratic Revivial: Why Liberal Democracy Will PRevail," Foreign AFfairs, Jan/Feb, Vol. 88, Issue 1, EBSCO))

TWO decades of post-Cold War liberal triumph, U.S. foreign policy is being challenged by the return of an old antiliberal vision. According to this vision, the world is not marching toward universal liberal democracy and "the end of history." Rather, it is polarizing into different camps and entering an era of rivalry between Western liberal states and dangerous autocracies, most notably China and Russia. Unlike the autocracies that failed so spectacularly in the twentieth century, today's autocracies are said to be not only compatible with capitalist success but also representative of a rival form of capitalism. And their presence in the international system supposedly foreshadows growing competition and conflict and is dangerously undermining the prospect of global cooperation. Several recent developments seem to support this emerging view. Democratic transitions have stalled and reversed. In China, the Communist Party dictatorship has weathered domestic challenges while presiding over decades of rapid economic growth and capitalist modernization. Rising oil prices have empowered autocratic regimes. In Russia, Vladimir Putin's government rolled back democratic gains and became increasingly autocratic. At the same time, relations between Russia and the West have deteriorated from the near amity of the early post-Cold War era, and China and the West remain divided over Taiwan, human rights, and oil access. Meanwhile, much less powerful autocratic states, such as Venezuela and Iran, are destabilizing their regions. There even appear to be signs that these autocratic states are making common cause against the liberal Western states, with nascent alliances such as the Shanghai Cooperation Organization. The United Nations, and particularly the Security Council, has returned to the paralysis of the Cold War. In this view, the liberal West faces a bleak future. The new prophets of autocratic revival draw important foreign policy implications from their thesis. One of the most forceful exponents of this new view, Robert Kagan, insists that it is time for the United States and the other liberal democracies to abandon their expectations of global convergence and cooperation. Instead, they should strengthen ties among themselves, perhaps even through a formal "league of democracies," and gird themselves for increasing rivalry and conflict with the resurgent autocracies. Containment rather than engagement, military rivalry rather than arms control, balance of power rather than concert of power — these should be, according to such theorists, the guideposts for U.S. foreign policy. Fortunately, this new conventional wisdom about autocratic revival is as much an exaggeration of a few years of headlines as was the proclamation of the end of history at the end of the Cold War. The proposition that autocracies have achieved a new lease on life and are emerging today as a viable alternative within the global capitalist system is wrong. Just as important, the policies promoted by the autocratic revivalists are unlikely to be successful and, if anything, would be counterproductive — driving autocracies away from the liberal system and thereby creating a self-fulfilling prophecy. Although today's autocracies may be more competent and more adept at accommodating capitalism than their predecessors were, they are nonetheless fundamentally constrained by deep-seated incapacities that promise to limit their viability over the long run. Ultimately, autocracies will move toward liberalism. The success of regimes such as those in China and Russia is not a refutation of the liberal vision; the recent success of autocratic states has depended on their access to the international liberal order, and they remain dependent on its success. Furthermore, the relentless imperatives of rising global interdependence create powerful and growing incentives for states to engage in international cooperation regardless of regime type. The resilience of autocracies calls not for abandoning or retreating from liberal internationalism but rather for refining and strengthening it. If liberal democratic states react to revived autocracies solely with policies of containment, arms competition, and exclusive bloc building, as neoconservatives advise, the result is likely to be a strengthening and encouragement of illiberal tendencies in these countries. In contrast, cooperatively tackling common global problems — such as climate change, energy security, and disease — will increase the stakes that autocratic regimes have in the liberal order. Western states must also find ways to accommodate rising states — whether autocratic or democratic — and integrate them into the governance of international institutions. Given the powerful logic that connects modernization and liberalization, autocratic regimes face strong incentives to liberalize. The more accommodating and appealing the liberal path is, the more quickly and easily the world's current illiberal powers will choose the path of political reform. NOT ONLY do the autocratic revival theorists posit an alternative form of capitalism, but they also envision renewed international rivalries. According to Kagan's version of the argument, the twenty-first century will look much like the nineteenth century. There will be a combination of great-power rivalries and a growing ideological and geopolitical divide between autocracies and democracies. Rivalry among great powers, independent of regime type, will be an increasingly salient feature of world politics, according to this view. Rising powers — most notably China, India, Japan, and Russia — will aspire to improve their international positions and establish hegemony within their regions. As the power of these states grows, their definition of their national interest will expand, placing them on a collision course with one another. Because their envisioned spheres of influence overlap, these rising states will come into increasing conflict and competition. In East Asia, China's rise will come at Japan's expense; China and India will be rivals for leadership in Southeast Asia; and Russia's attempt to reestablish its imperial sphere of influence will put it on a collision course with both China and Europe. In Kagan's view, this emerging great-power struggle will be exacerbated by several factors. All of the rising great powers have well-developed senses of grievance based on their historical experiences over the last two centuries of decline in the face of encroachment by European imperialism and by one another. China's aspirations and view of itself are heavily shaped by the historical experience of its decline from the Middle Kingdom's hegemony in East Asia to the "century of humiliation," defined by predation by the Europeans and then by Japan in the 1930s and 1940s. Russia's narrative of grievance centers on the sudden loss of its centuries-old domination of eastern Europe, Ukraine, and Central Asia with the end of the Cold War. Another factor that will exacerbate the supposed coming great-power competition is the prospect of a nineteenth-century-style scramble for raw materials and markets. Tightening global oil supplies and voraciously rising demand presage a future of cutthroat mercantilist competition among the great powers. It is in combination with these factors that the regime divergence between autocracies and democracies will become increasingly dangerous. If all the states in the world were democracies, there would still be competition, but a world riven by a democratic-autocratic divergence promises to be even more conflictual. There are even signs of the emergence of an "autocrats international" in the Shanghai Cooperation Organization, made up of China, Russia, and the poorer and weaker Central Asian dictatorships. Overall, the autocratic revivalists paint the picture of an international system marked by rising levels of conflict and competition, a picture quite unlike the "end of history" vision of growing convergence and cooperation. This bleak outlook is based on an exaggeration of recent developments and ignores powerful countervailing factors and forces. Indeed, contrary to what the revivalists describe, the most striking features of the contemporary international landscape are the intensification of economic globalization, thickening institutions, and shared problems of interdependence. The overall structure of the international system today is quite unlike that of the nineteenth century. Compared to older orders, the contemporary liberal-centered international order provides a set of constraints and opportunities — of pushes and pulls — that reduce the likelihood of severe conflict while creating strong imperatives for cooperative problem solving. Those invoking the nineteenth century as a model for the twenty-first also fail to acknowledge the extent to which war as a path to conflict resolution and great-power expansion has become largely obsolete. Most important, nuclear weapons have transformed great-power war from a routine feature of international politics into an exercise in national suicide. With all of the great powers possessing nuclear weapons and ample means to rapidly expand their deterrent forces, warfare among these states has truly become an option of last resort. The prospect of such great losses has instilled in the great powers a level of caution and restraint that effectively precludes major revisionist efforts. Furthermore, the diffusion of small arms and the near universality of nationalism have severely limited the ability of great powers to conquer and occupy territory inhabited by resisting populations (as Algeria, Vietnam, Afghanistan, and now Iraq have demonstrated). Unlike during the days of empire building in the nineteenth century, states today cannot translate great asymmetries of power into effective territorial control; at most, they can hope for loose hegemonic relationships that require them to give something in return. Also unlike in the nineteenth century, today the density of trade, investment, and production networks across international borders raises even more the costs of war. A Chinese invasion of Taiwan, to take one of the most plausible cases of a future interstate war, would pose for the Chinese communist regime daunting economic costs, both domestic and international. Taken together, these changes in the economy of violence mean that the international system is far more primed for peace than the autocratic revivalists acknowledge. The autocratic revival thesis neglects other key features of the international system as well. In the nineteenth century, rising states faced an international environment in which they could reasonably expect to translate their growing clout into geopolitical changes that would benefit themselves. But in the twenty-first century, the status quo is much more difficult to overturn. Simple comparisons between China and the United States with regard to aggregate economic size and capability do not reflect the fact that the United States does not stand alone but rather is the head of a coalition of liberal capitalist states in Europe and East Asia whose aggregate assets far exceed those of China or even of a coalition of autocratic states. Moreover, potentially revisionist autocratic states, most notably China and Russia, are already substantial players and stakeholders in an ensemble of global institutions that make up the status quo, not least the UN Security Council (in which they have permanent seats and veto power). Many other global institutions, such as the International Monetary Fund and the World Bank, are configured in such a way that rising states can increase their voice only by buying into the institutions. The pathway to modernity for rising states is not outside and against the status quo but rather inside and through the flexible and accommodating institutions of the liberal international order. The fact that these autocracies are capitalist has profound implications for the nature of their international interests that point toward integration and accommodation in the future. The domestic viability of these regimes hinges on their ability to sustain high economic growth rates, which in turn is crucially dependent on international trade and investment; today's autocracies may be illiberal, but they remain fundamentally dependent on a liberal international capitalist system. It is not surprising that China made major domestic changes in order to join the WTO or that Russia is seeking to do so now. The dependence of autocratic capitalist states on foreign trade and investment means that they have a fundamental interest in maintaining an open, rule-based economic system. (Although these autocratic states do pursue bilateral trade and investment deals, particularly in energy and raw materials, this does not obviate their more basic dependence on and commitment to the WTO order.) In the case of China, because of its extensive dependence on industrial exports, the WTO may act as a vital bulwark against protectionist tendencies in importing states. Given their position in this system, which so serves their interests, the autocratic states are unlikely to become champions of an alternative global or regional economic order, let alone spoilers intent on seriously damaging the existing one. The prospects for revisionist behavior on the part of the capitalist autocracies are further reduced by the large and growing social networks across international borders. Not only have these states joined the world economy, but their people — particularly upwardly mobile and educated elites — have increasingly joined the world community. In large and growing numbers, citizens of autocratic capitalist states are participating in a sprawling array of transnational educational, business, and avocational networks. As individuals are socialized into the values and orientations of these networks, stark: "us versus them" cleavages become more difficult to generate and sustain. As the Harvard political scientist Alastair Iain Johnston has argued, China's ruling elite has also been socialized, as its foreign policy establishment has internalized the norms and practices of the international diplomatic community. China, far from cultivating causes for territorial dispute with its neighbors, has instead sought to resolve numerous historically inherited border conflicts, acting like a satisfied status quo state. These social and diplomatic processes and developments suggest that there are strong tendencies toward normalization operating here. Finally, there is an emerging set of global problems stemming from industrialism and economic globalization that will create common interests across states regardless of regime type. Autocratic China is as dependent on imported oil as are democratic Europe, India, Japan, and the United States, suggesting an alignment of interests against petroleum-exporting autocracies, such as Iran and Russia. These states share a common interest in price stability and supply security that could form the basis for a revitalization of the International Energy Agency, the consumer association created during the oil turmoil of the 1970s. The emergence of global warming and climate change as significant problems also suggests possibilities for alignments and cooperative ventures cutting across the autocratic-democratic divide. Like the United States, China is not only a major contributor to greenhouse gas accumulation but also likely to be a major victim of climate-induced desertification and coastal flooding. Its rapid industrialization and consequent pollution means that China, like other developed countries, will increasingly need to import technologies and innovative solutions for environmental management. Resource scarcity and environmental deterioration pose global threats that no state will be able to solve alone, thus placing a further premium on political integration and cooperative institution building. Analogies between the nineteenth century and the twenty-first are based on a severe mischaracterization of the actual conditions of the new era. The declining utility of war, the thickening of international transactions and institutions, and emerging resource and environmental interdependencies together undercut scenarios of international conflict and instability based on autocratic-democratic rivalry and autocratic revisionism. In fact, the conditions of the twenty-first century point to the renewed value of international integration and cooperation. THE PROPHETS of autocratic revival propose a foreign policy for the United States and the other liberal democracies organized around the assumption that great-power rivalry and the autocratic-democratic divide will dominate in the coming decades. They advocate a foreign policy of confrontation, containment, and exclusion, and they advise liberal states to diminish their support for global cooperation and institution building. This foreign policy, were it to be implemented, would be a recipe for retreat and would risk creating a self-fulfilling prophecy. Instead, the underlying realities of the new era — and the incentives that all states face — underscore the need for a retooled and reinvigorated liberal internationalist program. A new liberal internationalism of consensus building and problem solving must take into account the circumstances and sensitivities of rising states while affirming the record of success and continuing relevance of the liberal democratic project. A successful foreign policy must start with an acknowledgment of the historically inherited vulnerabilities and grievances of the rising great powers and autocratic states. Autocratic government is partially appealing because it addresses the problems of ethnic separatism and territorial fragmentation that confront many contemporary states. For China, emerging from a long period of national humiliation and foreign encroachment, the territorial viability of the state hinges on the successful maintenance of control over the outlying regions of Manchuria, Taiwan, Tibet, and Xinjiang, which are occupied by restive ethnic groups seeking independence or autonomy. Similarly, Russia, shorn of much of its historical empire by the breakaway of the non-Russian republics at the end of the Cold War, presides over a vast territorial domain whose outlying areas are also inhabited by potentially secessionist peoples. For both China and Russia, nationalism and an ironhanded central state are appealing solutions to these centrifugal forces and important sources of legitimacy for the current regimes. As long as China and Russia view democratic opening and the norms of the liberal international system as threats to their territorial integrity, there will be severe upper limits on their willingness to be accommodating or to integrate themselves further into this system. In these circumstances, the foreign policy of the United States and the liberal democracies should be not to exacerbate these grievances and vulnerabilities but rather to mollify and ameliorate them. A successful foreign policy should also seek to integrate, rather than exclude, autocratic and rising great powers. Proposals to "draw up the gates" of the democratic world and exclude nondemocratic states — with measures such as the expulsion of Russia from the G-8 (the group of highly industrialized states) — promise to worsen relations and reinforce authoritarian rule. Instead, the United States and the other liberal democracies should seek to further integrate these states into existing international institutions by increasing their stakeholder roles within them. Proposals such as a "concert of democracies" should be configured to deepen cooperation among democratic states and reinforce global institutions rather than to confront nondemocratic states. The United States and the other democratic nations should take the initiative in solving global resource and environmental problems and produce global frameworks for problem solving that draw in nondemocratic states along the way. The democratic states should orient themselves to pragmatically address real and shared problems rather than focusing on ideological differences. Looking for alignments based on interests rather than regime type will further foreclose the unlikely coalescence of an antiliberal autocratic bloc. The foreign policy of the liberal states should continue to be based on the broad assumption that there is ultimately one path to modernity — and that it is essentially liberal in character. The liberal vision allows for considerable diversity based on historical experience and national difference. But autocratic capitalism is not an alternative model; it is only a way station on this path. How long states take in traversing this path will be shaped by many factors, some beyond the control of the liberal states. But a foreign policy appropriately calibrated to the real constraints and opportunities of the twenty-first century will facilitate this progression. Liberal states should not assume that history has ended, but they can still be certain that it is on their side. War as a path to conflict resolution and great-power expansion has become largely obsolete. Emerging global problems will create common interests across states regardless of regime type.

