# 1NC

### T

#### Restrictions are prohibitions

Northglenn 11 (City of Northglenn Zoning Ordinance, “Rules of Construction – Definitions”, http://www.northglenn.org/municode/ch11/content\_11-5.html)

Section 11-5-3. Restrictions. As used in this Chapter 11 of the Municipal Code, the **term "restriction**" shall mean a prohibitive regulation. Any use, activity, operation, building, structure or thing which is the subject of a restriction is prohibited, and no such use, activity, operation, building, structure or thing shall be **authorized by any permit or license**.

### CP

#### TEXT: The Executive Branch of the United States federal government should release individuals in military detention who have won their habeas corpus hearing.

#### Executive action solves case and avoids our disads

Katyal 06 Neal Kumar Katyal, Yale Law Journal, Internal Separation of Powers: Checking Today’s Most Dangerous Branch from Within, http://www.yalelawjournal.org/pdf/115-9/Katyal.pdf

This Essay therefore outlines a set of mechanisms that create checks and ¶ balances within the executive branch. The apparatuses are familiar—separate ¶ and overlapping cabinet offices, mandatory review of government action by ¶ different agencies, civil-service protections for agency workers, reporting ¶ requirements to Congress, and an impartial decision-maker to resolve interagency conflicts. But these restraints have been informally laid down and ¶ inconsistently applied, and in the wake of September 11 they have been ¶ decimated.8¶ A general framework statute is needed to codify a set of practices. ¶ In many ways, the status quo is the worst of all worlds because it creates the ¶ façade of external and internal checks when both have withered. ¶ This Essay’s proposed reforms reflect a more textured conception of the ¶ presidency than either the unitary executivists or their critics espouse. In ¶ contrast to the unitary executivists, I believe that the simple fact that the ¶ President should be in control of the executive branch does not answer the ¶ question of how institutions should be structured to encourage the most robust ¶ flow of advice to the President. Nor does that fact weigh against modest ¶ internal checks that, while subject to presidential override, could constrain ¶ presidential adventurism on a day-to-day basis. And in contrast to the doubters ¶ of the unitary executive, I believe a unitary executive serves important values, ¶ particularly in times of crisis. Speed and dispatch are often virtues to be ¶ celebrated. ¶ Instead of doing away with the unitary executive, this Essay proposes ¶ designs that force internal checks but permit temporary departures when the ¶ need is great. Of course, the risk of incorporating a presidential override is that ¶ its great formal power will eclipse everything else, leading agency officials to ¶ fear that the President will overrule or fire them. But just as a filibuster does ¶ not tremendously constrain presidential action, modest internal checks, buoyed ¶ by reporting requirements, can create sufficient deterrent costs.

### DA 1

#### Next is pltx

#### Immigration reform will pass --- Obama’s political capital is key

JIM KUHNHENN | Associated Press, 1/7/14, New prospects in 2014 for an immigration overhaul, <http://news.yahoo.com/prospects-2014-immigration-overhaul-202531626--finance.html>, jj

WASHINGTON (AP) — His agenda tattered by last year's confrontations and missteps, President Barack Obama begins 2014 clinging to the hope of winning a lasting legislative achievement: an overhaul of immigration laws. It will require a deft and careful use of his powers, combining a public campaign in the face of protests over his administration's record number of deportations with quiet, behind-the-scenes outreach to Congress, something seen by lawmakers and immigration advocates as a major White House weakness. In recent weeks, both Obama and House Speaker John Boehner, R-Ohio, have sent signals that raised expectations among overhaul supporters that 2014 could still yield the first comprehensive change in immigration laws in nearly three decades. If successful, it would fulfill an Obama promise many Latinos say is long overdue. The Senate last year passed a comprehensive, bipartisan bill that addressed border security, provided enforcement measures and offered a path to citizenship for the estimated 11 million immigrants living in the United States illegally. House leaders, pressed by tea party conservatives, demanded a more limited and piecemeal approach. Indicating a possible opening, Obama has stopped insisting the House pass the Senate version. And two days after calling Boehner to wish him happy birthday in November, Obama made it clear he could accept the House's bill-by-bill approach, with one caveat: In the end, "we're going to have to do it all." Boehner, for his part, in December hired Rebecca Tallent, a former top aide to Sen. John McCain, R-Ariz., and most recently the director of a bipartisan think tank's immigration task force. Even opponents of a broad immigration overhaul saw Tallent's selection as a sign legislation had suddenly become more likely. Boehner also fed speculation he would ignore tea party pressure, bluntly brushing back their criticism of December's modest budget agreement. "We believe immigration reform is going to pass," White House spokesman Jay Carney said Tuesday. "It's going to pass, you know, and it's up to the House to decide when. But it's going to happen." Republican pollster David Winston, who regularly consults with the House leadership, said the task ahead for both sides is to distinguish the key issues they must have in the legislation from those that are merely preferences. "The question is what are the core things that Republicans can't move away from, what are the core things that Democrats can't walk away from," he said. "That's part of the process of going back and forth." If successful, an immigration compromise could restore some luster to Obama's agenda, tarnished in 2013 by failures on gun legislation, bipartisan pushback on his efforts to take military action against Syria and the disastrous enrollment start for his health care law. Obama has repeatedly argued that final immigration legislation must contain a path toward citizenship for immigrants living in the United States illegally. Opponents argue citizenship rewards lawbreakers, and many Republicans are loath to support any measure granting citizenship no matter how difficult and lengthy that path may be. But some advocates of reform are beginning to rally around an idea to grant immigrants legal status in the U.S. and leave the question of citizenship out of the legislation. In other words, they can work, but not vote. "I don't think this is a good idea because citizenship is important, but I don't think it is a big deal breaker either," Rep. Luis Gutierrez, D-Ill., a leading congressional advocate for overhauling U.S. immigration law, said in a speech last month. "Right now we have to stop the deportations that are breaking up families. And if we do not get citizenship this year, we will be back next year and the year after that." While strong majorities of Hispanics continue to back a pathway to citizenship, a Pew Research Center poll last month found that being able to live and work in the U.S. legally without the threat of deportation was more important to Latinos by 55 percent to 35 percent. "Is the sticking point going to be we have to have immediate voting privileges for those who came here illegally?," Sen. Rand Paul of Kentucky, a Republican who voted against the Senate immigration bill, said Sunday on ABC. "If the Democrats are willing to come halfway, I think we can pass something, some meaningful reform that would help the 11 million who are here." Carney said Tuesday that Obama's views have not changed and that he continues to insist on a comprehensive overhaul that includes a path to citizenship. Still, that the immigration argument is now over legalization versus citizenship is remarkable enough. A 2005 Republican House immigration bill, instead of legalizing immigrants, would have made them felons if they were not authorized to be in the U.S.

#### Fighting to defend his war power will sap Obama’s capital, trading off with rest of agenda—it’s empirically killed immigration reform

Kriner, 10 --- assistant professor of political science at Boston University

(Douglas L. Kriner, “After the Rubicon: Congress, Presidents, and the Politics of Waging War”, University of Chicago Press, Dec 1, 2010, page 68-69)

While congressional support leaves the president’s reserve of political capital intact, congressional criticism saps energy from other initiatives on the home front by forcing the president to expend energy and effort defending his international agenda. Political capital spent shoring up support for a president’s foreign policies is capital that is unavailable for his future policy initiatives. Moreover, any weakening in the president’s political clout may have immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races.59 Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest casualty rates in the Iraq War. 60

In addition to boding ill for the president’s perceived political capital and reputation, such partisan losses in Congress only further imperil his programmatic agenda, both international and domestic. Scholars have long noted that President Lyndon Johnson’s dream of a Great Society also perished in the rice paddies of Vietnam. Lacking the requisite funds in a war-depleted treasury and the political capital needed to sustain his legislative vision, Johnson gradually let his domestic goals slip away as he hunkered down in an effort first to win and then to end the Vietnam War. In the same way, many of President Bush’s highest second-term domestic proprieties, such as Social Security and immigration reform, failed perhaps in large part because the administration had to expend so much energy and effort waging a rear-guard action against congressional critics of the war in Iraq.61

When making their cost-benefit calculations, presidents surely consider these wider political costs of congressional opposition to their military policies. If congressional opposition in the military arena stands to derail other elements of his agenda, all else being equal, the president will be more likely to judge the benefits of military action insufficient to its costs than if Congress stood behind him in the international arena.

***Immigration reform expands skilled labor --- key to India relations***

**L**os **A**ngeles **Times**, 11/9/20**12** (Other countries eagerly await U.S. immigration reform, p. <http://latimesblogs.latimes.com/world_now/2012/11/us-immigration-reform-eagerly-awaited-by-source-countries.html>)

"C**omprehensive** i**mmigration** r**eform will see expansion of skilled labor visas," predicted** B. Lindsay **Lowell, director of policy studies for the Institute for the Study of International Migration at Georgetown University**. A former research chief for the congressionally appointed Commission on Immigration Reform, **Lowell said he expects to see at least a fivefold increase in the number of highly skilled labor visas that would provide "a significant shot in the arm for India and China." There is widespread consensus among economists and academics that skilled migration fosters new trade and business relationships between countries and enhances links to the global economy, Lowell said. "Countries like India and China weigh the opportunities of business abroad** from their expats with the possibility of brain drain, **and** I think **they** still **see the immigration opportunity as a bigger plus than not," he said**.

***Relations check Indo Pak nuke war***

**Dugger, ’02** (Celia “Wider Military Ties With India Offer U.S. Diplomatic Leverage”, NYT, http://www.nytimes.com/2002/06/10/world/wider-military-ties-with-india-offer-us-diplomatic-leverage.html, 6/10)

Military cooperation between India and the United States has remarkably quickened since Sept. 11, with a burst of navy, air force and army joint exercises, the revival of American military sales to India and a blur of high-level visits by generals and admirals. The fledgling relationship between American and Indian military leaders will be important to Mr. Rumsfeld in talks intended to put to rest fears of war between India and Pakistan. ''We can hope this translates into some influence and trust, though I don't want to overstate it,'' a senior American defense official said in an interview on Thursday. ''I don't want to predict this guarantees success.'' The American diplomatic efforts yielded their first real gains on Saturday when India welcomed a pledge by Pakistan's military ruler to stop permanently the infiltration of militants into Kashmir. India indicated that it would soon take steps to reduce tensions, but a million troops are still fully mobilized along the border -- a situation likely to persist for months -- and the process of resolving the crisis has just begun. India has linked the killing of civilians in Kashmir to a Pakistan-backed insurgency there and has presented its confrontation with Pakistan as part of the global campaign against terrorism. India itself made an unstinting offer of support to the United States after Sept. 11, and Washington responded by ending the sanctions placed on India after its 1998 nuclear tests. With that, the estrangement that prevailed between the world's two largest democracies during the cold war, when India drew close to the Soviet Union and the United States allied with Pakistan, has eased. India, for decades a champion of nonalignment, seeks warmer ties with the United States in hopes of gaining access to sophisticated military technology and help in dealing with Pakistan. From the start of President Bush's term, some influential officials in his administration saw India as a potential counterweight to that other Asian behemoth, China, whose growing power was seen as a potential strategic threat. But since Sept. 11, the priority has been terrorism. The United States is hoping its deeper military and political ties with India will give it some measure of leverage to prevent a war between India and Pakistan that could lead to a nuclear ~~holocaust~~ and would play havoc with the hunt for Al Qaeda in Pakistan.

### DA 2

#### Next is plenary powers DA

***The plan is a litmus test for plenary powers***

David **Rubenstein**, Hofstra Law Professor, Can a Federal Judge Order the Release of Nonmilitary Guantanamo Detainees into the United States?”, ?”, Preview of United States Supreme Court Cases, 37.6, 20**10**, Hein

**Petitioners have been detained at Guantanamo** Bay since 2002 **but** are no longer classified as enemy combatants. In 2008, **a federal district judge ordered their release** into the United States because, at the time, there was no other country willing to accept them. The D.C. Circuit reversed. After certiorari was granted, the United States government safely resettled most of the petitioners in third countries and brokered offers of resettlement for the remaining petitioners. In light of these resettlement results, and prior to oral argument, the Supreme Court vacated the circuit court's decision, leaving it for the lower court(s) to decide what effect, if any, the remaining petitioners' resettlement offers have on the disposition of the case. ***Kiyemba v. Obama*** Docket No. 08-1234 Argument Date: Removed from the March Calendar From: The District of Columbia Circuit by David S. Rubenstein Hofstra University School of Law **ISSUE Do federal judges exercising** ***habeas* jurisdiction have the power to or- der the release of nonenemy combatants held at Guantanamo** into the United States against the political branches' will when the detention is long-standing and indefinite, and when release into the country is the only effective habeas remedy? FACTS Petitioners are Chinese nationals and members of the Uighur ethnic group. Prior to September 11, 2001, they traveled to Uighur villages in Afghanistan, allegedly to escape Chinese persecution. Shortly after the September 1 1th terrorist attacks, petitioners were captured in Pakistan or Afghanistan and transferred to U.S. military custody at Guantanamo in 2002. In 2004, petitioners were designated "enemy combatants" by a United States Combatant Status Review Tribunal. They challenged their enemy-combatant designation and sought release from custody in a habeas proceeding before the federal district court in Washington D.C. Before the district court ruled on their habeas petitions, however, Congress enacted the Military Commissions Act of 2006, which effectively stripped habeas jurisdiction from the district courts to review enemy-combatant designations. In 2008, however, **the Supreme Court ruled in Boumediene** v. Bush, 128 S. Ct. 2229 (2008), **that foreign nationals in military detention at Guantanamo are entitled to the constitutionally protected common law writ of habeas corpus** to challenge the lawfulness of their deten- tion. The Court stated that federal judges must have the power, when necessary, to order the conditional release of an unlawfully detained individual. **But the Court did not decide where these individuals could be released.** Soon after Boumediene, the D.C. Circuit Court of Appeals resolved a habeas petition in favor of a Uighur detainee, finding insufficient re- cord support for his detention as an enemy combatant. On the weight of that decision, the government opted not to defend the remaining Uighurs' habeas challenges. **Although no longer subject to military detention, the Uighurs could not be transferred back to China under domestic or international law because they reasonably feared torture by the Chinese government.** Accordingly, the United States execu- tive branch engaged in diplomatic efforts to resettle the Uighurs in safe third countries. Pending those efforts, the Uighurs remained at Guantanamo under "less restrictive" detention conditions. By October 2008, **the executive's resettlement efforts had fallen short**. **With no foreseeable end to petitioners**' already **six-year detention, the district judge ordered that petitioners appear in his Washington, D.C., courtroom for the purpose of fashioning appropriate release condi- tions into the United States**. Respondents quickly obtained a stay of the district court's order, thereby securing petitioners' continued detention at Guantanamo pending appellate review by the D.C. Circuit Court of Appeals. In a 2009 split decision, **the circuit court** ***vacated the district court's order***. The circuit court's majority decision recognized that the tradi- tional remedy for a successful habeas petition is release from custody. But, **the court explained, petitioners are not seeking "simple release**"; rather, **they seek "a court order compelling the Executive to release them into the United** States ***outside the framework of the immigra- tion laws.***" **This remedy, the court held*, is unavailable to the judiciary under existing law.*** According to the circuit court, the only judicial remedy was to require the government to continue its diplomatic ef- forts "to find an appropriate country willing to admit petitioners." Following the circuit court's decision, Congress passed a series of ap- propriation acts prohibiting the relevant agencies from using federal funds to transfer or release persons detained at Guantanamo into the United States. **Meanwhile, the government's diplomatic resettlement efforts met with significant success**. Four of the seventeen detained Uighurs were resettled in Bermuda and six were resettled in Palau. **Of the seven Uighurs remaining at Guantanamo** when the Supreme Court granted certiorari in this case, **two have since accepted resettlement** offers from Switzerland, **and five have received** (but declined) at least **two offers of resettlement from third countries**. Thus, ***all of the peti- tioning Uighurs either have resettled or have been offered resettle- ment outside of the United States***. Due to these changed circumstances, the Supreme Court vacated the circuit court's decision on March 1, 2010, without holding oral argu- ment. In its short per curium order, the Court stated that it should not be the first to decide how the new facts bear on the original issue presented and instructed the circuit court to determine "what further proceedings in that court or in the [d] istrict [c] ourt are necessary and appropriate for the full and final disposition of the case." CASE ANALYSIS The case is not moot; seven petitioners remain at Guantanamo despite their offers of resettlement. Although the focus and force of the parties' arguments before the lower court(s) on remand will be af- fected by the changed circumstances, much of the substantive points of disagreement remain. At the heart of this dispute lies a potentially historic clash between core government functions. One front hosts the judicial habeas power to order release of persons unlawfully detained by the execu- tive branch. This habeas power is forged in the common law and constitutionally protected by the Suspension Clause, which forecloses congressional suspension of the habeas writ except in exceptional circumstances not claimed here. On the competing front, however, lies the political branches' historic sovereign prerogative to determine who may enter the United States and under what circumstances. In Boumediene, the Supreme Court reinforced the fundamental role of the judicial habeas power in our constitutional system of checks and balances. The Court explained that habeas "serves not only to make Government accountable but also to secure individual liberty." As applied to this case, petitioners have argued that the judicial habeas power-in order to be an effective safeguard against unlawful execu- tive detention-must include the judicial power to order petitioners' conditional release into the United States when no other country is willing to accept them. In light of petitioners' offers of resettlement, the factual predicate of this claim is significantly (if not completely) undermined. Apart from the changed facts, respondents emphasize that the habeas power is an equitable one limited by practical and legal constraints. Here, such constraints include the undisputed legal prohibition of resettling petitioners in their home country or to any country that might in turn repatriate them to China. Moreover, according to respondents, release into the United States is not a legal option for two related reasons: first, because the power to admit or exclude aliens is a "sovereign prerogative" completely vested in the political branches; and second, because the political branches have decisively spoken against the Uighurs' admission into the United States. In particular, respondents argue, Congress has exercised its authority to control the borders un- der long-standing immigration laws that would bar petitioners' admis- sion into the United States. Further, through its recent appropriation acts, Congress barred use of federal funds to release Guantanamo detainees here. Assuming petitioners even have a legitimate claim to release into the United States under the new facts, they will still need to avoid or overcome the immigration and appropriation laws relied upon by respondents. In regard to the former, petitioners have maintained throughout that the immigration laws are irrelevant. That is so, petitioners claim, because they have never sought or been formally denied admission to the United States as immigrants. According to petitioners, their presence in the United States would be limited to determining the conditions of their release pending resettlement in third countries. Although petitioners concede that their presence here may ultimately lead the executive to commence immigration removal proceedings against them, petitioners contend that this course must play itself out and would not necessarily be an exercise in futility (ostensibly because petitioners may have valid legal objections to removal and to their immigration detention pending removal). In any event, petitioners claim, an interpretation of the immigration laws to justify petitioners' potentially indefinite detention would run afoul of the Constitution's Suspension Clause. Not so, according to respondents, who heavily rely on the Court's decision in Shaughnessy v. Mezei, 345 U.S. 206 (1953). There, in the context of a habeas challenge, the Court affirmed the executive's immigration exclusion order despite the alien's challenge to his indefinite detention at Ellis Island. According to the Court, the alien was free to go--just not within the United States. Petitioners, however, seek to distinguish Mezei in at least the follow- ing respects. First, they were brought to the threshold of the United States against their will, unlike the voluntary applicant for admission in Mezei. Second, petitioners' habeas challenge is not to an immigra- tion order of exclusion (which does not as yet exist) but instead is a naked challenge to their unlawful executive detention. Assuming that petitioners can avert or overcome immigration restrictions, petition- ers must do the same with respect to Congress's 2009 appropriation acts. Constitutional problems can be avoided, petitioners claim, by construing the acts to apply prospectively from the date of enact- ment, as opposed to retroactively for those (such as petitioners) who had been granted habeas relief before the federal coffer was closed. Alternatively, petitioners claim that the text of the appropriation acts, which extend to persons "detained" at Guantanamo, should be narrowly construed to apply only to those persons held in military detention as enemy combatants. Respondents counter, however, that petitioners' interpretative maneuvering is misplaced: first, because the appropriation acts as applied to petitioners are indeed prospective given that no transfer to the United States has occurred; and second, because petitioners' prof- fered interpretation of the acts is not "fairly possible" given the broad language of the acts and the context in which they were enacted. Finally, as an alternative to their constitutional claims under the Sus- pension Clause, petitioners contend that the district court's release order is cognizable under the federal habeas statute, 28 U.S.C. § 2241, which affords federal judges the power to grant relief to prisoners "in custody in violation of the Constitution or laws or treaties of the United States." As applied here, petitioners invoke the Constitution's Due Process Clause and the Geneva Convention. With respect to the former, petitioners argue that the circuit court erroneously applied a categorical territorial bar to the Due Process Clause's application outside of the United States, rather than the functional test applied in Boumediene with respect to the Suspension Clause. But respondents reject petitioners' invocations of the Due Process Clause and Geneva Convention as entitlements to statutory habeas relief under Section 2241. Respondents argue that whatever due pro- cess rights extend extraterritorially to petitioners at Guantanamo, the Court has never recognized a substantive due process right to be re- leased into the United States and should not do so here. Respondents further argue that, in the Military Commissions Act, Congress barred judicial enforcement of the at-issue Geneva Convention provisions, and that, in any event, nothing in the Geneva Convention mandates release into the territory of the detaining state as relief from unlawful detention. Apart from the foregoing, amici have offered additional perspec- tives in support of petitioners' request for release, including (1) that petitioners' indefinite detention violates the International Covenant on Civil and Political Rights (ICCPP), which the United States has ratified, as well as customary international law; (2) that if the United States does not live up to the standards of international law, resent- ment against the United States will undermine our influence over other countries' adherence to international norms; (3) that the Article Ill "judicial power" cannot be made dependent upon the subsequent discretionary actions of the political branches of government, much less the discretion of foreign sovereigns; (4) that the common law remedy for a successful habeas writ was historically the nondiscre- tionary and immediate release of the prisoner into the court's legal custody, rendering irrelevant the jailer's objections of impracticality; (5) that the Authorization for Use of Military Force (AUMF), which provides the statutory basis for detention at Guantanamo, should also be construed to include an "implied" release authority in order to avoid constitutional difficulties; and (6) that Supreme Court prec- edent offers vital transnational influence on "rule of law" norms, and that a decision ordering petitioners' release can reaffirm the Court's commitment to the rule of law during times of conflict. SIGNIFICANCE The Court's March 1 vacate-and-remand order has both legal and practical significance. The Court order is legally significant because it vacates the D.C. Circuit's decision, which had constrained the D.C. district courts from ordering the release of any similarly situated Guantanamo detainees into the United States. Thus, the effect of the order not only potentially benefits petitioners-who will have another opportunity before the lower court(s)-but also other Guantanamo detainees. As a practical matter, the Court declined its first opportunity to weigh in on President Obama's Guantanamo policy. The delay occasioned may yield the administration sufficient time to resettle all of the remaining civilian detainees at Guantanamo before the issue reaches the Court again, whether under the Kiyemba caption or some other. Of course, the delay may instead have the opposite effect; that is, to ease the administration's sense of urgency in resettling the remain- ing petitioners and other civilian detainees held at Guantanamo. The Supreme Court's decision to vacate the circuit court's decision is also important for what it might signal. Respondents had urged the Court to simply dismiss the writ of certiorari because the issue for which certiorari had been granted no longer existed. Specifically, the original question presented was whether release into United States was necessary to effectuate the habeas remedy when no other country was willing to accept them. But the factual predicate has changed. The legal effect of respondents' requested dismissal would have left the circuit court's decision intact, a poor result both for petitioners and other civilian detainees at Guantanamo. That the Supreme Court opted to vacate the circuit court's decision, rather than to dismiss it, provides fodder for petitioners to argue on remand that a repeat per- formance by the circuit court is not likely to meet with success on any appeal. Of course, any such argument requires reading between the lines. The Court's March I order expresses no reason why the Court chose to vacate the circuit court's decision rather than to dismiss the writ of certiorari. On remand, respondents are expected to argue that petitioners waived any claim for release into the United States under the changed circumstances, since petitioners' claim to relief, throughout the proceedings, had been predicated solely on the absence of safe third countries willing to accept them. Assuming petitioners overcome this technical defense, the case can take any number of turns, the direction of which may depend on whether the case is heard by the original panel or the circuit court en banc. First, it is possible that petitioners will obtain full relief from the circuit court. This result becomes much less likely if decided by the original Kiyemba panel. That is because the changed factual cir- cumstances only make petitioners' claim to release more difficult, and because petitioners must overcome, for the first time, obstacles under the appropriations acts. Alternatively, the circuit court might assume that release into the United States is a potential remedy when necessary but hold that re- lease in this case is unnecessary in light of petitioners' resettlement offers. Because this result involves a factual analysis, however, the circuit court.might remand to the district court to make that determi- nation in the first instance. Or, the circuit court might simply rely on the immigration laws, ap- propriation acts, or both to preclude release into the United States. It is important to recognize, in this regard, that the resettlement offers provide the circuit court an additional, narrower ground to decide against petitioners. But **nothing requires the circuit court to decide the case on the narrowest grounds available**. That may be especially so where, as here, the legal questions are likely to resurface in future cases, and disposition of these questions now can serve judicial efficacy. That the legal questions are of constitutional dimension, however, may counsel the circuit court away from ruling any more broadly than is necessary. Finally, **beyond the implications for Guantanamo detainees**, **an even- tual ruling on the merits can reasonably be expected to** ***spill into the immigration context more generally***. Among other things, **a ruling** ***in favor of respondents*** **might reinvigorate** the political branches' his- toric assertion of **plenary control over our borders**, **whereas *a ruling in favor of petitioners might undermine such grand assertions***.

***Plenary powers - particularly in the judiciary mandating release – decimates foreign policy***

Jon **Feere**, legal policy analyst at the Center for Immigration Studies , Center for Immigration Studies, Panel, Panel: Should Judges Set Immigration Policy?, 20**09**, http://www.cis.org/Transcript/ PlenaryPowerPanel

Foreign Powers Controlling U.S. Immigration Policy? One of **the arguments for** the political branches’ **plenary power over immigration involves a focus on foreign affairs**. That issue was a factor in the Zadvydas decision. Under the Constitution, it is the executive and legislative branches that direct foreign policy matters. This ensures that the U.S. relations with other countries are consistent and reliable. As explained by the dissenting justices in Zadvydas: “**judicial orders requiring release** of removable aliens, even on a temporary basis, ***have the potential to undermine the obvious necessity that the Nation speak with one voice on immigration and foreign affairs matters***.”90 **The problem is that the majority effectively empowered foreign governments to control U.S. immigration policy**. The dissenting justices in Zadvydas explained: “The result of the Court’s rule is that, **by refusing to accept repatriation of their own nationals**, ***other countries can effect the release of these individuals back into the American community***. If their own nationals are now at large in the United States, **the nation of origin may ignore or disclaim responsibility to accept their return. The interference with sensitive foreign relations becomes even more acute where hostility or tension characterizes the relationship**, for other countries can use the fact of judicially mandated release to their strategic advantage, refusing the return of their nationals to force dangerous aliens upon us.”91 Certainly, **such political considerations are not on the average judge’s radar*, and they shouldn’t be***. Political issues are to be debated and resolved within the political branches. But the decision in Zadvydas arguably requires judges to involve the judiciary in foreign affairs. According to the dissenting justices: “One of the more alarming aspects of the Court’s new venture into foreign affairs management is the suggestion that the district court can expand or contract the reasonable period of detention based on its own assessment of the course of negotiations with foreign powers. The Court says it will allow the Executive to perform its duties on its own for six months; after that, foreign relations go into judicially supervised receivership.”92 **By not adhering to the plenary power doctrine, the** Zadvydas **majority effectively relocates foreign policy considerations from experienced and accountable political actors to** arguably **less-politically astute judges while simultaneously politicizing the judiciary. The decision** also ***puts foreign governments in the driver’s seat***.

#### Blanket release causes WMD terror

Popeo, 10

(Attorney-Washington Legal Foundation, Brief on Behalf of Retired Military Officers, National Defense Committee and Washington Legal Foundation, Kiyemba v. Obama, No. 08-1234, Lexis)

Petitioners are asking the Court to rule that every detainee now being held at Guantanamo Bay possesses a substantive due process liberty interest protected by the U.S. Constitution. They further ask the Court to [45] rule that any such detainee who succeeds in overturning his "enemy combatant" designation and who cannot be sent to his nation of citizenship must be released into the United States. They further ask for **adoption of a rule that would require such release without regard to whether the political branches of government believe that release poses national security concerns.** Amici respectfully submit, based on their considerable military experience, that recognition of the constitutional rights asserted by petitioners would raise serious national security concerns. Congress and the Executive Branch have determined that national security dictates that the seven Uighurs remaining at Guantanamo Bay should not be released into the United States. Simply because the Uighurs are no longer deemed "enemy combatants" does not mean there can be adequate assurance they will not be disruptive if allowed to enter the United States. Each of them attended a military training camp in Afghanistan and acquired weaponry skills. Each was at one time determined to be an "enemy combatant" by a CSRT. More than a few of the individuals released from [34] Guantanamo Bay have returned to the battlefield [46] to fight against the United States. Boumediene, 128 S. Ct. at 2295 (Scalia, J., dissenting). If the Executive Branch and Congress are sufficiently concerned about releasing the seven Uighurs into the United States to oppose such release, the courts -- which have vastly fewer resources than the political branches and far less expertise in national security matters -- should be extremely reluctant to second-guess that position. **The potential national security concerns at issue range far beyond how the Uighurs may conduct themselves once released into the United States.** For example, China has stated in no uncertain terms that it wants the Uighurs returned to China and opposes permitting them to live freely in some other country. See, e.g., Peter Spiegel and Barbara Demick, "Uighur Detainees at Guantanamo Pose a Problem for Obama," Los Angeles Times (Feb. 18, 2009) ("China is insisting that the Uighurs be sent home to face trial for separatist activities. It has further intimated that any country that offers them political asylum will in effect be harboring dangerous terrorists."); Bradley S. Klapper, "China to Swiss: Don't Take Uighurs from Guantanamo," Miami [47] Herald (Jan. 8, 2010) ("China warned the Swiss government Friday against accepting two Guantanamo inmates as part of President Barack Obama's effort to close the detention center, calling them terrorist suspects who should face Chinese justice."). Releasing the seven Uighurs into the United States undoubtedly would have adverse effects on U.S. relations with China. Amici submit that the Executive Branch and Congress are better equipped than is the Court to weigh the costs of those effects against [35] whatever benefits might come from the Uighurs' release into the United States. Moreover, every Guantanamo detainee, including some of the most dangerous terrorists in the world, has filed a habeas petition in the District of Columbia and will reap the benefits of a decision extending due process rights to nonresident aliens at Guantanamo Bay. Given the well-known difficulty that the military has experienced in handling the massive amounts of evidence relevant to each of the pending habeas petitions, it is within the realm of possibility that at least some of the most highly dangerous detainees will prevail in their habeas petitions. If that occurs and the detainee [48] reasonably fears persecution in his home country, a decision favoring Petitioners in this matter **could well lead to the release of dangerous terrorists into the United States**. It would also compound the significant disruptions already being experienced by the military as it is forced to divert large amounts of its resources to defending against the habeas petitions filed by so many of its military detainees. See Gen. Thomas L. Hemingway, Wartime Detention of Enemy Combatants: What if There Were a War and No One Could Be Detained Without an Attorney?, 34 DENV. J. INT'L L. & POL'Y 63 (2006). The district court ruled that release into the United States was required because the Uighurs are no longer deemed "enemy combatants" and have nowhere else to go. Under the district court's "all or nothing" standard, the political branches' considered views that the Uighurs could pose a threat to national security if released into the United States count for nothing -- [36] because their evidence does not at present rise to the level necessary to support an "enemy combatant" designation. That decision is a sharp break from 220 years of constitutional history, during [49] which the courts deferred considerably to the political branches' foreign affairs decisions, and raises serious national security concerns.

***Terror causes extinction***

Owen B. **Toon**, 4-19-**2007**, is professor of Atmospheric and Oceanic Sciences and a fellow at the Laboratory for Atmospheric and Space Physics (LASP) at the University of Colorado received his Ph.D. from Cornell University, in cloud physics, atmospheric chemistry and radiative transfer, “Atmospheric effects and societal consequences of regional scale nuclear conﬂicts and acts of individual nuclear terrorism,” Atmosphere Chemistry Physics

**To an increasing extent, people are congregating in the world’s great urban centers, creating megacities** with popula- tions exceeding 10 million individuals. **At the same time,** ad- vanced **technology has designed nuclear explosives of such small size they can be easily transported** in a car, small plane or boat to the heart of a city. We demonstrate here that **a sin- gle detonation** in the 15 kiloton range can produce urban fa- talities **approaching one million** in some cases, **and casualties exceeding one million**. Thousands of small weapons still ex- ist **in** the arsenals of the U.S. and **Russia**, and **there are** at least six other countries with **substantial** nuclear weapons **invento- ries**. In all, thirty-three countries control sufficient amounts **of** highly **enriched uranium or plutonium** to assemble nuclear explosives. A conflict between any of these countries involv- ing 50-100 weapons with yields of 15kt has the potential to create fatalities rivaling those of the Second World War. Moreover, even a single surface nuclear explosion, or an air burst in rainy conditions, in a city center is likely to cause the entire metropolitan area to be abandoned at least for decades owing to infrastructure damage and radioactive contamina- tion. As the aftermath of hurricane Katrina in Louisiana sug- gests, the economic consequences of even a localized nuclear catastrophe would most likely have severe national and inter- national economic consequences. **Striking effects result even from relatively small nuclear attacks** because low yield det- onations **are** most **effective against city centers** where busi- ness and social activity as well as population are concen- trated. Rogue nations and **terrorists would be most likely to strike there**. Accordingly, an organized attack on the www.atmos-chem-phys.net/7/1973/2007/ Atmos. Chem. Phys., 7, 1973–2002, 2007 Page 28 2000 O. B. Toon et al.: **Consequences of** regional scale nuclear conflicts U.S. by a small nuclear state, or **terrorists** supported by such a state, **could generate casualties comparable to those once predicted for a full-scale nuclear “counterforce” exchange in a *superpower conflict*.** Remarkably, the estimated **quantities of smoke generated** by attacks totaling about one megaton of nuclear explosives **could lead to significant global climate perturbations** (Robock et al., 2007). While we did not ex- tend our casualty and damage predictions to include poten- tial medical, social or economic impacts following the initial explosions, such analyses have been performed in the past for large-scale nuclear war scenarios (Harwell and Hutchin- son, 1985). Such a study should be carried out as well for the present scenarios and physical outcomes.

**K**

#### Their focus on subjective flashpoints of violence creates a stop-gap in thought which distracts us from attempts to solve the root cause of all violence - Capital

**Zizek, ’08** (Slavoj, senior researcher at the Institute of Sociology, University of Ljubljana, Slovenia and a professor at the European Graduate School, Violence, p. 1-4)

If there is a unifying thesis that runs through the bric-a-brac of reflections on violence that follow, it is that a similar paradox holds true for violence. At the forefront of our minds, the obvious signals of violence are acts of crime and terror, civil unrest, international conflict. But we should learn to step back**,** to disentangle ourselves from the fascinating lure of this directly visible “subjective” violence, violence performed by a clearly identifiable agent. We need to perceive the contours of the background which generates such outbursts. A step back enables us to identify a violence that sustains our very efforts to fight violence and to promote tolerance. This is the starting point, perhaps even the axiom, of the present book: subjective violence is just the most visible portion of a triumvirate that also includes two objective kinds of violence. First, there is a “symbolic” violence embodied in language and its forms, what Heidegger would call “our house of being.” As we shall see later, this violence is not only at work in the obvious—and extensively studied—cases of incitement and of the relations of social domination reproduced in our habitual speech forms: there is a more fundamental form of violence still that pertains to language as such, to its imposition of a certain universe of meaning. Second, there is what I call “systemic” violence, or the often catastrophic consequences of the smooth functioning of our economic and political systems. The catch is that subjective and objective violence cannot be perceived from the same standpoint**:** subjective violence is experienced as such against the background of a non-violent zero level. It is seen as a perturbation of the “normal,” peaceful state of things. However, objective violence is precisely the violence inherent to this “normal” state of things. Objective violence is invisible since it sustains the very zero-level standard against which we perceive something as subjectively violent. Systemic violence is thus something like the notorious “dark matter” of physics, the counterpart to an all-too- visible subjective violence. It may be invisible, but it has to be taken into account if one is to make sense of what otherwise seem to be “irrational” explosions of subjective violence. When the media bombard us with those “humanitarian crises” which seem constantly to pop up all over the world, one should always bear in mind that a particular crisis only explodes into media visibility as the result of a complex struggle. Properly humanitarian considerations as a rule play a less important role here than cultural, ideologico-political, and economic considerations. The cover story of Time magazine on 5 June 2006, for example, was “The Deadliest War in the World.” This offered detailed documentation on how around 4 million people died in the Democratic Republic of Congo as the result of political violence over the last decade. None of the usual humanitarian uproar followed, just a couple of readers’ letters—as if some kind of filtering mechanism blocked this news from achieving its full impact in our symbolic space. To put it cynically, Time picked the wrong victim in the struggle for hegemony in suffering. It should have stuck to the list of usual suspects: Muslim women and their plight, or the families of 9/11 victims and how they have coped with their losses. The Congo today has effectively re-emerged as a Conradean “heart of darkness.” No one dares to confront it head on. The death of a West Bank Palestinian child, not to mention an Israeli or an American, is mediatically worth thousands of times more than the death of a nameless Congolese. Do we need further proof that the humanitarian sense of urgency is mediated, indeed overdetermined, by clear political considerations? And what are these considerations? To answer this, we need to step back and take a look from a different position. When the U.S. media reproached the public in foreign countries for not displaying enough sympathy for the victims of the 9/11 attacks, one was tempted to answer them in the words Robespierre addressed to those who complained about the innocent victims of revolutionary terror: “Stop shaking the tyrant’s bloody robe in my face, or I will believe that you wish to put Rome in chains.”1 Instead of confronting violence directly, the present book casts six sideways glances. There are reasons for looking at the problem of violence awry. My underlying premise is that there is something inherently mystifying in a direct confrontation with it: the overpowering horror of violent acts and empathy with the victims inexorably function as a lure which prevents us from thinking. A dispassionate conceptual development of the typology of violence must by definition ignore its traumatic impact. Yet there is a sense in which a cold analysis of violence somehow reproduces and participates in its horror. A distinction needs to be made, as well, between (factual) truth and truthfulness: what renders a report of a raped woman (or any other narrative of a trauma) truthful is its very factual unreliability, its confusion, its inconsistency. If the victim were able to report on her painful and humiliating experience in a clear manner, with all the data arranged in a consistent order, this very quality would make us suspicious of its truth. The problem here is part of the solution: the very factual deficiencies of the traumatised subject’s report on her experience bear witness to the truthfulness of her report, since they signal that the reported content “contaminated” the manner of reporting it. The same holds, of course, for the so-called unreliability of the verbal reports of Holocaust survivors: the witness able to offer a clear narrative of his camp experience would disqualify himself by virtue of that clarity.2 The only appropriate approach to my subject thus seems to be one which permits variations on violence kept at a distance out of respect towards its victims.

***It is not possible to solve any situation without solving them all - only a criticism which attacks the universality of capitalism can solve inevitable extinction***

**Zizek, ’89**

(Slavoj, Senior Researcher at the Institute for Social Studies, The Sublime Object of Ideology, page 3-4)

It is upon the unity of these two features that the Marxist notion of the revolution, of the revolutionary situation, is founded: **a situation of metaphorical condensation in which it finally becomes clear to the everyday consciousness that it is not possible to solve any particular ques­tion without *solving them all*** - that is, **without solving the fundamental question which embodies the antagonistic character of the social totality. In a 'normal', pre-revolutionary state of things, everybody is fighting his own particular battles** (workers are striking for better wages, feminists are fighting for the rights of women, democrats for political and social freedoms, ecologists against the exploitation of nature, participants in the peace movements against the danger of war, and so on). Marxists are using all their skill and adroimess of argument to convince the partici­pants in these particular struggles that the only real solution to their problem is to be found in the global revolution: **as long as social relations are dominated by Capital, there will always be sexism in relations between the sexes, there will always be a threat of global war, there will always be a danger that political and social freedoms will be suspended, nature itself will always remain an object of ruthless exploitation**. . . . **The global revolution will then abolish the basic social antagonism, enabling the formation of a transparent, rationally governed society.**

***Our alternative is to completely withdraw from the ideology of capital - this opens up the space for authentic politics***

**Johnston ’04** (Adrian, interdisciplinary research fellow in psychoanalysis at Emory, The Cynic’s Fetish: Slavoj Zizek and the Dynamics of Belief, Psychoanalysis, Culture and Society)

Perhaps the absence of a detailed political roadmap in Žižek’s recent writings isn’t a major shortcoming. Maybe, at least for the time being, the most important task is simply the negativity of the critical struggle, the effort to cure an intellectual constipation resulting from capitalist ideology and thereby to truly open up the space for imagining authentic alternatives to the prevailing state of the situation. Another definition of materialism offered by Žižek is that it amounts to accepting the internal inherence of what fantasmatically appears as an external deadlock or hindrance ( Žižek, 2001d, pp 22–23) (with fantasy itself being defined as the false externalization of something within the subject, namely, the illusory projection of an inner obstacle, Žižek, 2000a, p 16). From this perspective, seeing through ideological fantasies by learning how to think again outside the confines of current restrictions has, in and of itself, the potential to operate as a form of real revolutionary practice (rather than remaining merely an instance of negative/critical intellectual reflection). Why is this the case? Recalling the analysis of commodity fetishism, the social efficacy of money as the universal medium of exchange (and the entire political economy grounded upon it) ultimately relies upon nothing more than a kind of ‘‘magic,’’ that is, the belief in money’s social efficacy by those using it in the processes of exchange. Since the value of currency is, at bottom, reducible to the belief that it has the value attributed to it (and that everyone believes that everyone else believes this as well), derailing capitalism by destroying its essential financial substance is, in a certain respect, as easy as dissolving the mere belief in this substance’s powers. The ‘‘external’’ obstacle of the capitalist system exists exclusively on the condition that subjects, whether consciously or unconsciously, ‘‘internally’’ believe in it – capitalism’s life-blood, money, is simply a fetishistic crystallization of a belief in others’ belief in the socio-performative force emanating from this same material. And yet, this point of capitalism’s frail vulnerability is simultaneously the source of its enormous strength: its vampiric symbiosis with individual human desire, and the fact that the late-capitalist cynic’s fetishism enables the disavowal of his/her de facto belief in capitalism, makes it highly unlikely that people can simply be persuaded to stop believing and start thinking (especially since, as Žižek claims, many of these people are convinced that they already have ceased believing). Or, the more disquieting possibility to entertain is that some people today, even if one succeeds in exposing them to the underlying logic of their position, might respond in a manner resembling that of the Judas-like character Cypher in the film The Matrix (Cypher opts to embrace enslavement by illusion rather than cope with the discomfort of dwelling in the ‘‘desert of the real’’): faced with the choice between living the capitalist lie or wrestling with certain unpleasant truths, many individuals might very well deliberately decide to accept what they know full well to be a false pseudo-reality, a deceptively comforting fiction (‘‘Capitalist commodity fetishism or the truth? I choose fetishism’’).

### 1NC – Courts Solvency

#### Deference and circumvention inevitable – the best they can achieve is inconsistent application of precedent.

Posner and Vermeule, 10- \*professor of law at the University of Chicago AND \*\*professor of law at Harvard (Eric and Adrian, The Executive Unbound, p. 52-54)

THE COURTS

We now turn from Congress to the courts, the other main hope of liberal legalism. In both economic and security crises, courts are marginal participants. Here two Schmittian themes are relevant: that courts come too late to the crisis to make a real difference in many cases, and that courts have pragmatic and political incentives to defer to the executive, whatever the nominal standard of review. The largest problem, underlying these mechanisms, is that courts possess legal authority but not robust political legitimacy. Legality and legitimacy diverge in crisis conditions, and the divergence causes courts to assume a restrained role. We take up these points in turn.

The Timing of Review

A basic feature of judicial review in most Anglo-American legal systems is that courts rely upon the initiative of private parties to bring suits, which the courts then adjudicate as “cases and controversies” rather than as abstract legal questions. This means that there is always a time lag, of greater or lesser duration, between the adoption of controversial government measures and the issuance of judicial opinions on their legal validity ensures that courts are less likely to set precedents while crises are hot, precedents that will be warped by the emotions of the day or by the political power of aroused majorities.70

Delayed review has severe costs, however. For one thing, courts often face a fait accompli. Although it is sometimes possible to strangle new programs in the crib, once those measures are up and running, it is all the more difficult for courts to order that they be abolished. This may be because new measures create new constituencies or otherwise entrench themselves, creating a ratchet effect, but the simpler hypothesis is just that officials and the public believe that the measures have worked well enough. Most simply, returning to the pre-emergency status quo by judicial order seems unthinkable; doing so would just re-create the conditions that led the legislature and executive to take emergency measures in the first place.

For another thing, even if courts could overturn or restrict emergency measures, by the time their review occurs, those measures will by their nature already have worked, or not. If they have worked, or at least if there is a widespread sense that the crisis has passed, then the legislators and public may not much care whether the courts invalidate the emergency measures after the fact. By the time the courts issue a final pronouncement on any constitutional challenges to the EESA, the program will either have increased liquidity and stabilized financial markets, or not. In either case, the legal challenges will interest constitutional lawyers, but will lack practical significance.

Intensity of Review

Another dimension of review is intensity rather than timing. At the level of constitutional law, the overall record is that courts tend to defer heavily to the executive in times of crisis, only reasserting themselves once the public sense of imminent threat has passed. As we will discuss in chapter 3, federal courts deciding administrative cases after 9/11 have tended to defer to the government’s assertion of security interests, although more large number work is necessary to understand the precise contours of the phenomenon. Schmitt occasionally argued that the administrative state would actually increase the power of judges, insofar as liberal legislatures would attempt to compensate for broad delegations to the executive by creating broad rights of judicial review; consider the Administrative Procedure Act (APA), which postdates Schmitt’s claim. It is entirely consistent with the broader tenor of Schmitt’s thought, however, to observe that the very political forces that constrain legislatures to enact broad delegations in times of crisis also hamper judges, including judges applying APA-style review. While their nominal power of review may be vast, the judges cannot exercise it to the full in times of crisis.

Legality and Legitimacy

At a higher level of abstraction, the basic problem underlying judicial review of emergency measures is the divergence between the courts’ legal powers and their political legitimacy in times of perceived crisis. As Schmitt pointed out, emergency measures can be “exceptional” in the sense that although illegal, or of dubious legality, they may nonetheless be politically legitimate, if they respond to the public’s sense of the necessities of the situation.71 Domesticating this point and applying it to the practical operation of the administrative state, courts reviewing emergency measures may be on strong legal ground, but will tend to lack the political legitimacy needed to invalidate emergency legislation or the executive’s emergency regulations. Anticipating this, courts pull in their horns.

When the public sense of crisis passes, legality and legitimacy will once again pull in tandem; courts then have more freedom to invalidate emergency measures, but it is less important whether or not they do so, as the emergency measure will in large part have already worked, or not. The precedents set after the sense of crisis has passed may be calmer and more deliberative, and thus of higher epistemic quality—this is the claim of the common lawyers, which resembles an application of the Madisonian vision to the courts—but the public will not take much notice of those precedents, and they will have little sticking power when the next crisis rolls around.

#### 1) Circumvention:

#### A) The Executive

Umansky, 5 – senior editor at ProPublica (Eric, 6/17. “Closing Guantanamo prison may not be the best option.” http://onlineathens.com/stories/061805/opi\_20050618001.shtml)

Closing the U.S. prison at Guantanamo Bay has suddenly become a hot topic. Since Sen. Joseph R. Biden Jr., D-Del., broached the idea, the notion has been gaining steam. Last weekend, Sen. Mel Martinez, R-Fla., added the first Republican voice to the chorus, and there were Senate hearings Wednesday on detainee issues. Even President Bush seems to be hinting that he's game. Asked during a television interview whether Gitmo should be shut, the president said, "We're exploring all alternatives as to how best to do the main objective, which is to protect America." Gitmo has come to represent the lack of accountability and the extralegal aspects of the war on terrorism. Shuttering it would be a grand gesture. The symbolism would be important and could help improve the U.S. image. But if that is all that is done, a closure risks obscuring a more important issue and could even be counterproductive: If the U.S. is to really regain its standing as a defender of human rights, it needs to do more than mothball a single jail; it needs to change its policies. If the prison were to close, what would happen to the detainees? Most of them were judged by former commanders at Guantanamo to be merely Taliban foot soldiers. Some, presumably, would simply be released. Others might face military tribunals, and some would most likely be shipped off, to be held by other countries. The last two possibilities are not a welcome scenario from either a moral or public relations perspective. Consider the tribunals. Heavily stacked against defendants, they've been condemned by such groups as the American Bar Association and military defense lawyers, who actually sued the government over the lack of prisoners' rights. Shipping terror suspects to other countries, even their own countries, could be worse. The U.S. has been practicing a form of this: "extraordinary rendition," in which prisoners are picked up in one locale - "snatched" in CIA parlance - and find themselves incarcerated elsewhere, in countries such as Syria or Uzbekistan. A United States military boat patrols in front of Camp Delta in this 2002 file photo, in Guantanamo Bay, Cuba. The legal process in such cases isn't just flawed, it doesn't exist. Detainees get no trials or hearings before a judge. The U.S. gets pro forma promises that prisoners won't be tortured, but there is no known monitoring. And Uzbekistan, for instance, has gained some renown for reports of political prisoners being boiled alive. Rendition hasn't generated the headlines or the level of outrage as Guantanamo Bay. But stories from rendered detainees have made it out, and they do little for the U.S. image. One Australian citizen who was rendered to Egypt was reportedly hung from a wall and given electric shock. In something of a reprieve, he was transferred to Guantanamo Bay. He arrived without most of his fingernails. There's also a perverse possibility intrinsic in **closing Gitmo**: It **could end up making the U.S. less accountable. With the visible symbol of unfair treatment swept away, pressure for wider change might dissipate**. It's important to remember that Gitmo is only one of a group of U.S. prisons around the globe set up to hold "enemy combatants" captured in the war on terrorism. Far less is known about the other jails, which are reportedly run by the CIA. There's one at Bagram Air Base in Afghanistan, called the Salt Pits. As The New York Times reported, two detainees have been killed at Bagram. More obscure is the reported facility at a base in Diego Garcia in the Indian Ocean. Unlike at Guantanamo Bay, no reporters have been allowed to visit these jails.

#### B) The DC Circuit Court

Clive Stafford Smith is director of the charity Reprieve, “Federal Courts Reject Virtually All Habeas Petitions from Gitmo: Study”, March 13th 2012, http://www.thedailybeast.com/articles/2012/05/13/federal-courts-reject-virtually-all-habeas-petitions-from-gitmo-study.html

Upon taking office in 2009, President Barack Obama pledged to close the prison at Guantánamo Bay within the year. We all know how that turned out. Now, a decade into the sad experiment that is Guantánamo, we discover that the United States—supposedly a nation of laws—isn’t simply holding prisoners year after year without charge, but is rejecting their habeas corpus petitions almost out of hand. A new study out of Seton Hall University School of Law finds that the federal district courts in Washington, D.C., granted 56 percent of the habeas petitions filed by detainees after the Supreme Court permitted the petitions in 2008. But since July 2010, the courts have rejected all but one. The turning point was a case called Al-Adahi v. Obama, decided by the D.C. Circuit Court of Appeals. The study’s authors, two law professors, say this shows that the D.C. Circuit—generally considered the most powerful court in the country outside the Supreme Court—has made up its mind that henceforth nobody in Guantánamo Bay should be considered innocent. In Al-Adahi, the court essentially said that an error rate of 56 percent is intolerable, but rather than eliminating errors by actually eliminating them, it simply decided they didn’t exist. “After Al-Adahi, the practice of careful judicial fact-finding was replaced by judicial deference to the government's allegations,” the authors write. “Now the government wins every petition.” Let’s put this in context: Normally, when someone in America is charged with a crime, the first question the judicial system seeks to answer is not how to kill him. Rather, it is whether he has, in fact, committed the crime the government alleges. Back in 2003, Donald Rumsfeld purportedly said that the prisoners in Guantánamo Bay were all captured on the Afghanistan battlefield, and were the “worst of the worst” terrorists in the world. In a totalitarian dictatorship, we might accept this as true without question; in the United States, we generally require evidence. Over the months and years, that evidence began to seep out, calling Mr. Rumsfeld’s assertions into question. First, his good friend, the Pakistan dictator General Pervez Musharraf, penned an autobiography, In the Line of Fire, bragging that fully half of the Guantánamo prisoners had not been captured in Afghanistan, let alone on a battlefield. They were Arabs who had been seized in Pakistan and sold to the U.S. for a bounty. Next, the U.S. military started making their own assessment. To date, they have released 610 of the 779 prisoners from Guantánamo—in other words, almost four out of five (78%) were no threat to the United States. Thus did the military cull Rumsfeld’s “terrorists,” presumably into a rump who he would label the “worst of the worst of the worst.” Only a very small number of the Gitmo prisoners have ever resorted to the courts for a writ of habeas corpus, a legal remedy that tests the legality of someone’s detention. In the first 34 cases, a District Court judge ruled for the prisoner 56 percent of the time. In effect, the judges were saying that, even after several years spent trying to sort the terrorist wheat from the bystander chaff, and after winnowing out hundreds of the more obviously innocent, the probability that military intelligence had identified an enemy correctly was still less than a coin-toss. So in Al-Adahi, the court set an impossible standard. Now, the district courts routinely deny habeas petitions, and when they do grant them, the circuit reverses them. The professors’ theory is that this ruling was intended to intimidate the lower court judges into curtailing their liberal nonsense. That is, the Guantánamo prisoners were getting too much justice. Unfortunately, I can attest to the correctness of the professors’ theory, as I was in court when a federal judge recently observed that he had been sent a message by his appellate brethren. It is important to understand that the habeas hearings are not deciding anything so mundane as whether the men in Guantánamo actually committed a crime. Indeed, only five people out of the 779 Guantánamo detainees have been convicted of a criminal offense; more than 99% have not. Rather, the question in a habeas proceeding is whether a prisoner has done anything that might—under a minimal burden of proof, with what is essentially a presumption of guilt supported by secret evidence—indicate an association with those who the government tars as terrorists.

#### C) Congress

Mark D. Pezold, Boston College Law Review “When to be a Court of Last Resort: The Search for

a Standard of Review for the Suspension Clause”, 1-1-2010, http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=3108&context=bclr (BJN)

Although the war on terror has not resulted in a suspension of habeas corpus, the conflict has presented the courts with increasingly complex issues regarding what level of due process should be granted to detainees. The judicial scrutiny of legislative acts passed in the wake of the September 11, 2001 attacks, most notably the Military Commissions Act of 2006, creates the potential for Congress to suspend the writ of habeas corpus altogether in the event another terrorist attack occurs. This Note explores what level of scrutiny should be applied to such a suspension, assuming that the courts do not declare the issue a political question. Between a deferential standard focusing on an analogy to the war powers and a more searching form of judicial review focusing on the writ’s importance in individual liberty and due process, the courts would have a complex challenge in applying the correct standard. This Note ultimately concludes that the deciding factor in such a case would be the indefinite nature of the suspension itself, determined primarily by the length of detention a detainee had faced, the availability of judicial process, and the length of time that passed since an attack warranting suspension occurred. Introduction The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it. —United States Constitution1 When the founding fathers drafted the Suspension Clause in Philadelphia following the failure of the Articles of Confederation, there was fierce debate over whether the federal government should ever have the power to suspend habeas corpus.2 The drafters recognized the significance of the writ as a method of bringing a prisoner before a court, often to ensure that the prisoner’s imprisonment or detention is not illegal.3 The drafters themselves had lived through several suspensions of habeas corpus by Parliament throughout colonial times and during the American Revolution, which led to their view that suspension served as an “engine of oppression.”4 The suspension of the writ challenges us to examine whether it is ever appropriate to forgo the important right in an effort to protect the nation.5 The drafters thought it was appropriate in certain circumstances to suspend the writ, but remained silent about the level of judicial review that should apply to a suspension.6 Given this ambiguity, the question of what is considered a “rebellion or invasion” pursuant to the Suspension Clause is increasingly complex, especially amid a war on terrorism.7 This Note seeks to explore the standard of review and level of scrutiny that should be applied to the internal limitations of the Suspension Clause by the judicial branch in the event the writ of habeas corpus is suspended.8 The term “internal limitation” refers to the requirement of an invasion or rebellion, and ignores the possibility that external limitations could also be used to challenge a suspension.9 The conventional notion has been that a suspension of habeas corpus would be a non-justiciable political question, but recent developments in the war on terror and commentary by modern legal scholars have challenged this idea.10 The concept of judicial review of suspension is more than an academic exercise given the recent unsuccessful attempts by Congress to circumvent the writ of habeas corpus by statute.11 Additionally, Professor Amanda L. Tyler speculates there is “good reason to believe that another attack would be met with invocation of the suspension power by Congress.”12 The idea that suspension is not a political question suggests an important role for judicial review during tumultuous times in our nation, yet leaves unresolved the question of what level of review should be used.13

--Footnote 11--

\*11 See, e.g., Military Commissions Act of 2006, Pub. L. No. 109-366, 120 Stat. 2600 (codified at scattered sections of 10, 18, 28, and 42 U.S.C.) (“No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.”); Authorization for Use of Military Force, Pub. L. No. 107-30, 115 Stat. 224 (codified at 50 U.S.C. § 1541 (2006)) (declaring in the wake of September 11, 2001 terrorist attacks that “the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons”). The Military Commissions Act of 2006 was recently challenged in Boumediene v. Bush, highlighting the difficulty the government has faced in circumventing the courts in the war on terror and possibly increasing the likelihood that a future attack would lead the government to suspend the writ of habeas corpus altogether. 128 S. Ct. at 2263

#### 1) Obama is winning appointment battles for the federal judiciary now – key to reduce environmental regulations

Juliet Eilperin, Washington Post, Obama seeks to shift conservative tilt of key court, April 2nd 2013, http://articles.washingtonpost.com/2013-04-02/politics/38220167\_1\_president-obama-caitlin-halligan-second-term-agenda/2

President Obama has pressed senators from both parties in recent weeks to confirm a new federal judge for one of the country’s most powerful courts, using an aggressive strategy to campaign for a judicial nominee whom White House officials consider a potentially crucial figure in boosting the president’s second-term agenda. The effort reflects a new White House effort to tilt in its favor the conservative-dominated U.S. Court of Appeals for the District of Columbia Circuit, which is one notch below the Supreme Court and considers many challenges to executive actions. The push to win approval for Sri Srinivasan, the principal deputy solicitor general, has taken on greater urgency because Obama was forced late last month to withdraw his initial nominee to fill one of the court’s vacancies, New York City prosecutor Caitlin Halligan, in the face of a Republican filibuster. Giving liberals a greater say on the D.C. Circuit is important for Obama as he looks for ways to circumvent the Republican-led House and a polarized Senate on a number of policy fronts through executive order and other administrative procedures. The D.C. Circuit, with four Republican and three Democratic appointees, has four vacancies. It proved an obstacle for Obama during his first term — blocking proposed rules, for instance, to curb interstate air pollution and enhance cigarette labeling. The court also has put on hold dozens of cases relating to rules on workers’ rights, and it has challenged the president’s authority to name recess appointees. In recent days, Obama has intervened in the push for Srinivasan, said a White House official who spoke on the condition of anonymity because the confirmation process is not complete. The president has used meetings with Republican and Democratic senators to make a case for swift confirmation, the official said. The president mentioned the issue of judicial nominations during a recent Google Plus video chat, and the White House has spread the message online about the D.C. Circuit’s vacancies. One case the White House is making privately is that Srinivasan, who worked in President George W. Bush’s solicitor general’s office for five years before returning there under Obama in 2011, holds bipartisan appeal. Underscoring that point, 12 former solicitors general and principal deputy solicitors general — six Democrats and six Republicans — issued a letter Monday urging the nominee’s confirmation. “There are few things more vital on the president’s second-term agenda,” said Constitutional Accountability Center President Doug Kendall, who co-wrote an upcoming Environmental Forum article on the subject with his group’s senior counsel, Simon Lazarus. “With legislative priorities gridlocked in Congress, the president’s best hope for advancing his agenda is through executive action, and that runs through the D.C. Circuit.” Born in India and raised in Lawrence, Kan., Srinivasan, 46, has the backing of the country’s South Asian community, which voted overwhelmingly for Obama but has been an increasingly important donor base for both parties. Activist groups have mobilized to boost the White House campaign, with one organization, the Indian American Leadership Initiative, reaching out to Indian Americans in key states whose senators sit on the Judiciary Committee and lining up help from GOP donors. “This, for us, is a real groundbreaking nomination,” said Anurag Varma, vice president of the group. “It’s great to see Indian Americans who vote Republican also see Sri as a great candidate.” White House press secretary Jay Carney made a point during his news briefing Monday of extolling the credentials of Srinivasan, whose nomination will come before the Senate Judiciary Committee on April 11. Carney noted that Srinivasan has argued two dozen cases before the Supreme Court and has served “on behalf of the United States for both Democratic and Republican administrations. “Sri’s confirmation will be an important first step to filling this court’s four vacancies, and he will be, when confirmed, the first South Asian circuit court judge in history,” Carney said, adding that the D.C. Circuit “is often considered the nation’s second-highest court, but it has twice as many vacancies as any other court of appeals.” Although a number of Obama’s judicial nominees are awaiting confirmation — 15 are awaiting Senate floor votes, including 13 who won unanimous approval from the judiciary panel — the D.C. Circuit has taken on outsize importance because of its conservative tilt and its role overseeing Obama’s executive authority. In January, the court threw out a decision by the National Labor Relations Board on grounds that the recess appointments Obama made to the board were invalid. Since then, the court has put dozens of NLRB cases on hold, prompting concern in organized labor, a key Obama base. “It’s no exaggeration to say the workers’ rights agenda is either on hold or blowing up at the D.C. Circuit, in the hands of a few conservative judges,” said Lynn Rhinehart, general counsel for the AFL-CIO. The court is just as influential when it comes to environmental cases. It has exclusive jurisdiction over national rules issued under the Clean Air Act and the Safe Drinking Water Act, among other laws. It will have the power to block Obama’s efforts to regulate greenhouse gas emissions. “D.C. Circuit litigation will ensure these programs pass legal muster,” said Joseph Stanko, who heads government relations at the law firm Hunton & Williams and represents several coal-fired utilities that oppose rules governing greenhouse gas emissions. The White House effort, which includes pinning the blame on Republican senators for rampant federal court vacancies, has led to some additional bickering over who is at fault.

#### 2) Congress will block the new appointments

Geyh, Chair of Law Department @ Indiana, 06

(Charles Gardner. When courts & congress collide: the struggle for control of America’s Judicial System. P. 208)

The rise of customary judicial independence has been accompanied by a corresponding decline in judicial accountability, which resulted from the gradual rejection of various means of congressional control over judicial decision making—such as impeachment, court packing and unpacking, and jurisdictional manipulation. The appointments process, by virtue of its highly partisan tradition, its unique interbranch dynamic, and the relative ease with which partisan, ideologically motivated rejections can be accomplished, has evolved separately, unencumbered by the same judicial independent norms. As more draconian methods for controlling the courts - their decisions fell into disrepute, the confirmation process became the last best hope for legislators seeking to preserve some measure judicial accountability. Moreover, as the movement toward holding judges prospect' accountable for their decisions by means of the confirmation process took root, it may have diminished further still the perceived need hold judges accountable in other ways. To the extent that appointments process is calculated to select mainstream justices think, more or less, like those who appoint them (and to reject Tiers who do not), the occasions in which the decisions of those justices will so alienate the political branches and their constituencies to prompt retaliation may be fewer. And regardless of the extent which presidents and senators can in fact reduce the future incidence of unacceptable decisions via the appointments process, the emerging perception that they can do so has meant that when unacceptable decisions occur, the political response of first resort is increasingly address the problem with new appointments rather than by other, discredited means of court control.

#### 3) Regulations prevent extinction from runaway warming---now’s key

Lester R. Brown 11, Founder of the Worldwatch Institute and the Earth Policy Institute, June 28, 2011, “The Good News About Coal,” online: http://globalgeopolitics.net/wordpress/2011/06/28/op-ed-the-good-news-about-coal/

During the years when governments and the media were focused on preparations for the 2009 Copenhagen climate negotiations, a powerful climate movement was emerging in the United States: the movement opposing the construction of new coal-fired power plants.¶ Environmental groups, both national and local, are opposing coal plants because they are the primary driver of climate change. Emissions from coal plants are also responsible for 13,200 U.S. deaths annually – a number that dwarfs the U.S. lives lost in Iraq and Afghanistan combined.¶ What began as a few local ripples of resistance quickly evolved into a national tidal wave of grassroots opposition from environmental, health, farm, and community organisations. Despite a heavily funded industry campaign to promote "clean coal", the American public is turning against coal.¶ In a national poll that asked which electricity source people would prefer, only three percent chose coal. The Sierra Club, which has kept a tally of proposed coal-fired power plants and their fates since 2000, reports that 152 plants in the United States have been defeated or abandoned.¶ An early turning point in the coal war came in June 2007, when Florida’s Public Service Commission refused to license a huge 5.7- billion-dollar, 1,960-megawatt coal plant because the utility proposing it could not prove that building the plant would be cheaper than investing in conservation, efficiency, or renewable energy.¶ This point, frequently made by lawyers from Earthjustice, a nonprofit environmental legal group, combined with widely expressed public opposition to any more coal-fired power plants in Florida, led to the quiet withdrawal of four other coal plant proposals in the state.¶ Coal’s future also suffered as Wall Street, pressured by the Rainforest Action Network, turned its back on the industry. In February 2008, investment banks Morgan Stanley, Citi, J.P. Morgan Chase, and Bank of America announced that any future lending for coal- fired power would be contingent on the utilities demonstrating that the plants would be economically viable with the higher costs associated with future federal restrictions on carbon emissions.¶ One of the unresolved questions haunting the coal sector is what to do with the coal ash – the remnant of burning coal – that is accumulating in 194 landfills and 161 holding ponds in 47 states. This ash is not an easy material to dispose of since it is laced with arsenic, lead, mercury, and other toxic materials.¶ A coal ash spill in Tennessee in December 2008 released a billion gallons of toxic brew and is costing the Tennessee Valley Authority (TVA) 1.2 billion dollars to clean up.¶ An August 2010 joint study by the Environmental Integrity Project, Earthjustice, and the Sierra Club reported that 39 coal ash dump sites in 21 states have contaminated local drinking water or surface water with arsenic, lead, and other heavy metals at levels that exceed federal safe drinking water standards. The U.S. Environmental Protection Agency (EPA) had already identified 98 other water- polluting sites.¶ In response to these and other threats, new regulations are in the making to require better management of coal ash storage facilities to avoid contaminating local groundwater supplies. In addition, EPA is issuing more stringent regulations on coal plant emissions to reduce chronic respiratory illnesses and deaths caused by coal-fired power plant emissions.¶ The coal industry practice of blasting off mountaintops to get at coal seams is also under fire. In August 2010, the Rainforest Action Network announced that several leading U.S. investment banks, including Bank of America, J.P. Morgan, Citi, Morgan Stanley, and Wells Fargo, had ceased lending to companies involved in mountaintop removal coal mining.¶ Massey Energy, a large coal mining company notorious for its violations of environmental and safety regulations and the owner of the West Virginia mine where 29 miners died in 2010, lost all funding from three of the banks.¶ Now that the United States has, in effect, a near de facto moratorium on the licensing of new coal-fired power plants, several environmental groups, including the Sierra Club and Greenpeace, are starting to focus on closing existing coal plants.¶ Utilities are beginning to recognise that coal is not a viable long- term option. TVA announced in August 2010 that it was planning to close nine of its 59 coal-generating units. Duke Energy, another major southeastern utility, followed with an announcement that it was considering the closure of seven coal-fired units in North and South Carolina alone.¶ Progress Energy, also in the Carolinas, is planning to close 11 units at four sites. In Pennsylvania, Exelon Power is preparing to close four coal units at two sites. Xcel Energy, the dominant utility in Colorado, announced it was closing seven coal units. And in April 2011, TVA agreed to close another nine units as part of a legal settlement with EPA.¶ In an analysis of the future of coal, Wood Mackenzie, a leading energy consulting and research firm, describes these closings as a harbinger of things to come for the coal industry.¶ The chairman of the powerful U.S. Federal Energy Regulatory Commission, Jon Wellinghoff, observed in early 2009 that the United States may no longer need any additional coal plants. Regulators, investment banks, and political leaders are now beginning to see what has been obvious for some time to climate scientists such as James Hansen: that it makes no sense to build coal-fired power plants only to have to bulldoze them in a few years.¶ Closing coal plants in the United States may be much easier than it appears. If the efficiency level of the other 49 states were raised to that of New York, the most energy-efficient state, the energy saved would be sufficient to close 80 percent of the country’s coal-fired power plants. The remaining plants could be shut down by turning to wind, solar, and geothermal energy.¶ The U.S. transition from coal to renewables is under way. Between 2007 and 2010, U.S. coal use dropped eight percent. During the same period, and despite the recession, 300 new wind farms came online, adding some 23,000 megawatts of wind-generating capacity.¶ With the likelihood that few, if any, new coal-fired power plants will be approved in the United States, this moratorium sends a message to the world. Denmark and New Zealand have already banned new coal-fired power plants. As of late 2010, Hungary was on the verge of closing its one remaining coal plant.¶ Ontario Province, where 39 percent of Canadians live, plans to phase out coal entirely by 2014. Scotland announced in September 2010 that it plans to get 100 percent of its electricity from renewables by 2025, backing out coal entirely. In May 2011, that target date was pushed up to 2020.¶ Even China is surging ahead with renewable energy and now leads the world in new wind farm installations. These and other developments suggest that the Plan B goal of cutting carbon emissions 80 percent by 2020 may be much more attainable than many would have thought a few years ago.¶ The restructuring of the energy economy will not only dramatically drop carbon emissions, helping to stabilise climate, it will also eliminate much of the air pollution that we know today. The idea of a pollution-free environment is difficult for us even to imagine, simply because none of us has ever known an energy economy that was not highly polluting.¶ Working in coal mines will be history. Black lung disease will eventually disappear. So too will ‘code red’ alerts warning us to avoid strenuous exercise because of dangerous levels of air pollution.¶ And, finally, in contrast to investments in oil fields and coal mines, where depletion and abandonment are inevitable, the new energy sources are inexhaustible. While wind turbines, solar cells, and solar thermal systems will all need repair and occasional replacement, investing in these new energy sources means investing in energy systems that can last forever.¶ Although some of the prospects look good for moving away from coal, timing is key. Can we close coal-fired power plants fast enough to save the Greenland ice sheet? If not, sea level will rise 23 feet. Hundreds of coastal cities will be abandoned. The rice-growing river deltas of Asia will be underwater. And there will be hundreds of millions of rising-sea refugees.¶ If we cannot mobilise to save the Greenland ice sheet, we probably cannot save civilisation as we know it.