#### Disease spread leads to extinction

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Senate Majority Leader Frist describes the recent slew of emerging diseases in almost biblical terms: “All of these [new diseases] were advance patrols of a great army that is preparing way out of sight.”3146 Scientists like Joshua Lederberg don’t think this is mere rhetoric. He should know. Lederberg won the Nobel Prize in medicine at age 33 for his discoveries in bacterial evolution. Lederberg went on to become president of Rockefeller University. “Some people think I am being hysterical,” he said, referring to pandemic influenza, “but there are catastrophes ahead. We live in evolutionary competition with microbes—bacteria and viruses. There is no guarantee that we will be the survivors.”3147 There is a concept in host-parasite evolutionary dynamics called the Red Queen hypothesis, which attempts to describe the unremitting struggle between immune systems and the pathogens against which they fight, each constantly evolving to try to outsmart the other.3148 The name is taken from Lewis Carroll’s Through the Looking Glass in which the Red Queen instructs Alice, “Now, here, you see, it takes all the running you can do to keep in the same place.”3149 Because the pathogens keep evolving, our immune systems have to keep adapting as well just to keep up. According to the theory, animals who “stop running” go extinct. So far our immune systems have largely retained the upper hand, but the fear is that given the current rate of disease emergence, the **human race is losing the race**.3150 In a Scientific American article titled, “Will We Survive?,” one of the world’s leading immunologists writes: Has the immune system, then, reached its apogee after the few hundred million years it had taken to develop? Can it respond in time to the new evolutionary challenges? These perfectly proper questions lack sure answers because we are in an utterly unprecedented situation [given the number of newly emerging infections].3151 The research team who wrote Beasts of the Earth conclude, “Considering that bacteria, viruses, and protozoa had a more than two-billion-year head start in this war, a victory by recently arrived Homo sapiens would be remarkable.”3152 Lederberg ardently believes that emerging viruses may imperil human society itself. Says NIH medical epidemiologist David Morens, When you look at the relationship between bugs and humans, the more important thing to look at is the bug. When an enterovirus like polio goes through the human gastrointestinal tract in three days, its genome mutates about two percent. That level of mutation—two percent of the genome—has taken the human species eight million years to accomplish. So who’s going to adapt to whom? Pitted against that kind of competition, Lederberg concludes that the human evolutionary capacity to keep up “may be dismissed as almost totally inconsequential.”3153 To help prevent the evolution of viruses as threatening as H5N1, the least we can do is take away a few billion feathered test tubes in which viruses can experiment, a few billion fewer spins at pandemic roulette. The human species has existed in something like our present form for approximately 200,000 years. “Such a long run should itself give us confidence that our species will continue to survive, at least insofar as the microbial world is concerned. Yet such optimism,” wrote the Ehrlich prize-winning former chair of zoology at the University College of London, “might easily transmute into a tune whistled whilst passing a graveyard.”3154

### 1AC Afghanistan

#### Afghanistan will implement indefinite detention policies- their judiciary is modeled on the United States

Rodgers 12 (Chris Rogers is a human rights lawyer for the Open Society Foundations specializing in human rights and conflict in Afghanistan and Pakistan, May 14, “Karzai's bid for a dictatorial detention law”, http://afpak.foreignpolicy.com/posts/2012/05/14/karzais\_bid\_for\_a\_dictatorial\_detention\_law)

As part of the agreement to transfer control of Bagram, the Afghan government is creating the authority to hold individuals without charge or trial for an indefinite period of time on security grounds-a power it has never before said it needed. While such "administrative detention" regimes are permissible under the laws of war, this new detention power is being established in order to hand over a U.S. detention facility, not because changes in the conflict have convinced Afghan officials that it is necessary. A surge in U.S. detention operations like night raids has driven the prison population to over 3,000 detainees, most of whom the United States lacks evidence against for prosecution under Afghans law. Because the Afghan constitution, like the United States', protects individuals from being detained without charge or trial, the Afghan government needs a new detention law, which is now being modeled on deeply problematic U.S. detention policies and practices. As a result, Bagram's real legacy may be the establishment of a detention regime that will be ripe for abuse in a country with pervasive corruption and weak rule of law. Despite potentially far-reaching consequences, the development of this new detention power has been hidden from public view. When I met with leading Afghan lawyers and civil society organizations in Kabul several weeks ago, few knew that the government was proposing to create a new, non-criminal detention regime. Their reaction was disbelief and dismay. None had even seen a copy of the proposed regime, which the Afghan government has not made public and is trying to adopt by presidential fiat. The Open Society Foundations recently obtained a copy of the proposed detention regime, and after review, we have found what it details deeply troubling. The proposed changes leave open critical questions about the nature and scope of this proposed detention regime, which if left unanswered make it ripe for abuse. Who can be held in administrative detention and for how long? Where will it apply? When will the government cease to have this power? How will the government ensure it will not be abused to imprison the innocent or suppress political opposition? Most alarming is the failure to address the serious, long-term risks posed by such a regime. From apartheid South Africa to modern day China, administrative detention regimes adopted on security grounds have too often been used as tools of repression. In Egypt, the former government used administrative detention for decades to commit gross human rights violations and suppress political opposition, relying on a state of emergency declared in 1958, and nominally lifted only after last year's revolution. Across the border in Pakistan, the draconian Frontier Crimes Regulations are another stark reminder of the long, dark shadow that such legal regimes can cast. The ongoing imposition of these British, colonial-era laws, which among other things legalize collective punishment and detention without trial, are cited by many as a key driver of the rise of militancy in the tribal areas of Pakistan. But there is still time for the United States to avoid this legacy in Afghanistan. If the Afghan government cannot be dissuaded from adopting an administrative detention regime, then the United States should urge the Afghan government to include provisions that limit its scope and reduce its vulnerability to abuse. First, a ‘sunset' provision should be adopted, which would impose a time limit on such powers, or require an act by the Afghan Parliament to extend their duration. Second, the regime should be limited to individuals currently held by the United States at Bagram prison. There is no clear reason why the handover of Bagram detainees requires the creation of a nation-wide administrative detention regime. More generally, the scope of who can be detained must be clearly defined and limited. Third, detainees must have right to counsel as well as access to the evidence used against them in order to have a meaningful opportunity to challenge their detention-a fundamental right in international law. At present it seems the government will follow the well-documented due process shortfalls of the U.S. model. The United States and its Afghan partners must be honest about the serious, long-term risks of establishing an administrative detention regime in Afghanistan-particularly one that lacks clear limits and is democratically unaccountable. Protection from arbitrary or unlawful deprivation of life or liberty is at the constitutional core of the United States, and is essential to lasting stability and security in Afghanistan. Living up to the President's promise of responsibly ending the war in Afghanistan requires defending, not betraying this principle.

Indefinite detention erodes faith in the rule of law and ruins the Afghan judiciary

ICG 10 (International Crisis Group, November 17, “REFORMING AFGHANISTAN’S BROKEN JUDICIARY”, http://www.crisisgroup.org/~/media/Files/asia/south-asia/afghanistan/195%20Reforming%20Afghanistans%20Broken%20Judiciary.ashx)

U.S. detention policy has frequently been cited by Afghan and international legal experts as one of the chief obstacles to restoring balance to the Afghan justice system and citizens’ faith in the rule of law.233 The operation of parallel U.S.-controlled prisons has been problematic from the start. Thousands of Afghans have been detained since the start of Operation Enduring Freedom in 2001 without recourse to trial or the means to challenge their detention. Abuse of prisoners at the U.S.-run Bagram Theatre Internment Facility in the early years of its operation under the Bush administration has been well documented, including the use of harsh interrogation techniques that resulted in the deaths of two Afghans.234 Extrajudicial detentions at Bagram have eroded support for foreign troops and for many Afghans – Pashtuns in particular – stand as a symbol of oppression. Like its sister facility at the U.S. military base in Guantanamo, Cuba, the Bagram prison has provided much grist for Taliban propaganda mills.235 U.S. officials under the Obama administration appear to have begun to recognise that extrajudicial detentions have negatively impacted Afghan perceptions of the rule of law. In January 2009, the U.S. government announced plans to close the facility at Guantanamo and to re-evaluate its detainee programs overall. A U.S. federal district court ruling in April 2009 concluding that non-Afghan detainees held at the Bagram facility have a right to challenge their detention in American courts has hastened the need to find solutions to the legal conundrum posed by the extrajudicial status of prisoners at Bagram.236 In September 2009, the U.S. Department of Defense adopted a new framework for evaluating the status of detainees in U.S. facilities in Afghanistan. Responsibility for detainee policy and operations now falls to Task Force 435, an interagency unit under joint military-civilian leadership whose mission is to bring detention and rule of law practices in line with U.S. strategic goals in Afghanistan. The old Bagram facility has since been replaced by the more modern Detention Facility in Parwan (DFIP), which opened in 2009 at the edge of the Bagram military base. Under this new policy, new detainee review board (DRB) procedures were adopted to bring detention practices in Afghanistan more in line with U.S. and international law. They replaced the Unlawful Enemy Combatant Review Boards, which had been generally deemed inadequate because they afforded detainees few, if any, opportunities to challenge their arrest or to review evidence in cases brought against them in closed hearings. Under the new procedures, a military panel determines if a detainee has been properly captured and poses a future threat to the Afghan government or international security forces. Although the U.S. government is careful not to characterise the proceedings as legal or adversarial in the sense that a trial might be, detainees are allowed to some extent to present their version of events with the help of a U.S.-assigned “personal representative”. Hundreds of detainees have had their cases reviewed since the new review procedures were adopted and a number have been released because of insufficient evidence that they posed a threat to the Afghan government.237 These new guidelines are an important step forward, but they are far from replicating internationally recognised fair trial standards. A number of other actions must be taken to make U.S. detention policy more transparent, humane and fair and to bring it in line with international law. Specifically, U.S. investigation and intelligence gathering standards must be improved and the review board process must incorporate a more vigorous mechanism that allows detainees to review and challenge evidence brought against them, including measures for classified evidence. Transition to Afghan control of specially designated detainees will also necessitate a re-evaluation of classification procedures both at the point of capture and across agencies – both Afghan and U.S. The current process of declassifying information is far too cumbersome and there is a demand for greater clarity on the rules of transfer of information from coalition and Afghan sources to Afghan government sources.238 Changes in declassification policy will necessitate a serious review of current Afghan law and investigative practices and procedures employed by the Afghan National Directorate of Security and other security organs. In January 2010, the U.S. and Afghan government signed a memorandum of understanding calling for the DFIP to pass from U.S. to Afghan control in July 2011. By that time, review proceedings should be conducted entirely by Afghan judges and prosecutors; an Afghan judge in the Parwan provincial courts has already reviewed a number of detainee cases.239 The U.S. has set up a rule of law centre at the new facility with a view to training Afghan legal professionals to build cases against the roughly 1,100 detainees housed at the prison. The training and transition are important first steps toward dismantling the parallel legal systems that have co-existed uneasily in Afghanistan since the start of the U.S. military engagement. The transition could entail some tricky procedural challenges in terms of potential conflicts between Afghan courts and U.S. military authorities over the danger posed by “highrisk” detainees.240 This and other issues should be clarified before the transition in 2011.

#### **Starting with US policy is key- perception of hypocrisy replicates indefinite detention**

Eviatar 12 (Daphne Eviatar Law and Security Program Human Rights First, 1-9, “The Latest Skirmish in Afghanistan: Hate to Say We Told You So”, http://www.humanrightsfirst.org/2012/01/09/the-latest-skirmish-in-afghanistan-hate-to-say-we-told-you-so/)

Responsibility begins with due process. As we wrote in our report in May, based on our observations of the hearings given to detainees at the U.S.-run detention facility at Bagram: “the current system of administrative hearings provided by the U.S. military fails to provide detainees with an adequate opportunity to defend themselves against charges that they are collaborating with insurgents and present a threat to U.S. forces.” As a result, the U.S. hearings “fall short of minimum standards of due process required by international law.” For President Karzai, that’s an argument that the U.S. should immediately turn the thousands of detainees it’s holding over to the government of Afghanistan. But that would do little to solve the problem. TheUnited Nations reported in October that Afghanistan’s intelligence service systematically tortures detainees during interrogations. The U.S. government cannot hand prisoners over to the Afghans if they’re likely to be tortured, according to its obligations under international law. And unfortunately, as we also noted in our report, the Afghan justice system, although improving with the growing introduction of defense lawyers, is still hardly a model of due process. Still, unlike the United States, at least Afghan law does not permit detention without criminal charge, trial and conviction. The United States hasn’t exactly proven itself the best model for the Afghan justice system. Restoring U.S. credibility is going to be key to our ability to withdraw from Afghanistan without it becoming a future threat to U.S. national security. The U.S. government can’t credibly insist that the Afghans improve their justice system and treatment of detainees if the U.S. military doesn’t first get its own detention house in order. Whether for the sake of international law, U.S. credibility, or merely to improve relations with the Karzai government, upon which U.S. withdrawal from Afghanistan depends, the U.S. military needs to start providing real justice to the thousands of prisoners in its custody.

#### Strong Afghan judiciary key to post-drawdown strategy

ICG 10 (International Crisis Group, November 17, “REFORMING AFGHANISTAN’S BROKEN JUDICIARY”, http://www.crisisgroup.org/~/media/Files/asia/south-asia/afghanistan/195%20Reforming%20Afghanistans%20Broken%20Judiciary.ashx)

A substantial course correction is needed to restore the rule of law in Afghanistan. Protecting citizens from crime and abuses of the law is elemental to state legitimacy. Most Afghans do not enjoy such protections and their access to justice institutions is extremely limited. As a result, appeal to the harsh justice of the Taliban has become increasingly prevalent. In those rare instances when Afghans do appeal to the courts for redress, they find uneducated judges on the bench and underpaid prosecutors looking for bribes. Few judicial officials have obtained enough education and experience to efficiently execute their duties to uphold and enforce the law. Endemic problems with communications, transport, infrastructure and lack of electricity mean that it is likely that the Afghan justice system will remain dysfunctional for some time to come. Restoring public confidence in the judiciary is critical to a successful counter-insurgency strategy. The deep-seated corruption and high levels of dysfunction within justice institutions have driven a wedge between the government and the people. The insurgency is likely to widen further if Kabul does not move more swiftly to remove barriers to reform. The first order of business must be to develop a multi-year plan aimed at comprehensive training and education for every judge and prosecutor who enters the system. Pay-and-rank reform must be implemented in the attorney general’s office without further delay. Building human capacity is essential to changing the system. Protecting that capacity, and providing real security for judges, prosecutors and other judicial staff is crucial to sustaining the system as a whole. The international community and the Afghan government need to work together more closely to identify ways to strengthen justice institutions. A key part of any such effort will necessarily involve a comprehensive assessment of the current judicial infrastructure on a province-byprovince basis with a view to scrutinising everything from caseloads to personnel performance. This must be done regularly to ensure that programming and funding for judicial reform remains dynamic and responsive to real needs. More emphasis must be placed on public education about how the system works and where there are challenges. Transparency must be the rule of thumb for both the government and the international community when it comes to publishing information about judicial institutions. Little will change without more public dialogue about how to improve the justice system. The distortions created in the justice system by lack of due process and arbitrary detentions under both Afghan institutions and the U.S. military are highly problematic. Until there is a substantial change in U.S. policy that provides for the transparent application of justice and fair trials for detainees, the insurgency will always be able to challenge the validity of the international community’s claim that it is genuinely interested in the restoration of the rule of law. If the international community is serious about this claim, then more must be done to ensure that the transition from U.S. to Afghan control of detention facilities is smooth, transparent and adheres to international law.

#### That’s key to long-term stability

The Nation 9 (Nov. 11, 2009, http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/International/11-Nov-2009/UN-body-urges-Karzai-to-fight-corruption)

UNITED NATIONS - The UN General Assembly has urged the government of re-elected Afghan President Hamid Karzai to press ahead with “strengthening of the rule of law and democratic processes, the fight against corruption (and) the acceleration of justice sector reform.” The 192-member assembly made that call Monday night by unanimously adopting a resolution that also declared that Afghanistan’s presidential election “credible” and “legitimate”, despite allegations of widespread fraud that led Karzai’s main challenger Abdullah Abdullah to pull out of the run-off round of the election. But the UN assembly raised no doubts about Karzai’s mandate or his right to continue leading the war-torn country. The resolution welcomed “the efforts of the relevant institutions to address irregularities identified by the electoral institutions in Afghanistan and to ensure a credible and legitimate process in accordance with the Afghan Election Law and in the framework of the Afghan Constitution.” It appealed to the international community to help Afghanistan in countering the challenges of the militants’ attacks that threaten its democratic process and and economic development. Before the assembly approved the resolution, 24 countries, including Pakistan, spoke in the debate on the deteriorating situation in Afghanistan in which they stressed the need for the Afghan Government and the global community to work closely together. Pakistan’s Acting Permanent Representative Amjad Hussain Sial said the core of violence and conflict in Afghanistan emanated from terrorist groups, foreign militants such as Al-Qaeda, and militant Taliban who were not prepared to reconcile and give up fighting. The nexus with drug traders was increasingly discernable. The key to long-term stability in Afghanistan, he said, was reformation of the country’s corrupt governmental systems. Equally important was building the civilian institutions at the central and subnational levels.