### 1NC – Judicial Globalism FL

***Democracy is resilient – is seen as legitimate globally and has empirically withstood challenges to it***

Plattner 10 – director of the International Forum for Democratic Studies at the National Endowment for Democracy (Marc, Journal of Democracy, January 2010, Volume 21, Number 1)

At the same time, however, the new focus on the resilience of authoritarianism may have led to a tendency to neglect or undervalue the resilience of democracy—a subject that I believe merits fresh attention. Despite the obstacles that democracy has encountered in recent years, it in fact continues to endure remarkably well. In the first place, in a departure from previous cycles, the “third wave” of democratization that began in 1974 has not yet given way to a third “reverse wave,” in which the number of countries experiencing democratic breakdowns substantially exceeds the number giving birth to new democracies. It is true, as Larry Diamond has noted, that the incidence of democratic breakdown or backsliding has increased in the last few years, but the democratic regimes that have succumbed have all been of fairly recent vintage.2 Put differently, no well-established or consolidated democracies have been lost. In particular, in countries that have achieved high levels of per capita GDP, there still has not been a single case of democratic breakdown. Part of the explanation, of course, is that democratic regimes today enjoy a high degree of legitimacy, not only among their own citizens but in the world at large. This can be seen in the endorsement that democracy has been given by international and regional organizations, in the way in which nondemocratic countries try to claim the mantle of democracy for themselves, and in the support for democracy that public- opinion surveys find in every region of the world. As Amartya Sen has written, “In any age and social climate, there are some sweeping beliefs that seem to command respect as a kind of general rule—like a “default” setting in a computer program; they are considered right unless their claim is some- how precisely negated. While democracy is not yet universally practiced, nor indeed universally accepted, in the general climate of world opinion, democratic governance has now achieved the status of being taken to be generally right”.3 The high degree of legitimacy that democracy enjoys can also be observed in the paucity of support in established democracies for antidemocratic movements and regimes elsewhere. During the twentieth century, there were significant sources of support in Western public opinion, especially among academics and intellectuals, not only for Marxism, but for Stalin’s Soviet Union, for Mao’s China, for Castro’s Cuba, and for the Sandinistas’ Nicaragua. In the democratic world today, open backing for the regimes of Russia, China, or Iran is rarely to be found. There is, of course, a great deal of criticism of Western and especially U.S. policy toward these regimes, but that is a very different matter from endorsing their ideological claims. Yet although explicit sympathy for antidemocratic alternatives is virtually absent among significant groups of citizens in consolidated democracies, this cannot be taken to reflect widespread satisfaction on their part with political life in their own countries. When viewed from the vantage point of emerging democracies, the advanced democracies may appear to be paragons of successful governance, but that is not generally how it looks from the inside, where dissatisfaction with politics is widespread. This manifests itself in contempt for politicians (especially the people’s chosen representatives in the legislature), frequent outbreaks of scandal and corruption, and declining trust in political institutions. Moreover, across the political spectrum, at least in the United States, one hears heightened expressions of concern about escalating partisanship, a coarsening of political discourse, an inability to get things accomplished, and a broader cultural decline. It would be hard to deny that many of these complaints have a good deal of justification. Yet in the developed world democracy remains, if not exactly robust, seemingly impregnable. This may in part be due to an increasing acceptance of what has been dubbed “the Churchill hypothesis”—that “democracy is the worst form of Government except for all those other forms that have been tried from time to time.”4 It is surely true that the failures and drawbacks of other types of regimes help to shore up the continuing appeal of democracy. Even cases such as the People’s Republic of China, with its remarkable success over the past three decades in achieving economic growth and military power, have not been able to convince citizens in the advanced democracies that they would want to sacrifice their liberties to enjoy the putative benefits of single-party rule. The direction of migration in the world remains overwhelmingly from less free countries to freer ones.

***No impact—democratic peace theory is wrong***

Layne ’06 (Christopher, International Security 31.2 (2006) 7-41, “The Unipolar Illusion Revisited” project muse, jj)

The mere fact that the United States is a democracy does not negate the possibility that other states will fear its hegemonic power. First, **theories that posit a special democratic** (or liberal) **peace are contradicted by the historical record. When important geopolitical interests are at stake, realpolitik—not regime type—determines great power policies**. [69](http://muse.jhu.edu.proxy.lib.wayne.edu/journals/international_security/v031/31.2layne.html%22%20%5Cl%20%22FOOT69) Contrary to liberal theory, **democracies** (and liberal states) **have threatened to use military force against each other to resolve diplomatic crises and have even gone to the brink of war**. Indeed, **democracies have not just teetered on the brink; they have gone over it. The most notable example of a war among democracies occurred in 1914 when democratic Britain and France went to war against democratic Germany**. [70](http://muse.jhu.edu.proxy.lib.wayne.edu/journals/international_security/v031/31.2layne.html%22%20%5Cl%20%22FOOT70) Today, the gross imbalance of U.S. power means that **whenever the United States believes its interests are threatened, it will act like other hegemons typically have acted, notwithstanding that it is a democracy**. [71](http://muse.jhu.edu.proxy.lib.wayne.edu/journals/international_security/v031/31.2layne.html%22%20%5Cl%20%22FOOT71) [End Page 26] Second, **the term "democracy" itself is subjective; democracy has many different—contested—meanings**. [72](http://muse.jhu.edu.proxy.lib.wayne.edu/journals/international_security/v031/31.2layne.html%22%20%5Cl%20%22FOOT72) To say that two states are democracies may conceal more than it reveals. Take the U.S. relationship with Europe, for example. **Although liberal international relations theory stresses that democracies are linked by shared norms and values, in recent years—and especially since the terrorist attacks of September 11, 2001—polling data suggest that the United States and Europe share few common values**. A September 2004 survey of 8,000 respondents on both sides of the Atlantic, cosponsored by the German Marshall Fund and the Compagnia di Sao Paolo of Turin, Italy, found that **83 percent of Americans and 79 percent of Europeans concurred that the United States and Europe have different social and cultural values**. **[73](http://muse.jhu.edu.proxy.lib.wayne.edu/journals/international_security/v031/31.2layne.html%22%20%5Cl%20%22FOOT73) On a host of important domestic and international issues, including attitudes toward the role of international law and institutions, Americans and Europeans hold divergent views**. Although this split may be less pronounced among transatlantic elite opinion than it is among mass opinion, **if, over time, the gulf continues at the public level, it will eventually influence foreign policy behavior on both sides of the Atlantic.**

#### No modeling

Law & Versteeg 12—Professor of Comparative Constitutional Law @ Washington University & Professor of Comparative Constitutional Law @ University of Virginia [David S. Law & Mila Versteeg, “The Declining Influence of the United States Constitution,” New York University Law Review, Vol. 87, 2012

The appeal of American constitutionalism as a model for other countries appears to be waning in more ways than one. Scholarly attention has thus far focused on global judicial practice: There is a growing sense, backed by more than purely anecdotal observation, that foreign courts cite the constitutional jurisprudence of the U.S. Supreme Court less frequently than before.267 But the behavior of those who draft and revise actual constitutions exhibits a similar pattern. Our empirical analysis shows that the content of the U.S. Constitution is¶ becoming increasingly atypical by global standards. Over the last three decades, other countries have become less likely to model the rights-related provisions of¶ their own constitutions upon those found in the Constitution. Meanwhile, global adoption of key structural features of the Constitution, such as federalism, presidentialism, and a decentralized model of judicial review, is at best stable and at worst declining. In sum, rather than leading the way for global¶ constitutionalism, the U.S. Constitution appears instead to be losing its appeal as¶ a model for constitutional drafters elsewhere. The idea of adopting a constitution may still trace its inspiration to the United States, but the manner in which constitutions are written increasingly does not.

If the U.S. Constitution is indeed losing popularity as a model for other countries, what—or who—is to blame? At this point, one can only speculate as to the actual causes of this decline, but four possible hypotheses suggest themselves: (1) the advent of a superior or more attractive competitor; (2) a general decline in American hegemony; (3) judicial parochialism; (4) constitutional obsolescence; and (5) a creed of American exceptionalism.

With respect to the first hypothesis, there is little indication that the U.S. Constitution has been displaced by any specific competitor. Instead, the notion that a particular constitution can serve as a dominant model for other countries may itself be obsolete. There is an increasingly clear and broad consensus on the types of rights that a constitution should include, to the point that one can articulate the content of a generic bill of rights with considerable precision.269 Yet it is difficult to pinpoint a specific constitution—or regional or international human rights instrument—that is clearly the driving force behind this emerging paradigm. We find only limited evidence that global constitutionalism is following the lead of either newer national constitutions that are often cited as influential, such as those of Canada and South Africa, or leading international and regional human rights instruments such as the Universal Declaration of Human Rights and the European Convention on Human Rights. Although Canada in particular does appear to exercise a quantifiable degree of constitutional influence or leadership, that influence is not uniform and global but more likely reflects the emergence and evolution of a shared practice of constitutionalism among common law countries.270 Our findings suggest instead that the development of global constitutionalism is a polycentric and multipolar¶ process that is not dominated by any particular country.271 The result might be likened to a global language of constitutional rights, but one that has been collectively forged rather than modeled upon a specific constitution.

Another possibility is that America’s capacity for constitutional leadership is at least partly a function of American “soft power” more generally.272 It is reasonable to suspect that the overall influence and appeal of the United States and its institutions have a powerful spillover effect into the constitutional arena. The popularity of American culture, the prestige of American universities, and the efficacy of American diplomacy can all be expected to affect the appeal of American constitutionalism, and vice versa. All are elements of an overall American brand, and the strength of that brand helps to determine the strength of each of its elements. Thus, any erosion of the American brand may also diminish the appeal of the Constitution for reasons that have little or nothing to do with the Constitution itself. Likewise, a decline in American constitutional influence of the type documented in this Article is potentially indicative of a broader decline in American soft power.

There are also factors specific to American constitutionalism that may be¶ reducing its appeal to foreign audiences. Critics suggest that the Supreme Court has undermined the global appeal of its own jurisprudence by failing to acknowledge the relevant intellectual contributions of foreign courts on questions of common concern,273 and by pursuing interpretive approaches that lack acceptance elsewhere.274 On this view, the Court may bear some responsibility for the declining influence of not only its own jurisprudence, but also the actual U.S. Constitution: one might argue that the Court’s approach to constitutional issues has undermined the appeal of American constitutionalism more generally, to the point that other countries have become unwilling to look either to American constitutional jurisprudence or to the U.S. Constitution itself for inspiration.275

It is equally plausible, however, that responsibility for the declining appeal of American constitutionalism lies with the idiosyncrasies of the Constitution itself rather than the proclivities of the Supreme Court. As the oldest formal constitution still in force, and one of the most rarely amended constitutions in the world,276 the U.S. Constitution contains relatively few of the rights that have become popular in recent decades,277 while some of the provisions that it does contain may appear increasingly problematic, unnecessary, or even undesirable with the benefit of two hundred years of hindsight.278 It should therefore come as little surprise if the U.S. Constitution¶ strikes those in other countries–or, indeed, members of the U.S. Supreme Court279–as out of date and out of line with global practice.280 Moreover, even if the Court were committed to interpreting the Constitution in tune with global fashion, it would still lack the power to update the actual text of the document.

Indeed, efforts by the Court to update the Constitution via interpretation may actually reduce the likelihood of formal amendment by rendering such amendment unnecessary as a practical matter.281 As a result, there is only so much that the U.S. Supreme Court can do to make the U.S. Constitution an¶ attractive formal template for other countries. The obsolescence of the Constitution, in turn, may undermine the appeal of American constitutional jurisprudence: foreign courts have little reason to follow the Supreme Court’s lead on constitutional issues if the Supreme Court is saddled with the interpretation of an unusual and obsolete constitution.282 No amount of ingenuity or solicitude for foreign law on the part of the Court can entirely divert attention from the fact that the Constitution itself is an increasingly atypical document.

One way to put a more positive spin upon the U.S. Constitution’s status as a global outlier is to emphasize its role in articulating and defining what is unique about American national identity. Many scholars have opined that formal constitutions serve an expressive function as statements of national identity.283 This view finds little support in our own empirical findings, which suggest instead that constitutions tend to contain relatively standardized packages of rights.284 Nevertheless, to the extent that constitutions do serve such a function, the distinctiveness of the U.S. Constitution may simply reflect the uniqueness of America’s national identity. In this vein, various scholars have argued that the U.S. Constitution lies at the very heart of an “American creed of exceptionalism,” which combines a belief that the United States occupies a unique position in the world with a commitment to the qualities that set the United States apart from other countries.285 From this perspective, the Supreme Court’s reluctance to make use of foreign and international law in constitutional cases amounts not to parochialism, but rather to respect for the exceptional character of the nation and its constitution.286

Unfortunately, it is clear that the reasons for the declining influence of American constitutionalism cannot be reduced to anything as simple or attractive as a longstanding American creed of exceptionalism. Historically, American exceptionalism has not prevented other countries from following the example set by American constitutionalism. The global turn away from the American model is a relatively recent development that postdates the Cold War. If the U.S. Constitution does in fact capture something profoundly unique about the United States, it has surely been doing so for longer than the last thirty years. A complete explanation of the declining influence of American constitutionalism in other countries must instead be sought in more recent history, such as the wave of constitution-making that followed the end of the Cold War.287 During this period, America’s newfound position as lone superpower might have been expected to create opportunities for the spread of American constitutionalism. But this did not come to pass.

Once global constitutionalism is understood as the product of a polycentric evolutionary process, it is not difficult to see why the U.S. Constitution is playing an increasingly peripheral role in that process. No evolutionary process favors a specimen that is frozen in time. At least some of the responsibility for the declining global appeal of American constitutionalism lies not with the Supreme Court, or with a broader penchant for exceptionalism, but rather with the static character of the Constitution itself. If the United States were to revise the Bill of Rights today—with the benefit of over two centuries of experience, and in a manner that addresses contemporary challenges while remaining faithful to the nation’s best traditions—there is no guarantee that other countries would follow its lead. But the world would surely pay close attention. Pg. 78-83

#### Judicial independence impossible

Lydia Brashear Tiede ‘06\*, The Journal of Contemporary Legal Issues, 2006, 15 J. Contemp. Legal Issues 129, Positive Political Theory and the Law: Judicial Independence: Often Cited, Rarely Understood, Lexis, jj

The term "independent" is even more troubling. It is difficult to conceive of anything in this universe that is truly independent. Even a child who reaches the age of maturity is not entirely independent from his parents, and in adulthood, may rely on her parents for financial and psychological support, comfort, and validation. Likewise, courts are never entirely independent. Judges' salaries depend on congressional appropriations. Judges' powers depend on the Constitution and the laws of the land. Furthermore, certain judges, such as some state court judges, are dependent on the electorate for votes. Therefore, to truly understand the concept of independence, it must be defined in relation to something else. In the political context, this generally means independence from such things as the legislature, the executive, higher courts, individual litigants, and corruption, to name just a few examples.

#### No risk of Middle East war

**Maloney and Takeyh, 07** - \*senior fellow for Middle East Policy at the Saban Center for Middle East Studies at the Brookings Institution AND senior fellow for Middle East Studies at the Council on Foreign Relations (Susan and Ray, International Herald Tribune, 6/28, “Why the Iraq War Won't Engulf the Mideast”,
<http://www.brookings.edu/opinions/2007/0628iraq_maloney.aspx>)

Yet**, the Saudis, Iranians, Jordanians, Syrians, and others are very unlikely to go to war** either to protect their own sect or ethnic group or to prevent one country from gaining the upper hand in Iraq. The reasons are fairly straightforward. First, **Middle Eastern leaders, like politicians everywhere, are primarily interested in one thing: self-preservation.** Committing forces to Iraq is an inherently risky proposition, which**, if the conflict went badly, could threaten domestic political stability. Moreover, most Arab armies are geared toward regime protection rather than projecting power and thus have little capability for sending troops to Iraq. Second, there is cause for concern about the so-called blowback scenario in which jihadis returning from Iraq destabilize their home countries, plunging the region into conflict. Middle Eastern leaders are preparing for this possibility**. Unlike in the 1990s, when Arab fighters in the Afghan jihad against the Soviet Union returned to Algeria, Egypt and Saudi Arabia and became a source of instability, **Arab security services are being vigilant about who is coming in and going from their countries. In the last month, the Saudi government has arrested approximately 200 people suspected of ties with militants. Riyadh is also building a 700 kilometer wall along part of its frontier with Iraq in order to keep militants out of the kingdom. Finally, there is no precedent for Arab leaders to commit forces to conflicts in which they are not directly involved**. The Iraqis and the Saudis did send small contingents to fight the Israelis in 1948 and 1967, but they were either ineffective or never made it. In the 1970s and 1980s, Arab countries other than Syria, which had a compelling interest in establishing its hegemony over Lebanon, never committed forces either to protect the Lebanese from the Israelis or from other Lebanese. **The civil war in Lebanon was regarded as someone else's fight**.Indeed, this is the way many leaders view the current situation in Iraq. To Cairo, Amman and Riyadh, the situation in Iraq is worrisome, but in the end it is an Iraqi and American fight. **As far as Iranian mullahs are concerned, they have long preferred to press their interests through proxies as opposed to direct engagement.** At a time when Tehran has access and influence over powerful Shiite militias**, a massive cross-border incursion is both unlikely and unnecessary**. So Iraqis will remain locked in a sectarian and ethnic struggle that outside powers may abet, but will remain within the borders of Iraq. **The Middle East is a region both prone and accustomed to civil wars. But given its experience with ambiguous conflicts, the region has also developed an intuitive ability to contain its civil strife and prevent local conflicts from enveloping the entire Middle East.**

### \*\*1NC – Legitimacy / Soft Power

#### Obama shifting from drone to a capture and interrogate strategy now

Sara Sorcher, National Journal's national security correspondent, “Obama Is Changing the Way He Fights the War on Terrorism”, Oct 7th 2013, http://www.nationaljournal.com/national-security/obama-is-changing-the-way-he-fights-the-war-on-terrorism-20131007

In a risky operation this weekend, Navy SEALs stormed a villa in a seaside Somalian town, searching for Ikrima, a top commander from al-Shabab, the Qaida offshoot responsible for an attack in a Kenyan mall that killed dozens of people just weeks ago. When the troops came under intense gunfire, they retreated, reportedly because their target was impossible to capture. Meanwhile, in Tripoli, Libya, special forces whisked away Abu Anas al-Libi, the Qaida operative wanted in connection with the 1998 bombings of American embassies in Tanzania and Kenya, to an unnamed location in U.S. custody for questioning. The two raids this weekend, both with the unusual goal of trying to capture terrorists, may be a harbinger of a different style in Obama's war on terrorism, which has largely centered on deploying drones to kill targets away from conventional battlefields. "We are going to see more of this," says Rep. Adam Schiff, D-Calif., a senior member of the House Intelligence Committee. The surgical operations reflect the Obama administration's "change in policy" to minimize civilian casualties when taking out extremists, Schiff says. It also reflects the White House's desire to move away from a counterterrorism strategy reliant on drones toward one more focused on capturing, interrogating, and prosecuting suspects—a strategy, Schiff says, that "makes use of our proven capability of bringing to justice people who have committed acts of terrorism." Even Republicans are taking note. "I think it's encouraging that capture is back on the table," says Rep. Mac Thornberry, the Texan who chairs the House Armed Services subcommittee that oversees counterterrorism programs. Despite the administration's insistence it prefers capturing suspects whenever feasible, the numbers tell a different story: Only a handful of accused militants have been brought to the U.S. for trial; by contrast, the CIA and military have reportedly killed roughly 3,000 people in Pakistan, Somalia, and Yemen. Obama has pressed on with the drone war despite criticisms that the strikes unintentionally kill civilians and fuel anti-Americanism—and that suspects are slain without due process, a chance to surrender under fire, or relinquishing intelligence through interrogations. The twin raids are a sign that Obama is trying to change course, after strong hints from the president and his team that policy changes were coming. In May, Obama spoke out against the appeal of drone strikes—which he said presidents may be tempted to view as a terrorism "cure-all." After broadly interpreting executive authority to expand the scope of the covert drone war throughout his presidency, Obama in his second term is clearly trying to set a precedent for limiting presidential power on this front. "Beyond Afghanistan, we must define our effort not as a boundless 'global war on terror' but rather as a series of persistent, targeted efforts to dismantle specific networks of violent extremists that threaten America," Obama said at the National Defense University in May. So Obama formally inked the "playbook," a secret set of processes and standards dictating the rules of drone strikes. In this, Obama is not just restraining himself but future presidents. "We needed to codify certain practices and procedures to constrain this president or any president that came after … to try to further limit the use of certain kinetic tools, so they were only used as a last resort," says Tommy Vietor, former National Security Council spokesman, in a National Journal feature last week. Obama has also asked Congress to narrow—and ultimately repeal—the 12-year-old Authorization to Use Military Force, passed after the 9/11 attacks to target terrorists. The president has disagreed with the idea that the sweeping provision, which his team has used to justify taking out terrorists in far-flung places, encourages perpetual war and grants the White House too much power. In this weekend's two raids, however, one's success and the other's failure highlight the political and tactical minefields the commander in chief will face by capturing more terrorists. Libi's capture in the successful Libya operation raises sensitive questions about where the U.S. should hold and prosecute suspects in custody—thorny issues the Obama administration, intentionally or not, has largely managed to avoid since it has failed to apprehend suspected terrorists en masse. "Every time there's a capture and discussion of bringing somebody to trial, that reopens a big debate about whether we should be prosecuting terrorists here in the United States at all, or if we should be holding them abroad as military detainees ... [and] where to hold them while deciding whether to bring them to trial," says national security law professor Matthew Waxman of Columbia University. Already, House Armed Services Chairman Buck McKeon said in a statement that Libi should be interrogated "thoroughly" instead of rushed to trial on an "arbitrary" timeline, because the suspect has "vast intelligence value."

#### \*\*\*Full extension of habeas rights causes shift to targeted killing

Chesney 11 (Robert, Charles I. Francis Professor in Law, University of Texas School of Law, “ARTICLE: WHO MAY BE HELD? MILITARY DETENTION THROUGH THE HABEAS LENS”, Boston College Law Review, 52 B.C. L. Rev 769, Lexis)

Given that the United States is actively engaged in a process meant to culminate in the transfer of control over its long-term detention operations in Afghanistan to the Afghan government (just as the United States already has transferred control of its detention operations in Iraq to the government there), n599 and absent evidence that the United States is still in the business of capturing persons elsewhere and bringing them to Afghanistan for purposes of long-term detention, the prospects for an extension of habeas to Afghanistan are increasingly slim notwithstanding these caveats. The more significant lesson from the Afghan habeas litigation, therefore, is that courts likely will be receptive to an extension of habeas to any location should the United States in the future resume the practice of taking and maintaining military custody of individuals captured outside of a traditional battlefield context. n600 It may be that the United States will avoid that practice in the future, substituting some combination of rendition, host-nation detention," n601 targeted killing, surveillance, prosecution, or inaction in its place. n602 But if the practice of long-term detention for non-battlefield capture reemerges, so too will the questions surrounding habeas jurisdiction.

#### Drones destroy U.S. credibility---outweighs detention

Stephen Holmes 13, the Walter E. Meyer Professor of Law, New York University School of Law, July 2013, “What’s in it for Obama?,” The London Review of Books, <http://www.lrb.co.uk/v35/n14/stephen-holmes/whats-in-it-for-obama>

On the basis of undisclosed evidence, evaluated in unspecified procedures by rotating personnel with heterogeneous backgrounds, the US is continuing to kill those it classifies as suspected terrorists in Somalia, Yemen and Pakistan. It has certainly been eliminating militants who had nothing to do with 9/11, including local insurgents fighting local battles who, while posing no realistic threat to America, had allied themselves opportunistically with international anti-American jihadists. By following the latter wherever they go, the US is allowing ragtag militants to impose ever new fronts in its secret aerial war. Mistakes are made and can’t be hidden, at least not from local populations. Nor can the resentment of surrounding communities be easily assuaged. This is because, even when it finds its target, the US is killing not those who are demonstrably guilty of widely acknowledged crimes but rather those who, it is predicted, will commit crimes in the future. Of course, the civilian populations in the countries where these strikes take place will never accept the hunches of CIA or Pentagon futurologists. And so they will never accept American claims about the justice of Obama’s slimmed-down war on terror, but instead claim the right of self-defence, and this would be true even if drone operators could become as error-free as Brennan once claimed they already are. But of course collateral damage and mistaken-identity strikes will continue. They are inevitable accompaniments of all warfare. And they, too, along with intentional killings that are never publicly justified, will communicate resoundingly to the world that the arbitrary and unpredictable killing of innocent Muslims falls within America’s commodious concept of a just war.

The rage such strikes incite will be all the greater if onlookers believe, as seems likely, that the killing they observe makes relatively little contribution to the safety of Americans. Indeed, this is already happening, which is the reason that the drone, whatever its moral superiority to land armies and heavy weaponry, has replaced Guantánamo as the incendiary symbol of America’s indecent callousness towards the world’s Muslims. As Bush was the Guantánamo president, so Obama is the drone president. This switch, whatever Obama hoped, represents a worsening not an improvement of America’s image in the world.

#### Legitimacy & soft power are inevitable, resilient and not key to heg

Brooks and Wohlforth, 9 (Stephen Brooks and William Wohlforth, both are professors of Government at Dartmouth, “Reshaping the world order: how Washington should reform international institutions,” Foreign Affairs, March-April)

FOR ANALYSTS such as Zbigniew Brzezinski and Henry Kissinger, the key reason for skepticism about the United States' ability to spearhead global institutional change is not a lack of power but a lack of legitimacy. Other states may simply refuse to follow a leader whose legitimacy has been squandered under the Bush administration; in this view, the legitimacy to lead is a fixed resource that can be obtained only under special circumstances. The political scientist G.John Ikenberry argues in After Victory that states have been well positioned to reshape the institutional order only after emerging victorious from some titanic struggle, such as the French Revolution, the Napoleonic Wars, or World War I or II. For the neoconservative Robert Kagan, the legitimacy to lead came naturally to the United States during the Cold War, when it was providing the signal service of balancing the Soviet Union. The implication is that today, in the absence of such salient sources of legitimacy, the wellsprings of support for U.S. leadership have dried up for good. But this view is mistaken. For one thing, it overstates how accepted U.S. leadership was during the Cold War: anyone who recalls the Euromissile crisis of the 1980s, for example, will recognize that mass opposition to U.S. policy (in that case, over stationing intermediaterange nuclear missiles in Europe) is not a recent phenomenon. For another, it understates how dynamic and malleable legitimacy is. Legitimacy is based on the belief that an action, an actor, or a political order is proper, acceptable, or natural. An action - such as the Vietnam War or the invasion of Iraq - may come to be seen as illegitimate without sparking an irreversible crisis of legitimacy for the actor or the order. When the actor concerned has disproportionately more material resources than other states, the sources of its legitimacy can be refreshed repeatedly. After all, this is hardly the first time Americans have worried about a crisis of legitimacy. Tides of skepticism concerning U.S. leadership arguably rose as high or higher after the fall of Saigon in 1975 and during Ronald Reagan's first term, when he called the Soviet Union an "evil empire." Even George W. Bush, a globally unpopular U.S. president with deeply controversial policies,oversaw a marked improvement in relations with France, Germany, and India in recent years - even before the elections of Chancellor Angela Merkel in Germany and President Nicolas Sarkozy in France. Of course, the ability of the United States to weather such crises of legitimacy in the past hardly guarantees that it can lead the system in the future. But there are reasons for optimism. Some of the apparent damage to U.S. legitimacy might merely be the result of the Bush administration's approach to diplomacy and international institutions. Key underlying conditions remain particularly favorable for sustaining and even enhancing U.S. legitimacy in the years ahead. The United States continues to have a far larger share of the human and material resources for shaping global perceptions than any other state, as well as the unrivaled wherewithal to produce public goods that reinforce the benefits of its global role. No other state has any claim to leadership commensurate with Washington's. And largely because of the power position the United States still occupies, there is no prospect of a counterbalancing coalition emerging anytime soon to challenge it. In the end, the legitimacy of a system's leader hinges on whether the system's members see the leader as acceptable or at least preferable to realistic alternatives. Legitimacy is not necessarily about normative approval: one may dislike the United States but think its leadership is natural under the circumstances or the best that can be expected. Moreover, history provides abundant evidence that past leading states - such as Spain, France, and the United Kingdom - were able to revise the international institutions of their day without the special circumstances Ikenberry and Kagan cite. Spainfashioned both normative and positive laws to legitimize its conquest of indigenous Americans in the early seventeenth century; France instituted modern concepts of state borders to meet its needs as Europe's preeminent land power in the eighteenth century; and the United Kingdom fostered rules on piracy, neutral shipping, and colonialism to suit its interests as a developing maritime empire in the nineteenth century. As Wilhelm Grewe documents in his magisterial The Epochs of International Law, these states accomplished such feats partly through the unsubtle use of power: bribes, coercion, and the allure oflucrative long-term cooperation. Less obvious but often more important, the bargaining hands of the leading states were often strengthened by the general perception that they could pursue their interests in even less palatable ways - notably, through the naked use of force. Invariably, too, leading states have had the power to set the international agenda, indirectly affecting the development of new rules by defining the problems they were developed to address. Given its naval primacy and global trading interests, the United Kingdom was able to propel the slave trade to the forefront of the world's agenda for several decades after it had itself abolished slavery at home, in 1833. The bottom line is that the UnitedStates today has the necessary legitimacy to shepherd reform of the international system.

#### Only tangible power matters

**Layne 2** (Christopher, visiting fellow in foreign policy studies at Cato, Los Angeles Times, October 6, 2002)

U.S. **strategists believe that** "it can't happen to us," because **the United States is** a different kind of hegemon, **a benign hegemon that others will follow willingly due to the attractiveness of its** political **values** and culture. While flattering, **this** self-serving argument **misses the** basic **point: Hegemons are threatening because they have too much power**. And **it is America's power--not** the self-proclaimed benevolence of **its intentions--that will shape others' response** to it. **A state's power is a** hard, **measurable reality, but its intentions**, which can be peaceful one day but malevolent the next, **are ephemeral**. Hegemony's **proponents claim that the United States can inoculate itself** against a backlash **by acting multilaterally. But other states are not going to be deceived by** Washington's **use of international institutions as a fig leaf to cloak** its **ambitions of dominance**. And in any event, there are good reasons why the U.S. should not reflexively embrace multilateralism. When it comes to deciding when and how to defend American interests, Washington should want a free hand, not to have its hands tied by others.

#### Obama won’t use soft power — empirics prove

Lagon 11 (Mark, Chair, International Relations and Security Concentration, and Visiting Professor, MSFS Program MASTER OF SCIENCE IN FOREIGN SERVICE (MSFS), Georgetown University, "Soft Power Under Obama," 10-18, http://www.isn.ethz.ch/isn/Current-Affairs/ISN-Insights/Detail?lng=en&id=133416&contextid734=133416&contextid735=133415&tabid=133415&dynrel=4888caa0-b3db-1461-98b9-e20e7b9c13d4,0c54e3b3-1e9c-be1e-2c24-a6a8c7060233, EMM)

One irony of the Obama presidency is how much it relies on hard power. The president came into office proposing a dramatic shift from George W. Bush’s perceived unilateralism, and most of his predecessor’s hard-edged counterterrorism tactics and massive deployments in wars abroad. Yet after three years, Obama has escalated forces in Afghanistan, embraced the widespread use of unmanned drones § Marked 09:23 § to kill terrorists at the risk of civilian casualties, kept Guantánamo open, and killed Osama bin Laden in Pakistan in a thoroughly unilateral fashion. What he hasn’t accomplished to any great degree is what most observers assumed would be the hallmark of his approach to foreign affairs—a full assertion of the soft power that makes hard power more effective. His 2008 campaign centered on a critique of President Bush’s overreliance on hard power. Obama suggested he would rehabilitate the damaged image of America created by these excesses and show that the United States was not a cowboy nation. Upon taking office, he made fresh-start statements, such as his June 2009 remarks in Cairo, and embraced political means like dialogue, respectful multilateralism, and the use of new media, suggesting that he felt the soft power to change minds, build legitimacy, and advance interests was the key element missing from the recent US approach to the world—and that he would quickly remedy that defect. Yet President Obama’s conception of soft power has curiously lacked the very quality that has made it most efficacious in the past—the values dimension . This may seem odd for a leader who is seen worldwide as an icon of morality, known for the motto “the audacity of hope” and his deployment of soaring rhetoric. Yet his governance has virtually ignored the values dimension of soft power, which goes beyond the tradecraft of diplomacy and multilateral consultation to aggressively assert the ideals of freedom in practical initiatives. The excision of this values dimension renders soft power a hollow concept. The Obama presidency has regularly avoided asserting meaningful soft power, particularly in its relations with three countries—Iran, Russia, and Egypt—where it might have made a difference not only for those countries but for American interests as well. His reaction to the challenges these countries have posed to the US suggest that it is not soft power itself that Obama doubts, but America’s moral standing to project it.

# 2NC

## K

**2nc/1nr -Cap K overview-**

***Challenging global capital is the ultimate ethical responsibility. The current order guarantees social exclusion on a global scale***

**Zizek and Daly 2004**

(Slavoj, professor of philosophy at the Institute for Sociology, Ljubljana, and Glyn, Senior Lecturer in Politics in the Faculty of Arts and Social Sciences at University College, Northampton, Conversations with Zizek, page 14-16)

For Zizek it is imperative that we cut through this Gordian knot of postmodern protocol and recognize that **our ethico-political responsibility is to confront the constitutive violence of today’s global capitalism and its obscene naturalization / anonymization of the millions who are subjugated by it throughout the world.** Against the standardized positions of postmodern culture – with all its pieties concerning ‘multiculturalist’ etiquette – **Zizek is arguing for a politics that** might be called ‘radically incorrect’ in the sense that it break with these types of positions 7 and **focuses** instead **on the very organizing principles of today’s social reality:** the principles of global liberal capitalism. This requires some care and subtlety. For far too long, Marxism has been bedeviled by an almost fetishistic economism that has tended towards political morbidity. With the likes of Hilferding and Gramsci, and more recently Laclau and Mouffee, crucial theoretical advances have been made that enable the transcendence of all forms of economism. In this new context, however, Zizek argues that the problem that now presents itself is almost that of the opposite fetish. That is to say, the prohibitive anxieties surrounding the taboo of economism can function as a way of not engaging with economic reality and as a way of implicitly accepting the latter as a basic horizon of existence. In an ironic Freudian-Lacanian twist, the fear of economism can end up reinforcing a de facto economic necessity in respect of contemporary capitalism (i.e. the initial prohibition conjures up the very thing it fears). This is not to endorse any kind of retrograde return to economism. Zizek’s point is rather that in rejecting economism we should not lose sight of the systemic power of capital in shaping the lives and destinies of humanity and our very sense of the possible. In particular we should not overlook Marx’s central insight that **in order to create a universal global system the forces of capitalism seek to conceal the politico-discursive violence of its construction through a kind of gentrification of that system.** What is persistently denied by neo-liberals such as Rorty (1989) and Fukuyama (1992) is that **the gentrification of global liberal capitalism** is one whose ‘universalism’ fundamentally **reproduces and depends upon a disavowed violence that excludes vast sectors of the world’s populations.** In this way, **neo-liberal ideology attempts to naturalize capitalism by presenting its outcomes of winning and losing as if they were simply a matter of chance and sound judgment in a neutral market place.** Capitalism does indeed create a space for a certain diversity, at least for the central capitalist regions, but it is neither neutral nor ideal and its price in terms of social exclusion is exorbitant. That is to say, **the human cost in terms of inherent global poverty and degraded ‘life-chances’ cannot be calculated within the existing economic rationale and,** in consequence, **social exclusion remains mystified and nameless** (viz. the patronizing reference to the ‘developing world’). And Zizek’s point is that **this mystification is magnified through capitalism’s profound capacity to ingest its own excesses and negativity: to redirect** (or misdirect) **social antagonisms and to absorb them within a culture of differential affirmation.** Instead of Bolshevism, the tendency today is towards a kind of political boutiquism that is readily sustained by postmodern forms of consumerism and lifestyle. Against this **Zizek argues for a new universalism whose primary ethical directive is to confront the fact that our forms of social existence are founded on exclusion on a global scale.** While it is perfectly true that universalism can never become Universal (it will always require a hegemonic-particular embodiment in order to have any meaning), **what is novel about Zizek’s universalism is that it would not attempt to conceal this fact or reduce the status of the abject Other to that of a ‘glitch’ in an otherwise sound matrix.**

***This question of self-orientation comes first***

**Johnston ’04** (Adrian, interdisciplinary research fellow in psychoanalysis at Emory, The Cynic’s Fetish: Slavoj Zizek and the Dynamics of Belief, Psychoanalysis, Culture and Society)

The height of Zizek's philosophical traditionalism, his fidelity to certain lasting truths too precious to cast away in a postmodern frenzy, is his conviction that no worthwhile praxis can emerge prior to the careful and deliberate formulation of a correct conceptual framework. His references to the Lacanian notion of the Act (qua agent-less occurrence not brought about by a subject) are especially strange in light of the fact that he seemingly endorses the view that theory must precede practice, namely, that deliberative reflection is, in a way, primary. For Zizek, the foremost "practical" task to be accomplished today isn't some kind of rebellious acting out, which would, in the end, amount to nothing more than a series of impotent, incoherent outbursts. Instead, **given the contemporary exhaustion of the socio-political imagination under the hegemony of liberal-democratic capitalism,** he sees **the liberation of thinking itself from its present constraints as the first crucial step that must be taken if anything is to be changed for the better.** In a lecture given in Vienna in 2001, Zizek suggests that **Marx's call to break out of the sterile closure of abstract intellectual ruminations through direct, concrete action** (thesis eleven on Feuerbach--"The philosophers have only interpreted the world in various ways; the point is to change it") **must be inverted given the new prevailing conditions of late-capitalism. Nowadays, one must resist succumbing to the temptation to short-circuit thinking in favor of acting, since all such rushes to action are doomed; they either fail to disrupt capitalism or are ideologically co-opted by it.**

***There is no value to life***

**Dillon ’99**(Michael, Professor of IR @ Lancaster, “Another Justice” *Political Theory*, Vol. 27, No. 2. April, pp. 165)

Quite the reverse. The subject was never a firm foundation for justice, much less a hospitable vehicle for the reception of the call of another Justice. It was never in possession of that self-possession which was supposed to secure the certainty of itself, of a self-possession that would enable it ultimately to adjudicate everything. The very indexicality required of sovereign subjectivity gave rise rather to a commensurability much more amenable to the expendability required of the political and material economies of mass societies than it did to the singular, invaluable, and uncanny uniqueness of the self. **The value of the subject became the standard unit of currency for the political arithmetic of States and the political economies of capitalism.** They trade in it still to devastating global effect. The technologisation of the political has become manifest and global. **Economies of evaluation necessarily require calculability**.3s Thus no valuation without mensuration and no mensuration without indexation. **Once rendered calculable**, however, **units of account are necessarily submissible** not only to valuation but also, of course, **to devaluation. Devaluation, logically, can extend to the point of counting as nothing.** Hence, no mensuration without demensuration either. **There is nothing abstract about this: the declension of economies of value leads to the zero point of holocaust**. **However liberating and emancipating systems of value-rights-may claim to be, for example, they run the risk of counting out the invaluable. Counted out, the invaluable may then lose its purchase on life. Herewith, then, the necessity of championing the invaluable itself. For we must never forget that, "we are dealing always with whatever exceeds measure."**

### War turns structural violence

#### No uniqueness ….

***Capitalism makes war inevitable --- reject their scholarship --- this disproves***

Aris I. **Trantidis**, 20**09**, MPhil/PhD student, London School of Economics and Political Science, War, democracy and capitalism, <http://www.psa.ac.uk/2009/pps/Trantidis.pdf>, jj

**Causal spuriousness**, however, **may run the other way around**. It can be said that democracies foster open private market economies which in turn allow the development of economic ties between nations. It can be argued that the constructive effect of international trade and of economic interdependency rests on democratic governments pursuing policies of relatively open markets, as these have been perceived as maximising welfare. At the same time, they abstain from developing closer ties with those authoritarian regimes which democracies perceive as aggressive and threatening. Understandably there is less trade with autocratic countries which are not ‘free market’ and ‘open to trade’ economies.

**Capitalist peace theory** and democratic peace theory share the common position that both they both **have been in disagreement with key realist assumptions**. Robert Keohane (1983) summarises three assumptions, which form part of the ‘hard core’ of the realist approach: 1) states are the most important actors in the international system, 2) international relations can be analyzed as if states are unitary rational actors, and 3) states calculate their interests in terms of power, as an end in itself or as a necessary means to other ends. In the realist archetype, peace reflects a balance of power between nations or alliances, or result from the presence of a hegemonic power, whose power and resources enable it to impose its ‘peace’ on its own terms. Rosato has argued about post-World War II peace that ‘one potential explanation is that democratic peace is in fact an imperial peace based on American power. The democratic peace is essentially a postWorld War II phenomenon restricted to the Americas and Western Europe. The United States has been the dominant power in both these regions since World War II and has placed an overriding emphasis on regional peace (2003:599). **C**apitalist **p**eace **t**heory **has** also **been undermined by numerous historical observations prior to American hegemony of capitalist countries fighting bitter wars despite their trade links during the 19th century up to the second half of the 20th century**. ***The debate is far from closed.***

The departure of democratic peace theory and capitalist peace theory from realism is that they both look inside the state for institutions, norms and actors which largely define foreign policy. They also explore links between domestic actors across nations on the basis of shared values, shared norms, and common interests. In this sense, they are both closer to methodological individualism.

According to methodological individualism groups become actors when organised and acting under shared perceptions of common interest. Actors are motivated for collective action upon calculation of expected costs and benefits.

Before taking state preferences as given, it is thus useful to trace the preferences of these groups and the ways they are shaping the domestic process of decisionmaking. Implicitly or explicitly democratic peace theory and capitalist peace theory point to two levels of analysis related to the formation of national preferences: processes embedded within states, and linkages between states as well as underlying transnational connections between social and economic groups across states.

Opposite to the capitalist peace theory stands the Marxist view of war. The assumption of Marxist arguments is that **capitalist states represent the interests of the ruling class, the bourgeoisie, which wants to extend the exploitation of the labour class at home and abroad**. According to conventional Marxist thought, **war is the product of competition among capitalist states and their bourgeois elites for the expansion and intensification of exploitation of labour and material resources.**

**The concept of imperialism describes the** alleged **tendency of great powers to launch wars in order to territorially expand the exploitation of resources, human and material, beyond the boundaries of the nation state**. To explain why war between democracies had been rarer post World War II, Marxist accounts have come close to the realist argument and put forward concepts such as ‘empire’, ‘hegemony’ and ‘dependency’ (Negri and Hardt, 2000). Next to the realist emphasis on power, **Marxist accounts have put emphasis on hierarchical relations linking the advanced economies with the rest of the world by means of economic power as much as by the use of force.**

There are a number of challenges the four schools of thought have confronted.

**Capitalist peace theory has been asked to address the fact that civil war and domestic war-like conflicts are *more frequent* today, and occur among groups or regions closely tied in economic exchange**. For instance, **elected leaderships in Yugoslavia fought a series of bitter wars by fuelling nationalism in their ethnic groups despite the fact that they had resided in ethnically mixed and economically interdependent constituencies**. Democratic peace theory has to address why civil wars have often occurred between groups whose leaderships had enjoyed high degree of legitimacy, and were often elected. In particular, leaderships in ethnic civil war have been able to mobilise domestic groups into violent acts and conflict. On other occasions, ethnic and social divisions have been contained within the institutions in place, or have been tackled by peaceful institutional change establishing a modus vivendi that has secured peace and stability. **This is raising doubts on whether class or ethnic divisions trigger conflict irrespective of how the preferences of these groups have been shaped by the opportunity sets available to them.**

**2nc Frontline – A2: Alt = Transition War**

***Transition wars argument is liberal-democratic blackmail***

Be skeptical --- dismissing radical action like the alt by saying it will lead to transition wars and violence is a classic conservative tactic to shut down debate and lock in the status quo --- it creates a perverse politics where avoiding risk becomes the ultimate political goal --- even if the alt’s risky you should be willing to take a leap of faith and risk the impossible

**Johnston 04**

Adrian, Volume 1.0, Adrian Johnston Dept of Philosophy, University of New Mexico, The Cynic's Fetish: Slavoj Zizek and the Dynamics of Belief

**Žižek links liberal democracy’s employment of the threat of totalitarianism to a more fundamental rejection of the act itself** qua intervention whose consequences cannot safely be anticipated. In Žižek’s view, **contemporary democracy legitimates itself through a pathetic posture in which the avoidance of risk** (i.e., of extreme measures not covered by preexisting democratic consensuses, measures with no guarantee of status-quo-affirming success) **is elevated to the status of the highest political good**123—“**what the reference to democracy involves is the rejection of radical attempts to ‘step outside,’ to risk a radical break**.”124 **The refusal to risk a gesture of disruption because it might not turn out exactly the way one envisions it should is the surest bulwark against change:**

The standard critique concerns the Act’s allegedly ‘absolute’ character of a radical break, which renders impossible any clear distinction between a properly ‘ethical’ act and, say, a Nazi monstrosity: is it not that an Act is always embedded in a specific socio-symbolic context? The answer to this reproach is clear: of course—an Act is always a specific intervention within a socio-symbolic context; the same gesture can be an Act or a ridiculous empty posture, depending on the context… In what, then, resides the misunderstanding? Why this critique? There is something else which disturbs the critics of the Lacanian notion of Act: true, an Act is always situated in a concrete context—this, however, does not mean that it is fully determined by its context. ***An Act always involves a radical risk***… it is a step into the open, **with no guarantee about the final outcome— why? Because an Act retroactively changes the very co-ordinates onto which it intervenes.** **This lack of guarantee is what the critics cannot tolerate; they want an Act without risk**—not without empirical risks, but without the much more radical ‘transcendental risk’ that the Act will not only simply fail, but radically misfire… those who oppose he ‘absolute Act’ effectively oppose the Act as such, ***they want an Act without the Act***.125

***Transition is peaceful***

**Lewis, ‘98** (Chris, June 2000. PhD American Studies Univ of Colorado Boulder. “The Paradox of Global Development and the Necessary Collapse of Global Industrial Civilization,” [www.cross-x.com/archives/LewisParadox.pdf](http://www.cross-x.com/archives/LewisParadox.pdf))

With the collapse of global industrial civilization, smaller, autonomous, local and regional civilizations, cultures, and polities will emerge. We can reduce the threat of mass death and genocide that will surely accompany this collapse by encouraging the creation and growth of sustainable, self-sufficient regional polities. John Cobb has already made a case for how this may work in the United States and how it is working in Kerala, India. After the collapse of global industrial civilization, First and Third World peoples won't have the material resources, biological capital, and energy and human resources to re-establish global industrial civilization. Forced by economic necessity to become dependent on local resources and ecosystems for their survival, peoples throughout the world will work to conserve and restore their environments. Those societies that destroy their local environments and economies, as modern people so often do, will themselves face collapse and ruin.

**\*\*\*2nc – Link/Perm Debate**

***They don’t solve - if we win a 1% risk of a link you should prefer the alternative since capitalism turns and outweighs the case – that’s Johnston and Zizek above***

Attempts to quell particular flashpoints of subjective violence just masks objective violence and makes capitalism function more smoothly by glossing over its less visible contradictions. No perm is possible because you can’t see objective and subjective violence from the same vantage point. Subjective violence is experienced against the baseline of a non-violent zero level. It is seen as a disruption of the “normal,” peaceful state of things. However, our whole arg is that the normal state of things IS violent. Objective violence is precisely the violence inherent to this “normal” state of things. Objective violence is invisible since it sustains the very zero-level standard against which we perceive something as subjectively violent.

#### The 1AC identifies a subjective manifestation of violence and attempts to address it with the usual methods of liberal governmentality—this routinizes exceptional violence and prevents broader systemic analysis

Restrictions like the Aff function within the lexicon of exceptional violence – voting aff only serves to make the sovereign more charismatic and mask its bureaucratic liberal governmentality. The alternative is to step back from the Aff and reject their direct and immediate confrontation with exceptional violence in order to do rhetorical analysis and perform a broader critique of the system

Saas ‘12 (William O. Saas, Pennsylvania State University, “Critique of Charismatic Violence,” symploke, Vol. 20, Nos. 1-2 (2012), p. 65-67, Project Muse, Access Provided by Wayne State University at 02/28/13) [m leap]

The September 11, 2001 terrorist attacks in New York, Pennsylvania, and Virginia precipitated the development of a new lexicon for exceptional violence. “Enemy combatant,” “indefinite detention,” “enhanced interrogation,” “high value targets,” “black sites,” “extraordinary rendition,” “predator drones,” and “hellfire missiles” are but a small representative sample of the novel phraseology invented in the wake of the attacks to describe the bellicose praxis of the U.S.’ “war on terror.” Though this novel lexicon early comprised the avant-garde of the Bush administration’s rhetoric of retaliation, little work was required to integrate the language and its attendant practices into the more overt grammar of “preemptive” warfare codified in the United States National Security Strategy of 2002 (colloquially, the “Bush Doctrine”) and executed in Iraq. One decade and several extralegal “limited kinetic operations” later, President Barack Obama—who campaigned on a pledge to dissolve the regime of secrecy and coercion represented by Bush-era “counterterrorism”—routinely supplements the new war lexicon with ever more expansive interpretations of executive prerogative. Continuation of the most far-reaching of these new extensions of power—the until recently secret drone-assassination program that resulted in the targeted killing of a U.S. citizen in Yemen in September of 2011—is all but assured now by the confluence of enhanced measures against transparency and bi-partisan political approval (Wilson and Cohen 2012). Meanwhile, the next stage in the evolution of “post-9/11” warfare threatens to be of the “preventive” kind with Iran (Greenwald 2012).¶ The new war lexicon is one symptom of the unprecedented expansion of executive power following the attacks of September 11. Such executive power was accompanied immediately by the development of a new vehicle for its manufacture and delivery, a sprawling executive bureaucracy that, early on, Vice President Dick Cheney referred to as the “dark side” of the new war and which journalists Dana Priest and William Arkin have called “Top Secret America” (2010). According to Priest and Arkin, Top Secret America comprises some 1,271 government agencies and 1,931 private companies that individually work on “programs related to counterterrorism, homeland security and intelligence in about 10,000 locations across the United States.” This massive bureaucracy is populated by a workforce of over 854,000 civil servants with top-secret security clearances, inclusive of janitorial staff. Its agency locations occupy a total of over 17 million square feet of U.S. real estate, in spaces ranging from a three billion dollar techno-fortress in Maryland to commercial suites in small-town industrial malls across the suburban U.S. Its activities include domestic wiretapping, international e-mail monitoring, and myriad other forms of cultivating “intelligence” under the aegis of “national security.” The whole of this sprawling apparatus—close to one million personnel, Yottabytes1 [1One Yottabyte equals roughly “a septillion (1,000,000,000,000,000,000,000,000) pages of text.” The National Security Agency estimates that it will need Yottabytes of server space by 2015 (Bamford 2009).] of server space for storing endless streams of domestic and international “intelligence,” and the paramilitary technologies required to mobilize these elements against those deemed the enemy—falls within the administrative purview of the executive branch of U.S. government.¶ Hidden in plain sight: a sprawling bureaucracy designed to justify and deliver military violence—clothed in the new war lexicon—to the world. How might one critique this massive network of violence that has become so enmeshed in our contemporary geo-socio-political reality? Is there any hope for reversing the expansion of executive violence in the current political climate, in which the President enjoys minimal resistance to his most egregious uses of violence? How does exceptional violence become routine? Answers to these broad and difficult questions, derived as they are from the disorientingly vast and hyper-accelerated retrenchment of our current political situation, are best won through the broad strokes of what Slavoj Žižek calls “systemic” critique. For Žižek, looking squarely at interpersonal or subjective violences (e.g., torture, drone strikes), drawn as we may be by their gruesome and immediate appeal, distorts the critic’s broader field of vision. For a fuller picture, one must pull one’s critical focus back several steps to reveal the deep, objective structures that undergird the spectacular manifestations of everyday, subjective violence (Žižek 2008, 1-2). Immediately, however, one confronts the limit question of Žižek’s mandate: how does one productively draw the boundaries of a system without too severely dampening the force of objective critique?¶ For practical purposes, this essay leaves off discussion of neoliberal economic domination, vital as it may be to a full accounting for the U.S.’ latest and most desperate expressions of state solvency. Offered instead is a critique of the organizational violence of the U.S.’ executive bureaucratic apparatus, an apparatus called into being by charismatic decree, made banal through quasi-legal codification, and guaranteed by popular disinterest. Considered also will be the peculiar, if also somewhat inevitable, continuity of the apparatus’s growth under the Obama administration. Candidate Obama’s pledge to transparency may now seem an example of truly “mere” campaign rhetoric, but the extent to which his presidency has exceeded that of George W. Bush in terms of exceptional violence bears some attention. The central difference between the presidencies of Bush and Obama, I suggest, has been the discursive means by which their respective administrations have cultivated an image of charismatic rule.¶ This essay proceeds in three steps. I begin by outlining a recent case of subjective violence, the assassination of Anwar al-Awlaki by drone strike, and then pull back to reveal the structural support for that strike. In the second section, taking Max Weber as my guide, I argue that bureaucratic domination is both the derivative speech act of, and the logic that underwrites, the violence of the modern liberal-democratic state. Under stable conditions, the state bureaucracy facilitates the hegemony of abstract, depersonalized, and mechanical Enlightenment legal-rationalism—what Foucault called liberal “governmentality”—by maintaining relative equilibrium between liberal autonomy and distributive justice among the citizenry. In other words, modern bureaucracy effectively mediates the two poles, “liberty” and “equality,” that comprise what political theorists have called the liberal-democratic paradox (Mouffe 2009). When an event is framed as threatening to strip the state of its rhetorical power, however, the bureaucratic apparatus becomes the crucible for what I identify in the third section, with additional help from Carl Schmitt and Giorgio Agamben, as charismatic domination, or the rhetorical exploitation of a vulnerable population by a sovereign decider. Under these conditions, the state bureaucracy becomes a kind of “vanishing mediator” (Jameson 1988, 25-27), its energies redirected for exclusive and singular usage by the exceptional-charismatic sovereign. In the perpetual state of exception, the democratic paradox becomes subordinate to sovereign claims to total and indivisible control over the legitimate use of force. I conclude by outlining what I perceive as the best chances for stemming the growth of the national security bureaucracy, namely, relentless publicity.

## Solvency

### 2NC – Deference Inev / No Precedent / Circumvention

#### No spillover

Devins, 9 (Neal Devins, Law Prof @ William and Mary, Willamette Law Review, Spring, 2009)

Before turning to Part I, let me clarify two points that underlie the analysis that is to follow. First, the focus of this essay is the President's power to advance favored policy initiatives. I do not consider the separate question of presidential power over the administrative state. More to the point, if the President does not express a strong policy preference or, alternatively, delegates decision making authority to agency heads, it may be that agency heads will not look to the White House for policy direction. Agency heads, instead, may focus on their own personal agenda or the agendas of congressional committees, interest groups, or careerists in their agency. For reasons I will detail in Part III of this essay, however, Presidents increasingly seek to rein in agency direction - by appointing presidential loyalists and by making use of regulatory review procedures and pre-enforcement directives such as signing statements. Second, in saying that presidential power is largely [\*399] defined by the dance that takes place between Congress and the White House, I do not mean to suggest that the courts have no role to play in the separation of powers. My point, instead, is that court decisions are of limited reach. They typically settle a case; they rarely establish precedents that define subsequent bargaining between the executive and Congress. In case studies of Supreme Court rulings on the legislative veto, executive privilege, and war powers, Lou Fisher and I (both individually and collectively) have demonstrated the limited reach of Supreme Court decisions. 5 In this essay, I will make limited reference to those writings - but I will not try to establish a point that I have made several times before.

#### Obama will disregard the Court. He is on record

Pyle 12—Professor of constitutional law and civil liberties @ Mount Holyoke College [Christopher H. Pyle, “Barack Obama and Civil Liberties,” Presidential Studies Quarterly, Volume 42, Issue 4, December 2012, Pg. 867–880]

Preventive Detention

But this is not the only double standard that Obama's attorney general has endorsed. Like his predecessors, Holder has chosen to deny some prisoners any trials at all, either because the government lacks sufficient evidence to guarantee their convictions or because what “evidence” it does have is fatally tainted by torture and would deeply embarrass the United States if revealed in open court. At one point, the president considered asking Congress to pass a preventive detention law. Then he decided to institute the policy himself and defy the courts to overrule him, thereby forcing judges to assume primary blame for any crimes against the United States committed by prisoners following a court-ordered release (Serwer 2009).

According to Holder, courts and commissions are “essential tools in our fight against terrorism” (Holder 2009). If they will not serve that end, the administration will disregard them. The attorney general also assured senators that if any of the defendants are acquitted, the administration will still keep them behind bars. It is difficult to imagine a greater contempt for the rule of law than this refusal to abide by the judgment of a court. Indeed, it is grounds for Holder's disbarment.

As a senator, Barack Obama denounced President Bush's detentions on the ground that a “perfectly innocent individual could be held and could not rebut the Government's case and has no way of proving his innocence” (Greenwald 2012). But, three years into his presidency, Obama signed just such a law. The National Defense Authorization Act of 2012 authorized the military to round up and detain, indefinitely and without trial, American citizens suspected of giving “material support” to alleged terrorists. The law was patently unconstitutional, and has been so ruled by a court (Hedges v. Obama 2012), but President Obama's only objection was that its detention provisions were unnecessary, because he already had such powers as commander in chief. He even said, when signing the law, that “my administration will not authorize the indefinite military detention without trial of American citizens,” but again, that remains policy, not law (Obama 2011). At the moment, the administration is detaining 40 innocent foreign citizens at Guantanamo whom the Bush administration cleared for release five years ago (Worthington 2012b).

Thus, Obama's “accomplishments” in the administration of justice “are slight,” as the president admitted in Oslo, and not deserving of a Nobel Prize. What little he has done has more to do with appearances than substance. Torture was an embarrassment, so he ordered it stopped, at least for the moment. Guantanamo remains an embarrassment, so he ordered it closed. He failed in that endeavor, but that was essentially a cosmetic directive to begin with, because a new and larger offshore prison was being built at Bagram Air Base in Afghanistan—one where habeas petitions could be more easily resisted. The president also decided that kidnapping can continue, if not in Europe, then in Ethiopia, Somalia, and Kenya, where it is less visible, and therefore less embarrassing (Scahill 2011). Meanwhile, his lawyers have labored mightily to shield kidnappers and torturers from civil suits and to run out the statute of limitations on criminal prosecutions. Most importantly, kidnapping and torture remain options, should al-Qaeda strike again. By talking out of both sides of his mouth simultaneously, Obama keeps hope alive for liberals and libertarians who believe in equal justice under law, while reassuring conservatives that America's justice will continue to be laced with revenge.

It is probably naïve to expect much more of an elected official. Few presidents willingly give up power or seek to leave their office “weaker” than they found it. Few now have what it takes to stand up to the national security state or to those in Congress and the corporations that profit from it. Moreover, were the president to revive the torture policy, there would be insufficient opposition in Congress to stop him. The Democrats are too busy stimulating the economies of their constituents and too timid to defend the rule of law. The Republicans are similarly preoccupied, but actually favor torture, provided it can be camouflaged with euphemisms like “enhanced interrogation techniques” (Editorial 2011b).

### 2NC Solvency – Rendition Extension

#### Deference and circumvention inevitable – the best they can achieve is inconsistent application of precedent.

Posner and Vermeule, 10- \*professor of law at the University of Chicago AND \*\*professor of law at Harvard (Eric and Adrian, The Executive Unbound, p. 52-54)

#### exec

Umansky, 5 – senior editor at ProPublica (Eric, 6/17. “Closing Guantanamo prison may not be the best option.” http://onlineathens.com/stories/061805/opi\_20050618001.shtml)

#### The plan leaves massive loopholes in place for the Executive to render people outside the United States to avoid the scope of the plan

Vladeck 12 [10/01/12, Professor Stephen I. Vladeck of the Washington College of Law at American University, “Detention Policies: What Role for Judicial Review?”, <http://www.abajournal.com/magazine/article/detention_policies_what_role_for_judicial_review/>)]

The short chapter that follows aims to take Judge Brown’s suggestion seriously. As I explain, although Judge Brown is clearly correct that judicial review has affected the size of the detainee populations within the territorial United States and at Guantanamo, it does not even remotely follow that the jurisprudence of the past decade has precipitated a shift away from detention and toward targeted killings. To the contrary, the jurisprudence of Judge Brown’s own court has simultaneously (1) left the government with far greater detention authority than might otherwise be apparent where noncitizens outside the United States are concerned; and (2) for better or worse, added a semblance of legitimacy to a regime that had previously and repeatedly been decried as lawless. And in cases where judicial review prompted the government to release those against whom it had insufficient evidence, the effects of such review can only be seen as salutary. Thus, at the end of a decade where not a single U.S. military detainee was freed by order of a federal judge, it is more than a little ironic for Judge Brown to identify “take no prisoners” as Boumediene’s true legacy. The role of judicial review in the three post-9/11 military detention cases in which the detainees were held within the territorial United States is impossible to overstate. Despite the Bush administration’s initial position that the detention of “enemy combatants” posed a nonjusticiable political question, the federal courts (and the Supreme Court, in particular) were emphatic in suggesting that such detentions were subject to judicial review, even as they divided over the merits in each of the three cases. Thus, in the case of Yasser Esam Hamdi, the federal government argued to the Supreme Court that “some evidence” was sufficient to justify the long-term detention of U.S. citizens captured on the battlefield. Although the court agreed that the government had the authority to detain individuals like Hamdi, it disagreed as to the evidentiary burden, with a 6-1 majority concluding that a more rigorous evidentiary burden was necessary. Rather than attempting to provide such evidence on remand, the government quickly entered into an agreement with Hamdi wherein he agreed to relinquish his citizenship in exchange for his release and transfer to Saudi Arabia. In the case of Jose Padilla, although the Supreme Court initially threw out Padilla’s habeas petition in 2004 on the ground that he had filed in the wrong district court, the opinions in the contemporaneous Padilla and Hamdi decisions left the distinct impression that, on the merits, five justices would have rejected the argument that the 2001 Authorization for the Use of Military Force authorized the detention of U.S. citizens arrested within the territorial United States. Padilla refiled in the proper venue, only to have the government moot the case on the eve of Supreme Court review by indicting him on criminal charges and transferring him to civilian custody. As Fourth Circuit Judge J. Michael Luttig observed, the timing of the government’s conduct gave rise “to at least an appearance that the purpose of these actions may be to avoid consideration of our decision [upholding Padilla’s detention] by the Supreme Court.” Nevertheless, and over three dissents, the court denied certiorari. That pattern repeated itself in the case of Ali al-Marri (the one noncitizen subjected to military detention within the territorial United States), with the Obama administration mooting the merits of his detention after the Supreme Court granted certiorari by indicting him on criminal charges and transferring him to civilian custody. Thus, in all three cases, the specter of future judicial review—in the district court in Hamdi and in the Supreme Court in Padilla and al-Marri—directly led to a change in policy, and there have been no additional stateside military detention cases since. At least based on the public record, one can only make an inferential case that this pattern was repeated with regard to Guantanamo, but the circumstantial evidence is fairly compelling. Although 779 noncitizens were at one time detained as “enemy combatants” at Guantanamo, the detainee population dropped from 597 at the time of the Supreme Court’s Rasul decision in 2004 to 269 at the time Boumediene was decided, and from that number to the 171 men detained there today. And although none of the 600 detainees who have been released from Guantanamo were directly freed by a judicial order, it stands to reason that the sharp uptick in the rate of transfers out of Guantanamo (along with the virtual cessation of transfers in) after June 2004 was a direct reaction to, and result of, the court’s decision in Rasul v. Bush, which held that the federal habeas statute extended to Guantanamo. Moreover, in the four years since Boumediene, there have been at least 11 distinct district court decisions granting habeas relief that the government declined to appeal on the merits. Not all of the detainees at issue in those cases have been released, but those that were certainly weren’t hurt by the judicial proceedings on their behalf. Inasmuch as the detainee litigation appears to have exerted hydraulic pressure on the executive branch to reduce the detainee population at Guantanamo, it has arguably also invested the detentions in the cases that remain with at least a modicum of legitimacy—at least for those detainees who have not been cleared for release. After all, the government now is able to argue that the detainees still at Guantanamo have received the exact judicial review called for by the Constitution; the fact that the courts have denied relief in many of those cases only underscores the validity of that aspect of the U.S. detention regime in the short term (and perhaps in the long term as well). Far less data exists to evaluate the relationship between judicial review and the number of detainees held by the United States in Afghanistan. Here, though, the data is less important than the case law. Notwithstanding Boumediene, the D.C. Circuit held in al-Maqaleh v. Gates that noncitizens detained in Afghanistan, even if they are not citizens of or arrested in Afghanistan, are not entitled to pursue habeas relief in the U.S. federal courts. In so holding, the appeals court specifically rejected the detainees’ argument that judicial review must be available lest the government deliberately choose to send new detainees to Afghanistan

### \*A2: Political Costs

#### Political costs are exaggerated – this card will smoke them

Schauer, Distinguished Professor of Law, University of Virginia, 12

(Frederick, “ARTICLE: THE POLITICAL RISKS (IF ANY) OF BREAKING THE LAW,” 4 J. of Legal Analysis 83, lexis)

Consider, for example, the legality of American involvement in Libya. Factually, the issue arises from the situation in which the Obama Administration directed strikes against Libyan air defenses, some by aircraft and some by remotely operated drones, in conjunction with NATO, but without prior consultation with Congress and without approval by Congress, either in advance or to this day (Morrison 2011). In defending its refusal to consult with Congress or secure its approval, the Administration relied, in part, on now-routine presidential claims to have independent constitutional authority, under the explicit commander-in-chief and executive powers and under the implicit war-making and national defense and foreign policy and emergency powers, to engage in such actions. But in seeking to explain its disregard of the plain mandates of the War Powers Resolution, the Administration also claimed, in the face of a clear Office of Legal Counsel opinion to the contrary, that the military actions in Libya did not constitute "hostilities", as that term is used in the Resolution, because no American ground troops were placed in Libya and also because the likelihood of American casualties was essentially nonexistent.¶ The claim that the War Powers Resolution is in some or all dimensions an unconstitutional infringement on the President's independent powers is seriously debatable, and in fact this is the position that has been taken, in one form or another, by every President, regardless of party, since the Resolution was first enacted in 1973 (Posner & Vermeule 2011). The claim that the Resolution did not even apply to this situation because of the absence of hostilities, however, was widely mocked as legally implausible (Ackerman 2011; Ackerman & Hathaway 2011; Fisher 2012; Morrison 2011), especially in the several days after the Administration's written statement to this effect was issued, and after the claim was defended before the Senate Foreign Relations Committee by Harold H. Koh, Legal Advisor to the State Department.¶ For purposes of this article, it seems more than plausible to treat the legal defense of the actions over and against Libyan forces as so weak as to permit the claim that the actions simply violated the law in a straightforward way. Yet although the actions violated the law, they were plainly preferred by the Administration on policy and, presumably, political grounds. And as events have ensued, it is clear that the Administration's policy and political positions have largely been borne out. The air attacks were successful, the forces of a very [\*91] bad person were defeated, the regime seems to have changed, at least for now, for the better, and there were no American casualties. The entire scenario, therefore, seems a good example of one in which, faced with a choice between the law-independent policy preferences and the clear constraints of the law, the Administration chose the former.¶ What makes the example especially interesting, however, is not just the favorable policy outcome, but the fact that the policy and political success, even in the face of relatively plain illegality, has produced virtually no negative political consequences. Public and press attention to the illegality has disappeared (Wang 2011), and the political evaluation of the action has been largely positive. As the events have played out, the illegality has played essentially no role in the larger politics of the situation. To put it differently, not only has the illegality produced no formal legal sanctions, as it could not (short of impeachment), but it also seems to have produced virtually no political or reputational sanctions for the Administration. As of this writing, it remains logically possible that the Administration's violation of the law will be a campaign issue in 2012, but the likelihood of such an eventuality seems vanishingly small.¶ ¶ As I have discussed in previous writings (Schauer 2007, 2010c, 2011b), there are many other examples of illegal policy actions or positions that have seemingly produced no or few negative political consequences. One such example is the decision by the mayors of San Francisco and of New Paltz, New York, to marry same-sex couples in violation of the then-applicable state law. With sympathies in both States in the direction of legalizing same-sex marriage, however, the illegality was taken then, and is taken now, as being somewhere between inconsequential and courageous. And on the same issue, when Governor Deval Patrick of Massachusetts explicitly urged members of the legislature to disregard a decision by the Massachusetts Supreme Judicial Court mandating that they vote on a referendum proposal to amend the state constitution to prohibit same-sex marriage, his actions have produced no negative political fallout. In numerous other instances, from New Orleans Mayor Ray Nagin's public call for immediate federal military assistance in the wake of Hurricane Katrina, to Mayor (now Senator) Ray Menendez's support for Americans who would have illegally launched military actions against the Cuban regime, to the violation of New York's Taylor Law by leaders of the Transit Workers Union and other public employee unions, the fact of illegality in the face of popular policy initiatives or positions has yielded few or no negative political or reputational consequences. Less saliently, the frequent willingness of Congress to ignore the law of law-making seems a matter of virtually no political consequence and thus a practice that has produced no negative political consequences for anyone (Bar-Simon-Tov 2010).

### 2NC Solvency – A2: Executive Won’t Circumvent – Wants The Plan

#### This evidence also is speculating about what the Executive will do because it’s 4 years old – The reality is The Administration cant lose face in a habeas review – it will resist a court review even if it believes prisoners should be released

David Frakt, April 2013, Visiting Professor at the University of Pittsburgh School of Law and a Lieutenant Colonel in the US Air Force JAG Corps Reserve. He previously represented Guantanamo detainees before the military commissions and in habeas corpus proceedings in federal court, “ Release the Cleared Guantanamo Detainees to End the Hunger Strike,” The Jurist,

<http://jurist.org/forum/2013/04/david-frakt-hunger-strike.php>, KEL

One of the most vexing problems currently facing the administration of US President Barack Obama is its inability to release 85 detainees from Guantanamo Bay who were cleared for release by the Guantanamo Review Task Force (GRTF) more than three years ago. Many of these detainees are now engaged in a hunger strike, at least in part, to protest their continued, indefinite detention. Although cleared for release, politically motivated restrictions in the National Defense Authorization Act have made it virtually impossible for the administration to transfer these detainees out of Guantanamo absent a court order, such as a writ of habeas corpus from the US District Court for the District of Columbia. Unfortunately, the sole focus of the habeas review currently is on the legality of detention at the time of capture. If the US can establish that the detainee was lawfully detainable at that moment (and the standard of review created by the US Court of Appeals for the District of Columbia Circuit in Al-Adahi v. Obama makes this an easy burden for the government to meet) then the lawfulness of continued detention until the cessation of hostilities is conclusively presumed. Because the US loathes to admit that it has made a mistake and detained someone for many years without a legal basis, the US Department of Justice (DOJ) is in the awkward position of opposing habeas corpus petitions even when the GRTF has determined continued detention of the petitioner is unwarranted because he no longer poses a danger to the US. In fact, the DOJ has successfully blocked the release of eight detainees off the cleared list by opposing their habeas corpus petitions, including three cases where the detainee won the writ at the trial level and the Department of Justice won a reversal on appeal. One of those who won his petition only to have it reversed on appeal was Adnan Latif, whose resulting desperation drove him to commit suicide. In fact, no detainee has prevailed in a habeas corpus petition in three years.

#### Time and time again Obama has fought against HC rulings

J.D. Tuccille, September 21, 2012, managing editor, Reason, “How Obama Came to Be the Biggest Defender of Indefinite Detention,” Reason Magazine, <http://reason.com/archives/2012/09/21/were-all-in-detention-now>, KEL

Once in office, however, President Obama continued most of the practices of his predecessor and, with the full assistance of the Republican-controlled House of Representatives and the majority-Democratic Senate, signed into law the National Defense Authorization Act for 2012, Section 1021 of which formalized the military's ability to indefinitely detain civilians with no charge or trial if they could be interpreted as "part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners." Sure, he play-acted a little hesitation in taking on so much arbitrary power, but he ultimately signed a bill that legally codified for the first time the domestic detention of civilians, sparking vows of defiance from lawmakers in states as politically disparate as Arizona, Maine, and Virginia. Responding to the passage of the NDAA by Congress and its signing by the president, ACLU Executive Director Anthony D. Romero said, "[t]he statute is particularly dangerous because it has no temporal or geographic limitations, and can be used by this and future presidents to militarily detain people captured far from any battlefield." Joanne Mariner, the director of Hunter College’s Human Rights Program, was a bit more scathing: When future historians inquire into how the practice of indefinite military detention without trial became formally entrenched in a country with such strong constitutional safeguards and stringent criminal justice guarantees, they will find that it did not happen all at once, but rather via a series of incremental steps. President Obama is now responsible for three of them. The first was to justify indefinite detention in litigation opposing the release of detainees held at Guantanamo; the second was to issue an executive order on indefinite detention, and the third was to sign the NDAA. That the 2008 Democratic platform's concerns over detention are nowhere to be found in the current platform is no surprise. If Obama claimed to have "serious reservations" about indefinite detention when signing the NDAA, he got over them quickly (in fact, his administration had already argued, in March 2009, in favor of continuing the Bush administration's detention policies at Guantanamo Bay). Within months of signing the NDAA, the Obama administration defended Section 1021 in court against a lawsuit brought by a group of journalists and activists worried that they could be subject to the law's provisions. That defense continued through a temporary injunction after the indefinite detention provision was found unconstitutional by U.S. District Judge Katherine Forrest, of New York's Eastern District. When that injunction was made permanent, because of the chilling effect it could have on journalists who cover people and activities the goverment tags as terrorism-related, as well as its overt contempt for due process, the administration immediately appealed. Judge Forrest's ruling, the government argued, was an "unprecedented" incursion into executive and legislative power that wrongly tied the hands of military commanders in time of war. Besides, argued the Obama administration, there's nothing special about the NDAA, since it simply restated powers authorized by the post-9/11 Authorization for Use of Military Force Act. Judge Raymond Lohier must have found that feasible, since he stayed the permanent injunction pending a review by a three judge panel. That the government claims it already has powers that Obama insisted he didn't want before endorsing anyway has been noted by journalist Chris Hedges, one of the plaintiffs in the case. Writes Hedges: [Assistant U.S. Attorney Benjamin] Torrance told the court that judicial interpretation of the AUMF made it identical to the NDAA, which led the judge to ask him why it was necessary for the government to defend the NDAA if that was indeed the case. Torrance, who fumbled for answers before the judge's questioning, added that the United States does not differentiate under which law it holds military detainees. Judge Forrest, looking incredulous, said that if this was actually true the government could be found in contempt of court for violating orders prohibiting any detention under the NDAA. From pretending horror over the power to detain people without charges or trials, Obama has moved on to embracing that power, defending that power, and arguing that the executive branch had that power long before the current law was passed. That he came to this supposedly newfound disdain for due process with bipartisan connivance in Congress, and with his Republican opponent, Mitt Romney, me-too-ing his support for the NDAA, suggests that those of us who oppose such power have been left with few channels for appeal.