#### Post-drawdown Afghan state collapse leads to nuclear war

Cronin 13 (Audrey Kurth Cronin is Professor of Public Policy at George Mason University and author of How Terrorism Ends and Great Power Politics and the Struggle over Austria. Thinking Long on Afghanistan: Could it be Neutralized? Center for Strategic and International Studies The Washington Quarterly • 36:1 pp. 55\_72 <http://dx.doi.org/10.1080/0163660X.2013.751650>)

With ISAF withdrawal inevitable, a sea change is already underway: the question is whether the United States will be ahead of the curve or behind it. Under current circumstances, key actions within Afghanistan by any one state are perceived to have a deleterious effect on the interests of other competing states, so the only feasible solution is to discourage all of them from interfering in a neutralized state. As the United States draws down over the next two years, yielding to regional anarchy would be irresponsible. Allowing neighbors to rely on bilateral measures, jockey for relative position, and pursue conflicting national interests without regard for dangerous regional dynamics will result in a repeat of the pattern that has played out in Afghanistan for the past thirty years\_/except this time the outcome could be not just terrorism but nuclear war.

#### Multiple scenarios for escalation of Afghanistan conflict

Miller ’12 (Paul D. Miller, Paul D. Miller served as director for Afghanistan on the National Security Council staff under Presidents Bush and Obama. He is an assistant professor of International Security Affairs at the National Defense University and director for the Afghanistan-Pakistan program at the College of International Security Affairs, World Affairs Journal, “It’s Not Just Al-Qaeda: Stability in the Most Dangerous Region”, <http://www.worldaffairsjournal.org/article/it%E2%80%99s-not-just-al-qaeda-stability-most-dangerous-region>, March/April 2012)

Neither President Barack Obama nor the Republicans competing to run against him are eager to talk about the war in Afghanistan. The electorate certainly doesn’t want to hear about it. Defense analysts are acting like it ended when Iraq did. Even more amazing is that most analysts and policymakers seem to believe that, one way or another, it doesn’t actually matter very much that it didn’t. In fact, the war is only now entering its culminating phase, indicated by the willingness of both US and Taliban officials to talk openly about negotiations, something parties to a conflict do only when they see more benefit to stopping a war than continuing it. That means the war’s ultimate outcome is likely to be decided by the decisions, battles, and bargaining of the next year or so. And its outcome will have huge implications for the future of US national security. In turn, that means the collective decision to ignore the war and its consequences is foolish at best, dangerous at worst. While Americans have lost interest in the war, the war may still have an interest in America. Now is the time, more than ten years into the effort, to remind ourselves what is at stake in Afghanistan and why the United States must secure lasting stability in South Asia. It was, of course, al-Qaeda’s attack on the US homeland that triggered the intervention in Afghanistan, but wars, once started, always involve broader considerations than those present at the firing of the first shot. The war in Afghanistan now affects all of America’s interests across South Asia: Pakistan’s stability and the security of its nuclear weapons, NATO’s credibility, relations with Iran and Russia, transnational drug-trafficking networks, and more. America leaves the job in Afghanistan unfinished at its peril. The chorus of voices in the Washington policy establishment calling for withdrawal is growing louder. In response to this pressure, President Obama has pledged to withdraw the surge of thirty thousand US troops by September 2012—faster than US military commanders have recommended—and fully transition leadership for the country’s security to the Afghans in 2013. These decisions mirror the anxieties of the electorate: fifty-six percent of Americans surveyed recently by the Pew Research Center said that the US should remove its troops as soon as possible. But it is not too late for Obama (who, after all, campaigned in 2008 on the importance of Afghanistan, portraying it as “the good war” in comparison to Iraq) to reformulate US strategy and goals in South Asia and explain to the American people and the world why an ongoing commitment to stabilizing Afghanistan and the region, however unpopular, is nonetheless necessary. The Afghanistan Study Group, a collection of scholars and former policymakers critical of the current intervention, argued in 2010 that al-Qaeda is no longer in Afghanistan and is unlikely to return, even if Afghanistan reverts to chaos or Taliban rule. It argued that three things would have to happen for al-Qaeda to reestablish a safe haven and threaten the United States: “1) the Taliban must seize control of a substantial portion of the country, 2) Al Qaeda must relocate there in strength, and 3) it must build facilities in this new ‘safe haven’ that will allow it to plan and train more effectively than it can today.” Because all three are unlikely to happen, the Study Group argued, al-Qaeda almost certainly will not reestablish a presence in Afghanistan in a way that threatens US security. In fact, none of those three steps are necessary for al-Qaeda to regain its safe haven and threaten America. The group could return to Afghanistan even if the Taliban do not take back control of the country. It could—and probably would—find safe haven there if Afghanistan relapsed into chaos or civil war. Militant groups, including al-Qaeda offshoots, have gravitated toward other failed states, like Somalia and Yemen, but Afghanistan remains especially tempting, given the network’s familiarity with the terrain and local connections. Nor does al-Qaeda, which was never numerically overwhelming, need to return to Afghanistan “in strength” to be a threat. Terrorist operations, including the attacks of 2001, are typically planned and carried out by very few people. Al-Qaeda’s resilience, therefore, means that stabilizing Afghanistan is, in fact, necessary even for the most basic US war aims. The international community should not withdraw until there is an Afghan government and Afghan security forces with the will and capacity to deny safe haven without international help. Setting aside the possibility of al-Qaeda’s reemergence, the United States has other important interests in the region as well—notably preventing the Taliban from gaining enough power to destabilize neighboring Pakistan, which, for all its recent defiance, is officially a longstanding American ally. (It signed two mutual defense treaties with the United States in the 1950s, and President Bush designated it a major non-NATO ally in 2004.) State failure in Pakistan brokered by the Taliban could mean regional chaos and a possible loss of control of its nuclear weapons. Preventing such a catastrophe is clearly a vital national interest of the United States and cannot be accomplished with a few drones. Alarmingly, Pakistan is edging toward civil war. A collection of militant Islamist groups, including al-Qaeda, Tehrik-e Taliban Pakistan (TTP), and Tehrik-e Nafaz-e Shariat-e Mohammadi (TNSM), among others, are fighting an insurgency that has escalated dramatically since 2007 across Khyber Pakhtunkhwa, the Federally Administered Tribal Areas, and Baluchistan. According to the Brookings Institution’s Pakistan Index, insurgents, militants, and terrorists now regularly launch more than one hundred and fifty attacks per month on Pakistani government, military, and infrastructure targets. In a so far feckless and ineffectual response, Pakistan has deployed nearly one hundred thousand regular army soldiers to its western provinces. At least three thousand soldiers have been killed in combat since 2007, as militants have been able to seize control of whole towns and districts. Tens of thousands of Pakistani civilians and militants—the distinction between them in these areas is not always clear—have been killed in daily terror and counterterror operations. The two insurgencies in Afghanistan and Pakistan are linked. Defeating the Afghan Taliban would give the United States and Pakistan momentum in the fight against the Pakistani Taliban. A Taliban takeover in Afghanistan, on the other hand, will give new strength to the Pakistani insurgency, which would gain an ally in Kabul, safe haven to train and arm and from which to launch attacks into Pakistan, and a huge morale boost in seeing their compatriots win power in a neighboring country. Pakistan’s collapse or fall to the Taliban is (at present) unlikely, but the implications of that scenario are so dire that they cannot be ignored. Even short of a collapse, increasing chaos and instability in Pakistan could give cover for terrorists to increase the intensity and scope of their operations, perhaps even to achieve the cherished goal of stealing a nuclear weapon. Although our war there has at times seemed remote, Afghanistan itself occupies crucial geography. Situated between Iran and Pakistan, bordering China, and within reach of Russia and India, it sits on a crossroads of Asia’s great powers. This is why it has, since the nineteenth century, been home to the so-called Great Game—in which the US should continue to be a player. Two other players, Russia and Iran, are aggressive powers seeking to establish hegemony over their neighbors. Iran is seeking to build nuclear weapons, has an elite military organization (the Quds Force) seeking to export its Islamic Revolution, and uses the terror group Hezbollah as a proxy to bully neighboring countries and threaten Israel. Russia under Vladimir Putin is seeking to reestablish its sphere of influence over its near abroad, in pursuit of which it (probably) cyber-attacked Estonia in 2007, invaded Georgia in 2008, and has continued efforts to subvert Ukraine. Iran owned much of Afghan territory centuries ago, and continues to share a similar language, culture, and religion with much of the country. It maintains extensive ties with the Taliban, Afghan warlords, and opposition politicians who might replace the corrupt but Western-oriented Karzai government. Building a stable government in Kabul will be a small step in the larger campaign to limit Tehran’s influence. Russia remains heavily involved in the Central Asian republics. It has worked to oust the United States from the air base at Manas, Kyrgyzstan. It remains interested in the huge energy reserves in Kazakhstan and Turkmenistan. Russia may be wary of significant involvement in Afghanistan proper, unwilling to repeat the Soviet Union’s epic blunder there. But a US withdrawal from Afghanistan followed by Kabul’s collapse would likely embolden Russia to assert its influence more aggressively elsewhere in Central Asia or Eastern Europe, especially in the Ukraine. A US departure from Afghanistan will also continue to resonate for years to come in the strength and purpose of NATO. Every American president since Harry Truman has affirmed the centrality of the Atlantic Alliance to US national security. The war in Afghanistan under the NATO-led International Security Assistance Force (ISAF), the Alliance’s first out-of-area operation in its sixty-year history, was going poorly until the US troop surge. Even with the limited success that followed, allies have complained that the burden in Afghanistan has been distributed unevenly. Some, like the British, Canadians, and Poles, are fighting a shooting war in Kandahar and Helmand, while others, like the Lithuanians and Germans, are doing peacekeeping in Ghor and Kunduz. The poor command and control—split between four regional centers—left decisionmaking slow and poorly coordinated for much of the war. ISAF’s strategy was only clarified in 2008 and 2009, when Generals David McKiernan and Stanley McChrystal finally developed a more coherent campaign plan with counterinsurgency-appropriate rules of engagement. A bad end in Afghanistan could have dire consequences for the Atlantic Alliance, leaving the organization’s future, and especially its credibility as a deterrent to Russia, in question. It would not be irrational for a Russian observer of the war in Afghanistan to conclude that if NATO cannot make tough decisions, field effective fighting forces, or distribute burdens evenly, it cannot defend Europe. The United States and Europe must prevent that outcome by salvaging a credible result to its operations in Afghanistan—one that both persuades Russia that NATO is still a fighting alliance and preserves the organization as a pillar of US national security. For some critics, organizing US grand strategy around the possible appearance of Russian tanks across the Fulda Gap is the perfect example of generals continuing to fight the last war. For them, the primary threat to US national security comes from terrorists, insurgency, state failure, ecological disaster, infectious pandemic disease, cyber attacks, transnational crime, piracy, and gangs. But if that view of the world is right, it is all the more reason to remain engaged in Afghanistan, because it is the epicenter of the new, asymmetric, transnational threats to the US and allied national security. Even those who deny al-Qaeda could regain safe haven in Afghanistan cannot deny how much power, and capacity for damage, the drug lords have acquired there. In some years they have controlled wealth equivalent to fifty percent of Afghanistan’s GDP and produced in excess of ninety percent of the world’s heroin. Today, their products feed Europe’s endemic heroin problem, and the wealth this trade generates has done much to undermine nine years of work building a new and legitimate government in Kabul. In their quest for market share, the drug lords will expand wherever there is demand for their product or potential to grow a secure supply, almost certainly starting in Pakistan, where the trade was centered in the 1980s. Where the drug lords go, state failure, along with its accompanying chaos and asymmetric threats, will follow, as the violence and anarchy currently wracking parts of Mexico suggest. Imagine the Federally Administered Tribal Areas as a failed narco-state with the profits funding the revival of al-Qaeda or its many terror offshoots. South Asia’s narcotics-smuggling cartels are dangerously close to seizing control of an entire state and using it to undermine law, order, and stability across an entire region. The poppy and heroin kingpins are fabulously wealthy and powerful; they oppose US interests, weaken US allies, and are headquartered in Afghanistan. Defeating them is a vital interest of the United States.

#### Limited Indo-Pak war causes extinction

Toon et al 7 – Atmospheric and Oceanic Sciences @ University of Colorado – ‘7 [Owen B. Toon, Alan Robock (Professor of Environmental Sciences @ Rutgers University), Richard P. Turco (Professor of Atmospheric and Oceanic Sciences @ UCLA, Charles Bardeen (Professor of Atmospheric and Oceanic Sciences @ University of Colorado), Luke Oman (Professor of of Earth and Planetary Sciences @ Johns Hopkins University), Georgiy L. Stenchikov (Professor of Environmental Sciences @ Rutgers University), “NUCLEAR WAR: Consequences of Regional-Scale Nuclear Conflicts,” Science, 2 March 2007, Vol. 315. no. 5816, pp. 1224 – 1225]

The world may no longer face a serious threat of global nuclear warfare, but regional conflicts continue. Within this milieu, acquiring nuclear weapons has been considered a potent political, military, and social tool (1-3). National ownership of nuclear weapons offers perceived international status and insurance against aggression at a modest financial cost. Against this backdrop, we provide a quantitative assessment of the potential for casualties in a regional-scale nuclear conflict, or a terrorist attack, and the associated environmental impacts (4, 5). Eight nations are known to have nuclear weapons. In addition, North Korea may have a small, but growing, arsenal. Iran appears to be seeking nuclear weapons capability, but it probably needs several years to obtain enough fissionable material. Of great concern, 32 other nations--including Brazil, Argentina, Japan, South Korea, and Taiwan--have sufficient fissionable materials to produce weapons (1, 6). A de facto nuclear arms race has emerged in Asia between China, India, and Pakistan, which could expand to include North Korea, South Korea, Taiwan, and Japan (1). In the Middle East, a nuclear confrontation between Israel and Iran would be fearful. Saudi Arabia and Egypt could also seek nuclear weapons to balance Iran and Israel. Nuclear arms programs in South America, notably in Brazil and Argentina, were ended by several treaties in the 1990s (6). We can hope that these agreements will hold and will serve as a model for other regions, despite Brazil's new, large uranium enrichment facilities. Nuclear arsenals containing 50 or more weapons of low yield [15 kilotons (kt), equivalent to the Hiroshima bomb] are relatively easy to build (1, 6). India and Pakistan, the smallest nuclear powers, probably have such arsenals, although no nuclear state has ever disclosed its inventory of warheads (7). Modern weapons are compact and lightweight and are readily transported (by car, truck, missile, plane, or boat) (8). The basic concepts of weapons design can be found on of the Internet. The only serious obstacle to constructing a bomb is the limited availability of purified fissionable fuels.There are many political, economic, and social factors that could trigger a regional-scale nuclear conflict, plus many scenarios for the conduct of the ensuing war. We assumed (4) that the densest population centers in each country--usually in megacities--are attacked. We did not evaluate specific military targets and related casualties. We considered a nuclear exchange involving 100 weapons of 15-kt yield each, that is, ~0.3% of the total number of existing weapons (4). India and Pakistan, for instance, have previously tested nuclear weapons and are now thought to have between 109 and 172 weapons of unknown yield (9). Fatalities were estimated by means of a standard population database for a number of countries that might be targeted in a regional conflict (see figure, above). For instance, such an exchange between India and Pakistan (10) could produce about 21 million fatalities--about half as many as occurred globally during World War II. The direct effects of thermal radiation and nuclear blasts, as well as gamma-ray and neutron radiation within the first few minutes of the blast, would cause most casualties. Extensive damage to infrastructure, contamination by long-lived radionuclides, and psychological trauma would likely result in the indefinite abandonment of large areas leading to severe economic and social repercussions. Fires ignited by nuclear bursts would release copious amounts of light-absorbing smoke into the upper atmosphere. If 100 small nuclear weapons were detonated within cities, they could generate 1 to 5 million tons of carbonaceous smoke particles (4), darkening the sky and affecting the atmosphere more than major volcanic eruptions like Mt. Pinatubo (1991) or Tambora (1815) (5). Carbonaceous smoke particles are transported by winds throughout the atmosphere but also induce circulations in response to solar heating. Simulations (5) predict that such radiative-dynamical interactions would loft and stabilize the smoke aerosol, which would allow it to persist in the middle and upper atmosphere for a decade. Smoke emissions of 100 low-yield urban explosions in a regional nuclear conflict would generate substantial global-scale climate anomalies, although not as large as in previous "nuclear winter" scenarios for a full-scale war (11, 12). However, indirect effects on surface land temperatures, precipitation rates, and growing season lengths (see figure, below) would be likely to degrade agricultural productivity to an extent that historically has led to famines in Africa, India, and Japan after the 1783-1784 Laki eruption (13) or in the northeastern United States and Europe after the Tambora eruption of 1815 (5). Climatic anomalies could persist for a decade or more because of smoke stabilization, far longer than in previous nuclear winter calculations or after volcanic eruptions. Studies of the consequences of full-scale nuclear war show that indirect effects of the war could cause more casualties than direct ones, perhaps eliminating the majority of the world's population (11, 12). Indirect effects such as damage to transportation, energy, medical, political, and social infrastructure could be limited to the combatant nations in a regional war. However, climate anomalies would threaten the world outside the combat zone. The predicted smoke emissions and fatalities per kiloton of explosive yield are roughly 100 times those expected from estimates for full-scale nuclear attacks with high-yield weapons (4).

### 1AC Solvency

#### No Case Law on detention means there is no executive restraint in the squo

Steven Vladeck (Professor of Law, American University Washington College of Law) February 29, 2012 “THE DUE PROCESS GUARANTEE ACT : BANNING INDEFINITE DETENTION OF AMERICANS” Hearing Before the Senate Committee on the Judiciary, http://www.judiciary.senate.gov/pdf/12-2-29VladeckTestimony.pdf

Much more can — and has been — said about this case law. For present purposes, though, it suffice s to note that there is exceedingly little precedent bearing on the government’s power to subject individuals arrested inside the United States to military detention . The only opinion still in force — that of the Fourth Circuit in Padilla — turned on exceedingly narrow facts, and has been questioned even by the jurist who wrote it. 22 Thus, although the Feinstein Amendment to the NDAA preserved the status quo with regard to domestic military detention under the AUMF, the only thing that is clear about that pre-NDAA case law is its lack of certainty . 23

#### Clear statement requirement restricts executive power and preserves our ability to try and convict terrorists

Steven Vladeck (Professor of Law, American University Washington College of Law) February 29, 2012 “THE DUE PROCESS GUARANTEE ACT : BANNING INDEFINITE DETENTION OF AMERICANS” Hearing Before the Senate Committee on the Judiciary, http://www.judiciary.senate.gov/pdf/12-2-29VladeckTestimony.pdf

My third (and final) point is that , although some might believe that such an expanded clear statement rule would unnecessarily circumscribe the government’s present authority to detain terrorism suspects arrested within the territorial United States, there are myriad existing authorities that would unquestionably satisfy such a clear statement rule For example, all federal criminal statutes would necessarily satisfy a clear statement rule, since each expressly provides authority for imprisonment, 33 and the Bail Reform Act of 1984 expressly authorizes pre - trial detention in appropriate cases. 34 Given the Supreme Court’s jurisprudence holding that presentment of a putative defendant before a neutral magistrate need only take place within 48 hours of an arrest undertaken without prior judicial process , 35 the government thereby has a combination of short - and long - term detention authority for any individual arrested within the United States on suspicion of terrorism - related offenses. In addition, there is also the possibility that the government might validly obtain a federal material witness warrant to detain individuals who may have information material to ongoing terrorism investigations even when there is not enough evidence to support an indictment against those suspects. 36 For non - citizens within the United States, the government has express authority to detain for immigration violations pending deportation , 37 along with the specific power conferred by section 412 of the USA PATRIOT Act 38 to detain non - citizen terrorism suspects for seven days before charging them with a criminal or immigration offense or releasing them. 39 To be sure, some of these authorities are controversial, and may, in at least some of their applications, raise distinct constituti onal questions. For present purposes, though, they serve as powerful testament to Congress’s ability to expressly authorize domestic detention when it chooses to do so . Finally, lest this point go unmentioned , even in cases in which extant law does not provide express authorization for domestic military detention , and subject to relevant constitutional considerations, Congress can provide clear authorization to supplement these existing authorities . The purpose of clear statement rules is not to chill le gislative initiative, but rather to ensure that Congress proceeds deliberately in the face of the constitutional concerns noted above, and to prevent the Executive Branch from seizing on statutory ambiguity to claim powers on the homefront that Congress never specifically intended to confer

#### Only a ruling on indefinite detention allows the civilian courts to step in.

Sarah Erickson-Muschko (J.D., Georgetown University Law Center) June 2013 “Beyond Individual Status: The Clear Statement Rule and the Scope of the AUMF Detention Authority in the United States” 101 Geo. L.J. 1399, Lexis

III. EXISTING SCHOLARSHIP ON THE CLEAR STATEMENT RULE: THE FOCUS ON INDIVIDUAL STATUS

Many scholars have advanced arguments regarding the application of a clear statement principle to the AUMF. 133 Two specific arguments have been made [\*1419] about the applicability of a clear statement principle in the context of U.S. territory, both of which focus on the status of the individual as the triggering factor. Professors Richard Fallon and Daniel Meltzer argue that a clear statement principle applies when U.S. citizens are detained on U.S. territory. 134 This argument is based on statutory grounds, namely the theory that the Non-Detention Act triggers the clear statement requirement. 135 This argument is perfectly sound in that respect. However, it is incomplete in that it does not address the constitutional grounds for imposing a clear statement rule: the Due Process Clause of the Fifth Amendment, which applies to all persons, including noncitizens. 136 Reading the AUMF and the NDAA 2012 together to allow for the indefinite military detention without trial of individuals arrested on U.S. territory would be inconsistent with the constitutional prohibition on depriving a person of liberty without due process of law. Professors Curtis Bradley and Jack Goldsmith offer the most comprehensive constitutionally based argument for when and how to apply a clear statement principle. Their position is that courts should apply a clear statement requirement "when the President takes actions under the AUMF that restrict the liberty of noncombatants in the United States," but not when such actions only restrict the liberty of combatants. 137 Looking to the three World-War-II-era decisions discussed in Part II, they conclude that Endo and Duncan stand for the proposition that liberty interests trump the President's commander-in-chief authority when the President's actions are unsupported by historical practice in other wars and affect the constitutional rights of U.S. citizens who are not combatants. 138 In this context, "the canon protecting constitutional liberties prevails." 139 In contrast, the authors point to Quirin to show that "the Court did not demand a clear statement before concluding that the U.S. citizen enemy combatant in that case could be subject to a military commission trial in the United States even though neither the authorization to use force nor the authorization for military commissions specifically mentioned U.S. citizens." 140 In such a case, the authors contend that a clear statement requirement protecting civil liberties is not required because "the presidential action involves a traditional wartime function exercised by the President against an acknowledged enemy combatant or enemy [\*1420] nation." 141 In this context, "the President's Article II powers are at their height, and the relevant liberty interests (and thus the need for a liberty-protecting clear statement requirement) are reduced (or nonexistent)." 142 Despite its level of detail, Bradley and Goldsmith's clear statement principle will likely never be of much help to courts construing the AUMF. By basing their clear statement requirement on the distinction between combatants and noncombatants, they fail to resolve the key interpretive question: namely, how to construe the AUMF to avoid grave constitutional concerns where an individual's status as an enemy combatant is in dispute. Their interpretation accommodates a broad reading of Quirin. However, in Quirin, nobody disputed that the detainees were in fact unlawful enemy combatants under long-standing law-of-war principles. In contrast, a court reviewing the classification of an individual as an "enemy combatant" under the AUMF and NDAA 2012 must determine what it means to be "part of" or provide "substantial[] support[]" to al-Qaeda or an "associated force[]" or otherwise to commit a "belligerent act." 143 The question of how to construe these terms lies at the core of detainee litigation, 144 and the provisions in the NDAA 2012 failed to clarify their meaning. Bradley and Goldsmith acknowledge that the AUMF is silent on the point of "what institutions or procedures are appropriate for determining whether a person captured and detained on U.S. soil is in fact an enemy combatant." 145 However, they fail to address how this ambiguity impacts the application of their clear statement principle. Their framework is therefore of no real help to courts that must first determine whether an individual was properly deemed to be an "enemy combatant" before determining whether the clear statement rule applies to the AUMF. The clear statement rule thus fails to fulfill its core purpose of resolving statutory ambiguity in a manner that avoids serious constitutional questions. In addition to failing to resolve the due process questions surrounding the [\*1421] "enemy combatant" determination, Bradley and Goldsmith's argument does not resolve the core separation of powers concern: namely, whether, and if so under what conditions, it is constitutionally permissible for the President to apply martial law in place of the criminal justice system on U.S. territory despite the absence of any compelling need to do so. In short, their argument assumes that such an application of law-of-war principles on U.S. territory, outside of the battlefield context, would be a legitimate exercise of the President's war powers in the context of counterterrorism. This is hard to square with the Milligan Court's powerful statements to the contrary. 146 IV. MOVING BEYOND INDIVIDUAL STATUS: THE CONSTITUTION APPLIES IN THE UNITED STATES This Note argues that the clear statement principle applies to the AUMF detention authority whenever it is invoked to detain individuals arrested within the United States--at least where the enemy combatant question is in dispute. The principal trigger for application of the clear statement principle should not be an individual's status but rather the presumption that constitutional rights and restraints apply on U.S. territory. Courts therefore should dispense with the enemy combatant inquiry under these circumstances. This Note posits that such a construction is required to preserve the constitutionality of the AUMF. This constitutional default rule presumes that Congress has not delegated power to the executive branch to circumvent due process protections wholesale, and that it has not altered the traditional boundaries between military and civilian power on U.S. territory. Any departure from this baseline at least requires a clear manifestation of congressional intent. As evinced by the divisions in Congress over passage of the detention provisions in the NDAA 2012, there is no consensus as to the breadth of the detention power afforded to the executive branch under the AUMF. Courts should therefore not presume that the statute authorizes application of martial law to circumvent otherwise applicable constitutional restraints and due process rights. By making the jurisdictional question--civilian versus military--the trigger for the clear statement principle, the judiciary would properly place the impetus on Congress to clearly define and narrowly circumscribe the conditions under which the executive may use military jurisdiction to detain individuals on U.S. territory. This is the only way to ensure that our nation's political representatives have adequately deliberated and reached a consensus with respect to delegating powers to the executive branch where such delegation would have the consequence of displacing, in a wholesale fashion, constitutional protections. For all its controversy, § 412 of the USA PATRIOT Act of 2001 provides an example of where Congress has provided for executive detention under circumstances that are arguably sufficiently detailed to satisfy a clear statement [\*1422] requirement. 147 Absent this level of clarity, where the President purports to use the AUMF to detain militarily on U.S. territory, courts must presume that constitutional rights and restraints apply and are not displaced by martial law. A. DUE PROCESS CONCERNS One of the most basic rights accorded by the Constitution is the fundamental right to be free from deprivations of liberty absent due process of law. The AUMF must be read with the gravity of this fundamental right in mind. As the Court made clear in Endo, where fundamental due process rights are at stake, ambiguous wartime statutes are to be construed to allow for "the greatest possible accommodation of the liberties of the citizen." 148 Courts "must assume, when asked to find implied powers in a grant of legislative or executive authority, that the law makers intended to place no greater restraint on the citizen than was clearly and unmistakably indicated by the language they used." 149 This includes statutes that would otherwise "exceed the boundaries between military and civilian power, in which our people have always believed, which responsible military and executive officers had heeded, and which had become part of our political philosophy and institutions . . . ." 150 B. THE SUSPENSION CLAUSE The Suspension Clause lends further constitutional support to applying a clear statement requirement to the AUMF detention authority on U.S. territory. The Suspension Clause gives Congress the emergency power to suspend the writ of habeas corpus "when in Cases of Rebellion or Invasion the public Safety may require it." 151 As Fallon and Meltzer observe, this Clause--and the limited circumstances in which it may be invoked--suggest, or even explicitly affirm, "the presumptive rule that when the civilian courts remain capable of dealing with threats posed by citizens, those courts must be permitted to function." 152 To interpret the AUMF as congressional authorization to displace the civilian system and apply military jurisdiction on U.S. territory would "render that [\*1423] emergency power essentially redundant." 153 The Suspension Clause also underscores that the right to be free from the arbitrary deprivation of physical liberty is one of the most central rights that the Constitution was intended to protect. C. THE LACK OF MILITARY NECESSITY The lack of military necessity for applying law-of-war principles on U.S. territory further supports the construction of the AUMF to avoid displacing civilian law with law of war in the domestic context. The Supreme Court long ago declared that martial law may not be applied on U.S. territory when civilian law is functioning and "the courts are open and their process unobstructed." 154 Instead, "[t]he necessity [for martial law] must be actual and present; the invasion real, such as effectually closes the courts and deposes the civil administration." 155 In the absence of such necessity, "[w]hen peace prevails, and the authority of the government is undisputed, there is no difficulty of preserving the safeguards of liberty . . . ." 156 The past ten years have shown that there is no need to stretch law-of-war principles in the AUMF to reach U.S. territory. The exigencies associated with an active battlefield, which were critical to the Hamdi plurality's interpretation of the AUMF, 157 are simply not present in the United States. Instead, "American law enforcement agencies . . . continue to operate within the United States. These agencies have a powerful set of legal tools, adapted to the criminal process, to deploy within the United States against . . . suspected [terrorists], and the civilian courts remain open to impose criminal punishment." 158 Indeed, for more than a decade since the 9/11 attacks, domestic law enforcement agencies have carried the responsibility for domestic counterterrorism and have successfully thwarted several terrorism plots. 159 Civilian courts have adjudicated the prosecution of suspected terrorists captured on U.S. territory under [\*1424] federal laws. 160 The experience of the past decade shows that the civilian system is up to the task, and there is no military exigency that justifies curtailing constitutional protections and applying military authority in the domestic context. 161 Accordingly, the circumstances that the Supreme Court found to justify the use of the military authority under the AUMF to capture and indefinitely detain Hamdi, who was found armed on the active battlefield in Afghanistan, do not extend to persons captured on U.S. territory. The manner in which the government handled the Padilla and al-Marri cases further demonstrates the lack of military necessity. In both cases, the government abandoned its position that national security imperatives demanded that they continue to be held in military custody; both were transferred to federal custody and ultimately convicted of federal crimes carrying lengthy prison terms. 162 The Supreme Court's precedent in Quirin neither requires, nor can it be fairly read to justify, a different conclusion. First, the issue of indefinite military detention without trial was not before the Court in that case. Second, the status of the Nazis in Quirin as enemy combatants was undisputed, in contrast to that of individuals who are "part of" or "substantially support" al-Qaeda or "associated forces." 163 Third, the Court in Quirin went "out of its way to say that the Court's holding was extremely limited," encompassing only the precise factual circumstances before it. 164 Finally, Quirin itself is shaky precedent, as evidenced by the Court's own subsequent statements and as elaborated in numerous scholarly commentaries on the case. 165 As Katyal and Tribe observe: Quirin plainly fits the criteria typically offered for judicial confinement or reconsideration: It was a decision rendered under extreme time pressure, with respect to which there are virtually no reliance interests at stake, and where the statute itself has constitutional dimensions suggesting that its construction should be guided by relevant developments in constitutional law. 166 [\*1425] This case therefore should not be read as foreclosing the application of a clear statement principle to the AUMF as applied on U.S. territory where an individual's status as an enemy combatant is in dispute. CONCLUSION The AUMF is ambiguous: it does not specify whether it reaches individuals captured on U.S. territory, and Congress declined to resolve this question when it enacted § 1021 of the NDAA 2012. If a future administration invokes the AUMF as authority to capture and hold persons on U.S. territory in indefinite military detention, it will be left to the courts to determine whether this is constitutional. Courts should resolve this question by applying a clear statement requirement. This Note has argued that the trigger for this clear statement requirement is not the individual's status but rather the presumption that constitutional rights and restraints apply on U.S territory. Courts should apply this default presumption regardless of an individual's citizenship status, and it should apply even where the government claims that the individual is an "enemy combatant," at least where that determination is subject to dispute. This Note has argued that this method of statutory interpretation is constitutionally required. "[B]y extending to all 'persons' within the Constitution's reach such guarantees as . . . due process of law, the Constitution constrains how our government may conduct itself in bringing terrorists to justice." 167 If these constraints are to remain meaningful, these guarantees require, at the very least, that courts presume that constitutional guarantees prevail where congressional intent is unclear. The past ten years have shown that our criminal justice system is capable of thwarting terrorist attacks and bringing terrorists to justice while still preserving the safeguards of liberty that are fundamental to our system of justice. "[T]hese safeguards need, and should receive, the watchful care of those [e]ntrusted with the guardianship of the Constitution and laws." 168