#### Can’t solve – the DOD will just shift detainment overseas

Merritt, 2005 (Jeralyn, Criminal Defense Lawyer, J.D. 1973, “Rendition Comes Out of the Closet”, TalkLeft, March 11th, http://talkleft.com/new\_archives/009994.html)

A Feb. 5 memorandum from Defense Secretary Donald H. Rumsfeld calls for broader interagency support for the plan, starting with efforts to work out a significant transfer of prisoners to Afghanistan, the officials said. The proposal is part of a Pentagon effort to cut a Guantánamo population that stands at about 540 detainees by releasing some outright and by transferring others for continued detention elsewhere. What's behind the move to reduce the population at Guantanamo? Is it finally some concern for the due process rights of the detainees? Not a chance. In fact, it's just the opposite. The Pentagon doesn't care for the restrictions the U.S. Courts have placed on their actions, so they want to move the show elsewhere--to foreign countries that won't have such concerns. Defense Department officials said that the adverse court rulings had contributed to their determination to reduce the population at Guantánamo, in part by persuading other countries to bear some of the burden of detaining terrorism suspects.

### 2NC Solvency – DC Circuit Court Circumvention

#### Also – their Milko evidence proves circumvention – I’ll read the first paragraph in complete context

**Milko 12**

[Winter, 2012, Jennifer L. Milko, “Separation of Powers and Guantanamo Detainees: Defining the Proper Roles of the Executive and Judiciary in Habeas Cases and the Need for Supreme Guidance”, 50 Duq. L. Rev. 173]

After the Boumediene and Munaf cases, it was clear that the United States district courts have habeas jurisdiction over detainee cases, and the District of Columbia Circuit has taken center stage in Guantanamo cases. n58 While many felt that Boumediene granted federal judges considerable control over the legal fate of detainees, the D.C. Circuit Court of Appeals used the Supreme Court's warning not to "second-guess" the Executive as its mantra in detainee cases. Though the district court ruled in several cases that a remedy, including actual release, was proper, the D.C. Circuit Court of Appeals has never approved such a release and has struck down district court orders seeking to control the fate of detainees

#### And here is the last paragraph of their Melko evidence

**Milko 12**

[Winter, 2012, Jennifer L. Milko, “Separation of Powers and Guantanamo Detainees: Defining the Proper Roles of the Executive and Judiciary in Habeas Cases and the Need for Supreme Guidance”, 50 Duq. L. Rev. 173]

Following this reversal, the Petitioners filed a motion for rehearing and suggested a rehearing en banc, as well as a stay of the mandate of the D.C. Circuit Court of Appeals. n91 Both of these motions were denied, and the Petitioners filed a writ for a petition of certiorari on November 10, 2009. n92 The Supreme Court denied the writ on March 22, 2010. n93 [\*186]

#### This is a big deal for aff solvency – literally EVERY SINGLE Habeas case will be made a mockery by the DC Circuit Court –

JOE NOCERA, NYT, “The Detainees’ Dilemma”, April 29th 2013, http://www.nytimes.com/2013/04/30/opinion/nocera-the-detainees-dilemma.html

Like most Guantánamo detainees, Hentif spent years in solitary confinement. He was subjected to “alternative interrogation techniques” as it was euphemistically called. He watched the Bush administration release more than 500 of the 779 detainees who have passed through Guantánamo. He learned about lawyers arguing in court that the detainees had the legal right to a habeas corpus hearing — that is, to try to prove that they were not enemy combatants and had been detained illegally. And, in 2008, the Supreme Court ruled that they did have that right. That same year, a presidential candidate headed toward the White House, Barack Obama, promised to close Guantánamo. That never happened, though President Obama continued the Bush policy of releasing detainees who were not deemed a threat to the United States. Hentif, in fact, was among those set to be released. In late 2009, he was hours away from flying home to Yemen when a man on a flight to Detroit tried to detonate explosives hidden in his underwear. Because the man had purportedly been trained by an Al Qaeda affiliate with bases in Yemen, Congress demanded that the administration stop releasing all Yemen detainees. Obama complied. And so it went: Hentif had a habeas corpus hearing in 2010, but, by then, the United States Court of Appeals for the District of Columbia Circuit had made a mockery of the Supreme Court’s ruling, establishing evidentiary presumptions that made it impossible for a detainee to win a habeas ruling. (The Supreme Court has declined to hear further cases.) Sure enough, the judge ruled against him in 2012, despite concluding, among other things, that Hentif had never been to an Al Qaeda training camp, as the government alleged. Meanwhile, along with 55 other Yemen detainees, he has been placed on a “cleared” list compiled by a commission composed of national security officials, meaning he could be transferred out of Guantánamo. But Congress, led by Senators John McCain and Lindsey Graham, both Republicans, quickly passed laws that put impossible conditions on their release. Shamefully, President Obama signed those bills.

#### There are not hundreds of people who have won a Habeas hearing that are sitting in prison, waiting for their release – there are TEN – Why haven’t they been released? Because the Government is appealing. And the Government WILL WIN those appeals at the DC court

Andy Worthington, Investigative journalist, author, filmmaker, photographer and Guantanamo expert, “Guantánamo Habeas Results: The Definitive List”, Last updated 2012, http://www.andyworthington.co.uk/guantanamo-habeas-results-the-definitive-list/

Please note that, although 28 of the prisoners who won their habeas petitions have been released, ten are still held, including two, Mohamedou Ould Slahi and Saeed Hatim, who had their successful petitions vacated on appeal, and sent back to the District Court to reconsider. In addition, four other prisoners, Mohammed al-Adahi, Uthman Abdul Rahim Mohammed Uthman, Hussein Almerfedi and Adnan Farhan Abdul Latif, had their successful petitions overturned on appeal, and another, Belkacem Bensayah, who lost his habeas petition, won on appeal, and his case is supposed to be reconsidered by the District Court. With the exception of the Uighurs, the government has appealed (or appears intent on appealing) the majority of the rulings (and, in the cases of the Uighurs, appealed to prevent their release in to the United States). In the cases of prisoners who lost their habeas petitions, a number of appeals have also been filed by the prisoners’ attorneys, although, given the scandalous bias of the D.C. Circuit Court, every appeal by a prisoner is almost certainly doomed to fail, and what is needed is for the Supreme Court to act to restore any meaning to the concept of habeas corpus for the Guantánamo prisoners. Links to the often alarming outcomes of a number of these appeals (in which the Circuit Court has been intent on naked, ideological confrontation with the District Court, disregarding their opinions and defending a position on national security that would have delighted former Vice President Dick Cheney) are published below, and at the time of my latest update to this article in November 2011, had contributed significantly to a situation in which it is now appropriate to consider that a handful of right-wing judges are now dictating the government’s detention policies and have gutted habeas corpus of all meaning and remedy.

#### Sure – Detainees may have won an initial case – but the DC Court ruled on the side of the admiration in EVERY SINGLE appeal - There is no advantage to be wrestled out of this aff – it is literally worthless – you should vote on presumption

Reprieve, Charity to seek justice for Guantanamo Detainees, “Why can't cleared prisoners leave Guantánamo Bay?”, July 10th 2012, http://www.reprieve.org.uk/publiceducation/2012\_07\_10\_Guantanamo\_public\_education/

Guantánamo detainees can appeal to federal judges to compel the Department of Defense to release them; a federal court order would circumvent the NDAA restrictions. Under this method, detainees challenge their detention by seeking a court order of habeas corpus – essentially asking the court to declare their detention illegal. In 2008, the United States Supreme Court ruled in Boumediene v. Bush that US courts can make habeas corpus orders for non-US citizens detained at Guantánamo. (The Court specifically ruled that a Congressional Act prohibiting such orders was unconstitutional.) Following Boumediene, a number of Guantánamo detainees challenged their detention in court. Some of these habeas petitions were granted, meaning that the detainee had indeed been held illegally. The release of some of these habeas winners was not contested by the government and such prisoners returned home or to a third country willing to take them. However, since 2010, the D.C. Circuit Court has consistently decided against the detainee on appeal[1], meaning the US courts have become effectively worthless to Guantánamo prisoners. The problem was that the Supreme Court’s Boumediene opinion lacked clear guidance on the standards and procedures for Guantánamo habeas corpus review. This allowed lower (and possibly more hostile) courts to narrow and misinterpret the meaning of the Boumediene decision to a point where it became worthless. For example, the D.C. Circuit Court set the standard of evidence required of the government to oppose a release as a “preponderance of evidence” - extremely low and vague. The Court has also allowed hearsay evidence, and has even accepted the existence of simply “some evidence" as sufficient for continued detention. Furthermore, the courts now side with the government whenever it presents a 'plausible' allegation about the prisoner. In reality, this shifts the burden of proof onto the prisoner, as he must actively disprove the allegations about him, while the government may simply present them as fact. In sum, while detainees can challenge their detention in court they now have no chance of winning.

### 2NC Solvency – A2: They Will Win Hearings

#### 1) If they win the cases – they lose on appeal – this literally answers none of our circumvention argument

#### 2) They can’t win – these Habeas Trials are stacked in favor of the Government

Benjamin Wittes et al, senior fellow in Governance Studies at the Brookings Institution., “The Emerging Law of Detention 2.0”, April 2012, http://www.brookings.edu/~/media/research/files/reports/2011/5/guantanamo%20wittes/chesney%20full%20text%20update32913.pdf

Our purpose in this report is to describe in detail and analyze the courts’ work to date—and thus map the contours of the nascent law of non-criminal counterterrorism detention that is emerging from it. As we shall describe, the Supreme Court, in deciding that the federal courts have jurisdiction over habeas corpus cases from Guantánamo, gave only the barest sketch of what such proceedings should look like, leaving a raft of questions open for the district and appellate court judges:  Who bears the burden of proof in these cases, and what is that burden—which is to say, who has to prove what?  What are the boundaries of the President’s detention power—that is, assuming the government can prove that the detainee is who it claims him to be, what sort of person is it lawful to detain under the laws of war?  What sort of evidence can the government use?  And how should the courts handle hearsay and evidence that may have been given involuntarily? None of these questions, and many others besides, has clear answers emanating from either Congress or the Supreme Court. On all of them, the lower federal court judges are making the law.

### 2NC Solvency – A2: Democrats In Congress Won’t Backlash

Mark D. Pezold, Boston College Law Review “When to be a Court of Last Resort: The Search for

a Standard of Review for the Suspension Clause”, 1-1-2010, http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=3108&context=bclr (BJN)

#### Democrats would circumvent a Court ruling on detention

Ilya Somin, Professor of Law at George Mason University School of Law, “Boumediene, Executive Power, and Congressional Power”, June 12th 2008, http://www.volokh.com/posts/1213294259.shtml (BJN)

Importantly, the Court does leave Congress a way out. If it wants to, Congress could still strip detainees of the protection they get under Boumediene by enacting a statute suspending the writ of habeas corpus under the Suspension Clause. With a Democratic Congress, I suspect that we might get a new detainee law that suspends the writ for certain categories of terror detainees, but also perhaps gives them more procedural rights than they got under the Republican-enacted MCA. For a variety of reasons, I doubt that the Democrats will be willing to take the risk of allowing the detainees to retain full habeas rights. If they don't act and a terrorist released as a result of a habeas petition commits some atrocity, the Dems will take a predictable political hit. Especially if Obama wins the presidential election, expect the Democrats to enact some sort of partial suspension of habeas corpus, combined with new, but limited statutory procedural rights for detainees. At least that is my tentative prediction.

### 2NC A2: Plan Solves Anyway / signal

#### This is a joke – Nothing about US credibility would change if zero people got released and the courts deferred to the US on “who is a terrorist”

#### If you think they still have an advantage – than the aff is not unique – Boudmedine ruling should have been sufficient – their evidence

Knowles 9 [Spring, 2009, Robert Knowles is a Acting Assistant Professor, New York University School of Law, “American Hegemony and the Foreign Affairs Constitution”, ARIZONA STATE LAW JOURNAL, 41 Ariz. St. L.J. 87]

The Bush Administration's detainee policy made clear that - due to America's power - the content of enforceable international law applicable to the detainees would largely depend on interpretation by the U.S. government. Under the classic realist paradigm, international law is less susceptible to judicial comprehension because it cannot be taken at face value; its actual, enforceable meaning depends on ever-shifting political dynamics and complex relationships among great powers. But in a hegemonic system, while enforceable international legal norms may still be political, their content is heavily influenced by the politics of one nation - the United States. n412 As an institution of that same government, the courts are well-positioned to understand and interpret international law that has been incorporated into U.S. law. Because the courts have the capacity to track international legal norms, there was no longer a justification for exceptional deference to the Administration's interpretation of the Geneva Conventions as applied to the detainees. Professors Posner and Sunstein have argued for exceptional deference on the ground that, unless the executive is the voice of the nation in foreign affairs, other nations will not know whom to hold accountable for foreign policy decisions. n413 But the Guantanamo litigation demonstrated that American hegemony has altered this classic assumption as well. The [\*154] transparent and accessible nature of the U.S. government made it possible for other nations to be informed about the detainee policy and, conceivably, to have a role in changing it. The Kuwaiti government hired American attorneys to represent their citizens held at Guantanamo. n414 In the enemy combatant litigation, the government was forced to better articulate its detainee policies, justify the detention of each detainee, and permit attorney visits with the detainees. n415 Other nations learned about the treatment of their citizens through the information obtained by attorneys. n416 Although the political climate in the U.S. did not enable other nations to have an effect on detainee policy directly - and Congress, in fact, acted twice to limit detainees' access to the courts n417 - this was an exceptional situation. Foreign governments routinely lobby Congress for favorable foreign affairs legislation, and are more successful with less politically-charged issues. n418 Even "rogue states" such as Myanmar have their lobbyists in Washington. n419 In addition, foreign governments facing unfavorable court decisions can and do appeal or seek reversal through political channels. n420 The accessibility and openness of the U.S. government is not a scandal or weakness; instead, it strengthens American hegemony by giving other nations a voice in policy, drawing them into deeper relationships that serve America's strategic interests. n421 In the Guantanamo litigation, the courts served as an important accountability mechanism when the political branches were relatively unaccountable to the interests of other nations. The hegemonic model also reduces the need for executive branch flexibility,

and the institutional competence terrain shifts toward the courts. The stability of the current U.S.-led international system depends on the ability of the U.S. to govern effectively. Effective governance depends on, among other things, predictability. n422 G. John Ikenberry analogizes America's hegemonic position to that of a "giant corporation" seeking foreign investors: "The rule of law and the institutions of policy making in a democracy are the political equivalent of corporate transparency and [\*155] accountability." n423 Stable interpretation of the law bolsters the stability of the system because other nations will know that they can rely on those interpretations and that there will be at least some degree of enforcement by the United States. At the same time, the separation of powers serves the global-governance function by reducing the ability of the executive branch to make "abrupt or aggressive moves toward other states." n424 The Bush Administration's detainee policy, for all of its virtues and faults, was an exceedingly aggressive departure from existing norms, and was therefore bound to generate intense controversy. It was formulated quickly, by a small group of policy-makers and legal advisors without consulting Congress and over the objections of even some within the executive branch. n425 Although the Administration invoked the law of armed conflict to justify its detention of enemy combatants, it did not seem to recognize limits imposed by that law. n426 Most significantly, it designed the detention scheme around interrogation rather than incapacitation and excluded the detainees from all legal protections of the Geneva Conventions. n427 It declared all detainees at Guantanamo to be "enemy combatants" without establishing a regularized process for making an individual determination for each detainee. n428 And when it established the military commissions, also without consulting Congress, the Administration denied defendants important procedural protections. n429 In an anarchic world characterized by great power conflict, one could make the argument that the executive branch requires maximum flexibility to defeat the enemy, who may not adhere to international law. Indeed, the precedents relied on most heavily by the Administration in the enemy combatant cases date from the 1930s and 1940s - a period when the international system was radically unstable, and the United States was one of several great powers vying for advantage. n430 But during that time, the executive branch faced much more exogenous pressure from other great powers to comply with international law in the treatment of captured enemies. If the United States strayed too far from established norms, it would risk retaliation upon its own soldiers or other consequences from [\*156] powerful rivals. Today, there are no such constraints: enemies such as al Qaeda are not great powers and are not likely to obey international law anyway. Instead, the danger is that American rule-breaking will set a pattern of rule-breaking for the world, leading to instability. n431 America's military predominance enables it to set the rules of the game. When the U.S. breaks its own rules, it loses legitimacy.

The Supreme Court's response to the detainee policy enabled the U.S. government as a whole to hew more closely to established procedures and norms, and to regularize the process for departing from them. After Hamdi, n432 the Department of Defense established a process, the CSRTs, for making an individual determination about the enemy combatant status of all detainees at Guantanamo. After the Court recognized habeas jurisdiction at Guantanamo, Congress passed the DTA, n433 establishing direct judicial review of CSRT determinations in lieu of habeas. Similarly, after the Court declared the military commissions unlawful in Hamdan, n434 this forced the Administration to seek congressional approval for commissions that restored some of the rights afforded at courts martial. n435 In Boumediene, the Court rejected the executive branch's foreign policy arguments, and bucked Congress as well, to restore the norm of habeas review. n436 Throughout this enemy combatant litigation, it has been the courts' relative insulation from politics that has enabled them to take the long view. In contrast, the President's (and Congress's) responsiveness to political concerns in the wake of 9/11 has encouraged them to depart from established norms for the nation's perceived short-term advantage, even at the expense of the nation's long-term interests. n437 As Derek Jinks and Neal Katyal have observed, "treaties are part of [a] system of time-tested standards, and this feature makes the wisdom of their judicial interpretation manifest." n438 At the same time, the enemy combatant cases make allowances for the executive branch's superior speed. The care that the Court took to limit the issues it decided in each case gave the executive branch plenty of time to [\*157] arrive at an effective detainee policy. n439 Hamdi, Rasul, and Boumediene recognized that the availability of habeas would depend on the distance from the battlefield and the length of detention. n440 The enemy combatant litigation also underscores the extent to which the classic realist assumptions about courts' legitimacy in foreign affairs have been turned on their head.

 In an anarchic world, legitimacy derives largely from brute force. The courts have no armies at their disposal and look weak when they issue decisions that cannot be enforced. n441 But in a hegemonic system, where governance depends on voluntary acquiescence, the courts have a greater role to play. Rather than hobbling the exercise of foreign policy, the courts are a key form of "soft power." n442 As Justice Kennedy's majority opinion observed in Boumediene, courts can bestow external legitimacy on the acts of the political branches. n443 Acts having a basis in law are almost universally regarded as more legitimate

than merely political acts. Most foreign policy experts believe that the Bush Administration's detention scheme "hurt America's image and standing in the world." n444 The restoration of habeas corpus in Boumediene may help begin to counteract this loss of prestige. Finally, the enemy combatant cases are striking in that they embrace a role for representation-reinforcement in the international realm. n445 Although defenders of special deference acknowledge that courts' strengths lie in protecting the rights of minorities, it has been very difficult for courts to protect these rights in the face of exigencies asserted by the executive branch in foreign affairs matters. This is especially difficult when the minorities are alleged enemy aliens being held outside the sovereign territory of the United States in wartime. In the infamous Korematsu decision, another World War II-era case, the Court bowed to the President's factual assessment of the emergency justifying detention of U.S. citizens of Japanese ancestry living in the United States. n446 In Boumediene, the Court [\*158] pointedly declined to defer to the executive branch's factual assessments of military necessity. n447 The court may have recognized that a more aggressive role in protecting the rights of non-citizens was required by American hegemony. In fact, the arguments for deference with respect to the rights of non-citizens are even weaker because aliens lack a political constituency in the United States. n448 This outward-looking form of representation-reinforcement serves important functions. It strengthens the legitimacy of U.S. hegemony by establishing equality as a benchmark and reinforces the sense that our constitutional values reflect universal human rights. n449

***Previous rulings solves the aff***

**Siegel 12** (Ashley E., J.D. – Boston University School of Law, “Some Holds Barred: Extending Executive Detention Habeas Law Beyond Guantanamo Bay,” Boston University Law Review, Vol. 92, <http://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/SIEGEL_000.pdf>)

Mr. Janjua’s situation implicates the very concerns that the Supreme Court discussed in the Boumediene line of cases. **While** **Mr. Janjua’s case does not fall under the definition of extraordinary rendition**, since he has not been removed to a foreign country, **there are many parallels between his case and extraordinary rendition cases**. Specifically, as with extraordinary rendition, the U.S. government has ordered Mr. Janjua’s enforced disappearance by the Pakistani government to avoid compliance with U.S. law and international conventions.212 **The Supreme Court and the D.C. Circuit have both expressed a concern that the Executive would seek to avoid compliance with the law by sidestepping any standard the Court would elucidate**.213 Further, Mr. Janjua’s situation implicates separation-of-powers concerns, an issue with which the Supreme Court in Boumediene was particularly concerned. By ordering foreign governments to detain terrorist suspects on behalf of the U.S. government, the Executive sidesteps judicial review of its actions and removes such detainees’ rights to challenge their detentions.

**The Boumediene factors themselves *allow habeas rights to be extended*** to those in Mr. Janjua’s circumstances. The first factor, considering the detainee’s status and the process afforded in determining that status, appears to weigh in favor of a detainee in Mr. Janjua’s circumstances. Such a detainee often has not been charged with any crime, nor given any status whatsoever. Even if a status has been given to such a detainee, it is unlikely that a disappeared person was afforded any process or allowed to rebut that status in any meaningful way. **While such detainees are often considered suspected terrorists, their detention should not draw on indefinitely without any formal charges or the opportunity to rebut those charges**. The first factor weighs more in this sort of detainee’s favor than perhaps those in Eisentrager, Boumediene, or Maqaleh since both the status and status-determination process in the present case provide significantly less protection.

### Turn

#### circumvention turns heg

Aloe, 82

Paul Hubschman Aloe, Kudman Trachten Aloe, L.L.P, Hofstra LR, Fall, 82,

The Vietnam War added a new twist to the political question doctrine. Many of the lawsuits challenging the war were dismissed on the theory that the political question doctrine precluded the courts from reaching the merits of the cases. n194 The courts, in reaching their decisions, refused to consider whether the President was acting within the scope of his powers. n195 The three judge district court opinion in Atlee v. Laird, n196 presented the most detailed analysis of this revised approach to the political question doctrine. The judges dismissed a challenge to the Vietnam War, refusing to consider whether Vietnam was, in fact, a war, n197 whether Congress had taken sufficient action to authorize a war, or whether the President was justified in maintaining American forces in Southeast Asia. The Atlee court relied on the factors set out in Baker v. Carr n198 and concluded that deciding the case "could lead to consequences in our foreign relations completely beyond the ken and authority of this Court to evaluate." n199 The court also concluded that it lacked "judicially manageable standards to apply to reach a factual determination whether we are at war." n200 The court noted that the "data necessary for such an evaluation regarding the nature of our military presence would be overwhelming." n201 For the first time, the political question doctrine prevented the courts from considering a separation of powers issue, n202 specifically, whether the President had the power to pursue the Vietnam War without congressional approval. Although the court held that the war making powers were committed to the political branches, it failed to decide whether the President had the power to wage war without congressional approval. [\*550] Many judges believed that this new approach was unsupported by prior case law n203 and was unsound as a matter of expediency. It was pointed out that even in the event that the war was declared unconstitutional, the President could still seek a declaration of war from Congress. n204 District Judge Sweigert noted that the court's refusal to decide whether the President was usurping war making power only added to the confusion and controversy surrounding the Vietnam War and prevented the political process from working. n205 [T]he political question doctrine . . . [presents] no obstacle to judicial determination of the rival legislative-executive claims . . . . The power to decide these claims plainly has not been lodged in either the legislative or executive branch; equally plainly, the jurisdiction to demark constitutional boundaries between the rival claimants has been given to the courts. The criteria for judgment whether a claim of "executive privilege" is maintainable can be found in parliamentary practice and, if need be, in the private litigation cases. And the framing of a remedy is attended by no special difficulties but rather falls into familiar patterns. Each of the parties seeks power allegedly conferred by the Constitution and each maintains that interference by the other with the claimed function will seriously impair it, the classic situation for judicial arbitrament. Arbitrament by the courts is the rational substitute for eyeball to eyeball confrontation. n219 The kind of conflicts that Justice Rehnquist's approach would encourage would be detrimental to the smooth functioning of the national government. This problem would be severe in the area of foreign affairs, where the questions are delicate and the need is pressing to present a coherent policy to foreign nations. Excessive infighting over which branch has what power in a given situation would undermine a coherent foreign policy and divert attention from the policy issues that needed to be faced. Such infighting might jeopardize the country's position as a world leader. The courts would do well not to use a political question doctrine rooted in concern for expediency to avoid separation of powers adjudication and, particularly, claims founded upon a statute limiting the President, such as the War Powers Resolution. n220 Rather, once it is determined that the plaintiffs have standing to sue under a statute, the courts should proceed to apply the statute, unless it is found to be unconstitutional. The courts may inquire into congressional power to pass the particular statute n221 or whether the statute unconstitutionally requires the courts to hear cases the fall outside of their article III power. A political question, however, requires deference to [\*555] a political branch of government. Once there is a statute, it is evidence that a political branch has made a political determination. The role of the court should then be to consider whether that political branch acted within the scope of its authority. If the statute is constitutional, then the political question doctrine should compel the courts to defer to the legislative expression and apply its commands. As Professor Firmage wrote: When the executive and legislative branches are in open disagreement over the employment of the war powers, most of the criteria of political question noted in Baker v. Carr point toward independent judicial review. The question of the constitutional delegation is simply which of the political branches should prevail. The national government is not speaking with one voice and may be able to do so only after judicial determination of constitutional competence. The embarrassment of "multifarious pronouncements" has occurred, not by judicial intrusion, but as a result of disputes between the political branches. n222 The courts' disregard of acts of Congress, without considering the separation of powers question, effectively constitutes the judicial branch placing itself above the will of Congress, thus usurping congressional power.

**Legit**

**Drones**

**Ov**

***Drones destroy U.S. credibility---outweighs detention***

Stephen **Holmes 13**, the Walter E. Meyer Professor of Law, New York University School of Law, July 2013, “What’s in it for Obama?,” The London Review of Books, <http://www.lrb.co.uk/v35/n14/stephen-holmes/whats-in-it-for-obama>

On the basis of undisclosed evidence, evaluated in unspecified procedures by rotating personnel with heterogeneous backgrounds, the US is continuing to kill those it classifies as suspected terrorists in Somalia, Yemen and Pakistan. It has certainly been eliminating militants who had nothing to do with 9/11, including local insurgents fighting local battles who, while posing no realistic threat to America, had allied themselves opportunistically with international anti-American jihadists. By following the latter wherever they go, the US is allowing ragtag militants to impose ever new fronts in its secret aerial war. **Mistakes are made and can’t be hidden**, at least not **from local populations. Nor can the resentment of surrounding communities be easily assuaged**. This is **because**, **even when it finds its target**, **the US is killing not those who are demonstrably guilty of** widely **acknowledged crimes but** rather **those who**, ***it is predicted, will commit crimes in the future***. Of course, **the civilian populations in the countries where these strikes take place** ***will never accept the hunches of CIA or Pentagon futurologists***. **And so they will** ***never accept American claims*** **about the justice of Obama’s slimmed-down war on terror, but instead claim the right of self-defence**, and **this would be true** ***even if drone operators could become*** as ***error-free*** as Brennan once claimed they already are. But of course collateral damage and mistaken-identity strikes will continue. They are inevitable accompaniments of all warfare. And they, too, along with intentional killings that are never publicly justified, will communicate resoundingly to the world that the arbitrary and unpredictable killing of innocent Muslims falls within America’s commodious concept of a just war.

**The** ***rage such strikes incite*** **will be all the greater if onlookers believe**, as seems likely, **that the killing they observe makes relatively little contribution to the safety of Americans**. Indeed, **this is already happening**, which is the reason that **the drone**, whatever its moral superiority to land armies and heavy weaponry, **has** ***replaced Guantánamo as the incendiary symbol of America’s indecent callousness towards the world’s Muslims***. **As Bush was the Guantánamo president, so Obama is the drone president**. **This switch**, whatever Obama hoped, **represents a** **worsening not an improvement of America’s image in the world.**

***Turns rule of law, resentment***

***Uniquely worse than detention***

DAN **ROBERTS**, THE GUARDIAN MAY 2, 20**13**, Business Insider, BUSH LAWYER: Drone Strikes Are Worse Than Indefinite Detention, <http://www.businessinsider.com/bush-administration-lawyer-drone-strikes-being-used-as-alternative-to-guantnamo-2013-5>, jj

"**These drone strikes are causing us great damage in the world**, but on the other hand if you are the president and you do nothing to stop another 9/11 then you also have a problem." Nevertheless, the legal justification for drone strikes has become so stretched that critics fear it could now encourage other countries to claim they were acting within international law if they deployed similar technology. A senior lawyer now advising Barack Obama on the use of drone strikes conceded that the administration's definition of legality could even apply in the hypothetical case of an al-Qaida drone attack against military targets on US soil. Philip Zelikow, a member of the White House Intelligence Advisory Board, said the government was relying on two arguments to justify its drone policy under international law: that the US remained in a state of war with al-Qaida and its affiliates, or that those individuals targeted in countries such as Pakistan were planning imminent attacks against US interests. When asked by the Guardian whether such arguments would apply in reverse in the unlikely event that al-Qaida deployed drone technology against military targets in the US, Zelikow accepted they would. "Yes. But it would be an act of war, and they would suffer the consequences," he said during the debate at the Bipartisan Policy Center in Washington. Hina Shamsi, a director at the American Civil Liberties Union, warned that the issue of legal reciprocity was not just a hypothetical concern: "The use of this technology is spreading and we have to think about what we would say if other countries used drones for targeted killing programmes." "***Few thing are more likely to undermine our legitimacy than the perception that we are not abiding by the rule of law or are indifferent to civilian casualties***," she added.

**A2: Not Unique – We Use Drones Now**

***Prefer the direction of the link – what happens with these two captures is a TEST CASE for future detention – and taking military commissions off the table wrecks Obama’s faith in detention***

Spencer **Ackerman**, The Guardian, “US raids on terror suspects present test for Obama: to capture or to kill?”, **October 7th** 2013, http://www.theguardian.com/world/2013/oct/07/us-raids-terror-suspects-obama

**The twin raids** mounted by US forces on terror suspects in Africa at weekend **are shaping up** ***as a test*** **of whether the Obama administration is re-emphasising the capture of terrorist suspects** – risky missions that have been relatively rare during the past five years – **and shifting away from** what it calls "**targeted killing**" operations, usually involving armed drones. The seizure of Abu Anas al-Liby, an alleged al-Qaida operative wanted for the 1998 east Africa embassy bombings, is also looking like a test of a related issue: whether the Obama administration is recommitting to civilian courts for trying terrorist suspects that it captures in the future. A likely prologue for Liby's case came in April 2011, when US special operations forces captured Ahmed Abdulkadir Warsame off the Somali coast, and kept him in the brig of the USS Boxer for nearly three months of interrogation before the navy took him to the southern district of New York to face terrorism charges. In March, the Justice Department revealed that Warsame had pleaded guilty to all nine counts against him. Reportedly, information that Warsame provided his interrogators contributed to **the** September 2011 operation that killed the US citizen and al-Qaida propagandist Anwar al-Awlaki in Yemen. One **reason that the captures of terrorism suspects has been rare is** ***the policy limbo concerning their detention.*** **Trying terrorists in civilian courts**, particularly those captured overseas, ***remains a controversial decision*** in Congress, particularly but not exclusively among Republicans. So does the Obama administration's stalled efforts to close the detention facility at Guantánamo Bay. At the same time, bringing Liby before a military commission would spark criticism from the left and internationally, quarters that consider the commissions to provide insufficient due process. Senior special operations officials have cited the detentions policy inertia as contributing to the tacit preference for killing terrorism suspects instead of capturing them. In June 2011, after the Warsame detention became public, Admiral William McRaven, now the head of US special operations command, publicly urged the administration and Congress to settle on a policy for his elite forces to execute. Obama stated that he preferred to capture terrorists instead of killing them, and recommitted to shuttering Guantánamo Bay, during a May speech at the National Defense University. It remains less clear how that preference translates into policy. The Defense Department has transferred only two detainees from Guantánamo to foreign countries since the speech; detentions policy remains unsettled; and special operations raids are a risky option, as demonstrated by the weekend's Somalia mission that appears not to have netted its target, reportedly an al-Shabaab militant known as Abdulkadir Mohamed Abdulkadir. But even if **Obama** succeeds in the arduous challenge of closing down the Guantánamo Bay detention facility, his administration ***has long embraced the controversial military commissions process*** hosted there, which it helped revise and entrench in a 2009 law. **Caitlin Hayden, spokeswoman for the national security council at the White House**, while not announcing any decision on al-Liby's case, **defended both** federal courts – sometimes called "**Article Three courts**," a reference to their place in the US constitution – **and military commissions** as legitimate venues for terrorism suspects. "Article Three courts have a long track record of success, proving that federal prosecutions can often be the most effective mechanism for gathering useful intelligence, neutralizing a threat, and keeping a dangerous individual behind bars," Hayden said. "**We** also ***fully support the use of the military commissions*** system in appropriate cases, based on the reforms implemented in the bipartisan military commissions act of 2009. ***Both systems are potentially viable options*** that must be evaluated based on the facts of each individual case."

***Drone strikes are at historic lows – Obama wants to increase captures and detention – key to intelligence***

Guy **Taylor** and Kristina Wong, Washington Times, “Drone strikes plummet as U.S. seeks more human intelligence”, **Oct 9th** 2013, http://www.washingtontimes.com/news/2013/oct/9/drone-strikes-drop-as-us-craves-more-human-intelli/?page=all

**The number of drone strikes approved by** the **Obama** administration on suspected terrorists **has *fallen dramatically*** this year, as the war with al Qaeda increasingly shifts to Africa **and U.S. intelligence *craves*** **more captures and interrogations of high-value targets.** U.S. officials told The Washington Times on Wednesday that the reasons for a shift in tactics are many — including that al Qaeda’s senior ranks were thinned out so much in 2011 and 2012 by an intense flurry of drone strikes, and that the terrorist network has adapted to try to evade some of Washington’s use of the strikes or to make them less politically palatable. But the sources acknowledged that **a growing desire to close a recent gap in actionable human intelligence** on al Qaeda’s evolving operations also **has renewed the administration’s interest in more clandestine commando raids** like the one that netted a high-value terrorist suspect in Libya last weekend. **Capturing and interrogating suspects can provide** ***valuable intelligence*** about a terrorist network **that has been morphing from its roots with a central command in Pakistan and Afghanistan** (known as intelligence circles as the FATA) **to more diverse affiliates spread most notably across North Africa, officials and analysts said.**

***It’s a new phase and solves cred***

**Jenkins 10/23** [Brian Michael Jenkins serves as senior adviser to the president of the RAND Corporation. He is a former captain in the Army's Special Forces and a veteran of multiple tours in Latin America and Vietnam. October 23, 2013, USA Today, How war on terrorism has evolved: Column, <http://www.usatoday.com/story/opinion/2013/10/23/military-terrorism-somalia-libya-al-shabab-column/3172489/>, jj]

While U.S. drone strikes directed against terrorist leaders will continue to be part of our arsenal, even President **Obama has acknowledged a "new phase" in our terrorism fight. He has recently stated that drones will be used more narrowly to lessen the risk of civilian casualties** — a point amplified Tuesday in reports by Amnesty International and Human Rights Watch. This is a significant shift, largely obscured by the intense news coverage of the government shutdown and debt limit. **It has the potential to both reduce public hostility to the drones that is interfering with U.S. objectives in several countries and to improve intelligence by capturing rather than killing terrorist leaders.**

**UQ – Credibility High**

***Not try-or-die—the shift back to capture and detention is boost legitimacy and allied cooperation***

**Byman 10/10-13** [Daniel Byman focuses on counterterrorism and Middle East security. He is also a professor at Georgetown University's Security Studies Program. He served as a staff member on the 9/11 Commission and worked for the U.S. government. His most recent book is A High Price: The Triumphs and Failures of Israeli Counterterrorism. October 10, 2013, Captures vs. Drones, <http://www.brookings.edu/blogs/up-front/posts/2013/10/10-al-libi-capture-byman>, jj]

**Capturing terrorists offers both tactical and *diplomatic rewards***. Dead men tell no tales, and a dead terrorist carries his secrets to the grave. By capturing rather than killing al-Libi, the United States can interrogate him about the old guard Al Qaeda members involved in the 1998 Embassy attacks and the latest incarnation of jihadists active in Libya and nearby Maghreb states, an area of growing concern to U.S. counterterrorism officials. **Al-Libi can fill in holes in our understanding of Al Qaeda and provide intelligence that enables the United States and its allies to disrupt more plots.** **Over time, sustained capture operations can create a *benign circle*, with successful arrests and interrogations leading to further arrests, taking terrorists off the streets faster than they can be replaced**. **Arrests and the legal system also offer more *legitimacy*, particularly with Western allies**. The legality of U.S. drone strikes outside recognized war zones and against targets only loosely associated with the Al Qaeda core and the 9/11 attacks, even if they are clearly terrorists, is hotly debated. **The U.S. drone and targeted killing program are widely criticized as counterproductive and barbaric, with allies rejecting the war paradigm the United States uses to justify these attacks**. **Capture is deemed *more civilized*, particularly when – as seems the case with al-Libi – it is followed by a trial in a civilian court**. In theory at least, **such legitimacy makes allies more willing to support U.S. policies in general.**

***Capture missions lock in cooperation with allies—overcomes drone downsides***

**Robinson 10/18** [Linda Robinson is a senior policy analyst at the Rand Corp. and the author of “One Hundred Victories: Special Ops and the Future of American Warfare.” Washington Post, The future of counterterrorism: Fewer drones, more partnerships, <http://www.washingtonpost.com/opinions/the-future-of-counterterrorism-fewer-drones-more-partnerships/2013/10/18/47e49f02-35cc-11e3-8a0e-4e2cf80831fc_story.html>, jj]

**Raids have several advantages over drones**. The targets can be interrogated for further intelligence, laptops and other physical evidence can be scooped up, and perhaps most important, **the capture can result in what operators call a “judicial finish,” with the terrorist tried and convicted in a court of law**. Of course, Special Operations forces, along with the CIA, will still use drones when a threat is deemed so imminent that taking out a suspect is the best way to stop an attack on vital U.S. interests. That was the case in August when a barrage of drone strikes pummeled the nether provinces of Yemen to foil a reported plot on oil terminals and ports by the most active terrorist group today, al-Qaeda in the Arabian Peninsula . **But the drone’s disadvantages, primarily political and diplomatic, are now widely recognized**. Even if a strike takes out a target, **the apparent unilateralism of the attack** (local leaders often give tacit support) **can lead to popular resentment against the United States**. In Yemen, President Abed Rabbo Mansour Hadi has publicly endorsed drone strikes, but such a stance can undermine a leader’s legitimacy at home. Finally, even if civilian casualties are minimal, **just a few deaths can tarnish America’s image — and fuel terrorist recruitment**. The third tool in the anti-terrorism toolkit is the use of partnered forces. Somalia is a good example: **Special Operations troops have worked with a variety of partners to retake the country from al-Shabab, restoring government there for the first time in two decades and creating a network of allies to push al-Qaeda out of East Africa.** Amid a wider peace enforcement operation**, U.S. troops have helped train forces from Ethi­o­pia, Uganda, Kenya and Djibouti. High-end Ugandan units played a key role in pushing al-Shabab out of Mogadishu, and SEAL-trained Kenyan boat units and infantry conducted a joint operation to retake the port city of Kismayo from al-Shabab, thus denying the terrorist group a key revenue source**. Partner forces also reportedly played a role in the raid two weekends ago. Today, **Special Operations forces are engaged in some level of partnering in more than 70 countries, with an increasing focus on joint operations — or even raids** conducted mainly by partners with a supporting U.S. role — **to capture** or kill **terrorists.** The bulk of America’s 33,000 uniformed Special Operations forces, including the most elite units, will be engaged in partnering, but need time to develop their partners’ combat skills and intelligence capacity. **This quiet partnering gets less attention than drone attacks, but it is the long game that will ensure that U.S. troops can go home and leave behind forces capable of keeping the peace in bad neighborhoods**. In Somalia, the training, advising and assisting of partner forces has helped bring some order to one of the most famous ungoverned spaces on the planet.

**HC Link**

***\*\*\*Full extension of habeas rights causes shift to targeted killing***

**Chesney 11** (Robert, Charles I. Francis Professor in Law, University of Texas School of Law, “ARTICLE: WHO MAY BE HELD? MILITARY DETENTION THROUGH THE HABEAS LENS”, Boston College Law Review, 52 B.C. L. Rev 769, Lexis)

Given that the United States is actively engaged in a process meant to culminate in the transfer of control over its long-term detention operations in Afghanistan to the Afghan government (just as the United States already has transferred control of its detention operations in Iraq to the government there), n599 and absent evidence that the United States is still in the business of capturing persons elsewhere and bringing them to Afghanistan for purposes of long-term detention, **the prospects for an extension of habeas** to Afghanistan **are increasingly slim** notwithstanding these caveats. **The more significant lesson** from the Afghan habeas litigation, therefore, **is that courts likely will be receptive to an extension of habeas to any location should the United States in the future resume the practice of taking and maintaining military custody of individuals captured outside of a traditional battlefield context**. n600 **It may be that the United States will avoid that practice in the future, substituting some combination of rendition, host-nation detention**," n601 **targeted killing**, surveillance, prosecution, or inaction in its place. n602 But **if the practice of long-term detention for non-battlefield capture reemerges, so too will the questions surrounding habeas jurisdiction.**

***\*\*\*Ruling on habeas corpus litigation spills over to undermine detention authority broadly—causes a shift to targeted killing and proxy detention***

**Chesney 11** (Robert, Charles I. Francis Professor in Law, University of Texas School of Law, “ARTICLE: WHO MAY BE HELD? MILITARY DETENTION THROUGH THE HABEAS LENS”, Boston College Law Review, 52 B.C. L. Rev 769, Lexis)

Finally, a cautionary observation regarding the aforementioned balloon-squeezing effect: as noted above, **the habeas jurisprudence quite possibly will have spillover effects for AUMF-based detention operations in Afghanistan--effects that most likely would find expression in the form of additional constraints on detention authority**. n654 **This implicates the balloon-squeezing dynamic in that the military, as a result of such spillover effects, may be incentivized to opt for lethal force** [\*861] **over capture when both options lawfully are available**--though, if the spillover effect extends to targeting, this may not be an option either. **Alternatively, the spillover effects may serve further to incentivize resort to still another alternative method of incapacitation: Afghan custody, whether on a proxy basis or as a genuinely independent detention system. Certainly there already is great interest in shifting to just such an approach**. n655 **Whether this is in detainees' interest is a difficult question**. n656

**2NC Link Wall**

***Restricting detention prompts greater reliance on drones***

**Wittes ’11**, Benjamin Wittes is a Senior Fellow in Governance Studies at the Brookings Institution, where he is the Research Director in Public Law, and Co-Director of the Harvard Law School - Brookings Project on Law and Security. Detention and Denial [electronic resource] : The Case for Candor after Guantanamo. Washington : Brookings Institution Press, 2011., ebook, accessed via Wayne State online library, pg 112, jj

And why should anyone defend the status quo—as an intellectual matter, a policy matter, a legal matter, or a matter of common ¶ sense? Under what conceivable set of values would one admire a ¶ set of detention rules whose contours vary so wildly according to ¶ factors so unrelated to either liberty or security? Surely, no selfrespecting human rights advocate, believing that the rule of law ¶ requires habeas corpus review of detentions for detainees held at ¶ Guantánamo, could regard with equanimity the total deprivation ¶ of judicial review for the many more detainees held elsewhere in ¶ the world. If one truly believes that habeas review is a fulcrum on ¶ which our values pivot, it beggars belief that one would find satisfying the notion that the rule of law hinges on the odd terms of ¶ the U.S. lease of Guantánamo. It also beggars belief that the government could evade the rule of law by holding detainees in more ¶ dangerous conditions instead of removing them from the arena of ¶ combat. **Such a person must also feel at least modest discomfort** ¶ **at the increased reliance on proxy forces and Predator strikes that** ¶ **has accompanied the human rights victories over administration** ¶ **detention policies**. Surely, **such a person would regard the closure** ¶ **of Guantánamo—if it ever happens—as the most Pyrrhic of victories if it ends up meaning that future detainees, *if captured at*** ¶ ***all***, **will be held somewhere else, somewhere darker, by forces less** ¶ **professional and less constrained by law than our own**. The most ¶ that a self-respecting human rights activist could honestly say for ¶ the current situation is that it might represent the beginning of ¶ greater judicial oversight of international counterterrorism, the ¶ birth of a regime that will grow more comprehensive over time.

**D**

**2NC – Legitimacy Inev**

***Layne says hegemony is determined by capabilities and tangible power which makes the aff irrelevant. Takes out uniqueness for the advantage***

#### Knowles

American hegemony is unusually stable and durable. n380 As noted above, other nations have many incentives to continue to tolerate the current order. n381 And although other nations or groups of nations - China, the European Union, and India are often mentioned - may eventually overtake the United States in certain areas, such as manufacturing, the U.S. will remain dominant in most measures of capability for decades

***Best evidence concludes no legitimacy impact***

**Brooks & Wohlforth 8** – Stephen G. Brooks, Assistant Professor of Government at Dartmouth, and William C. Wohlforth, Associate Professor of Government at Dartmouth, 2008, World Out of Balance: International Relations and the Challenge of American Primacy, p. 201-206

First, **empirical studies find** ***no clear relationship*** **between U.S. rulebreaking, legitimacy, and the continued general propensity of other governments to comply with the overall institutional order**. **Case studies of U.S. unilateralism**—that is, perceived violations of the multilateral principle underlying the current institutional order—**reach decidedly mixed results**.74 Sometimes unilateralism appears to impose costs on the United States that may derive from legitimacy problems; in other cases, these acts appear to win support internationally and eventually are accorded symbolic trappings of legitimacy; in yet others, no effect is discernable. **Similar results are reported in detailed analyses of the most salient cases of U.S. noncompliance with international law**, which, according to several studies, is as likely to result in a “new multilateral agreement and treaties [that] generally tilt towards U.S. policy preferences” as it is to corrode the legitimacy of accepted rules.75

The contestation created by the Bush administration’s “new unilateralism,” on the one hand, and the “new multilateralism” represented by other states’ efforts to develop new rules and institutions that appear to constrain the United States, on the other hand, fits the historical pattern of the indirect effect of power on law. Highlighting only the details of the struggle over each new rule or institution may deflect attention from the structural influence of the United States on the overall direction of change. For example, **a focus on highly contested issues in the UN**, such as the attempt at a second resolution authorizing the invasion of Iraq, **fails to note how the institution’s whole agenda has shifted to address concerns (e.g., terrorism, proliferation) that the U**nited **S**tates **particularly cares about**. The secretary-general’s Highlevel Panel on Threats, Challenges and Change endorsed a range of U.S.-supported positions on terrorism and proliferation.76 International legal scholars argue that the United States made measurable headway in inculcating new rules of customary law to legitimate its approach to fighting terrorism and containing “rogue states.”77 For example, UN Security Council Resolution 1373 imposed uniform, mandatory counterterrorist obligations on all member states and established a committee to monitor compliance.

That said, there is also evidence of resistance to U.S. attempts to rewrite rules or exempt itself from rules. Arguably the most salient example of this is the International Criminal Court (ICC). During the negotiations on the Rome Convention in the late 1990s, the United States explicitly sought to preserve great-power control over ICC jurisdiction. U.S. representatives argued that the United States needed protection from a more independent ICC in order to continue to provide the public good of global military intervention. When this logic failed to persuade the majority, U.S. officials shifted to purely legal arguments, but, as noted, these foundered on the inconsistency created by Washington’s strong support of war crimes tribunals for others. The Rome Convention rejected the U.S. view in favor of the majority position granting the ICC judicial panel authority to refer cases to court’s jurisdiction.78 By 2007, 130 states had signed the treaty and over 100 were full-fledged parties to it.

President Clinton signed the treaty, but declined to submit it to the Senate for ratification. The Bush administration “unsigned” it in order legally to be able to take action to undermine it. The United States then persuaded over 75 countries to enter into agreements under which they undertake not to send any U.S. citizen to the ICC without the United States’ consent; importantly, these agreements do not obligate the United States to investigate or prosecute any American accused of involvement in war crimes. This clearly undermines the ICC, especially given that about half the states that have signed these special agreements with the United States are also parties to the Rome Statute. 79 At the same time, the EU and other ICC supporters pressured governments not to sign special agreements with the United States, and some 45 have refused to do so—about half losing U.S. military assistance as a result. In April 2005, the United States chose not to veto a UN Security Council resolution referring the situation in Darfur, Sudan, to the ICC. To many observers, this suggests that inconsistency may yet undermine U.S. opposition to the court.80 If the U.S. campaign to thwart the court fails, and there is no compromise solution that meets some American concerns, the result will be a small but noticeable constraint: U.S. citizens involved in what might be construed as war crimes and who are not investigated and prosecuted by the U.S. legal system may have to watch where they travel.

The upshot as of 2007 was something of a stalemate on the ICC, demonstrating the limits of both the United States’ capability to quash a new legal institution it doesn’t like and the Europeans’ ability to legitimize such an institution without the United States’ participation. Similar stalemates characterize other high-profile arguments over other new international legal instruments, such as the Kyoto Protocol on Climate Change and the Ottawa Landmine Convention. Exactly as constructivists suggest, these outcomes lend credence to the argument that power does not translate unproblematically into legitimacy. What the larger pattern of evidence on rule breaking shows, however, is that this is only one part of the story; the other part involves rule breaking with few, if any, legitimacy costs, and the frequent use of go-it-alone power to revise or create rules.

AN EROSION OF THE ORDER?

**The second general evidence pattern concerns whether fallout from the unpopular U.S. actions** **on ICC, Kyoto** and **Ottawa, Iraq, and many other issues** **have led to an erosion of the legitimacy of the larger institutional order.** Constructivist theory identifies a number of reasons why **institutional orders are resistant to change**, **so strong and sustained action is presumably necessary to precipitate a legitimacy crisis** that might undermine the workings of the current order. While aspects of this order remain controversial among sections of the public and elite both in the United States and abroad, **there is** ***little evidence of a trend toward others opting out of the order or setting up alternatives***. Recall also that the legitimacy argument works better in the economic than in the security realm. It is also in the economic realm that the United States arguably has the most to lose. Yet it is hard to make the empirical case that U.S. rule violations have undermined the institutional order in the economic realm. Complex rules on trade and investment have underwritten economic globalization. The United States generally favors these rules, has written and promulgated many of them, and the big story of the 1990s and 2000s is their growing scope and ramified nature—in a word, their growing legitimacy. On trade, the WTO represents a major strengthening of the GATT rules that the United States pushed for (by, in part, violating the old rules to create pressure for the upgrade). As of 2007, it had 149 members, and the only major economy remaining outside was Russia’s. And notwithstanding President Putin’s stated preference for an “alternative” WTO, Russian policy focused on accession.81 To be sure, constructivists are right that the WTO, like other rational-legal institutions, gets its legitimacy in part from the appearance of independence from the major powers.82 Critical analysts repeatedly demonstrate, however, that the organization’s core agenda remains powerfully influenced by the interests of the United States.83

Regarding international finance, the balance between the constraining and enabling properties of rules and institutions is even more favorable to the United States, and there is little evidence of general legitimacy costs. The United States retains a privileged position of influence within the International Monetary Fund and the World Bank. An example of how the scope of these institutions can expand under the radar screen of most legitimacy scholarship is International Center for Settlement of Investment Disputes (ICSID)—the major dispute settlement mechanism for investment treaties. Part of theWorld Bank group of institutions, it was established in 1966, and by 1991 it had considered only 26 disputes. With the dramatic growth in investment treaties in the 1990s, however, the ICSID came into its own. Between 1998 and 2004, over 121 disputes were registered with the Center.84 This increase reflects the rapidly growing scope of international investment law. And these new rules and treaties overwhelmingly serve to protect investors’ rights, in which the United States has a powerful interest given how much it invests overseas.

Looking beyond the economic realm, the **evidence** ***simply does not provide a basis for concluding that serial U.S. rule-breaking imposed general legitimacy costs sufficient to erode the existing order.*** **On the contrary, it suggests a complex and malleable relationship between rule breaking, legitimacy, and compliance with the existing order that opens up** ***numerous opportunities for the United*** ***S***tates **to use its power to** ***change rules and limit the legitimacy costs of breaking rules***. The evidence also suggests that just as rules do not automatically constrain power, power does not always smoothly translate into legitimacy. As our review of the ICC issue showed, the United States is not omnipotent, and its policies can run afoul of the problems of hypocrisy and inconsistency that constructivists and legal scholars identify. Indeed, neither the theory nor the evidence presented in this chapter can rule out the possibility that the United States might have enjoyed much more compliance, and had much more success promulgating its favored rules and quashing undesired rule change, had it not been such a rule breaker or had it pursued compensating strategies more energetically.

***Legitimacy inevitable – material power and lack of competitors***

Muktar **Usman-Muktar**, 9-30-**12**, The Independent Op-Ed, American Hegemony In The Asia-Pacific, <http://www.independentoped.com/2012/09/30/american-hegemony-in-the-asia-pacific/>, jj

**Professor** Hugh **White of the Australian National University, in explaining why Asia had been “remarkably peaceful**” after the Vietnam War ended in 1975, **puts it down to what he called “uncontested American Primacy**” which “kept the risk of major conflict in Asia very low” . **Uncontested primacy** essentially **describes a situation where the dominant position of one state is unchallenged and accepted by the other major states within the system, *thereby conferring legitimacy on the leadership claim of the dominant State***. This was the situation that prevailed in the Asia-Pacific after the Sino-U.S. rapprochement. **The lack of a powerful regional state with the sufficient capability, legitimacy and will to challenge the U.S. for hegemony**, in conjunction with the presence of an outlying state – the Soviet Union – seemingly intent on imposing a “hard” hegemony (hegemony by force) in the Asia, **ensured that the U.S.’ leadership position was accepted** as a fait accompli by the major states of the Asia-Pacific, particularly China (the country that had the greatest incentive to challenge the U.S. for hegemony). **The two pillars cemented the America’s hegemony as the U.S. used its preponderance of power to render a challenge to its “liberal” order futile, and deliver the “public goods” that made the pacification of potentially “dissatisfied” powers considerably easier to achieve.**

***States won’t bandwagon---capabilities outweigh intentions---it’s impossible to make heg seem benevolent***

**Layne & Schwarz 2** – Christopher Layne, professor and Robert M. Gates Chair in National Security at Texas A & M University’s George H. W. Bush School of Government and Public Service; and Benjamin Schwarz, National Editor of The Atlantic, January 2002, “A New Grand Strategy,” The Atlantic, Vol. 289, No. 1, p. 36-42

Like some optimistic Britons in the late eighteenth century, many American strategists today ***assert*** that the United States, the only superpower, is a ***"benevolent" hegemon***, immunized from a backlash against its preponderance by what they call its "soft power"—that is, by the attractiveness of its liberal-democratic ideology and its open, syncretic culture. Washington also believes that others don't fear U.S. geopolitical pre-eminence because they know the United States will ***use its*** unprecedented ***power to promote*** the ***good*** of the international system rather than to advance its own selfish aims.

But states must ***always*** be more concerned with a ***predominant power's capabilities*** than with its intentions, and in fact well before September 11—indeed, throughout most of the past decade—other states have been profoundly anxious about the imbalance of power in America's favor. This simmering mistrust of U.S. predominance intensified during the Clinton Administration, as other states responded to American hegemony by concerting their efforts against it. Russia and China, although long estranged, found common ground in a nascent alliance that opposed U.S. "hegemonism" and expressly aimed at re-establishing "a multipolar world." Arguing that the term "superpower" is inadequate to convey the true extent of America's economic and military pre-eminence, the French Foreign Minister Hubert Vedrine called the United States a "hyperpower." Even the Dutch Prime Minister declared that the European Union should make itself "a counterweight to the United States."

***Capability outweighs legitimacy – best scholarship proves***

Ian **Clark**, 20**11**, E. H. Carr Professor of International Politics, Aberystwyth University, Hegemony in International Society, “Hegemony and IR Theory”, doi:10.1093/acprof:oso/9780199556267.001.0001,http://fds.oup.com/www.oup.com/pdf/13/9780199556267.pdf, jj

It is at this point that various IR theories, and wider social theories, compete for our attention. **Waltzian neorealism**, for instance, **derives its account of the leadership of the great powers directly from the capabilities possessed by them**. International politics is the realm of coordination, not superordination, and so ‘[n]one is entitled to command; none is required to obey’ (Waltz 1979: 88). The consequence is that ***such ‘authority’ as there is derives immediately from the capability underlying the claim to it:*** **Whatever elements of authority emerge internationally are barely once removed from the capability that provides the foundation for the appearance of those elements**. **Authority quickly reduces to a particular expression of capability**. (Waltz 1979: 88) The underlying logic here is that, **in the absence of deployment of the capabilities of the strongest powers, ‘no enforcement mechanism would exist’** (Brilmayer 1994: 100–1), **and the system would lack any authority at all**. ***Leadership is deﬁned by capability, and by the absence of any alternative to it.*** Others start from a similar dilemma, but develop the analysis in a different direction. ‘If we take hegemony as a speciﬁc form of power’, it has been suggested, ‘what we wish to theorize is how power has a consensual aspect that facilitates relations of domination’(Haugaard 2006b: 50). The main forms of neo-Gramscian discussion notably develop this particular perspective. In other words, while there is certainly domination in the relationship, there must also be an element of consent. ‘Hegemony is a relation’, when viewed this way, ‘not of domination by means of force, but of consent by means of political and ideological leadership’ (Simon 1982: 21). How might that be so? ***This confronts directly the relationship between legitimacy and hegemony*** (Brooks and Wohlforth 2008: 207; Grifﬁths 2004: 65; Ikenberry and Kupchan 1990: 51; Paupp 2009: 46–67; Rapkin and Braaten 2009: 119). For much social science, the idea of hegemony already comprehends that of legitimacy. ‘The concept of hegemony’, it is typically observed, ‘is normally understood as emphasising consent in contrast to reliance on the use of force’ (Joseph 2002: 1). For example, Keohane—despite his materialist deﬁnition of hegemony—had been mindful also that theories of hegemony needed to ‘explore why secondary states defer to the leadership of the hegemon. That is, they need to account for the legitimacy of hegemonic regimes’ (Keohane 1984: 39). Others too restrict the term hegemony speciﬁcally to a situation where a substantial element of legitimacy is present (Mastanduno 2002: 181–3). Does hegemony, conceived in this way, then hold any possible attraction for the anarchical society? The core problem raised by this question is whether or not the hegemon can serve as a source of order, or only as a threat to it (Hinnebusch 2006: 284). The danger of unbalanced power, as Hurrell reminds us, is that it ‘will permit the powerful to “lay down the law” to the less powerful’ (Hurrell 2006: 16). In short, it poses the pressing question ‘[h]ow is it possible to make a hegemon accountable to weaker states?’ (Brilmayer 1994: 221). This question has added force when the hegemon is not otherwise subject to external constraints, and much therefore hinges upon its own degree of self-restraint (Lebow 2003: 283–4). How reliable a safeguard self-restraint might be depends largely, in turn, on how the hegemony works. Ian Hurd suggests two alternative possibilities. The ﬁrst sees hegemony as entrenching the dominant position of the already most powerful, and therefore as objectively ‘entirely in the favour of the strong’. This view is represented in the suggestion that **US hegemony is ‘self-interested, not altruistic’, and that what underpins its stability is the ‘disproportionate gains’ that the USA derives from it** (Norrlof 2010: 3, 56). This is quite different from Hurd’s other model, where legitimacy functions as a constraint also on the strong, not simply on the weak. In this case, successful maintenance of hegemony ‘requires that the strong subscribe to a minimum standard of compliance with the legitimized rule or institution’. The result is that ‘the strong...may be induced to alter their behaviour by the effects of legitimated rules’(Hurd 2007a: 78–9). The outcome, in this second version, is‘to increase the autonomy of all parties, not to compromise the autonomy of the less powerful in order to increase the autonomy of the more powerful’ (Haugaard 2006a: 4). What is distinctive in this approach is the emphasis on the institutional dimension—the empowerment of the institution of hegemony—rather than any simple enhancement of the power of the hegemon. At the heart of these debates is exactly what it is that merits the compliance of the followers. On this, there remains a deep-seated ambiguity, even when hegemony is regarded as necessarily rooted in legitimacy. This ambiguity is puzzling, because **it seems to leave us with a notion of legitimacy derived solely from self-interest.** The puzzle then is that legitimacy is normally understood to constitute a ground for compliance different, in principle, from self-interest, just as it is taken to be different from one predicated upon coercion (Hurd 1999). **And yet when it comes to discussions of hegemony, the most commonly identiﬁed source of legitimacy is satisfaction of self-interest, particularly in the ‘favorable-outcomes model’, which ‘provides a hypothesis about why those who beneﬁt from a system might see it as legitimate’**(Hurd 2007a: 69**). This is demonstrably so in the case of HST, where the other actors are thought to beneﬁt from the public goods provided by the hegemon, and presumably to accept its rules for that very reason**. **The hegemon**, in this interpretation, **delivers ‘a sufﬁcient ﬂow of beneﬁts to small and middle powers to persuade them to acquiesce’** (Keohane 1989: 78). According to HST, ‘**other states will cooperate with a benign hegemon because they beneﬁt strategically and economically’** (Layne 2006b: 17). Is this provision of beneﬁts sufﬁcient on its own to fashion an institution of hegemony, based in social legitimacy?

**2NC – Fails**

#### Obama won’t use soft power — empirics prove

Lagon 11 (Mark, Chair, International Relations and Security Concentration, and Visiting Professor, MSFS Program MASTER OF SCIENCE IN FOREIGN SERVICE (MSFS), Georgetown University, "Soft Power Under Obama," 10-18, http://www.isn.ethz.ch/isn/Current-Affairs/ISN-Insights/Detail?lng=en&id=133416&contextid734=133416&contextid735=133415&tabid=133415&dynrel=4888caa0-b3db-1461-98b9-e20e7b9c13d4,0c54e3b3-1e9c-be1e-2c24-a6a8c7060233, EMM)

One irony of the Obama presidency is how much it relies on hard power. The president came into office proposing a dramatic shift from George W. Bush’s perceived unilateralism, and most of his predecessor’s hard-edged counterterrorism tactics and massive deployments in wars abroad. Yet after three years, Obama has escalated forces in Afghanistan, embraced the widespread use of unmanned drones

 to kill terrorists at the risk of civilian casualties, kept Guantánamo open, and killed Osama bin Laden in Pakistan in a thoroughly unilateral fashion. What he hasn’t accomplished to any great degree is what most observers assumed would be the hallmark of his approach to foreign affairs—a full assertion of the soft power that makes hard power more effective. His 2008 campaign centered on a critique of President Bush’s overreliance on hard power. Obama suggested he would rehabilitate the damaged image of America created by these excesses and show that the United States was not a cowboy nation. Upon taking office, he made fresh-start statements, such as his June 2009 remarks in Cairo, and embraced political means like dialogue, respectful multilateralism, and the use of new media, suggesting that he felt the soft power to change minds, build legitimacy, and advance interests was the key element missing from the recent US approach to the world—and that he would quickly remedy that defect. Yet President Obama’s conception of soft power has curiously lacked the very quality that has made it most efficacious in the past—the values dimension . This may seem odd for a leader who is seen worldwide as an icon of morality, known for the motto “the audacity of hope” and his deployment of soaring rhetoric. Yet his governance has virtually ignored the values dimension of soft power, which goes beyond the tradecraft of diplomacy and multilateral consultation to aggressively assert the ideals of freedom in practical initiatives. The excision of this values dimension renders soft power a hollow concept. The Obama presidency has regularly avoided asserting meaningful soft power, particularly in its relations with three countries—Iran, Russia, and Egypt—where it might have made a difference not only for those countries but for American interests as well. His reaction to the challenges these countries have posed to the US suggest that it is not soft power itself that Obama doubts, but America’s moral standing to project it.

***Irrelevant to actual statecraft***

**Stacey 13**

Dr. Jeffrey Stacey is currently Senior Visiting Fellow at the Center for Transatlantic Relations at the Paul H. Nitze School for Advanced International Studies at Johns Hopkins University, Duck of Minerva, February 25, 2013, "Time to Redefine the Term “soft power”?", http://www.whiteoliphaunt.com/duckofminerva/2013/02/time-to-redefine-the-term-soft-power.html

Nye’s classic definition of the term–the attractiveness of a country based on the legitimacy of its policies and the political and cultural values that underpin them–seemed reasonable enough when I first became familiar with it in the mid 19***90s***. The notion that a country’s cultural power could influence other countries and cause their governments to either agree more with a country of cultural prowess or adopt similar values made a lot of sense. The Cold War had recently come to an end, and the rush of East Central European governments to join the West in all ways seemed just the evidence one needed to subscribe not only to the concept, but also the view that the U.S. possessed a whole lot of soft power that was causing other countries to agree with or emulate it. After all liberalism and openness of all kinds were being celebrated, and the new concept of globalization was further and futher in evidence while the third wave of democracy was spreading fast. But something I always feared as an academic was readily confirmed when I entered the government: more than a decade later, despite the large number of policymakers who learned Nye’s definition in graduate school, ***for the vast majority of them soft power‘s academic definition is of little practical use***. ***To a pragmatic policymaker the concept is too complex, too difficult to measure, and near impossible to manipulate as a device of influence***. While Nye’s definition is intuitive on some level, most policymakers–and especially non American ones–simply choose to define soft power as exercising influence by non military means. And why shouldn’t they? For even more intuitive is the notion that the counterpart to hard power (by military means) naturally is soft power (by non-military means). Thus, the other tools in one’s foreign policy toolbox–from diplomacy to economic sanctions, and development aid to cultural attractiveness–make perfect sense as comprising soft power. Indeed, Hillary Clinton, whom I knew as Madame Secretary, became well known for promoting the concept of smart power, which basically means the same thing and was part of her somewhat successful effort to elevate the D’s of diplomacy and development next to the big D of defense.

***States don’t have feelings***

**Fan 7** (Ying, Senior Lecturer in Marketing at Brunel Business School, Brunel University in London, “Soft power: Power of attraction or confusion?”, November 14)

**The whole concept of soft power** — power of attraction — **is based on the assumption that there is a link between attractiveness and the ability to influence others** in international relations, that is, such a power of attraction does have the ability to shape the preferences of others. This may be the case at the personal or individual level. **It is questionable whether attraction power works at the nation level**. Wang (2006) identifi es two problems. **First, a country has many different actors. Some of them like the attraction and others do not. Whether the attraction will lead to the ability to influence the policy of the target country depends on which groups in that country find it attractive** (eg the political elite, the general public or a marginal group), **and how much control they have on policymaking**. For example, soft power by Country A may have positive infl uence on the political elite but negative infl uence on the general public in Country B, or vice versa. **Secondly, policy making at the state level is far more complicated than at the personal level**; and has different dynamics that emphasise the rational considerations. **This leaves little room for emotional elements, thus significantly reducing the effect of soft power. Even Nye** (2004a) **has to admit, what soft power can influence is not the policy making itself but only the ‘environment for policy’**. **Soft power may be counterproductive because societies react differently to American culture, the working of which is extremely complex**, not least because of the diversity, as Fehrenbach and Poiger point out, in the ‘ processes by which societies adopt, adapt, and reject American culture ’ ( Opelz, 2004 ).

***best studies prove***

Stephen **Brooks and** William **Wohlforth 8**, IR @ Dartmouth (World Out of Balance, p. 158-170)

According to the logic of institutionalist theory, the United States thus now faces very significant constraints on its security policy due to the institutional order: the United States must be strongly cooperative across the board to maintain cooperation in those aspects of the order that it favors. As it turns out, the institutionalist argument for why the United States needs to pursue a highly cooperative approach regarding all parts of the institutional order is premised on a particular view of how reputations work. **Institutionalist theory rests on the notion that "states carry a general reputation for cooperativeness** that determines their attractiveness as a treaty partner both now and in the future. A defection in connection with any agreement will impose reputation costs that affect all current and future agreements."36 Despite the fact that this conception of a general reputation does a huge amount of work within institutionalist theory, **the theory's proponents have so far not provided a theoretical justification for this perspective** .17 Rather, **they have simply assumed this is how reputation works. In the most detailed theoretical analysis of the role that reputation plays within international institutions to date, Downs and Jones argue that there is no theoretical basis for viewing states as having a "a single reputation for cooperation that characterizes its expected reliability in connection with every agreement to which it is a party**."" **Downs and Jones maintain that it is more compelling to view states as having multiple, or segmented, reputations: "states develop a number of reputations, often quite different, in connection with different regimes and even with different treaties within the same regime**."" In other words, there is reason to think that a state's reputation within the security realm cannot be different from the reputation that it has within the economic realm, or, indeed, that a state cannot have varying reputations within different parts of the security realm. As an illustrative example, Downs and Jones note: The United States has one simple reputation for making good on its financial commitments with workers in the UN Office of the Secretary General and another quite different simple reputation with officials of European states in connection with its financial commitments to NATO. Neither group is much concerned with characterizing the reliability of the United Stales in meeting its financial commitments in general. Those inside the Office of the Secretary General are aware of the fact that the United States has paid its NATO bills, and NATO workers know that the United States is behind on its UN dues. However, **they design their policies in response to the behavior of the United States in the subset of contexts that is relevant** to them.43

### Impact D

***Heg collapse doesn’t cause global nuclear war – conflicts would be small and managable***

Richard Haas (president of the Council on Foreign Relations, former director of policy planning for the Department of State, former vice president and director of foreign policy studies at the Brookings Institution, the Sol M. Linowitz visiting professor of international studies at Hamilton College, a senior associate at the Carnegie Endowment for International Peace, a lecturer in public policy at Harvard University’s John F. Kennedy School of Government, and a research associate at the International Institute for Strategic Studies) April 2008 “Ask the Expert: What Comes After Unipolarity?” http://www.cfr.org/publication/16063/ask\_the\_expert.html

Does a non polar world increase or reduce the chances of another world war? Will nuclear deterrence continue to prevent a large scale conflict? Sivananda Rajaram, UK Richard Haass: I believe the chance of a world war, i.e., one involving the major powers of the day, is remote and likely to stay that way. This reflects more than anything else the absence of disputes or goals that could lead to such a conflict. Nuclear deterrence might be a contributing factor in the sense that no conceivable dispute among the major powers would justify any use of nuclear weapons, but again, I believe the fundamental reason great power relations are relatively good is that all hold a stake in sustaining an international order that supports trade and financial flows and avoids large-scale conflict. The danger in a nonpolar world is not global conflict as we feared during the Cold War but smaller but still highly costly conflicts involving terrorist groups, militias, rogue states, etc.