### Plan Text

**The federal judiciary of the United States should apply a clear statement principle that restricts the President of the United States authority to indefinitely detain individuals arrested by the U.S. government.**

## 2AC

### T

#### Counter-interp: The president’s war power of indefinite detention includes detaining individuals to prevent return to the battlefield

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)

The constitutionality, and scope, of the AUMF's grant of detention authority was first tested in 2004 in Hamdi v. Rumsfeld.'^^ In a plurality opinion, the Court clarified that there are some narrow circumstances in which a broad power to detain is necessary: [I]t is of no moment that the AUMF does not use specific language of detention. Because detention to prevent a combatant's return to the battlefield is a fundamental incident of waging war, in permitting the use of necessary and appropriate force. Congress has clearly and unmistakably authorized detention in the narrow circumstances considered here."\*\* In response to Hamdi's argument that the AUMF did not authorize indefinite detention, the plurality explained that "indefinite detention for the purpose of interrogation is not authorized" but that under "longstanding law-ofwar principles" and the AUMF, the Executive Branch possessed authority to detain "individuals legitimately determined to be Taliban combatants" for the duration of the conflict.''^ The Court also stated that if the current conflict proved entirely unlike those that informed the law of war, that the authority to detain "may unravel."^^ So while the Court in Hamdi clarified the AUMF's grant of authority to detain, it did so predicated on a determination of combatant status and U.S. involvement in active combat, such as Hamdi's case in Afghanistan.'\*' Following Hamdi, the Department of Defense created Combatant Status Review Tribunals to determine whether individuals detained were enemy combatants.

(2001).

#### ention means lawfully depriving an individual of his freedom- prefer country specific definitions

Guiora 12 (Professor of Law, S.J. Quinney College of Law, University of Utah; author of Freedom from Religion: Rights and National Security (2009). DUE PROCESS AND COUNTERTERRORISM EMORY INTERNATIONAL LAW REVIEW [Vol. 26 pg Lexis Nexis]

Detention—depriving an individual of his freedom—is lawful in the American criminal law paradigm, requiring probable cause pertaining to past acts.39 The initial arrest, provided exigent circumstances do not exist,40 requires an arrest warrant issued by a “neutral and detached magistrate” in response to a request submitted by law enforcement based on evidence or sourced information.41 In addition to the initial detention, the court may conclude that continued detention is warranted, predicated on a variety of factors including severity of the crime, danger posed by the suspect, and whether the individual is a possible flight risk.42 The presence of these additional factors allows the court to require additional detention. This detention model, with varying degrees of interpretation subject to country-specific criminal procedure codes, is largely representative in countries adhering to the rule of law and separation of powers between the executive and judiciary.43 Judicial review of the executive is essential to preserving liberty and due process.44

### Cred

Powers will cooperate - contains the impact - empirically proven

Collins and Wohlforth 4 (Kathleen, Professor of Political Science – Notre Dame and William, Professor of Government – Dartmouth, “Defying ‘Great Game’ Expectations”, Strategic Asia 2003-4: Fragility and Crisis, p. 312-313)

Conclusion **The** popular **great game lens for analyzing Central Asia fails to capture the declared interests of the great powers as well as the** best reading **of their objective interests** in security and economic growth. Perhaps **more importantly, it fails to explain their actual behavior on the ground, as well the specific reactions of the Central Asian states themselves.** Naturally, there are competitive elements in great power relations. Each country’s policymaking community has slightly different preferences for tackling the challenges presented in the region, and the more influence they have the more able they are to shape events in concordance with those preferences. But these clashing preferences concern the means to serve ends that all the great powers share. To be sure, policy-makers in each capital would prefer that their own national firms or their own government’s budget be the beneficiaries of any economic rents that emerge from the exploitation and transshipment of the region’s natural resources. But the scale of these rents is marginal even for Russia’s oil-fueled budget. And for taxable profits to be created, the projects must make sense economically—something that is determined more by markets and firms than governments. Does it matter? The great game is an arresting metaphor that serves to draw people’s attention to an oft-neglected region. The problem is **the great-game lens can distort realities on the ground, and** therefore bias analysis and **policy**. For when great powers are locked in a competitive fight, the issues at hand matter less than their implication for the relative power of contending states. Power itself becomes the issue—one that tends to be nonnegotiable. **Viewing an** essential positive-sum relationship **through zero sum** conceptual lenses **will result in missed opportunities for cooperation** that leaves all players—not least the people who live in the region—poorer and more insecure. While cautious realism must remain the watchword concerning an impoverished and potentially unstable region comprised of fragile and authoritarian states, **our analysis yields** at least conditional and relative optimism**. Given the confluence** of their **chief strategic interests, the major powers are in a better position to serve as a** stabilizing force **than analogies to the Great Game** or the Cold War would **suggest**. It is important to stress that **the region’s response to the profoundly destabilizing shock of** coordinated **terror attacks was increased cooperation** between local governments and China and Russia, and—multipolar rhetoric notwithstanding—between both of them and the United States. If this trend is nurtured and if the initial signals about potential SCO-CSTO-NATO cooperation are pursued, another destabilizing shock might generate more rather than less cooperation among the major powers. **Uzbekistan, Kyrgyzstan, Tajikistan, and Kazakhstan [The Stans] are clearly on a trajectory that portends longer-term cooperation** with each of the great powers. **As** military and economic **security interests become more entwined, there are sound reasons to conclude that “great game” politics will not shape Central Asia’s future** in the same competitive and destabilizing way as they have controlled its past. **To the contrary, mutual interests** in Central Asia **may reinforce the broader positive developments** in the great powers’ relations that have taken place since September 11, **as well** as reinforce regional and domestic stability in Central Asia.

### Solvency

#### Circumvention happens because of a lack of a clear statement – Plan solves

Meltzer 8 – Law prof @ Harvard (Daniel J, “Habeas Corpus, Suspension, and Guantánamo: The Boumediene Decision,” The Supreme Court Review, Vol 2008, No. 1, University of Chicago Press) 9/19/13 \*MCA = Military Commissions Act of 2006

That was the state of play on the meaning of the Suspension Clause prior to Boumediene. Justice Kennedy’s opinion for the Court essentially took the constitutional reasoning that had informed the statutory construction in St. Cyr and transformed it into a constitutional holding—that the Suspension Clause affirmatively confers a right to habeas corpus review and that, accordingly, the preclusion of habeas jurisdiction in § 7 of the MCA is unconstitutional. Many issues in the Boumediene case were the subject of dispute between majority and dissent, but unlike in St. Cyr, none of the dissenters in Boumediene objected that the Suspension Clause simply was not implicated if Congress permanently withdrew habeas jurisdiction over a particular set of cases. To be sure, because the dissenters thought that, for other reasons, there was no violation of the Suspension Clause in any event, that was not a point on which they were obliged to take issue. But the way that they phrased their conclusions is nonetheless suggestive: Justice Scalia said “[t]he writ as preserved in the Constitution would not possibly extend farther than the common law provided when that Clause was written,”67 while Chief Justice Roberts acknowledged the holding in St. Cyr that as an absolute minimum, the Suspension Clause protects the writ as it existed in 1789.68¶ Much of the attention to the Boumediene decision has focused on the points on which the dissenters did take issue—the scope of the writ along various dimensions, as well as broader questions about the relationship of the courts to the political branches in matters relating to national security. As a result, the Court’s holding that the Suspension Clause confers an affirmative right to habeas relief has not received the attention that it deserves. That holding is not, of course, a surprise in light of St. Cyr. But the puzzle of how to construe the unusual guarantee found in the Suspension Clause had been the subject of considerable debate and had not received an authoritative answer for more than two centuries into our nation’s history.¶ But even on that understanding, a subtler question remained: If the Founders presupposed that the writ would be available, in what courts would it be available? Some have argued that if federal courts have only that jurisdiction (including habeas jurisdiction) given them by Congress, then the Constitution cannot guarantee the right of access to a federal court, for habeas corpus or any other purpose. In a general version of this argument, Henry Hart famously contended both that it is a premise of the Constitution that some court must be open to hear a claim that the Constitution entitles a litigant to judicial redress and that, given the Madisonian Compromise, the state courts, which are courts of general jurisdiction, are the ultimate guardians of constitutional rights.69 In the more specific context of habeas corpus, this view suggests that the Suspension Clause, rather than guaranteeing federal court habeas corpus jurisdiction, instead restricts the power of Congress to interfere with state court habeas jurisdiction.70 William Duker, who has advocated this position, notes among other things that the Clause appears in Article I, Section 9, other provisions of which also limit Congress’s power vis‐à‐vis the states.71¶ In Boumediene, the Court appears to have passed entirely over this set of questions, simply assuming that if the congressional regime denied the detainees a constitutionally guaranteed right of access to habeas review, that constitutionally required review should be undertaken in federal court.72 But even accepting Hart’s general position—a position that, at least among commentators, is anything but uncontroversial,73 and that poses special challenges in the unusual context of extraterritorial detention74—the Court’s assumption seems to be well grounded. First, the decisions in Ableman v Booth75 and particularly in Tarble’s Case,76 much criticized77 but never overruled, at the very least cast doubt upon the constitutional power of the state courts to issue habeas relief against federal custodians. Second, even if those decisions are read more narrowly as resting on an implied congressional preclusion of jurisdiction rather than on the state courts’ lack of constitutional power,78 the Boumediene Court’s assumption that any constitutionally required relief should be provided in federal court still rests on solid ground. Assume that access to either federal court or state court would suffice to provide the constitutionally required review. Section 7 of the Military Commissions Act, in precluding all courts (other than the D.C. Circuit operating under the DTA) from exercising habeas or any other jurisdiction, could be viewed as having two subrules: (1) no federal court shall exercise such jurisdiction, and (2) no state court shall exercise such jurisdiction.79 On the assumption that constitutionally adequate redress could be provided by either a federal or a state court, either subrule would be valid without the other. The issue then becomes a matter of statutory severability: if Congress could not constitutionally satisfy its first‐order preference of precluding all review outside of the DTA, what second‐order preference should the Court ascribe to Congress: eliminating the barrier to federal court jurisdiction or the barrier to state court jurisdiction?¶ The Court’s unstated assumption that it was the barrier to federal court jurisdiction that should fall is entirely sound. To be sure, the Founders might not have shared that assumption; some have argued that they expected habeas jurisdiction to be exercised by the state courts,80 and indeed that the Suspension Clause presupposed rather than guaranteed the writ because of the unquestioned power of the state courts to issue it.81 But here the decisions in Ableman v Booth and Tarble’s Case become relevant insofar as they recognize a concern, born of experience rather than constitutional originalism, about the appropriateness of state court control of federal official action. That concern is also recognized by the broad provision of removal jurisdiction in 28 USC § 1442, permitting federal officers to remove state court actions—including state court actions that could not have been filed in the first instance in federal court. And most broadly of all, the aftermath of the Civil War and Reconstruction left us with a conception of federalism different from that embodied in the original Constitution,82 one in which the role of the federal courts in protecting individual rights assumes far greater prominence. Relatedly, insofar as there has been judicial review of habeas petitions brought by enemy combatants detained by the United States, both before and after 9/11, that review has generally been in federal court.83 And in sensitive matters of foreign relations, there is no reason to believe that Congress would have wished to have state rather than federal courts involved.¶ Thus, if one of the two subrules contained in § 7 must yield, it should be the one barring federal court review. And if that portion of § 7 of the MCA is held to be void, the federal courts, though courts of limited jurisdiction, could fall back upon the preexisting general grant of habeas jurisdiction under § 2241 as it previously stood, thereby avoiding any need to consider the more difficult situation in which the Suspension Clause applies but there is no background congressional grant of federal court jurisdiction on which to rely.¶ For all of these reasons, the Court’s basic premise about where constitutionally required relief must be provided seems correct. Also correct, and of more fundamental importance, is the holding that the Suspension Clause affirmatively guarantees the right to habeas corpus review.¶ B. Did the MCA Suspend the Writ?¶ The Government did not argue that the MCA constituted a congressional suspension of the privilege of the writ. On one view, that failure seems surprising. While one might doubt that the 9/11 attacks were an invasion or rebellion, it was at least arguable that those words should be given a broad construction, extending generally to warlike actions, both internal and external. If the government had taken that somewhat aggressive view, it could have added that Congress surely knew that it was curtailing habeas corpus for a specified set of potential petitioners and that questions about the constitutionality of that curtailment had been raised as the measure was being debated. Although it is true that the MCA did not expressly state that it was suspending the writ, other congressional legislation has been effective without referring to the constitutional power being exercised; notably, resolutions authorizing the commencement of hostilities (including the Authorization for the Use of Military Force enacted after 9/11,84 which launched the war in Afghanistan) have been treated as adequate without using the linguistic formula “declaration of war.”85¶ But given the legitimate uncertainty about whether the DTA/MCA regime infringed any constitutional right to habeas possessed by the Guantánamo detainees (and four Justices thought it did not), Congress might have sought to limit what it viewed as a constitutionally gratuitous conferral of statutory jurisdiction (recognized by the Rasul decision) without seeking to trench on constitutional rights should its understanding of the Constitution be rejected by the Supreme Court. And there would have been a political price to pay had Congress and the President expressly advocated suspension of the writ. It is one thing to contend that the Guantánamo detainees, hardly a popular group with the voters, have no rights that are being infringed; it is another to contend that a most fundamental protection of liberty is being withdrawn. (That the writ has been suspended on only four previous occasions 86 and that the struggle against terrorism is not a conventional war would only highlight the extraordinary character of treating the MCA as an effort to suspend.) The political price highlights an underlying normative point: because suspension of so fundamental a liberty is a rare and solemn act, the Court should impose a clear statement requirement,87 requiring that Congress plainly seek to suspend the writ (as it has done with respect to all past measures that have been treated as suspensions).88 Against that background, the Court’s assumption that no suspension was intended seems well founded.

### History of Being

#### Not defending consequences replicates totalitarian disregard for life – sacrificing responsibility for morality turns case

**Isaac 2** (Jeffrey C., Prof of Polisci and Director of the Center for the Study of Democracy and Public Life @ Indiana U, “Hannah Arendt on human rights and the limits of exposure, or why Noam Chomsky is wrong about the meaning of Kosovo,” AD: 12/20/09) jl

What does Arendt mean here? She does not attribute primary responsibility, either causal or moral, for the rise of totalitarianism to these intellectuals, who were basically without power. But she does imply that they were guilty of a serious intellectual and indeed ethical failure, connected to the fact that while brilliant they were also cynical. Disgusted with bourgeois hypocrisy and its double standards, they abandoned standards altogether. Revolted by the impoverishment of social relationships, they abandoned all sense of genuine solidarity with fellow citizens or human beings. It was not simply that they lacked any clear sense of the actual consequences of their rage against liberalism. They also failed to offer, or to stand by, any moral values. They were enemies of hypocrisy rather than partisans of liberty. They lacked any "sense of reality"--any sense of their responsibility for the common world inhabited by men and women, and any sense of the role of their own ideas as potential sources of human good or evil. The theme of the conjunction of intellect and evil recurs again in the concluding sections of Origins, this time in connection not with the irresponsibility of intellectuals as such, but with the relentless logic of totalitarian ideologies. There is, she argues, not simply a dogmatism but a cruelty inherent in the totalistic explanations furnished by such ideologies. Such cruelty derives from the complete independence of totalitarian ideologies from "all experience." Totalitarian thinking reduces all that is unique, novel, or contingent to the simple terms of its own purported truth. All experience becomes reducible to the terms of that truth, and is forced, not simply politically but also intellectually, to conform to these terms. This accounts for what Arendt considers the most terrifying feature of totalitarian thought, its "stringent logicality." Ideological thinking, she argues, "orders facts into an absolutely logical procedure which starts from an axiomatically accepted premise, deducing everything else from it; that is, it proceeds with a consistency that exists nowhere in the realm of reality" (Arendt, 1973: 471). The ideologue, Arendt maintains, demands a consistency that is inconsistent with "the realm of reality." She does not deny that logic is a method of ordering concepts, or that consistency may be an intellectual virtue. But she maintains that such consistency is not and cannot be a defining quality of the world. The world is too complex, too pluralistic, to admit such consistency. It consists of the disparate experiences, beliefs, and convictions of diverse individuals and groups. And it consists of complex situations that admit of difficult and often tragic choices. The demand for consistency in such a world is too monistic. It is an intellectual conceit--and a conceit specific to intellectuals--to imagine that inconsistency or contradiction is the world's most profound problem, and that the resolution of such inconsistency by logical methods is the most important intellectual-cum-political task. For the elimination of inconsistency may well threaten the elimination of situational ambiguities and differences of opinion that are endemic to the human condition. And, more to the point, the world's most profound problem is not inconsistency or ambiguity or even hypocrisy. It is the infliction of harm and suffering on humans by other humans, and the consequent denial of elemental human dignity to the vulnerable and dispossessed. It is, in short, the denial of freedom to human beings. The "stringent logicality" of ideological thinking not only fails to make this suffering a primary concern; it actually exacerbates this suffering, through its own cruel lack of political responsibility, and through its tendency to gravitate toward cruel and unsavory causes that seem noble because of their relentless ideological consistency (see Shklar, 1984). I want to be clear about this. Arendt is talking about totalitarian ideologies, principally Nazism and Stalinism. She is not arguing that all of those who turn "logicality" into a supreme virtue are quasi totalitarians. But in criticizing totalitarian modes of thinking, she also makes a more general point: that "strict logicality," whatever its intellectual merits, can be hostile to other and more important human values. Intellectuals, she believes, are peculiarly liable to ignore this, for they often inhabit an imaginary world of pure ideality, in which ideas, especially their own ideas, predominate. This is the peculiar unworldliness of the intellectual. It is the source of much brilliance. But if intellectuals want to be social critics then they must become worldly, They must appreciate the irreducible complexity and plurality of the world (see Arendt, 1971: 50-54).

#### There are no prior questions to problem oriented IR-

David **Owen**, Reader of Political Theory at the Univ. of Southampton, Millennium Vol 31 No 3 **2002** p. 655-7

Commenting on the ‘philosophical turn’ in IR, Wæver remarks that ‘[a] frenzy for words like “epistemology” and “ontology” often signals this philosophical turn’, although he goes on to comment that these terms are often used loosely.4 However, loosely deployed or not, it is clear that debates concerning ontology and epistemology play a central role in the contemporary IR theory wars. In one respect, this is unsurprising since it is a characteristic feature of the social sciences that periods of disciplinary disorientation involve recourse to reflection on the philosophical commitments of different theoretical approaches, and there is no doubt that such reflection can play a valuable role in making explicit the commitments that characterise (and help individuate) diverse theoretical positions. Yet, such a philosophical turn is not without its dangers and I will briefly mention three before turning to consider a confusion that has, I will suggest, helped to promote the IR theory wars by motivating this philosophical turn. The first danger with the philosophical turn is that it has an inbuilt tendency to **prioritise** issues of ontology and epistemology over explanatory and/or interpretive power as if the latter two were merely a **simple function** of the former. But while the explanatory and/or interpretive power of a theoretical account is not wholly independent of its ontological and/or epistemological commitments (otherwise criticism of these features would not be a criticism that had any value), it is by no means clear that it is, in contrast, wholly dependent on these philosophical commitments. Thus, for example, one need not be sympathetic to rational choice theory to recognise that it can provide powerful accounts of certain kinds of problems, such as the tragedy of the commons in which dilemmas of collective action are foregrounded. It may, of course, be the case that the advocates of rational choice theory cannot give a good account of why this type of theory is powerful in accounting for this class of problems (i.e., how it is that the relevant actors come to exhibit features in these circumstances that approximate the assumptions of rational choice theory) and, if this is the case, it is a philosophical weakness—but this **does not undermine** the point that, for a certain class of problems, rational choice theory may **provide the best account available to us.** In other words, while the critical judgement of theoretical accounts in terms of their ontological and/or epistemological sophistication is one kind of critical judgement, it is not the only or even necessarily the **most important** kind. The second danger run by the philosophical turn is that because prioritisation of ontology and epistemology promotes theory-construction from philosophical first principles, **it cultivates a theory-driven rather than problem-driven approach to IR.** Paraphrasing Ian Shapiro, the point can be put like this: since it is the case that there is always a plurality of possible true descriptions of a given action, event or phenomenon, the challenge is to decide which is the most apt in terms of getting a perspicuous **grip on** the **action,** event or phenomenon in question given the purposes of the inquiry; yet, from this standpoint, ‘theory-driven work is part of a **reductionist program’** in that it ‘dictates always opting for the description that calls for the explanation that flows from the **preferred model** or theory’.5 The justification offered for this strategy rests on the mistaken belief that it is necessary for social science because general explanations are required to characterise the classes of phenomena studied in similar terms. However, as Shapiro points out, **this is to misunderstand the enterprise of science** since ‘whether there are general explanations for classes of phenomena is a question for social-scientific inquiry, **not to be prejudged** before conducting that inquiry’.6 Moreover, this strategy easily slips into the promotion of the pursuit of **generality over** that of **empirical validity.** The third danger is that the preceding two combine to encourage the formation of a particular image of disciplinary debate in IR—what might be called (only slightly tongue in cheek) ‘the Highlander view’—namely, an image of warring theoretical approaches with each, despite occasional temporary tactical alliances, dedicated to the strategic achievement of sovereignty over the disciplinary field. It encourages this view because the turn to, and **prioritisation of, ontology and epistemology stimulates the idea that there can only be one theoretical approach which gets things right**, namely, the theoretical approach that gets its ontology and epistemology right. This image feeds back into IR exacerbating the first and second dangers, and so a potentially **vicious circle arises.**

1. The alternative should be evaluated based on their ability to engage 1AC institutions- society shapes individual beliefs and create behavioral patterns for macro-level trends- their pedagogy is irrelevant absent a method of engagement

Wight – Professor of IR @ University of Sydney – 6

(Colin, Agents, Structures and International Relations: Politics as Ontology, pgs. 48-50

One important aspect of this relational ontology is that these relations constitute our identity as social actors. According to this relational model of societies, one is what one is, by virtue of the relations within which one is embedded. A worker is only a worker by virtue of his/her relationship to his/her employer and vice versa. ‘Our social being is constituted by relations and our social acts presuppose them.’ At any particular moment in time an individual may be implicated in all manner of relations, each exerting its own peculiar causal effects. This ‘lattice-work’ of relations constitutes the structure of particular societies and endures despite changes in the individuals occupying them. Thus, the relations, the structures, are ontologically distinct from the individuals who enter into them. At a minimum, the social sciences are concerned with two distinct, although mutually interdependent, strata. There is an ontological difference between people and structures: ‘people are not relations, societies are not conscious agents’. Any attempt to explain one in terms of the other should be rejected. If there is an ontological difference between society and people, however, we need to elaborate on the relationship between them. Bhaskar argues that we need a system of mediating concepts, encompassing both aspects of the duality of praxis into which active subjects must fit in order to reproduce it: that is, a system of concepts designating the ‘point of contact’ between human agency and social structures. This is known as a ‘positioned practice’ system. In many respects, the idea of ‘positioned practice’ is very similar to Pierre Bourdieu’s notion of *habitus*. Bourdieu is primarily concerned with what individuals do in their daily lives. He is keen to refute the idea that social activity can be understood solely in terms of individual decision-making, or as determined by surpa-individual objective structures. Bourdieu’s notion of the *habitus* can be viewed as a bridge-building exercise across the explanatory gap between two extremes. Importantly, the notion of a habitus can only be understood in relation to the concept of a ‘social field’. According to Bourdieu, a social field is ‘a network, or a configuration, of objective relations between positions objectively defined’. A social field, then, refers to a structured system of social positions occupied by individuals and/or institutions – the nature of which defines the situation for their occupants. This is a social field whose form is constituted in terms of the relations which define it as a field of a certain type. A *habitus* (positioned practices) is a mediating link between individuals’ subjective worlds and the socio-cultural world into which they are born and which they share with others. The power of the habitus derives from the thoughtlessness of habit and habituation, rather than consciously learned rules. The habitus is imprinted and encoded in a socializing process that commences during early childhood. It is inculcated more by experience than by explicit teaching. Socially competent performances are produced as a matter of routine, without explicit reference to a body of codified knowledge, and without the actors necessarily knowing what they are doing (in the sense of being able adequately to explain what they are doing). As such, the *habitus* can be seen as the site of ‘internalization of reality and the externalization of internality.’ Thus social practices are produced in, and by, the encounter between: (1) the *habitus* and its dispositions; (2) the constraints and demands of the socio-cultural field to which the habitus is appropriate or within; and (3) the dispositions of the individual agents located within both the socio-cultural field and the *habitus*. When placed within Bhaskar’s stratified complex social ontology the model we have is as depicted in Figure 1. The explanation of practices will require all three levels. Society, as field of relations, exists prior to, and is independent of, individual and collective understandings at any particular moment in time; that is, social action requires the conditions for action. Likewise, given that behavior is seemingly recurrent, patterned, ordered, institutionalised, and displays a degree of stability over time, there must be sets of relations and rules that govern it. Contrary to individualist theory, these relations, rules and roles are not dependent upon either knowledge of them by particular individuals, or the existence of actions by particular individuals; that is, their explanation cannot be reduced to consciousness or to the attributes of individuals. These emergent social forms must possess emergent powers. This leads on to arguments for the reality of society based on a causal criterion. Society, as opposed to the individuals that constitute it, is, as Foucault has put it, ‘a complex and independent reality that has its own laws and mechanisms of reaction, its regulations as well as its possibility of disturbance. This new reality is society…It becomes necessary to reflect upon it, upon its specific characteristics, its constants and its variables’.

### Exec Restraint Cp

#### CP doesn’t solve- legal certainty is key

Guiora 12 (Professor of Law, S.J. Quinney College of Law, University of Utah; author of Freedom from Religion: Rights and National Security (2009). DUE PROCESS AND COUNTERTERRORISM EMORY INTERNATIONAL LAW REVIEW [Vol. 26 pg Lexis Nexis]

While President Obama signed an Executive Order ordering the closure of the Guantanamo Bay detention center26 for the purpose of discontinuing trials before Military Commissions, in April 2010 the Obama Administration reinstituted the Military Commissions.27 It is unclear whether this represents reversal of a policy previously articulated but not implemented, or a stopgap measure. Whatever the explanation, the Obama Administration has largely failed to satisfactorily address the rule-of-law questions essential to creating and implementing counterterrorism policy that ensures implementation of due process guarantees and obligations. For example, the Administration has failed to resolve whether Article III courts are the proper judicial forums for suspected terrorists.28 Perhaps this continuing failure is reflective of political infighting, as demonstrated in the backtracking with respect to Khalid Sheikh Mohammed’s trial.29 The result is a disturbing failure to ensure due process for individuals suspected of involvement in terrorism. More fundamentally, the status of individuals detained post-9/11 has not been uniformly or consistently articulated or applied. That is, varying definitions have been articulated at different times, reflecting legal and policy uncertainty directly affecting the ability to establish and consistently apply a legal regime based on due process.30 For thousands of individuals whose initial detention was based on questionable intelligence and subsequent, inadequate habeas protections, the current regime is inherently devoid of due process.31 I propose that detainees are neither prisoners of war nor criminals in the traditional sense; rather, they are a hybrid of both. To that end, I propose that the appropriate term for post-9/11 detainees is a combination—a convergence of the criminal law and law of war paradigms—best described as a hybrid paradigm.

### Credibility DA

1. Obama cred at an all time low now NSA and Syria

Economics and relations check (china-taiwan war)

Rosenberg 9 (David, Professor of Political Science – Middlebury College and Research Fellow at the Research School of Pacific and Asian Studies – Australian National University, “Dire Straits: Competing Security Priorities in the South China Sea”, The Asia-Pacific Journal, 3-20, http://japanfocus.org/-David-Rosenberg/1773)

There is a curious pattern of accommodation in PRC-Taiwan relations. On the one hand, the PRC views Taiwan as a renegade province while Taiwan views the mainland with cultural empathy but political disdain. On many South China Sea issues, however, they are often in agreement. They have not had any direct confrontations in the South China Sea. They make the same claims, use the same definitions, baselines, and maps in stating their interests in the region. There is even some direct cooperation between China and Taiwan on technical issues. Beyond these governmental links, there are very substantial corporate and personal links between China and Taiwan. Taiwanese firms have invested over US $100 billion on the mainland, more than any other country. Much of this involves the relocation of Taiwanese industries to the Shanghai-Suzhou and Fujian areas. To a large extent, Taiwan's continued economic prosperity is tied to reintegration with the mainland. These economic links of investment and trade are reinforced by millions of personal visits as well as mail and email correspondence. Bonds of marriage also strengthen these ties. Nearly 10% of Taiwanese men marry mainland brides, further tying migrant generations to ancestral origins. These deeply-rooted, long-term economic and demographic trends provide a counterbalance to the often strident political clashes. The longer and broader the cross-Strait engagement, the better the prospects for peaceful coexistence. Unfortunately, the cross-Strait issue has become immersed in domestic politics in Taiwan and China. The recent spate of threats and counter-threats over Taiwan's status is linked to maneuvering among domestic political forces seeking popular support. For example, in March 2005, after China passed its anti-secession law, there were widespread protest demonstrations in Taiwan led by Prime Minister Chen Shui-bian's Democratic Progressive Party (DPP). Soon after, a large delegation of Taiwan's main opposition party, the Kuomintang (KMT, Nationalist Party), visited the mainland to encourage trade and political dialogue with China and to pay respects to the memorial shrine of Sun Yat-sen, KMT's founder. This, in turn, was followed in early April by the visit of right-wing Taiwan Solidarity Union party leaders to the Yasukuni shrine, the Japanese war memorial in Tokyo. Clearly issues of national identity and national sovereignty can generate volatile reactions. The big danger across the Taiwan Strait is that misunderstanding and miscalculation, fueled by distrust, xenophobia, and opportunism, may lead to escalating conflict. Senior leaders on both sides of the Strait are beginning to realize the potential consequences if instability erupts into violence. Hu Jintao has recently been signaling that he advocates a long-term policy of stability for eventual reunification. Chen Shui-bian has recently dropped his independence demands. Several Southeast Asian leaders have opposed Taiwan's independence; most explicitly, Singapore's Prime Minister, Lee Hsien Loong. Lee bluntly stated, "If Taiwan goes for independence, Singapore will not recognize it. In fact no Asian country will recognize it. China will fight. Win or lose, Taiwan will be devastated." The prospect of a military confrontation between the mainland and Taiwan is unlikely, in part because the consequences of such a conflict would be extremely destructive for both sides. Diplomatic efforts are needed to avoid even this remote risk. In the March/April 2005 issue of Foreign Affairs, Kenneth Lieberthal offered a useful proposal to change the focus of negotiations over "independence" and "reunification" to a pragmatic question: what is needed to achieve long-term stability and peaceful coexistence between China and Taiwan? What confidence building measures are needed to reassure security strategists that defensive military developments are not offensive? What legal and administrative means are necessary to resolve routine conflicts that will inevitably occur as commercial and civil relations thicken? The current U.S. attempts to help Taiwan "contain" China and to mobilize support in its global war on terrorism threaten to complicate if not weaken regional security developments. As Ronald Montaperto notes, "the almost daily manifestations of Chinese economic power, the effort to demonstrate commitment to the 'new' principle that the economic development of individual nations is inseparable from the development of the region as a whole, and the broad perception within the region that the Chinese are willing to engage actively in multilateral, cooperative policies have combined to provide Beijing with an unprecedented measure of influence and even clout."[6] The Beijing regime is obsessed with economic stability, because it fears that a severe downturn would trigger social and political upheaval. The last thing it wants is a military confrontation with its biggest trading partner, the United States, or with Japan or Taiwan, each of which are major trade and investment partners. It may go on playing the nationalist card over Taiwan to curry domestic political favor, but there has been no massive military build-up and there is no plausible threat of impending war. [7] To the contrary, China is investing heavily in creating a regional security framework to pursue its domestic development. The U.S. goal of achieving genuine regional maritime security would best be served through cooperation with China -- one of its most important creditors, suppliers, and markets -- rather than confrontation.