***Transition is smooth – decline in power causes global cooperation***

Carla Norrlof (an Associate Professor in the Department of Political Science at the University of Toronto) 2010 “America’s Global Advantage US Hegemony and International Cooperation” p. 50

Keohane and Snidal’s predictions – that the waning of American power did not have to jeopardize cooperation – were in this context reassuring. As mentioned at the outset of this chapter, Keohane explained the persistence of cooperation in terms of states’ continued demand for regimes.40 Snidal demonstrated that collective action depends as much on the hegemon’s size, as it does on the size of other actors in the international system. By paying attention to the size of all Great Powers, not just the hegemon, Snidal opened up the possibility that a more symmetrical distribution of power might enhance the prospects for the provision of public goods, thus offering a potential explanation for the otherwise puzzling persistence of cooperation in the 1980s despite America’s relative decline. The likelihood for cooperation increases with American decline because the hegemon can no longer singlehandedly provide the good as it declines, so smaller states have to chip in for the good to be provided. If one were to use Snidal’s production function in the revised model (i.e., by plugging the numbers from his production function into the revised model), the waning hegemon continues to be taken advantage of. While Snidal was modeling a theory he did not believe in, these distributional implications haunt the literature and cast decline as inescapable and continuous

#### Retrenchment doesn’t cause conflict, lashout, or draw-in---all their studies are wrong

Paul K. MacDonald 11, Assistant Professor of Political Science at Williams College, and Joseph M. Parent, Assistant Professor of Political Science at the University of Miami, Spring 2011, “Graceful Decline?: The Surprising Success of Great Power Retrenchment,” International Security, Vol. 35, No. 4, p. 7-44

How do great powers respond to acute decline? The erosion of the relative power of the United States has scholars and policymakers reexamining this question. The central issue is whether prompt retrenchment is desirable or probable. Some pessimists counsel that retrenchment is a dangerous policy, because it shows weakness and invites attack. Robert Kagan, for example, warns, "A reduction in defense spending . . . would unnerve American allies and undercut efforts to gain greater cooperation. There is already a sense around the world, fed by irresponsible pundits here at home, that the United States is in terminal decline. Many fear that the economic crisis will cause the United States to pull back from overseas commitments. The announcement of a defense cutback would be taken by the world as evidence that the American retreat has begun."1 Robert Kaplan likewise argues, "Husbanding our power in an effort to slow America's decline in a post-Iraq and post-Afghanistan world would mean avoiding debilitating land entanglements and focusing instead on being more of an offshore balancer. . . . While this may be in America's interest, the very signaling of such an aloof intention may encourage regional bullies. . . . [L]essening our engagement with the world would have devastating consequences for humanity. The disruptions we witness today are but a taste of what is to come should our country flinch from its international responsibilities."2 The consequences of these views are clear: retrenchment should be avoided and forward defenses maintained into the indefinite future.3¶ Other observers advocate retrenchment policies, but they are pessimistic [End Page 7] about their prospects.4 Christopher Layne, for instance, predicts, "Even as the globe is being turned upside down by material factors, the foreign policies of individual states are shaped by the ideas leaders hold about their own nations' identity and place in world politics. More than most, America's foreign policy is the product of such ideas, and U.S. foreign-policy elites have constructed their own myths of empire to justify the United States' hegemonic role."5 Stephen Walt likewise advocates greater restraint in U.S. grand strategy, but cautions, "The United States . . . remains a remarkably immature great power, one whose rhetoric is frequently at odds with its conduct and one that tends to treat the management of foreign affairs largely as an adjunct to domestic politics. . . . [S]eemingly secure behind its nuclear deterrent and oceanic moats, and possessing unmatched economic and military power, the United States allowed its foreign policy to be distorted by partisan sniping, hijacked by foreign lobbyists and narrow domestic special interests, blinded by lofty but unrealistic rhetoric, and held hostage by irresponsible and xenophobic members of Congress."6 Although retrenchment is a preferable policy, these arguments suggest that great powers often cling to unprofitable foreign commitments for parochial reasons of national culture or domestic politics.7¶ These arguments have grim implications for contemporary international politics. With the rise of new powers, such as China, the international pecking order will be in increasing flux in the coming decades.8 Yet, if the pessimists are correct, politicians and interests groups in the United States will be unwilling or unable to realign resources with overseas commitments. Perceptions of weakness and declining U.S. credibility will encourage policymakers to hold on to burdensome overseas commitments, despite their high costs in blood and treasure.9 Policymakers in Washington will struggle to retire from profitless military engagements and restrain ballooning current accounts and budget deficits.10 For some observers, the wars in Iraq and Afghanistan represent the ill-advised last gasps of a declining hegemon seeking to bolster its plummeting position.11¶ In this article, we question the logic and evidence of the retrenchment pessimists. To date there has been neither a comprehensive study of great power retrenchment nor a study that lays out the case for retrenchment as a practical or probable policy. This article fills these gaps by systematically examining the relationship between acute relative decline and the responses of great powers. We examine eighteen cases of acute relative decline since 1870 and advance three main arguments.¶ First, we challenge the retrenchment pessimists' claim that domestic or international constraints inhibit the ability of declining great powers to retrench. In fact, when states fall in the hierarchy of great powers, peaceful retrenchment is the most common response, even over short time spans. Based on the empirical record, we find that great powers retrenched in no less than eleven and no more than fifteen of the eighteen cases, a range of 61-83 percent. When international conditions demand it, states renounce risky ties, increase reliance on allies or adversaries, draw down their military obligations, and impose adjustments on domestic populations.¶ Second, we find that the magnitude of relative decline helps explain the extent of great power retrenchment. Following the dictates of neorealist theory, great powers retrench for the same reason they expand: the rigors of great power politics compel them to do so.12 Retrenchment is by no means easy, but [End Page 9] necessity is the mother of invention, and declining great powers face powerful incentives to contract their interests in a prompt and proportionate manner. Knowing only a state's rate of relative economic decline explains its corresponding degree of retrenchment in as much as 61 percent of the cases we examined.¶ Third, we argue that the rate of decline helps explain what forms great power retrenchment will take. How fast great powers fall contributes to whether these retrenching states will internally reform, seek new allies or rely more heavily on old ones, and make diplomatic overtures to enemies. Further, our analysis suggests that great powers facing acute decline are less likely to initiate or escalate militarized interstate disputes. Faced with diminishing resources, great powers moderate their foreign policy ambitions and offer concessions in areas of lesser strategic value. Contrary to the pessimistic conclusions of critics, retrenchment neither requires aggression nor invites predation. Great powers are able to rebalance their commitments through compromise, rather than conflict. In these ways, states respond to penury the same way they do to plenty: they seek to adopt policies that maximize security given available means. Far from being a hazardous policy, retrenchment can be successful. States that retrench often regain their position in the hierarchy of great powers. Of the fifteen great powers that adopted retrenchment in response to acute relative decline, 40 percent managed to recover their ordinal rank. In contrast, none of the declining powers that failed to retrench recovered their relative position.

**Demo**

### Their ev

CJA: --- 2004

Guantánamo Bay detentions, noted that the erosion of civil liberties in the United States has "given a blank check to nations who are inclined to violate human rights already." Doug Gross, "Carter: U.S. human rights missteps embolden foreign dictators," Associated Press Newswires, November 12, 2003 (available from Westlaw at 11/12/03 APWIRES 00:30:26). At the same conference, Professor Saad Ibrahim of the American University in Cairo (who was jailed for seven years after exposing fraud in the Egyptian election process) said, "Every dictator in the world is using what the United States has done under the Patriot Act . . . to justify their past violations of human rights and to declare a license to continue to violate human rights." Id. Likewise, Shehu Sani, president of the Kaduna, Nigeriabased Civil Rights Congress, wrote in the International Herald Tribune on September 15, 2003 that "[t]he insistence by the Bush administration on keeping Taliban and Al Quaeda captives in indefinite detention in Guantánamo Bay, Cuba, instead of in jails in the United States — and the White House's preference for military tribunals over regular courts — helps create a free license for tyranny in Africa. It helps

Scharf:

international media published the leaked photos of the abuses at Abu Ghraib. The Iraqi judges would not allow the training sessions to continue until PILPG answered to their satisfaction questions about whether the U.S. judicial system could ensure that the perpetrators would be brought to justice, that the victims would be able to bring

**2NC – Demo Inev**

***Diamond votes neg—spread of democracy is sustainable, resilient and inevitable.***

* Decades long trend, momentum

**Diamond, 13** [LARRY DIAMOND, Mr. Democracy himself, is a senior fellow at the Hoover Institution and the Freeman Spogli Institute at Stanford University. He is also coeditor of the Journal of Democracy. Wilson Quarterly, Winter 2013, Why Wait for Democracy?, <http://www.wilsonquarterly.com/essays/why-wait-democracy>, jj]

When the Third Wave of democracy began in the mid-1970s, democracy seemed to be where the world had been or where the West had settled, but not where the rest of the world was going. In a pair of widely noted works, two of the most eminent political scientists of the time, Robert Dahl and Samuel Huntington, dismissed the prospects for significant democratic expansion. Given chronic poverty, Cold War competition, and “the unreceptivity to democracy of several major cultural traditions,” **Huntington speculated** in a 1984 Political Science Quarterly article, “**the limits of democratic development in the world may well have been reached**.” ***The developments of the last four decades***, however, ***have proved the skeptics wrong***. Even as Huntington was writing the words quoted above, **a wave of democratic expansion was gathering momentum**, which Huntington himself would document and analyze definitively just seven years later in his influential book The Third Wave: Democratization in the Late Twentieth Century. **In the decade following his 1984 article, the world witnessed the greatest expansion of democracy in history, as political freedom spread from southern Europe and Latin America to Asia, then central and eastern Europe, then Africa.** **By the mid-1990s, three of every five states in the world were democracies—a proportion that persists more or less to this day**. While it remains true that democracy is more sustainable at higher levels of development, **an unprecedented number of poor countries adopted democratic forms of government during the 1980s and ’90s, and *many of them have sustained democracy for well over a decade***. **These include several African countries, such as Ghana, Benin, and Senegal, and one of the poorest Asian countries, Bangladesh**. **Other very poor countries, such as East Timor, Sierra Leone, and Liberia, are now using the political institutions of democracy as they rebuild their economies and states after civil war**. **Although the world has been in a *mild* democratic recession since about 2006**, with reversals concentrated disproportionately in low-income and lower-middle-income states, **a significant number of democracies in these income categories continue to function**. **The lower- and middle-income democracies that did come through the last two decades intact have shown that authoritarianism confers no intrinsic developmental advantage**. **For every Singapore-style authoritarian economic “miracle,” there have been many more instances of implosion or stagnation—as in Zaire, Zimbabwe, North Korea, and** (until recently) **Burma**— resulting from predatory authoritarian rule. Numerous studies have shown that democracies do a better job of reducing infant mortality and protecting the environment, and recent evidence from sub-Saharan Africa (see, for example, economist Steven Radelet’s 2010 book Emerging Africa: How Seventeen Countries are Leading the Way) shows that the highest rates of economic growth in Africa since the mid-1990s have generally occurred in the democratic states. Once they achieved democracy, South Korea and Taiwan continued to record brisk economic growth. When the G-20 was formed at the end of the ’90s out of the old G-8 organization of the world’s major economies, eight of the 10 emerging-market countries that joined were democracies, including India, Indonesia, Brazil, Turkey, and South Korea. **Further refuting the skeptics, democracy has taken root or at least been embraced by every major cultural group, not just the societies of the West with their Protestant traditions**. **Most Catholic countries are now democracies, and very stable ones at that. Democracy has thrived in a Hindu state, Buddhist states, and a Jewish state**. **And many predominantly Muslim countries, such as Turkey, Bangladesh, Senegal, and Indonesia, have by now had significant and mainly positive experience with democracy**. **Finally, the claim that democracy was unsuitable for these other cultures**—that their peoples did not value democracy as those in the West did—**has been invalidated, both by experience and by a profusion of public opinion survey data showing that the desire for democracy is very much a global phenomenon**. Although there is wide variation across countries and regions, with low levels of trust in parties and politicians in the wealthier democracies of Asia, Latin America, and postcommunist Europe, ***people virtually everywhere say they prefer democracy to authoritarianism***. **What people want is not a retreat to dictatorship but a more accountable and deeper democracy**. Despite the persistence of authoritarianism under Hugo Chávez in Venezuela, and the authoritarian tendencies of left-wing populist presidents in Bolivia, Ecuador, and Nicaragua, **the bigger story in Latin America has been *democratic resilience* and deepening**. **Chile and Uruguay have become stable liberal democracies, Brazil has made dramatic democratic and economic progress, and even once chronically unstable Peru has seen three successive democratically elected presidents deliver brisk economic growth with declining poverty rates**. In fact, Latin America is the only region of the world where income inequality has decreased in the last decade. **The new popular embrace of democracy is particularly striking in sub-Saharan Africa, where five rounds of the Afrobarometer opinion surveys have uncovered a surprisingly *robust* public commitment to democracy**. In 2008, **an average of 70 percent of Africans surveyed across 19 countries expressed support for democracy as always the best form of government**. But only 59 percent perceived that they had in their country a full or almost full democracy, and only 49 percent were satisfied with how democracy was working in their country. **This finding simply does not fit with the image of a passive and deferential populace ready to exchange freedom for bread**. In Africa, people have learned through bitter experience that without democracy they will have neither freedom nor bread. **Throughout most of the non-Western world, majorities of the public have come to see that the right to choose and replace their leaders in competitive, free, and fair elections is fundamental to the achievement and defense of all other rights**. **This is strikingly the case now in the Arab world, where the Arab Barometer surveys show that upward of 80 percent of the citizens of most countries name democracy as the best form of government, even if they do not define democracy in fully liberal and secular terms.**

***Global democracy inevitable***

**Tow 10**—Director of the Future Planet Research Centre (David, Future Society- The Future of Democracy, 26 August 2010, http://www.australia.to/2010/index.php?option=com\_content&view=article&id=4280:future-society-the-future-of-democracy&catid=76:david-tow&Itemid=230)

**Democracy**, as with all other processes engineered by human civilisation, **is evolving at a rapid rate. A number of indicators are pointing to a major leap forward, encompassing a more** public **participatory** form of **democratic model** and the harnessing of the expert intelligence of the Web. **By the middle of the 21st century, such a global version of the democratic process will be largely in place.** Democracy has a long evolutionary history. The concept of democracy - the notion that men and women have the right to govern themselves, was practised at around 2,500 BP in Athens. The Athenian polity or political body, granted all citizens the right to be heard and to participate in the major decisions affecting their rights and well-being. The City State demanded services and loyalty from the individual in return. There is evidence however that the role of popular assembly actually arose earlier in some Phoenician cities such as Sidon and Babylon in the ancient assemblies of Syria- Mesopotamia, as an organ of local government and justice. As demonstrated in these early periods, democracy, although imperfect, offered each individual a stake in the nation’s collective decision-making processes. It therefore provided a greater incentive for each individual to cooperate to increase group productivity. Through a more open decision process, improved innovation and consequently additional wealth was generated and distributed more equitably. An increase in overall economic wellbeing in turn generated more possibilities and potential to acquire knowledge, education and employment, coupled with greater individual choice and freedom. **According to the Freedom House Report**, an independent survey of political and civil liberties around the globe, **the world has made great strides towards democracy** **in the** 20th and **21st centuries.** In 1900 there were 25 restricted democracies in existence covering an eighth of the world’s population, but none that could be judged as based on universal suffrage. The US and Britain denied voting rights to women and in the case of the US, also to African Americans. But **at the end of the 20th century 119 of the world’s 192 nations were declared electoral democracies. In the current century, democracy continues to spread through Africa** and **Asia and** significantly also **the Middle East**, **with** over **130 states in** various **stages of democratic evolution.** Dictatorships or quasi democratic one party states still exist in Africa, Asia and the middle east with regimes such as China, North Korea, Zimbabwe, Burma, the Sudan, Belarus and Saudi Arabia, seeking to maintain total control over their populations. However **two thirds of sub-Saharan countries have staged elections in the past ten years, with coups becoming less common and internal wars gradually waning. African nations are also starting to police human rights** in their own region. African Union peacekeepers are now deployed in Darfur and are working with UN peacekeepers in the Democratic Republic of the Congo. The evolution of democracy can also be seen in terms of improved human rights. The United Nations Universal Declaration of Human Rights and several ensuing legal treaties, define political, cultural and economic rights as well as the rights of women, children, ethnic groups and religions. This declaration is intended to create a global safety net of rights applicable to all peoples everywhere, with no exceptions. It also recognises the principle of the subordination of national sovereignty to the universality of human rights; the dignity and worth of human life beyond the jurisdiction of any State. **The global spread of democracy is** now also **irreversibly linked to the new cooperative globalisation model.** The EU, despite its growing pains, provides a compelling template; complementing national decisions in the supra-national interest at the commercial, financial, legal, health and research sharing level. **The global spread of new technology and knowledge also provides the opportunity for developing countries to gain a quantum leap in material wellbeing; an essential prerequisite for a stable democracy.** The current **cyber-based advances** therefore **presage a much more interactive public form of democracy and mark the next phase in its ongoing evolution**. Web 2.0’s social networking, blogging, messaging and video services have already significantly changed the way people discuss political issues and exchange ideas beyond national boundaries. In addition a number of popular sites exist as forums to actively harness individual opinions and encourage debate about contentious topics, funnelling them to political processes. These are often coupled to online petitions, **allowing the public to deliver requests to Government and receive a committed response.** In addition there are a plethora of specialized smart search engines and analytical tools aimed at locating and interpreting information about divisive and complex topics such as global warming and medical stem cell advances. These are increasingly linked to Argumentation frameworks and Game theory, aimed at supporting the logical basis of arguments, negotiation and other structured forms of group decision-making. New logic and statistical tools can also provide inference and evaluation mechanisms to better assess the evidence for a particular hypothesis. By 2030 it is likely that such ‘intelligence-based’ algorithms will be capable of automating the analysis and advice provided to politicians, at a similar level of quality and expertise as that offered by the best human advisers. It might be argued that there is still a need for the role of politicians and leaders in assessing and prioritising such expert advice in the overriding national interest. But a moment’s reflection leads to the opposite conclusion. Politicians have party allegiances and internal obligations that can and do create serious conflicts of interest and skew the best advice. History is replete with such disastrous decisions based on false premises, driven by party political bias and populist fads predicated on flawed knowledge. One needs to look no further in recent times than the patently inadequate evidential basis for the US’s war in Iraq which has cost at least half a million civilian lives and is still unresolved. However there remains a disjunction between the developed west and those developing countries only now recovering from colonisation, the subsequent domination by dictators and fascist regimes and ongoing natural disasters. There is in fact a time gap of several hundred years between the democratic trajectory of the west and east, which these countries are endeavouring to bridge within a generation; often creating serious short-term challenges and cultural dislocations. A very powerful enabler for the spread of democracy as mentioned is the Internet/Web- today’s storehouse of the world’s information and expertise. By increasing the flow of essential intelligence it facilitates transparency, reduces corruption, empowers dissidents and ensures governments are more responsive to their citizen’s needs. Ii is already providing the infrastructure for the emergence of a more democratic society; empowering all people to have direct input into critical decision processes affecting their lives, without the distortion of political intermediaries. **By 2040 more democratic outcomes for all populations on the planet will be the norm**. Critical and urgent decisions relating to global warming, financial regulation, economic allocation of scarce resources such as food and water, humanitarian rights and refugee migration etc, will to be sifted through community knowledge, resulting in truly representative and equitable global governance. **Implementation of the democratic process itself will continue to evolve with new forms of e-voting and governance supervision, which will include the active participation of advocacy groups supported by a consensus of expert knowledge via the Intelligent Web** 4.0. Over time **democracy** as with all other social processes, **will evolve to best suit the needs of its** human **environment**. It will emerge as a networked model- a non-hierarchical, resilient protocol, responsive to rapid social change. Such distributed forms of government will involve local communities, operating with the best expert advice from the ground up; the opposite of political party self-interested power and superficial focus-group decision-making, as implemented by many current political systems. These are frequently unresponsive to legitimate minority group needs and can be easily corrupted by powerful lobby groups, such as those employed by the heavy carbon emitters in the global warming debate.

***Democratization inevitable even absent US promotion***

**Mandelbaum 7** – professor of US foreign policy, Johns Hopkins U (Michael, Sep/Oct, “Democracy Without America,” Foreign Affairs, AG)

Yet the **failure of** Washington's **democracy promotion has not meant the failure of democracy** itself. To the contrary, in the last quarter of the twentieth century **this** form of **government enjoyed a remarkable rise**. Once confined to a handful of wealthy countries, it became, in a short period of time, the most popular political system in the world. In 1900, only ten countries were democracies; by midcentury, the number had increased to 30, and 25 years later the count remained the same. By 2005, fully 119 of the world's 190 countries had become democracies. [continues] The desire for a democratic political system does not by itself create the capacity for establishing one. **The key to** establishing a working **democracy**, and in particular the institutions of liberty, **has been** the **free-market** economy. The institutions, skills, and values needed to operate a free-market economy are those that, in the political sphere, constitute democracy. [continues] Whether, when, and how China will become a democracy are all questions to which only the history of the twenty-first century can supply the answers. Nonetheless, two predictions may be hazarded with some confidence. One is that if and when democracy does come to China--as well as to the **Arab world and Russia**--it will not be because of the deliberate and direct efforts at democracy promotion by the United States. The other is that **pressure for democratic governance will grow** in the twenty-first century whatever the United States does or does not do. It will grow wherever nondemocratic **governments adopt the** free-**market** system of economic organization. Such regimes will adopt this system as part of their own efforts **to promote** economic **growth**, a goal that governments all over the world will be pursuing for as **far into the future** as the eye can see.

**2NC – No Solve War**

***Democratization doesn’t solve war and authoritarianism doesn’t cause it***

**Kupchan**, Professor of International Affairs – Georgetown University, April **‘11**

(Charles A, “Enmity into Amity: How Peace Breaks Out,” <http://library.fes.de/pdf-files/iez/07977.pdf>)

Second, contrary to conventional wisdom, **democracy is not a** necessary **condition for stable peace.** Although liberal democracies appear to be better equipped to fashion zones of peace due to their readiness to institu­tionalize strategic restraint and their more open societies – an attribute that advantages societal integration and narrative/identity change – **regime type is a poor predic­tor of the potential for enemies to become friends. The Concert of Europe was divided between** two **liberalizing countries** (Britain and France) **and** three **absolute monar­chies** (Russia, Prussia, and Austria), **but** nevertheless **pre­served peace in Europe** for almost four decades. Gen-eral **Suharto was a repressive leader** at home, **but after taking power** in 1966 **he** nonetheless **guided Indonesia toward peace with Malaysia and** played a leading role in the **founding** of **ASEAN. Brazil and Argentina embarked down the path to peace** in 1979 – **when both** countries **were ruled by military juntas.** These findings indicate that non-democracies can be reliable partners in peace and make clear that **the U**nited **S**tates, the EU, and de­mocracies around the world **should choose enemies and friends on the basis of** other states’ **foreign policy** behav-ior, **not** the nature of their **domestic institutions.**

***Democracy doesn’t cause peace – statistical models are spurious and don’t assume economic growth***

**Mousseau, 12** (Michael – Professor IR Koç University, “The Democratic Peace Unraveled: It’s the Economy” International Studies Quarterly, p 1-12)

Model 2 presents new knowledge by adding the control for economic type. To capture the dyadic expectation of peace among contract-intensive nations, the variable Contract- intensive EconomyL (CIEL) indicates the value of impersonal contracts in force per capita of the state with the lower level of CIE in the dyad; a high value of this measure indicates both states have contract-intensive economies. As can be seen, the coefficient for CIEL ()0.80) is negative and highly significant. This corroborates that impersonal economy is a highly robust force for peace. The coefficient for DemocracyL is now at zero. There are no other differences between Models 1 and 2, whose samples are identical, and no prior study corroborating the democratic peace has considered contractintensive economy. Therefore, the standard econometric inference to be drawn from Model 2 is the nontrivial result that ***all prior reports of democracy as a force for peace are probably spurious, since this result is predicted and fully accounted for by economic norms theory.*** CIEL and DemocracyL correlate only in the moderate range of 0.47 (Pearson’s r), so the insignificance of democracy is not likely to be a statistical artifact of multicollinearity. This is corroborated by the variance inflation factor for DemocracyL in Model 2 of 1.85, which is well below the usual rule-of-thumb indicator of multicollinearity of 10 or more. Nor should readers assume most democratic dyads have both states with impersonal economies: While almost all nations with contract-intensive economies (as indicated with the binary measure for CIE) are democratic (Polity2 > 6) (Singapore is the only long-term exception), more than half—55%—of all democratic nation-years have contract-poor economies. At the dyadic level in this sample, this translates to 80% of democratic dyads (all dyads where DemocracyBinary6 = 1) that have at least one state with a contract-poor economy. In other words, not only does Model 2 show **no evidence of causation from democracy to peace** (as reported in Mousseau 2009), but it also illustrates that this absence of democratic peace includes the vast majority—80%—of democratic dyad-years over the sample period. Nor is it likely that the causal arrow is reversed—with democracy being the ultimate cause of contract-intensive economy and peace. This is because correlations among independent variables are not calculated in the results of multivariate regressions: Coefficients show only the effect of each variable after the potential effects of the others are kept constant at their mean levels. If it was democracy that caused both impersonal economy and peace, then there would be some variance in DemocracyL remaining, after its partial correlation with CIEL is excluded, that links it directly with peace. The positive direction of the coefficient for DemocracyL informs us that no such direct effect exists (Blalock 1979:473–474). Model 3 tests for the effect of DemocracyL if a control is added for mixed-polity dyads, as suggested by Russett (2010:201). As discussed above, to avoid problems of mathematical endogeneity, I adopt the solution used by Mousseau, Orsun and Ungerer (2013) and measure regime difference as proposed by Werner (2000), drawing on the subcomponents of the Polity2 regime measure. As can be seen, the coefficient for Political Distance (1.00) is positive and significant, corroborating that regime mixed dyads do indeed have more militarized conflict than others. Yet, the inclusion of this term has no effect on the results that concern us here: CIEL ()0.85) is now even more robust, and the coefficient for DemocracyL (0.03) is above zero.7 Model 4 replaces the continuous democracy measure with the standard binary one (Polity2 > 6), as suggested by Russett (2010:201), citing Bayer and Bernhard (2010). As can be observed, the coefficient for CIEL ()0.83) remains negative and highly significant, while DemocracyBinary6 (0.63) is in the positive (wrong) direction. As discussed above, analyses of fatal dispute onsets with the far stricter binary measure for democracy (Polity = 10), put forward by Dafoe (2011) in response to Mousseau (2009), yields perfect prediction (as does the prior binary measure Both States CIE), causing quasi-complete separation and inconclusive results. Therefore, Model 5 reports the results with DemocracyBinary10 in analyses of all militarized conflicts, not just fatal ones. As can be seen, the coefficient for DemocracyBinary10 ()0.41), while negative, is not significant. Model 6 reports the results in analyses of fatal disputes with DemocracyL squared (after adding 10), which implies that the likelihood of conflict decreases more quickly toward the high values of DemocracyL. As can be seen, the coefficient for DemocracyL 2 is at zero, further corroborating that even very high levels of democracy do not appear to cause peace in analyses of fatal disputes, once consideration is given to contractintensive economy. Models 3, 4, and 6, which include Political Distance, were repeated (but unreported to save space) with analyses of all militarized interstate disputes, with the democracy coefficients close to zero in every case. Therefore, the conclusions reached by Mousseau (2009) are corroborated even with the most stringent measures of democracy, consideration of institutional distance, and across all specifications: The **democratic peace appears spurious**, with contract-intensive economy being the more likely explanation for both democracy and the democratic peace.

***Autocratic peace true- DPT isn’t***

Erik **Gartzke**, University of California, **and** Alex **Weisiger 2013**, University of Pennsylvania. “Permanent Friends? Dynamic Difference and the Democratic Peace” http://dss.ucsd.edu/~egartzke/publications/gartzke\_weisiger\_isq\_2013.pdf

The “autocratic peace” involves a class of arguments¶ about the conflictual consequences of regime similarity¶ and difference. Theories disagree over whether demo-¶ cratic and autocratic relations are distinct or equivalent.¶ Early studies of the autocratic peace typically focused on¶ certain geographic regions. **Despite** having **little democ-**¶ **racy, low levels of economic development, arbitrary**¶ **national borders, and widespread civil conflict, Africa**¶ **experiences *surprisingly little interstate war.*** Several **stud-**¶ **ies attribute the “African peace” to** historical norms and¶ to the ***strategic behavior*** of insecure leaders who recog-¶ nize that challenging existing borders invites continental¶ war while encouraging secessionist movements risks reci-¶ procal meddling in the country’s own domestic affairs¶ (Jackson and Rosberg 1982; Herbst 1989, 1990).¶ 6¶ How-¶ ever, these arguments fail to address tensions between¶ individual (state, leader) interests and social goods. The¶ security dilemma implies precisely that leaders act aggres-¶ sively despite lacking revisionist objectives (Jervis 1978).¶ **Initial statistical evidence of an *autocratic peace***¶ **emerged in a negative form with the observation that**¶ ***mixed democratic****¶* ***–****¶* ***autocratic dyads are more conflict****¶* ***prone*** than either jointly democratic or jointly autocratic¶ dyads (Gleditsch and Hegre 1997; Raknerud and Hegre¶ 1997). **Studies have sought systematic evidence for** or¶ against an **autocratic peace. Oren and Hays** (1997) **evalu-**¶ **ate several data sets, finding that autocracies are *less war****¶* ***prone* than democracy**¶–¶ autocracy pairs. Indeed, they find¶ that **socialist countries with advanced industrialized econ-**¶ **omies are more peaceful than democracies**. Werner¶ (2000) finds an effect of political similarity that coexists¶ with the widely recognized effect of joint democracy. She¶ attributes the result to shared preferences arising from a¶ reduced likelihood of disputes over domestic politics.¶ Peceny, Beer and Sanchez-Terry (2002) break down the¶ broad category of autocracy into multiple subgroups and¶ find evidence that shared autocratic type (personalistic¶ dictatorships, single-party regimes, or military juntas)¶ reduces conflict, although the observed effects are less¶ pronounced than for joint democracy. Henderson (2002)¶ goes further by arguing that ***there is no empirically verifi able democratic peace.*** **Instead, political *dissimilarity***¶ **causes conflict. Souva (2004) argues and finds that simi-**¶ **larity of both political and economic institutions encour-**¶ **ages peace. In the most sophisticated analysis to date,**¶ **Bennett (2006) finds a *robust autocratic peace***, though¶ the effect is smaller than for joint democracy and limited¶ to coherent autocratic regimes. Petersen (2004), in con-¶ trast, uses an alternate categorization of autocracy and¶ finds no support for the claim that similarity prevents or¶ limits conflict. Still, **the bulk of evidence suggests that similar polities are associated with relative peace, even**¶ **among nondemocracies.***¶***The autocratic peace poses *unique challenges* for demo**-¶ cratic peace theories. **Given** that the democratic peace¶ highlights apparently unique characteristics of joint¶ democracy, many explanations are predicated on attributes¶ found only in democratic regimes. **An autocratic peace**¶ **implies that scholars should focus on corollaries or conse-**¶ **quences of *shared regime type,*** in addition to, or perhaps¶ even ***instead of democracy***. In this context, **arguments**¶ **about democratic *norms* (**Maoz and Russett 1993; Dixon¶ 1994), improved **democratic *signaling*** ability (Fearon 1994;¶ Schultz 1998, 1999, 2001), **the peculiar incentives imposed**¶ **on leaders by democratic *institutions*** (Bueno de Mesquita¶ et al. 1999, 2003), **and *democratic learning*** (Cederman¶ 2001a) **all invite *additional scrutiny***. **While it is theoretically**¶ **possible that a democratic peace and an autocratic peace**¶ **could arise from independent causal processes, *logical ele-****¶* ***gance* and the *empirical similarities* inherent in shared**¶ **regime type provide cause to explore theoretical argu-**¶ **ments that spring from regime similarity in general.**¶

***Their research is biased towards optimistic predictions***

**Rosato 11**

Sebastian, Dept of Political Science at Notre Dame. “The Handbook on the Political Economy of War”, Google Books

**Given that there is good evidence contradicting democratic peace theory, how can we explain its prominence and durability in policymak¬ing circles and within the academy**? The first reason is that it is a **liberal theory of war and peace and**, at least in America, liberalism **is the domi¬nant framework of political discourse.** Indeed, Louis Hartz (1991, pp. 3, 57) goes so far as to argue that liberalism is the only political tradition of any importance in the United States."4 **This dominance derives from it’s fundamentally optimistic view of the world, a view that fits neatly with the optimism that pervades American society**. As Mearsheimer (2001, p. 24) notes, "Americans are basically optimists. They regard progress in poli¬tics, whether at the national or international level, as both desirable and possible." This view dovetails neatly with liberal political thought, which Keith Shimko (1992, p. 2S3) describes as "ultimately dependent upon an optimistic assessment of man and his potential." It is this connection that gives democratic peace theory its staying power. After all, Shimko (1992, p. 285) notes, "**Theoretical perspectives**, particularly in the social sciences, **thrive** not merely because of their scientific superiority, but also **because they are consonant with a society's prevailing values and beliefs." The second reason that the democratic peace continues to thrive is that the research program is considered to be an exemplar of "good" scientific inquiry.** There is a growing consensus among students of inter¬national polities that, in order to be compelling, theories must meet two and only two criteria: their independent and dependent variables must be significantly correlated and their explanations must be logically consist¬ent (Slantchcv ct al. 2005, p. 462). Democratic peace theory appears to meet these criteria. For one thing, there seems to be abundant evidence meet these criteria. For one thing, there seems to be abundant evidence of a powerful association between joint democracy and peace. Moreover, there is nothing illogical, for example, about the claim that states that trust and respect one another will remain at peace or the claim that states with leaders accountable to pacific publics will remain at peace. **Because they are wedded to this conception of scientific inquiry, pro¬ponents of the democratic peace dismiss most critiques of the theory** [Google Books Preview Ends]

***Democratic peace is wrong --- it only applies to full, mature democracies***

**Baliga 11**—prof of managerial economics and decision sciences at Kellog School of Business, NU. PhD from Harvard—AND—Tomas Sjöström—chaired prof of economics at Rutgers—AND—David O. Lucca—economist with the Federal Reserve Board (Sandeep, Domestic Political Survival and International Conflict: Is Democracy Good for Peace?, The Review of Economic Studies, July 2011, 78;3)

The idea that democracy promotes peace has a long history. Thomas Paine argued that monarchs go to war to enrich themselves, but a more democratic system of government would lead to lasting peace: “What inducement has the farmer, while following the plough, to lay aside his peaceful pursuit, and go to war with the farmer of another country?” (Paine, 1985 p. 169). Immanuel Kant agreed that if “the consent of the subjects is required to determine whether there shall be war or not, nothing is more natural than that they should weigh the matter well, before undertaking such a bad business” (Kant, 1795, 1903, p. 122). More recently, the democratic peace hypothesis has influenced the “neoconservative” view of international relations (Kaplan and Kristol, 2003). U.S. policy makers of different political persuasions have invoked it in support of a policy to “seek and support the growth of democratic movements and institutions in every nation and culture.”1 But some anecdotal **observations** seem to **support a more “realist”** **viewpoint**. For example, **after the breakup of Yugoslavia, democratic reforms were followed by war, not peace**. **When given a chance** in the legislative elections of 2006, the **Palestinians voted for Hamas, which did not have a** particularly **peaceful platform**. Such anecdotes suggest that ***democratization does not always promote peace.*** Even fully democratic countries such as the U.S. sometimes turn aggressive: under perceived threats to the homeland, the democratically elected President George W. Bush declared war on Iraq.

**We develop a** simple **game-theoretic model of conflict** based on Baliga and Sjöström (2004). **Each leader can behave aggressively or peacefully.** A leader's true propensity to be aggressive, his “type”, is his private information. Since actions are strategic complements, the fear that the other leader might be an aggressive type can trigger aggression, creating a fear spiral we call “Schelling's dilemma” (see Schelling, 1960; Jervis, 1976, Jervis, 1978; Kydd, 1997). Unlike Baliga and Sjöström (2004), we assume a leader may be removed from power. Whether a leader can stay in power depends on the preferences of his citizens, the political system, and the outcome of the interaction between the two countries. **The political system interacts with Schelling's dilemma to create a non-monotonic relationship between democracy and peace.**

Like the leaders, **citizens have different types**. By hypothesis, **the median type prefers to live in peace. This imposes a “dovish bias” on a dyad of two full democracies** (whose leaders can be replaced by their median voters). Thus, a dyadic democratic peace is likely to obtain. **However, when facing a country that is not fully democratic, the median voter may support aggression out of fear and may replace a leader who is not aggressive enough.** (For example, Neville **Chamberlain had to resign after appeasing Hitler**.) This gives rise to a “hawkish bias”. Thus, ***in a fully democratic country, a dovish bias is replaced by a hawkish bias when the environment becomes more hostile***. In contrast, a **dictator is not responsive to** the preferences of **his** **citizens**, so there is neither a hawkish nor a dovish bias. Accordingly, a dyad of two dictators is less peaceful than a fully democratic dyad, but **a dictator responds less aggressively than a democratically elected leader to increased threats from abroad.**

In the model, **the leader of a limited democracy risks losing power if hawks in his population turn against him.** For instance, **the German leaders during World War I believed signing a peace agreement would lead to their demise** (Asprey, 1991, pp. 486–487, 491). **Conversely, *the support of the hawkish minority trumps the opposition of more peaceful citizens***. Thus, ***a limited democracy experiences a hawkish bias similar to a full democracy under threat from abroad but never a dovish bias.*** ***On balance, this makes limited democracies more aggressive than any other regime type***. In a full democracy, if the citizens feel safe, they want a dovish leader, but if they feel threatened, they want a hawkish leader. In dictatorships and limited democracies, the citizens are not powerful enough to overthrow a hawkish leader, but the leader of a limited democracy risks losing power by appearing too dovish. This generates a non-monotonic relationship between democracy and peace.