### Politics 2AC

#### Econ resilient, US isn’t key, and impact empirically denied

**Lamy ’11**(Pascal Lamy is the Director-General of the World Trade Organization. Lamy is Honorary President of Paris-based think tank Notre Europe. Lamy graduated from the prestigious Sciences Po Paris, from HEC and ÉNA, graduating second in his year of those specializing in economics. “System Upgrade” BY PASCAL LAMY | APRIL 18, 2011)

**The** bigger **test came with** the 2008-2009 Great Recession, **the first** truly **global recession** since World War II. When the international economy went into free fall, trade went right along with it. Production and supply are today thoroughly global in nature, with most manufactured products made from parts and materials imported from many other countries. These global value chains have a multiplier effect on trade statistics, which explains why, as the global economy contracted by 2 percent in 2009, trade volume shrank by more than 12 percent. This multiplier effect works the other way around as well: **Growth returned** to 4.6 percent and trade volume grew by a record 14.5 percent over the course of 2010. **Projections for trade** in 2011 **are** also **strong**, with WTO economists predicting that trade volume will rise 6.5 percent during the current year. This sharp rebound in trade has proved two essential things: **Markets stayed open despite ever-stronger pressures** to close them, and trade is an indispensible tool for economic recovery, particularly for developing countries, which are more dependent on trade. Shortly after the crisis broke out, we in the WTO began to closely monitor the trade policy response of our member governments. Many were fearful that pressures to impose trade restrictions would prove too powerful for governments to resist. But this is not what happened. Instead, **the system of rules and disciplines**, agreed to over 60 years of negotiations, **held firm**. In **a series of reports** prepared for WTO members and the G-20, we found that **governments acted with great restraint**. At no time did the trade-restrictive measures imposed cover more than 2 percent of world imports. Moreover, the measures used -- anti-dumping duties, safeguards, and countervailing duties to offset export or production subsidies -- were those which, in the right circumstances, are permissible under WTO rules. I am not suggesting that every safeguard measure or countervailing duty imposed during those difficult days was in compliance with WTO rules, but responses to trade pressures were generally undertaken within an internationally agreed-upon framework. Countries by and large resisted overtly noncompliant measures, such as breaking legally binding tariff ceilings or imposing import bans or quotas. As **markets stayed open, trade flows began to shift**, **and countries** that shrugged off the impact of the crisis and **continued to grow** -- **notably China, India, and Brazil** -- **became ever-more attractive markets for countries that were struggling**, **including** those in Europe and **North America**. Trade has been a powerful engine for growth in the developing world, a fact reflected in the far greater trade-to-GDP ratios we see there. In 2010, developing countries' share of world trade expanded to a record 45 percent, and this trend looks set to continue. Decisions made in Brasilia, Beijing, and New Delhi to open their respective economies to trade have been instrumental in enabling these countries to lift hundreds of millions of people out of poverty.

#### Courts shield

Whittington 5 Keith E., Cromwell Professor of Politics – Princeton University, ““Interpose Your Friendly Hand”: Political Supports for the Exercise of Judicial Review by the United States Supreme Court”, American Political Science Review, 99(4), November, p. 585, 591-592

There are some issues that politicians cannot easily handle. For individual legislators, their constituents may be sharply divided on a given issue or overwhelmingly hostile to a policy that the legislator would nonetheless like to see adopted. Party leaders, including presidents and legislative leaders, must similarly sometimes manage deeply divided or cross-pressured coalitions. When faced with such issues, elected officials may actively seek to turn over controversial political questions to the courts so as to circumvent a paralyzed legislature and avoid the political fallout that would come with taking direct action themselves. As Mark Graber (1993) has detailed in cases such as slavery and abortion, elected officials may prefer judicial resolution of disruptive political issues to direct legislative action, especially when the courts are believed to be sympathetic to the politician’s own substantive preferences but even when the attitude of the courts is uncertain or unfavorable (see also, Lovell 2003). Even when politicians do not invite judicial intervention, strategically minded courts will take into account not only the policy preferences of well-positioned policymakers but also the willingness of those potential policymakers to act if doing so means that they must assume responsibility for policy outcomes. For cross-pressured politicians and coalition leaders, shifting blame for controversial decisions to the Court and obscuring their own relationship to those decisions may preserve electoral support and coalition unity without threatening active judicial review (Arnold 1990; Fiorina 1986; Weaver 1986). The conditions for the exercise of judicial review may be relatively favorable when judicial invalidations of legislative policy can be managed to the electoral benefit of most legislators. In the cases considered previously, fractious coalitions produced legislation that presidents and party leaders deplored but were unwilling to block. Divisions within the governing coalition can also prevent legislative action that political leaders want taken, as illustrated in the following case.

#### Recently released NSA decision thumps all links

Gallagher 9/17 (Ryan, slate magazine. How the Surveillance Court Ruled the NSA's Domestic Snooping Was Legal http://www.slate.com/blogs/future\_tense/2013/09/17/claire\_eagan\_fisc\_how\_surveillance\_court\_ruled\_the\_nsa\_s\_domestic\_snooping.html)

The secret court that oversees NSA surveillance has declassified documents that reveal for the first time the legal justification for the spy agency’s daily collection of virtually all Americans’ phone records. On Tuesday, a previously top-secret opinion and order signed off by Foreign Intelligence Surveillance Court Judge Claire Eagan was [published](http://www.uscourts.gov/uscourts/courts/fisc/br13-09-primary-order.pdf). The opinion, dated Aug. 29, shows how the court decided to deem the NSA’s mass collection of domestic phone records constitutional and in line with section 215 of the Patriot Act, which allows the government to secretly grab so-called “business records.” The NSA’s operation of a vast database storing metadata on millions of calls made by Americans daily was [first revealed](http://www.slate.com/blogs/future_tense/2013/06/06/nsa_verizon_phone_records_national_security_agency_order_collects_metadata.html) by the Guardian in June, based on documents leaked by former NSA contractor Edward Snowden. The release of the court opinion and order on the phone records program comes after a declassification review of the secret legal files was conducted, primarily due to the huge backlash prompted by Snowden’s leaks. The opinion shows that the court is relying on a Supreme Court case from 1979 to conclude that the bulk collection of phone records is not a violation of the Fourth Amendment, which protects against unreasonable searches and seizures. In [Smith v. Maryland](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=442&invol=735), at issue was the warrantless monitoring of a robbery suspect’s phone calls. The Supreme Court judges in Smith found that the monitoring was permissible because “a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties” and that they doubted “people in general entertain any actual expectation of privacy in the numbers they dial.” Grounded in the same logic, the newly released FISC opinion states: In sum, because the application at issue here concerns only the production of call detail records or "telephone metadata" belonging to a telephone company, and not the contents of communications, Smith v. Maryland compels the conclusion that there is no Fourth Amendment impediment to the collection. Furthermore, for the reasons stated in [REDACTED] and discussed above, this Court finds that that the volume of records being acquired does not alter this conclusion. Aside from the bizarre redaction here, which appears to have censored a crucial detail for inexplicable reasons, the reliance on Smith v. Maryland is contentious. The 1979 case concerned the monitoring of a single individual, already a criminal suspect, for a period of only a few days. The NSA’s metadata program involves the daily mass collection of billions of phone records from millions of Americans not suspected of committing any crime. These records can be mined using sophisticated software that draws relationships between people, and they can be used to conduct retrospective surveillance of people dating back several years. This raises constitutional questions that were simply not a consideration in the Maryland case more than three decades ago. Notably, the opinion also indicates that no company that was ordered to turn over the bulk metadata has challenged its legality in the court, despite having the ability to do so. The publication of the legal documents will add fuel to the already simmering debate about the phone records program, which several lawmakers have blasted since it was revealed in June. According to the ACLU, there are at least 19 NSA-related bills are pending in Congress, with some of them aimed at reforming and effectively shutting down the phone records database in its current form. Last week, [separately released documents](http://www.slate.com/blogs/future_tense/2013/09/11/dni_surveillance_documents_show_how_badly_nsa_managed_phone_database.html) about the phone records program showed how the NSA had unlawfully violated court rules governing the use of the database, while providing the court false information about how it was being operated for a period of almost three years.

#### PC theory is wrong – winners win

Hirsh 13 – National Journal chief correspondent, citing various political scientists

[Michael, former Newsweek senior correspondent, "There’s No Such Thing as Political Capital," National Journal, 2-9-13, www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207, accessed 2-8-13, mss]

The idea of political capital—or mandates, or momentum—is so poorly defined that presidents and pundits often get itwrong. On Tuesday, in his State of the Union address, President Obama will do what every president does this time of year. For about 60 minutes, he will lay out a sprawling and ambitious wish list highlighted by gun control and immigration reform, climate change and debt reduction. In response, the pundits will do what they always do this time of year: They will talk about how unrealistic most of the proposals are, discussions often informed by sagacious reckonings of how much “political capital” Obama possesses to push his program through. Most of **this** talk **will have** no bearing on what actually happens over the next four years. Consider this: Three months ago, just before the November election, if someone had talked seriously about Obama having enough political capital to oversee passage of both immigration reform and gun-control legislation at the beginning of his second term—even after winning the election by 4 percentage points and 5 million votes (the actual final tally)—this person would have been called crazy and stripped of his pundit’s license. (It doesn’t exist, but it ought to.) In his first term, in a starkly polarized country, the president had been so frustrated by GOP resistance that he finally issued a limited executive order last August permitting immigrants who entered the country illegally as children to work without fear of deportation for at least two years. Obama didn’t dare to even bring up gun control, a Democratic “third rail” that has cost the party elections and that actually might have been even less popular on the right than the president’s health care law. And yet, for reasons that have very little to do with Obama’s personal prestige or popularity—variously put in terms of a “mandate” or “political capital”—chances are fair that both will now happen. What changed? In the case of gun control, of course, it wasn’t the election. It was the horror of the 20 first-graders who were slaughtered in Newtown, Conn., in mid-December. The sickening reality of little girls and boys riddled with bullets from a high-capacity assault weapon seemed to precipitate a sudden tipping point in the national conscience. One thing changed after another. Wayne LaPierre of the National Rifle Association marginalized himself with poorly chosen comments soon after the massacre. The pro-gun lobby, once a phalanx of opposition, began to fissure into reasonables and crazies. Former Rep. Gabrielle Giffords, D-Ariz., who was shot in the head two years ago and is still struggling to speak and walk, started a PAC with her husband to appeal to the moderate middle of gun owners. Then she gave riveting and poignant testimony to the Senate, challenging lawmakers: “Be bold.” As a result, momentum has appeared to build around some kind of a plan to curtail sales of the most dangerous weapons and ammunition and the way people are permitted to buy them. It’s impossible to say now whether such a bill will pass and, if it does, whether it will make anything more than cosmetic changes to gun laws. But one thing is clear: The **political tectonics** have **shift**ed **dramatically** in very little time. Whole new possibilities exist now that didn’t a few weeks ago. Meanwhile, the Republican members of the Senate’s so-called Gang of Eight are pushing hard for a new spirit of compromise on immigration reform, a sharp change after an election year in which the GOP standard-bearer declared he would make life so miserable for the 11 million illegal immigrants in the U.S. that they would “self-deport.” But this turnaround has very little to do with Obama’s personal influence—his political mandate, as it were. It has almost entirely to do with just two numbers: 71 and 27. That’s 71 percent for Obama, 27 percent for Mitt Romney, the breakdown of the Hispanic vote in the 2012 presidential election. Obama drove home his advantage by giving a speech on immigration reform on Jan. 29 at a Hispanic-dominated high school in Nevada, a swing state he won by a surprising 8 percentage points in November. But the movement on immigration has mainly come out of the Republican Party’s recent introspection, and the realization by its more thoughtful members, such as Sen. Marco Rubio of Florida and Gov. Bobby Jindal of Louisiana, that without such a shift the party may be facing demographic death in a country where the 2010 census showed, for the first time, that white births have fallen into the minority. It’s got nothing to do with Obama’s political capital or, indeed, Obama at all. 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 [they]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**.” ALL THE WAY WITH LBJ Sometimes, a clever practitioner of power can get more done just because [they’re]he’s aggressive and knows the hallways of Congress well. Texas A&M’s Edwards is right to say that the outcome of the 1964 election, Lyndon Johnson’s landslide victory over Barry Goldwater, was one of the few that conveyed a mandate. But one of the main reasons for that mandate (in addition to Goldwater’s ineptitude as a candidate) was President Johnson’s masterful use of power leading up to that election, and his ability to get far more done than anyone thought possible, given his limited political capital. In the newest volume in his exhaustive study of LBJ, The Passage of Power, historian Robert Caro recalls Johnson getting cautionary advice after he assumed the presidency from the assassinated John F. Kennedy in late 1963. Don’t focus on a long-stalled civil-rights bill, advisers told him, because it might jeopardize Southern lawmakers’ support for a tax cut and appropriations bills the president needed. “One of the wise, practical people around the table [said that] the presidency has only a certain amount of coinage to expend, and you oughtn’t to expend it on this,” Caro writes. (Coinage, of course, was what political capital was called in those days.) Johnson replied, “Well, what the hell’s the presidency for?” Johnson didn’t worry about coinage, and he got the Civil Rights Act enacted, along with much else: Medicare, a tax cut, antipoverty programs. He appeared to understand not just the ways of Congress but also the way to maximize the momentum he possessed in the lingering mood of national grief and determination by picking the right issues, as Caro records. “Momentum is not a mysterious mistress,” LBJ said. “It is a controllable fact of political life.” Johnson had the skill and wherewithal to realize that, at that moment of history, he could have unlimited coinage if he handled the politics right. He did. (At least until Vietnam, that is.)

### Politics-Debt Ceiling

#### No debt compromise now

Reuters 9/18/13 ("White House Says Reublicans Moving Away From Compromise On Debt Limit")

The White House said on Wednesday that the House of Representatives had moved away from trying to reach a deal to avoid a debt default with a plan to link an increase of the U.S. debt ceiling to cuts to President [Barack Obama's](http://www.reuters.com/people/barack-obama?lc=int_mb_1001) healthcare program.¶ "House Republicans have decided to pursue a path away from the center, away from compromise, in favor of voting on a piece of legislation that they know will not become law," said White House spokesman Jay Carney.¶ "A faction of the House of Representatives, the House Republicans, is driving this thing in the wrong direction, (and) could bring us closer to a wholly unnecessary and damaging shutdown of the government," he said.

### Judicial Deference DA

#### Courts have historically gotten involved in military cases – even recently

Fisher, 6 (Louis, is Scholar in Residence at the Constitution Project. Previously he worked for four decades at the Library of Congress as Senior Specialist in Separation of Powers (Congressional Research Service, from 1970 to 2006) and Specialist in Constitutional Law (the Law Library, from 2006 to 2010) , he taught full-time at Queens College for three years, later he taught part-time at Georgetown University, American University, Catholic University law school, Indiana University, Catholic University, the College of William and Mary law school, and Johns Hopkins University. Currently he is a Visiting Professor at the William and Mary law school, “Lost Constitutional Moorings: Recovering the War Power,” Indiana Law Review, 5/2006, p.p. 1221-1223)

From the Vietnam War to the present, there has been a growing consensus that federal courts lack both the jurisdiction and the competence to decide war power disputes. I have heard this sentiment directly from political science professors, law professors, and federal judges. Such a cramped view finds no support in the first 150 years of U.S. history, when courts regularly accepted and decided such cases, sometimes for the President, sometimes against. It was only with Vietnam that courts began to avoid the merits of war power cases by invoking a variety of threshold tests, including standing, mootness, ripeness, the political question doctrine, and prudential considerations.138 I am familiar with only one war power (actually commander in chief) case that the Supreme Court deliberately ducked over this period of 150 years.139 The State of Mississippi sought to enjoin President Andrew Johnson from using the military to implement two Reconstruction Acts. The Court worried what would happen if Johnson refused to comply with its order. Did the Court have the power (legal or political) to enforce its process? Federal courts had faced that prospect before without flinching. The Johnson case was doubly difficult because if Johnson complied with the Court order and became subject to impeachment by acting in contempt of congressional statutes, would the Court then step in to support Johnson in opposition to the House? Of course if the House impeached Johnson and the matter moved to a Senate trial, the Chief Justice would preside. All in all, the dispute was one to avoid. But other than the Johnson case, federal courts regularly received war power disputes and disposed of them on the merits. There was nothing about war power cases that disqualified the judiciary. They presented statutory and constitutional questions as did other cases. The notion that courts are poorly suited to decide war power and foreign affairs issues does not emerge until after World War I. The legal literature began to treat matters of foreign policy, war, and peace as beyond the scope of judicial cognizance. That position appeared in a series of law review articles in the 1920s.140 Still, federal courts continued to take war power cases and decide them, as in the Steel Seizure case of 1952.141 The war in Vietnam and Southeast Asia sparked dozens of lawsuits challenging the President’s authority to wage war without a formal declaration or explicit authorization from Congress. Initially, federal courts dismissed these cases on the grounds that they posed a political question, they represented an unconsented suit against the United States, or the plaintiffs lacked standing. The Supreme Court regularly denied petitions seeking its review of the questions involved. For the first time in its history, federal courts were using the political question doctrine on a regular basis to avoid fundamental constitutional questions about the war power. By the early 1970s, however, federal courts seemed ready to reach the merits of the constitutionality of America’s involvement in Indochina and to assert the judiciary’s competence to decide such questions.142 Following the end of the Vietnam War, lawsuits continued to challenge presidential authority to conduct military operations without authorization from Congress. Federal judges fell back on various threshold tests to avoid deciding the dispute: ripeness, mootness, political questions, equitable discretion, and standing. Many of the cases failed in court because they were brought by members of Congress. Federal judges regularly informed the lawmakers that if they wanted to resort to litigation they had to first exhaust the institutional remedies available to them, including voting to deny authorization or funding.143 The doctrinal incoherence among federal judges on war power issues is illustrated by a lawsuit challenging the constitutionality of President Clinton’s decision in 1999 to order the bombing of Yugoslavia without congressional authorization. A district court held that lawmakers lacked standing because their complaint––the alleged “nullification” of congressional votes––was not sufficiently concrete. To gain standing, legislative plaintiffs had to allege that their votes had been “completely nullified” or “virtually held for naught.”144 The case would have been ripe for judicial determination if Congress had directed Clinton to remove U.S. forces and he had refused, or if Congress had withheld funds for the air strikes in Yugoslavia and he had decided “to spend that money (or money earmarked for other purposes) anyway.”145 The D.C. Circuit affirmed on the same ground of lack of standing. It concluded that the lawmakers lacked standing because they possessed legislative power to force the President to withdraw U.S. troops, to cut off funds, or to impeach the President if he disregarded congressional authority.146 The appellate decision is interesting because the three judges wrote separate opinions based on very different legal doctrines. To Judge Silberman, no one had a legal right to challenge the President’s use of military force. Such claims were nonjusticiable because courts lacked discoverable and manageable standards to decide questions related to the War Powers Clause.147 Judge Tatel rejected the view that the case posed a nonjusticiable political question or that there was a lack of manageable standards. He believed that the case presented purely legal issues, calling on the courts to determine the proper constitutional allocation of power between Congress and the President.148 The sweeping assertions of presidential power after 9/11 led to challenges in federal courts and eventually prompted the Supreme Court’s decisions on June 28, 2004. Writing for the plurality in Hamdi v. Rumsfeld, Justice O’Connor rejected the government’s position that separation of powers principles “mandate a heavily circumscribed role for the courts.”149 A state of war, she said, “is not a blank check for the President when it comes to the rights of the Nation’s citizens.”150 This decision, with Justices scattering in different directions, provided few clear standards for the lower courts, but at least eight members of the Court rejected the notion that the judiciary lacks institutional competence to participate in constitutional questions of war.151

#### Ending deference key to rule of law

Murphy 12 (Richard W., Visiting Professor (2005-2006), Seton Hall University School of Law; Professor, William Mitchell College of Law., Judicial Deference, Agency Commitment, and Force of Law, March 28, <http://moritzlaw.osu.edu/students/groups/oslj/files/2012/03/66.5.murphy.pdf>, p. 1013) ap

The law governing judicial deference to agency statutory constructions is a ghastly brew of improbable fictions and proceduralism. One reason this state of affairs persists is that courts have failed to resolve a contradiction between two competing, sensible impulses in deference doctrine. Oceans of precedent over the last 150 years have stressed that courts should defer to longstanding, reasonable constructions by agencies of statutes they administer. Then along came Chevron, which extolled agency flexibility and instructed courts to extend strong deference even to interpretive flip-flops. Competition between the virtues of interpretive consistency and flexibility has bubbled through and confused judicial deference analysis ever since. The Supreme Court’s recent efforts to limit the scope of Chevron’s strong deference to those agency constructions carrying the “force of law” has worsened such confusion, in part because the Court’s discussion and application of this concept were incoherent.¶ This Article proposes a new “commitment” approach to this “force of law” limitation that has deep roots in the concept of the “rule of law” and considerable power to clarify deference doctrine by resolving the clash between the competing values of interpretive consistency and flexibility. For the rule of law to be genuine, the default position must be that “laws” have general applicability—in other words, the law for X should be the law for Y as well. This truism suggests that an agency’s statutory construction properly can enjoy the force of law only where the agency has committed to applying its construction consistently across time and parties. Where an agency’s construction is longstanding, the agency’s commitment to consistent application is self-evident. The puzzle, of course, is to reconcile this commitment approach with Chevron’s praise of interpretive flexibility. One solution is to recognize that an agency can genuinely commit to a new interpretation by adopting it in a manner that makes it costly to change course later. Where agencies commit to consistency in this way, there is less need for courts to engage in independent statutory construction to protect rule-of-law values, which should leave courts freer to accept the premise of strong deference that the best way to determine the “meaning” of an agency’s statute is to trust the agency’s own (rational) construction.

#### Judicial deference destroys civil-military relations

Mazur 10 (Diane H., a Professor of Law at the University of Florida College of Law, a former Bigelow Fellow at the University of Chicago Law School, and a graduate of the University of Texas School of Law, A More Perfect Military: How the Constitution Can Make Our Military Stronger, October 20, Google Books, p. 193 – 194) ap

One of the most direct ways of introducing some rationality into the doctrine of judicial deference would be to appoint more federal judges—and especially new justices of the Supreme Court—who have an understanding of judicial deference consistent with healthy civil-military relations and strong civilian control. Professing strong support for the military, without any awareness of how judicial rulings can undermine military professionalism, should not be enough. During Senate confirmation hearings for Supreme Court justices, we generally don't hear questions on the subject of civil-military relations and judicial deference, but this may be because each institution has a vested interest in reducing the role of federal courts in civilian control of the military. Congress protects the doctrine because it radically increases congressional power in matters involving the military. The Supreme Court first developed the doctrine as a way of changing our basic understanding of civil-military relations and weakening the military's connection to law. After thirty-five years of judicial deference, however, this may also be the only way of thinking about military affairs any of the participants has ever known. With time, it becomes very easy to follow the crowd and pretend judicial deference is supportive of the military, avoiding the harder truth that courts are imposing real consequences on the military and on civil-military relations when they shirk their constitutional obligation for civilian control.¶ One of the ways the doctrine of judicial deference has left a scar on civil-military relations is by changing how civilian government manages the military advice it receives. I don't meant to suggest this is a new problem for civilian control of the military—President Harry Truman certainly struggled to manage the military advice offered by General Douglas MacArthur during the Korean War1—but judicial deference has contributed to a more pervasive problem broadly affecting the way civilians engage with information from military sources.¶ Strictly speaking, judicial deference in military affairs applies only when constitutional or legal issues are in play. When the question is whether a particular military policy or plan of action is a wise or prudent thing to do, and not whether it is constitutional or lawful, courts have no rule in answering the question and judicial deference is irrelevant. However, because judicial deference has expanded beyond an abstract legal theory into a more general way of thinking about military affairs, it has come to have an indirect effect on all forms of military decision making by civilian officials. Deference in a strictly legal sense is only a part of the broad cultural deference on military issues we have adopted since the end of the Vietnam War.¶ We consistently discourage civilians from serious engagement with military issues. We assume most civilians are incapable of understanding the military and have little to add to the conversation. We suspect they have not earned the right to speak about military affairs, even though at some level we must know civilian engagement is necessary in a system built on civilian control of the military. There is always a risk that asking too many questions will be interpreted as a lack of support for the military, and so the easier path is often to endorse whatever appears to be the consensus "military" position on an issue, whether or not the consensus position is actually helpful to the military.¶ Our inclination toward deference in matters involving the military is so strong that military advice can sometimes carry the power of a military veto when the advice becomes part of public debate. Few government officials want to be in the position of asking for the military's viewpoint on an issue and then choosing a policy direction inconsistent with that viewpoint. As a result, civilians may package or present military advice in a way that misleadingly removes any conflict with civilian policy preference, ensuring at least the appearance of a deferential attitude. The "Don't Ask, Don't Tell" debate offered a good example of this phenomenon. Congress put on what were essentially "show hearings" to create the appearance of unified military opposition to gay citizens in military service. I don't doubt that in 1993 military opposition outweighed military support, but the hearings were carefully scrubbed of any military expertise from the minority viewpoint.

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#### Cooperation is ineffective

Harding ’11(Harry Harding 11, founding dean of the School of Leadership and Public Policy at the University of Virginia, “Are China and the U.S. on a collision course?”, June 14, http://thinkingaboutasia.blogspot.com/2011/06/are-china-and-us-on-collision-course.html

In my judgment, it is highly unlikely for the relationship between the US and China to be primarily cooperative, at least in the short to medium term. The differences in values, political systems, interests, levels of development, and perceptions of the existing international order **are simply too great** for the two countries to find common ground on all issues, or even to find a mutually agreeable allocation of costs and benefits when they try to pursue common interests. Only a common interest that was massively compelling – say a widespread pandemic, another financial crisis, a global outbreak of terrorist activity targeted at both countries, or increasingly severe consequences of climate change – might produce a predominantly cooperative relationship. Fortunately, an essentially confrontational relationship is also unlikely, especially if one is primarily concerned with the risks of military conflict. The high degree of economic interdependence between the two countries has already created a relatively resilient relationship. The cost of military conflict, especially given the fact that both China and the US are nuclear powers, will be a significant deterrent against military conflict. Equally important, the probability of the most worrying of the trigger events identified above– a unilateral declaration of independence by Taiwan – is presently quite low, as is the risk that China would try to compel unification through the use of force.

#### No China threat

Eland ‘13 (Ivan Eland, Senior Fellow and Director of the Center on Peace & Liberty at The Independent Institute, Ph.D. in Public Policy from George Washington University. He has been Director of Defense Policy Studies at the Cato Institute, and he spent 15 years working for Congress on national security issues, including stints as an investigator for the House Foreign Affairs Committee and Principal Defense Analyst at the Congressional Budget Office. He also has served as Evaluator-in-Charge (national security and intelligence) for the U.S. General Accounting Office (now the Government Accountability Office), “Threat From China Is Being Hyped”, http://original.antiwar.com/eland/2013/06/04/threat-from-china-is-being-hyped/, June 5, 2013)

Articles in the American media usually portray China as a potential adversary, and recent press coverage is no exception. Stories have appeared about China’s military hacking into the computer systems of the American government and business and Chinese oil companies’ reaping of unfair gains in Iraq on the backs of dead American soldiers. Yet the threat from China in the popular American mind instilled by such articles is overblown. Undoubtedly, the U.S. military and intelligence services also attempt to hack into Chinese computer systems; this unseemly fact is glossed over by the usually nationalist American media. Even if Chinese military espionage is taken in isolation, it indicates that the Chinese realize a technological gap exists between China and the West and that they are having trouble developing technologies themselves. Similarly, the same conclusions could be reached about the much-ballyhooed Chinese purchase of Russian military equipment. In contrast, the United States develops its own military technologies, and they are the best in the world. Although Chinese defense spending has been growing at a double digit annual pace for a while now, China’s military started from only a low base. Chinese yearly defense spending is still only a fifth of that of the United States and the results of that annual disparity have [has] accumulated over many years in a vastly superior U.S. military force.

Also, much of China’s recent increases in defense spending have been spent increasing military pay to keep people from defecting to the white-hot civilian economy and converting a Maoist people’s land army into one more designed to project power from China’s coasts using air and sea power. Both of these requirements have constrained the purchase of new weaponry. Even so, China has made gains in its ability to project power, recently obtaining a small, old Ukrainian aircraft carrier. Yet carrier operations take a long time to master, and China is still very limited in its power projection capability. Also, China’s imitation of the United States in emphasis on carrier forces could be ill advised. In any naval war, carriers may very well prove vulnerable to submarines using cruise missiles and torpedoes. To the extent that pursuing carriers has an opportunity cost for the Chinese in forgoing more of those potent sea-denial forces, it may lessen China’s ability to defend itself against U.S. carriers. China’s sea-denial forces make up any real threat to the all-in U.S. force of 11 large deck carriers. But of course this threat is to the American Empire, not the United States itself. The U.S. carrier-heavy force is deployed far forward in East Asia to contain China and protect allies, such as Japan, Taiwan, South Korea, and Australia. Those wealthy allies should be doing more to provide their own security but will never do so as long as the United States provides the first line of defense. Japan already has a stronger navy than China and could do much more if it spent more of its large GDP on defense. As for Taiwan, being an easily defended island nation (amphibious assaults are notoriously difficult), it doesn’t need to match China dollar for dollar on defense spending but merely needs to adopt a porcupine strategy by being able to deter the same by inflicting unacceptable damage on the attacker. Finally, an American retraction of its defense perimeter to Hawaii and Guam would undoubtedly motivate these four nations, plus others in the region such as the Philippines and Vietnam, to band together in an alliance to be the first line of defense against China. Because China’s ability to project military power is so limited, the fears that China is expanding in Africa and the Middle East are fanciful. For example, recent press articles have implied that Chinese state-owned oil companies have exploited the American invasion of Iraq to win oil contracts from the Iraqi government. Because they don’t have to satisfy private shareholders, those companies can accept low profit margins on oil contracts that Western companies, such as Exxon, cannot. To some neoconservatives, such as Victor Davis Hanson, such failure of America to economically exploit its military empire is praiseworthy; to other imperialists, it is merely foolish. In any event, such Chinese commercial penetration is little threat to the United States and may actually be of some help. Because a worldwide oil market exists and any new petroleum being produced anywhere lowers the price for everyone, Chinese state-owned companies may be indirectly subsidizing U.S. oil consumers by bringing to market oil deposits that would be uneconomical for private firms to find and pump. Of course, implicitly, a worldwide oil market would also obviate the need for the military forces of the United States, China, or any other nation to “secure” oil. In my award-winning book No War for Oil: U.S. Dependency and the Middle East, I explain why it is cheaper to just pay higher prices caused by any disruption of Middle Eastern oil than to pay for forward-deployed military forces to attempt to prevent this rare occurrence. In conclusion, the Chinese “threat” is being dragged out and hyped to attempt to forestall cuts in U.S. security budgets, not because it severely undermines American security.