**Our empirical analysis reassesses the link between democracy and peace using a flexible semiparametric functional form, where fixed effects account for unobserved heterogeneity across country dyads**. We use Polity IV data to classify regimes as dictatorships, limited democracies or full democracies. Following the literature on the democratic peace hypothesis, we define a conflict as a militarized dispute in the Correlates of War data set. The data, which span over the period 1816–2000, contain many military disputes between limited democracies. In the nineteenth century, Britain had a Parliament, but even after the Great Reform Act of 1832, only about 200,000 people were allowed to vote. Those who owned property in multiple constituencies could vote multiple times.2 Hence, Britain is classified as a limited democracy for 58 years and becomes a full democracy only after 1879. France, Italy, Spain, and Germany are also limited democracies at key points in the nineteenth and early twentieth centuries. These countries, together with Russia and the Ottoman Empire, were involved in many militarized disputes in Europe and throughout the world. For much of the nineteenth century, Britain and Russia had many skirmishes and outright wars in the “Great Game” for domination of Central Asia (Hopkirk, 1990). France is also involved in many disputes and is a limited democracy during the Belgian War of Independence and the Franco-Prussian War. Germany is a limited democracy at the start of the First World War.

Over the full sample, the data strongly support a dyadic democratic peace hypothesis: dyads consisting of two full democracies are more peaceful than all other pairs of regime types. This is consistent with previous empirical studies (Babst, 1972, Levy, 1988, , maozrussett, Russett and Oneal, 2001). Over the same period, limited democracies were the most aggressive regime type. In particular, **dyads consisting of two limited democracies are more likely to experience militarized disputes than any other dyads, including “mixed” dyads where the two countries have different regime types.** These results are robust to changing the definitions of the three categories (using the Polity scores) and to alternative specifications of our empirical model. ***The effects are quantitatively significant***. **Parameter estimates of a linear probability model specification, suggest that the likelihood that a dyad engages in a militarized dispute falls roughly 35% if the dyad changes from a pair of limited democracies to a pair of dictatorships**. We also find that if some country j faces an opponent which changes from a full democracy to another regime type, the estimated equilibrium probability of conflict increases most dramatically when country j is a full democracy. This suggests that as the environment becomes more hostile, democracies respond more aggressively than other regime types, which is also consistent with our theoretical model.

A more nuanced picture emerges when we split the data into subsamples. Before World War II, the data strongly suggest that limited democracies were the most conflict prone. It is harder to draw conclusions for the post World War II period, when very few countries are classified as limited democracies, and full democracies have very stable Polity scores. The Cold War was a special period where great power wars became almost unthinkable due to the existence of large nuclear arsenals (Gaddis, 2005). Did the weakening and demise of the Soviet Union bring a return to the pre-1945 patterns? Although the time period is arguably short, in the post-1984 period, it does seem that dyads of limited democracies are again the most prone to conflict.

**It is** commonly **argued that a process of democratization**, e.g. **in the Middle East, will lead to peace** (Bush, 2003). **But** both theory and data suggest that the relationship between democracy and peace may be complex and non-monotonic. ***Replacing a dictatorship with a limited democracy may actually increase the risk of militarized disputes. Even if a dictatorship is replaced by a full democracy, this may not reduce the risk of militarized disputes if the region is dominated by hostile non-democratic countries***. In the data, ***only dyads consisting of two full democracies are peaceful.*** **Democratic countries such as Israel and India, with hostile neighbours, do not enjoy a low level of conflict.**

**2NC – No Modeling**

#### No judicial globalism—can’t spillover

David Law, Professor of Law and Professor of Political Science, Washington University, and Wen-Chen Chang, Associate Professor, National Taiwan University College of Law, 11 [“THE LIMITS OF GLOBAL JUDICIAL DIALOGUE,” Vol. 86:523, 2011]

INTRODUCTION: MUCH ADO ABOUT NOTHING? No aspect of the globalization of constitutional law has thus far attracted more attention or controversy than the use of foreign and international legal materials by constitutional courts.1 Although judicial citation of foreign law is hardly a new phenomenon, there is a widespread sense that constitutional courts are turning more frequently to foreign jurisprudence for guidance and inspiration.2 Moreover, the manner in which courts and judges interact with one another has changed in ways that are said to have systemic implications for the global evolution of constitutional law. Prominent scholars and jurists now speak in glowing terms of the emergence of a “global” or “international” or “transnational judicial dialogue”3 that unites judges around the world in a “common global judicial enterprise.”4 It is said that, by engaging in “open” and “self-conscious” debate with courts in other countries over common questions of both substance and methodology, constitutional courts not only “improve the quality of their particular national decisions,” but also “contribute to a nascent global jurisprudence,” most notably in the area of human rights.5 Several varieties of global judicial dialogue are said to exist. One variety, which has already been mentioned, is comparative analysis of the type found in judicial decisions. Although judicial citation of foreign law is hardly a new phenomenon,6 it is increasingly suggested that the manner in which constitutional courts analyze the work of their counterparts in other countries is characterized by such a degree of mutual engagement and substantive debate that it amounts to an ongoing conversation conducted through the medium of judicial opinions.7 A second variety of global judicial dialogue is dialogue in a literal sense, in the form of “direct interactions”8 and networking among judges. This type of dialogue has been fostered by technological advances, such as the internet, that have lowered the barriers to international communication, and by the deliberate efforts of academic institutions, intergovernmental and international organizations, and constitutional courts themselves to generate proliferating opportunities for face-to-face interaction, in the form of conferences, visits, and the like.9 It is not the goal of this Article to contribute to the normative debate over whether global judicial dialogue is cause for celebration or consternation. Nor is it our purpose to evaluate the normative arguments in favor of an interpretive posture of “engagement”10 or a “dialogical” approach to comparative analysis.11 This Article aims, instead, to explain as an empirical matter why the concept of “global judicial dialogue” neither describes the actual practice of comparative analysis by judges nor explains the emergence of a global constitutional jurisprudence. We also demonstrate that the frequency with which a court cites foreign law in its opinions is an extremely unreliable measure of the extent to which the court actually makes use of foreign law. Scholars who wish to understand or measure a particular court’s usage of foreign law must therefore be prepared to supplement quantitative research methods, such as statistical analysis of citations to foreign law, with qualitative approaches that are capable of probing more deeply, such as interviews with court personnel. Part II of this Article argues that the notion of “dialogue” is, both conceptually and empirically, an inapt metaphor for the comparative analysis performed by constitutional courts. Part III takes advantage of a natural experiment in judicial isolation to show that judge-to-judge dialogue and “judicial networks,” as eye-catching as they may be, have limited impact on constitutional adjudication and do little to explain the frequency or sophistication with which constitutional judges resort to foreign law. The natural experiment that we evaluate goes by the name of Taiwan—a democratic country with an active constitutional court that is nevertheless systematically deprived of opportunities to interact directly with other courts for a combination of historical and political reasons. Our case study of Taiwan combines quantitative and qualitative empirical research methods, in the form of statistical analysis of the Taiwanese Constitutional Court’s decisions and numerous off-the-record interviews with members of the Court and their law clerks. Although the Court rarely cites foreign law, foreign legal research forms a routine and indispensable part of its deliberations. Taiwan’s experience strongly suggests that judicial interaction and networking play a much smaller role in shaping a court’s utilization of foreign law than institutional factors such as the rules and practices governing the composition and staffing of the court and the extent to which the structure of legal education and the legal profession incentivizes judges and academics to possess expertise in foreign law. Comparison of the Taiwanese Constitutional Court with the U.S. Supreme Court, which rarely looks to foreign law for inspiration notwithstanding its extensive participation in various forms of global judicial dialogue, only reinforces this conclusion. This comparison is performed in Part IV. The Article concludes by highlighting the role that American legal education must play if the global influence of American constitutionalism is to be revived, or if American courts are to engage in comparativism of their own.

***Even if they are right the US has influence – specific decisions aren’t modeled – just the foundations of our system***

**Klug**, Law Professor at the University of Wisconsin, **2K** (Heinz, “MODEL AND ANTI-MODEL: THE UNITED STATES CONSTITUTION AND THE ‘RISE OF WORLD CONSTITUTIONALISM,’” Wisconsin Law Review, 2000 Wis. L. Rev. 597)

Before discussing the various ways in which the American experience has served as a constitutional model, it is important to specify what serves as the model. The model is not merely the constitutional document and its amendments; it is also, more importantly, the ideas and institutions of American constitutionalism - popular sovereignty, federalism, the separation of powers, and judicial review - as well as the over two hundred years of constitutional jurisprudence that has flowed from the Constitution. It is this vision of the United States Constitution, as an elaborated text with a history of structural, institutional, and jurisprudential changes, that allows us to understand the place of the United States Constitution as the backdrop or wallpaper before which subsequent constitutional stories, from constitution-making to constitutional adjudication, have evolved. I must also clarify my use of the idea of a model. By model I mean a general source of ideas, concepts, examples, and even specific constitutional arguments rather than a mere reproduction or copy of what has occurred or is contained in the United States Constitution or constitutional jurisprudence. Caution at the notion of a constitutional model is also important. The pure adoption of any particular model or example **does not guarantee any particular outcome**. This problem is clearly evident in the experience of the United States in the Philippines, despite the aim of the United States to establish a different form of colonial relationship. After obtaining formal control from Spain through the Treaty of Paris in 1898 and after over fifty years of "tutelage" designed to establish an American form of government, the efforts of the United States seem to have achieved little more than a system of institutional charades, cast aside as soon as they no longer served those in power. From the passage of the 1934 Philippine Commonwealth and Independence Act, which provided that the Constitution should "include a [\*600] bill of rights and establish a "republican form of government'"; to the subsequent adoption of the 1935 Constitution by a Philippine constitutional convention and the **wholesale adoption of American case law**, which seems to have been used as binding precedent; the experience produced no more than a **symbolic manifestation** of United States constitutionalism. As Andrzej Rapaczynski argues, "politically speaking, the cloning of America did not effectively protect the Philippines from a dictatorship, and even the best commentators could not see why the result was not what the Americans had intended." 5 Despite this failure to clone, the United States constitutional experience has served as a model, in my more general sense of the concept. As a general model it has served a number of distinct functions. On the one hand, the American constitutional experience offers examples of a range of structural features, whose evolution and impact may be observed over two centuries. These structural features include the transformation of the political idea of the separation of powers into a working constitutional principle; the creation of a federal system providing for the division of powers between a central government and its constituent regions; and finally, the creation of a range of institutional mechanisms for checking and balancing the exercise of governmental power, which provided political adversaries multiple sites for raising and contesting issues. On the other hand, the American experiment has raised the banner of individual rights and through a long and wavering jurisprudence demonstrated how vast areas of political conflict may become judicialized. Although often criticized as a legalization of politics, the creation of a popular rights consciousness among citizens of the United States has indeed inspired advocates of human rights and is reflected most clearly in the adoption of international human rights instruments and the post-1945 emergence of an international human rights culture. Although less common, the specific doctrines of United States rights jurisprudence have at times served as a direct model abroad. A significant example of this is the influence of free speech doctrines flowing from the First Amendment of the United States Constitution on the common law based freedom of speech jurisprudence in Israel [n6](http://www.lexisnexis.com.floyd.lib.umn.edu/us/lnacademic/frame.do?reloadEntirePage=true&rand=1270823866181&returnToKey=20_T9038689172&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.128042.01106417134#n6) and Australia. [n7](http://www.lexisnexis.com.floyd.lib.umn.edu/us/lnacademic/frame.do?reloadEntirePage=true&rand=1270823866181&returnToKey=20_T9038689172&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.128042.01106417134#n7) However, instead of specific constitutional doctrines, particular institutional forms, or even specific constitutional rights, it has been the ideas and broad structural innovations of American constitutionalism that have found the greatest resonance among constitution-makers and interpreters.  [\*601]  From the development of a single fundamental law, incorporated within one written document, to the distribution of public power among different geographic and institutional levels of government, the experience of American constitutionalism has provided a vast experiment to which constitution-builders abroad could turn. With subsequent waves of constitution-making these constitutional forms have evolved - both in the United States and abroad - to provide further elucidations of the original American model that could be relied upon by subsequent waves of constitution-makers.

***Modeling fails – different cultures and resources***

Jeremy **Rabkin 13**, Professor of Law at the George Mason School of Law. Model, Resource, or Outlier? What Effect Has the U.S. Constitution Had on the Recently Adopted Constitutions of Other Nations?, 29 May 2013, www.heritage.org/research/lecture/2013/05/model-resource-or-outlier-what-effect-has-the-us-constitution-had-on-the-recently-adopted-constitutions-of-other-nations

**Even when people are not ambivalent in their desire to embrace American practices**, **they may not have the wherewithal to do so, given their own resources.** That is true **even for constitutional arrangements**. You might think it is enviable to have an old, well-established constitution, but that doesn’t mean you can just grab it off the shelf and enjoy it in your new democracy. **You might think it is enviable to have a broad respect for free debate and tolerance** of difference, **but that doesn’t mean you can wave a wand and supply it to your** own **population**. **We can’t think of** most **constitutional practices as techniques** or technologies **which can be *imported into different cultures*** as easily as cell phones or Internet connections.

***Foreign opinions and citations prove***

**Pedersen 8** – Lecturer in Law at Newcastle Law School (Ole W., “Fading influence of the US Supreme Court”, 9/18/08, http://internationallawobserver.eu/2008/09/18/fading-influence-of-the-us-supreme-court/)

It appears that it is not only the EU whose authority is fading. Today’s NY Times has a very interesting story on the influence of the US Supreme Court, which is well worth a read. The article states that the number of citations of US Supreme Court cases in other jurisdictions is in decline compared to just ten years ago. There are many reasons for this, according to, inter alia, Thomas Ginsburg of University of Chicago and Aharon Barak, former president of the Israeli Supreme Court. One reason is the rise in the numbers of constitutional courts elsewhere, which has, through time, created a rich jurisprudence on constitutional law rendering the need to cite US cases less essential. Additionally, US foreign policy may play a part in the diminishing influence of the oldest constitutional court in world. Finally, the reluctance of the US Supreme Court itself to cite foreign law when adjudicating may play a role. This final point is perhaps the most interesting. Whereas European (including the ECJ and the ECtHR), Australian and Canadian courts do not shy away from referring to foreign law, it has always been a sensitive topic in the US where many scholars favour leaving aside foreign law. This approach has its clear democratic justification but as Justice Ruth Bader Ginsberg said in 2006 in an address to the South African Constitutional Court: “[F]oreign opinions are not authoritative; they set no binding precedent for the U.S. judge. But they can add to the store of knowledge relevant to the solution of trying questions. Yes, we should approach foreign legal materials with sensitivity to our differences, deficiencies, and imperfect understanding, but imperfection, I believe, should not lead us to abandon the effort to learn what we can from the experience and good thinking foreign sources may convey.”

***No modeling – new democracies fear courts***

**Schor 08** - Professor of Law @ Suffolk University Law School. [Miguel Schor, “Judicial Review and American Constitutional Exceptionalism,” Osgoode Hall Law Journal, Vol. 46, 2008

This article questions the conventional wisdom that the logic of Marbury has conquered the world’s democracies by exploring two questions: why do social movements contest constitutional meaning by fighting over judicial appointments in the United States, and why does such a strategy make little sense in democracies that constitutionalized rights in the late twentieth century?6 The short answer is that the United States has been both a model and an ***anti-model*** 7 in the worldwide spread of judicial review. The United States stood astride the world after the Second World War and elements of American constitutionalism such as judicial review proved irresistible to democracies around the globe.8 Polities that adopted judicial review in the late twentieth century, however, ***rejected the key assumption*** on which judicial review in the United States is founded.. American constitutionalism assumes that law is separate from politics and that courts have the power and the duty to maintain that distinction.

This assumption was rejected because other democracies learned from the American experience that courts that exercise judicial review are powerful political as well as legal actors. The ***fear of providing constitutional courts with too much power*** played an important role in shaping judicial review outside the United States. 9 When judicial review began to spread around the globe in the second half of the twentieth century, the hope of Marbury (the promise of constitutionalized rights) became fused with the fear of Lochner 10 (the possibility that courts might run amok). In seeking to thread a needle between Marbury and Lochner , the American assumption that a constitution is a species of law was rejected in favour of a very different baseline assumption that constitutions are neither law nor politics, but an entirely new genus of “political law.” 11Consequently, democracies abroad adopted stronger mechanisms by which ***citizens can hold constitutional courts accountable*** 12and which make it less likely that social forces will use appointments as a vehicle for constitutional battles. Pg. 37-38

**Ext – Independence Impossible**

***Alt causes outweigh—86% of judges run for election which makes them dependent institutions***

Lydia Brashear **Tiede ‘06**\*, The Journal of Contemporary Legal Issues, 2006, 15 J. Contemp. Legal Issues 129, Positive Political Theory and the Law: Judicial Independence: Often Cited, Rarely Understood, Lexis, jj

As opposed to judicial appointment, **many state court judges are selected by bipartisan or partisan elections**. In fact, ***eighty-six percent of American judges run for election*** n35 **and state courts where judges sit for election hear the majority of all litigation in the United States**. n36 Despite the prevalence of elected judges, at least in the United States, **most legal scholars argue that elections compromise the integrity and impartiality of judges because they must actively seek votes to obtain, and in some cases, retain their posts**. While elections may make judges more responsive to the needs and desires of the electorate, scholars argue that **elections** may **limit judicial independence if judges are intent on staying in office and voters use information about judicial decisions when they go to the polls**. n37 Furthermore, **elections may compromise a judge's ability to make decisions on individual cases due to the signals received by voters** n38 **and election campaign contributors.**

Scholars claim that **judicial elections may hinder judicial independence because individual judges running for election may be compelled to take positions on social and political issues to solicit both votes and campaign funding.** ***This in turn may compromise their impartiality to render decisions on such issues.*** n39 **This may be cause for concern due to the** [\*141] **explosion in campaign spending in state judicial races in recent years**. n40 For example, litigants who appear before a judge to decide a case involving abortion may be concerned about a judge who asserts strong pro-life or pro-choice opinions in his election campaign. **The voicing of such political opinions by judges**, who traditionally have been viewed as "above" politics, **was implicitly approved by the U.S. Supreme Court in a finding that a law prohibiting "a candidate for judicial office" from "announcing his or her views on disputed legal or political issues" violated the First Amendment**. n41 **The Supreme Court decision signals that the political opinions of judges, once a taboo subject, are now considered legitimate election fodder.**

**The use of advertising in judicial election races also accentuates the political opinions of judges and weakens the public perception of judges** [\*142] **as independent free-thinking arbiters of cases**. Not surprisingly, **hand-in-hand with the increase in state judicial campaign funding, is the increase in contentious election advertisements, which not only air negative campaign messages against opponents, but also tends to focus on three particular political issues: civil justice** (tort reform), **crime control, and family values**. n42 **This focus on the political positions of judges on specific issues comes at the expense of objective analysis of the candidates' credentials and professional integrity. Thus, a judicial election has come to appear much as any other political election and the independence and impartiality of judging a quaint notion**. n43

The concern over the effects of judicial elections on judicial independence has led to demands for reform. State and national reform efforts have focused on abandoning judicial elections completely in favor of other selection methods. However, **such reform by state legislators would require constitutional amendments to state constitutions, which may in turn require voter approval** n44 **- a difficult task as most voters arguably would like to retain their rights to influence judicial selection.** Other efforts have focused on revising judicial codes of conduct, curbing especially egregious behavior, and on reforming campaign finance and advertisement disclosure laws.

### A2: Rule of Law

#### The aff can’t solve rule of law and there’s no impact

Thomas Carothers is vice president for studies at the Carnegie Endowment for International Peace, 06 (“Promoting the Rule of Law Abroad: In Search of Knowledge,” Chapter 1, http://carnegieendowment.org/2006/01/01/promoting-rule-of-law-abroad-in-search-of-knowledge/35vq)

The effects of this burgeoning rule-of-law aid are generally positive,¶ though usually modest. After more than ten years and hundreds of millions¶ of dollars in aid, many judicial systems in Latin America still function¶ poorly. Russia is probably the single largest recipient of such aid,¶ but is not even clearly moving in the right direction. The numerous ruleof-¶ law programs carried out in Cambodia after the 1993 elections failed¶ to create values or structures strong enough to prevent last year’s coup.¶ Aid providers have helped rewrite laws around the globe, but they have¶ discovered that the mere enactment of laws accomplishes little without¶ considerable investment in changing the conditions for implementation¶ and enforcement. Many Western advisers involved in rule-of-law assistance¶ are new to the foreign aid world and have not learned that aid¶ must support domestically rooted processes of change, not attempt to¶ artificially reproduce preselected results.¶ Efforts to strengthen basic legal institutions have proven slow and difficult.¶ Training for judges, technical consultancies, and other transfers of expert knowledge make sense on paper but often have only minor¶ impact. The desirability of embracing such values as efficiency, transparency,¶ accountability, and honesty seems self-evident to Western aid¶ providers, but for those targeted by training programs, such changes¶ may signal the loss of perquisites and security. Major U.S. judicial reform¶ efforts in Russia, El Salvador, Guatemala, and elsewhere have foundered¶ on the assumption that external aid can substitute for the internal¶ will to reform.¶ Rule-of-law aid has been concentrated on more easily attained type¶ one and type two reforms. Thus it has affected the most important elements¶ of the problem least. Helping transitional countries achieve type¶ three reform that brings real change in government obedience to law is¶ the hardest, slowest kind of assistance. It demands powerful tools that¶ aid providers are only beginning to develop, especially activities that¶ help bring pressure on the legal system from the citizenry and support¶ whatever pockets of reform may exist within an otherwise selfinterested¶ ruling system. It requires a level of interventionism, political¶ attention, and visibility that many donor governments and organizations¶ cannot or do not wish to apply. Above all, it calls for patient, sustained¶ attention, as breaking down entrenched political interests, transforming¶ values, and generating enlightened, consistent leadership will¶ take generations.¶ The experience to date with rule-of-law aid suggests that it is best to¶ proceed with caution. The widespread embrace of the rule-of-law imperative¶ is heartening, but it represents only the first step for most transitional¶ countries on what will be a long and rocky road. Although the¶ United States and other Western countries can and should foster the¶ rule of law, even large amounts of aid will not bring rapid or decisive¶ results. Thus, it is good that President Ernesto Zedillo of Mexico has¶ made rule-of-law development one of the central goals of his presidency,¶ but the pursuit of that goal is certain to be slow and difficult,¶ as highlighted by the recent massacre in the south of the country. Judging¶ from the experience of other Latin American countries, U.S. efforts¶ to lighten Mexico’s burden will at best be of secondary importance. Similarly,¶ Wild West capitalism in Russia should not be thought of as a brief¶ transitional phase. The deep shortcomings of the rule of law in Russia¶ will take decades to fix. The Asian financial crisis has shown observers¶ that without the rule of law the Asian miracle economies are unstable.¶ Although that realization was abrupt, remedying the situation will be a¶ long-term enterprise.

### Ext #1 – No Middle East War

#### No Middle East war---Israel’s enemies are too weak

**Pedatzur, August 7th, 2011** (Reuven, Haaretz, “The Arab spring is not a threat to Israel” <http://www.haaretz.com/print-edition/opinion/the-arab-spring-is-not-a-threat-to-israel-1.377351>, jj)

If the legislators probe where the money is going, they will discover that two thirds go to manpower, mostly to salaries. And if they were to be genuinely courageous and examine which weapons systems are being developed for the IDF, they will discover that **billions of dollars are spent annually on advanced weapons systems whose only real problem is that some of them have no operational use**. **The question remains: will the upheavals in the Arab world increase the threats against us? The answer to this is negative. The armies of the countries in the region will not suddenly increase in strength because of the new situation. The chances that Egypt or Syria, whose leaderships are busy desperately trying to survive and stabilize the domestic situation, will embark on a war with Israel have narrowed significantly. There are no new threats, only new scaremongering**. It will be very sad if our elected officials will not use the public protest in order to finally face down the pushy, arrogant and insensitive defense establishment. In 2007, the Brodet Commission, set up to examine the Israeli defense budget, wrote the following about the modus operandi of the defense establishment: "In managing of resources there are blatant cases of lack of transparency, selective and partial information, which at times is used in a manipulative way inside the army, between the army and the [Defense] Ministry, and between the army and external elements and decision makers."

#### Empirical proof

Kevin **Drum**, journalist, September 9 20**07** The Washington Monthly, “The Chaos Hawks”

Needless to say, **this is nonsense. Israel has fought war after war in the Middle East. Result: no regional conflagration. Iran and Iraq fought one of the bloodiest wars of the** second half the **20th century**. Result**: no regional conflagration. The Soviets fought in Afghanistan** and then withdrew. **No regional conflagration. The U.S. fought the Gulf War** and then left**. No regional conflagration. Algeria fought an internal civil war for a decade. No regional conflagration**.

# 1NR

## Overview

### 1NR Overview --- India

***Indo Pak war outweighs --- causes extinction***

**Robock and Toon ‘09** [Alan and Owen Brian, “Local Nuclear War, Global Suffering”, Scientific American, <http://climate.envsci.rutgers.edu/pdf/RobockToonSciAmJan2010.pdf>]

***\*we don’t endorse ableist language***

 Twenty-five years ago international teams of scientists showed that a nuclear war between the U.S. and the Soviet Union could produce a “nuclear winter.” The smoke from vast fires started by bombs dropped on cit­ies and industrial areas would envelop the planet and absorb so much sunlight that the earth’s sur­face would get cold, dark and dry, killing plants worldwide and eliminating our food supply. Sur­face temperatures would reach winter values in the summer. International discussion about this prediction, fueled largely by astronomer Carl Sa­gan, forced the leaders of the two superpowers to confront the possibility that their arms race endangered not just themselves but the entire hu­man race. Countries large and small demanded disarmament. Nuclear winter became an important factor in ending the nuclear arms race. Looking back later, in 2000, former Soviet Union leader Mikhail S. Gorbachev observed, “Models made by Russian and American scientists showed that a nuclear war would result in a nuclear winter that would be extremely destructive to all life on earth; the knowledge of that was a great stimulus to us, to people of honor and mo­rality, to act.” Why discuss this topic now that the cold war has ended? Because **as** other nations continue to acquire nuclear weapons, smaller, regional nu­clear wars could create a similar global catastro­phe**.** New analyses reveal that a conflict be­tween India and Pakistan, for example, in which 100 nuclear bombs were dropped on cities and industrial areas—only 0.4 percent of the world’s more than 25,000 warheads—would produce enough smoke to ~~cripple~~ global agriculture. A regional war could cause widespread loss of life even in countries far away from the conflict.

#### Escalates globally

**Caldicott 2** (Helen, Founder of Physicians for Social Responsibility [Helen, The New Nuclear Danger: George W. Bush’s Military-Industrial Complex, p. X]

The use of Pakistani nuclear weapons could trigger a chain reaction. Nuclear-armed India, an ancient enemy, could respond in kind. China, India's hated foe, could react if India used her nuclear weapons, triggering a nuclear holocaust on the subcontinent. If any of either Russia or America's 2,250 strategic weapons on hair-trigger alert were launched either accidentally or purposefully in response, nuclear winter would ensue, meaning the end of most life on earth.

***And, relations are key to accessing every impact***

**Asia Society Task Force ‘09**[Delivering on the Promise: Advancing US Relations With India, January, <http://www.asiasociety.org/policy-politics/task-forces/delivering-promise-advancing-us-relations-india>, Acccessed, 9-19-09, p. 7-8]

India matters to virtually every major foreign policy issue that will confront the United States in the years ahead. A broad-based, close relationship with India will thus be necessary to solve complex global challenges, achieve security in the critical South Asian region, reestablish stability in the global economy, and overcome the threat of violent Islamic radicalism which has taken root across the region and in India. The members of this task force believe that the US relationship with India will be among our most important in the future, and will at long last reach its potential for global impact—provided that strong leadership on both sides steers the way. The new relationship rests on a convergence of US and Indian national interests, and never in our history have they been so closely aligned. With India, we can harness our principles and power together to focus on the urgent interconnected challenges of our shared future: economic stability, expanded trade, the environment and climate change, innovation, nonproliferation, public health, sustainability, and terrorism. Together our two countries will be able to take on some of the most vexing problems facing the world today, and improve the lives and security of our citizens in doing so. But to get there, we must set broad yet realistic goals to be shared by both countries.

**1NR – CIR Turns Heg**

***CIR k2 heg***

**Nye 12/10** Joseph S. Nye, a former US assistant secretary of defense and chairman of the US National Intelligence Council, is University Professor at Harvard University. His most recent book is The Future of Power. 12/10/12, Project Syndicate, Immigration and American Power, <http://www.project-syndicate.org/commentary/obama-needs-immigration-reform-to-maintain-america-s-strength-by-joseph-s--nye>, jj

CAMBRIDGE – The United States is a nation of immigrants. Except for a small number of Native Americans, everyone is originally from somewhere else, and even recent immigrants can rise to top economic and political roles. President Franklin Roosevelt once famously addressed the Daughters of the American Revolution – a group that prided itself on the early arrival of its ancestors – as “fellow immigrants.”

**In recent years**, however, **US politics has had a strong anti-immigration slant**, and the issue played an important role in the Republican Party’s presidential nomination battle in 2012. But Barack Obama’s re-election demonstrated the electoral power of Latino voters, who rejected Republican presidential candidate Mitt Romney by a 3-1 majority, as did Asian-Americans.

**As a result, several prominent Republican politicians are now urging their party to reconsider its anti-immigration policies, and plans for immigration reform will be on the agenda at the beginning of Obama’s second term. Successful reform will be an important step in preventing the decline of American power.**

Fears about the impact of immigration on national values and on a coherent sense of American identity are not new. The nineteenth-century “Know Nothing” movement was built on opposition to immigrants, particularly the Irish. Chinese were singled out for exclusion from 1882 onward, and, with the more restrictive Immigration Act of 1924, immigration in general slowed for the next four decades.

During the twentieth century, the US recorded its highest percentage of foreign-born residents, 14.7%, in 1910. A century later, according to the 2010 census, 13% of the American population is foreign born. But, despite being a nation of immigrants, more Americans are skeptical about immigration than are sympathetic to it. Various opinion polls show either a plurality or a majority favoring less immigration. The recession exacerbated such views: in 2009, one-half of the US public favored allowing fewer immigrants, up from 39% in 2008.

Both the number of immigrants and their origin have caused concerns about immigration’s effects on American culture. Demographers portray a country in 2050 in which non-Hispanic whites will be only a slim majority. Hispanics will comprise 25% of the population, with African- and Asian-Americans making up 14% and 8%, respectively.

But mass communications and market forces produce powerful incentives to master the English language and accept a degree of assimilation. Modern media help new immigrants to learn more about their new country beforehand than immigrants did a century ago. Indeed, most of the evidence suggests that the latest immigrants are assimilating at least as quickly as their predecessors.

While too rapid a rate of immigration can cause social problems, over the long term, **immigration strengthens US power**. **It is estimated that at least 83 countries and territories currently have fertility rates that are below the level needed to keep their population constant. Whereas most developed countries will experience a shortage of people as the century progresses, America is one of the few that may avoid demographic decline and maintain its share of world population.**

For example, **to maintain its current population size, Japan would have to accept 350,000 newcomers annually for the next 50 years,** which is difficult for a culture that has historically been hostile to immigration. **In contrast, the Census Bureau projects that the US population will grow by 49% over the next four decades.**

Today, **the US is the world’s third most populous country; 50 years from now it is still likely to be third** (after only China and India). **This is highly relevant to economic power: whereas nearly all other developed countries will face a growing burden of providing for the older generation, immigration could help to attenuate the policy problem for the US.**

In addition, though studies suggest that the short-term economic benefits of immigration are relatively small, and that unskilled workers may suffer from competition, **skilled immigrants can be important to particular sectors – and to long-term growth**. **There is a strong correlation between the number of visas for skilled applicants and patents filed in the US**. **At the beginning of this century, Chinese- and Indian-born engineers were running one-quarter of Silicon Valley’s technology businesses, which accounted for $17.8 billion in sales; and, in 2005, immigrants had helped to start one-quarter of all US technology start-ups during the previous decade. Immigrants or children of immigrants founded roughly 40% of the 2010 Fortune 500 companies.**

**Equally important are immigration’s benefits for America’s soft power**. **The fact that people want to come to the US enhances its appeal, and immigrants’ upward mobility is attractive to people in other countries. The US is a magnet, and many people can envisage themselves as Americans, in part because so many successful Americans look like them**. **Moreover, connections between immigrants and their families and friends back home help to convey accurate and positive information about the US.**

Likewise, **because the presence of many cultures creates avenues of connection with other countries, it helps to broaden Americans’ attitudes and views of the world in an era of globalization. Rather than diluting hard and soft power, immigration enhances both.**

Singapore’s former leader, Lee Kwan Yew, an astute observer of both the US and China, argues that **China will not surpass the US as the leading power of the twenty-first century**, precisely **because the US attracts the best and brightest from the rest of the world and melds them into a diverse culture of creativity**. China has a larger population to recruit from domestically, but, in Lee’s view, its Sino-centric culture will make it less creative than the US.

That is a view that Americans should take to heart. **If Obama succeeds in enacting immigration reform in his second term, he will have gone a long way toward fulfilling his promise to maintain the strength of the US.**

**Relations Good – Democracy**

***US-India relations key to democracy promotion***

**Financial Times, ’05** (“US begins to develop a new idea of India,” http://www.financialexpress.com/news/us-begins-to-develop-a-new-idea-of-india/140299/, 7/23)

The broad case for partnership is compelling. India and the US are natural trading partners or, rather, would be if India’s government made greater effort to release its huge economic potential. Closer business links and co-operation in space technology and agriculture should bring real gains. India and the US are also natural partners in promoting democracy around the world. India can help US interests by contributing to an influence that favours peace and democracy. But offering India - a nuclear weapons state outside the Non-Proliferation Treaty - full civilian nuclear co-operation undermines the NPT. It will make it more difficult to build a consensus on Iran and North Korea.

### Soft power

***CIR key to soft power***

**Bush et al 09** Jeb Bush and Thomas F. McLarty III, Chairs, Edward Alden, Project Director, Council on Foreign Relations, Independent Task Force Report No. 63, U.S. Immigration Policy, online, jj

**America’s image in the world has taken a beating in the past decade**. The Pew Global Attitudes Project, the most comprehensive survey of its type, showed a precipitous drop in favorable opinions toward the United States from across the world between 1999 and 2008, with only a handful of exceptions.44 **The reasons for this decline are many, but the evidence is strong that immigration and cross-border exchanges of all types are among the best tools the U.S. government has for trying to reverse this decline.** Certainly, **mistreatment at the hands of U.S. border and immigration officials is one of the surest ways to denigrate America’s standing in the eyes of many in the world.**

**Allowing people to come to the United States helps America’s image by exposing foreigners directly or indirectly to the realities of life in this country**. Polls of foreign attitudes toward the United States indicate strongly that **those who have spent time here, or have friends or families who have spent time here, have more positive views of the United States than those who have not**. In its polling of Arab countries, for instance, Zogby International found that Arabs who knew even a single American were roughly 10 percent more favorable in their opinion of the United States than those who did not. Among those who had traveled to the United States, wanted to travel here, or had a relative living here, the favorability was 25 to 30 percentage points higher. 45 The Task Force finds that **one of the most successful forms of public diplomacy has been to allow non-Americans to see what the United States has achieved at home. Encouraging travel to the United States has more positive influence than the best efforts that the government can muster to use the media and other channels to present a positive image abroad.**

**Relations Good – Middle East Stability**

***US-Indo relations are key to Mid-East stability***

**Carpenter, ’01** (Ted Galen, vice president for defense and foreign policy studies at the Cato Institute, “Stop Viewing India as a Threat,” http://www.cato.org/pub\_display.php?pub\_id=3958, 7/17)

India is also on its way to being a great power militarily. New Delhi increased its military budget some 27 percent in 2000 and intends to raise spending nearly another 13 percent this year. A large portion of that spending is going to modernize the air force and navy, including building aircraft carriers and submarines. In short, India is determined to have a first-rate military and is putting money behind that objective. The United States should exploit rather than resist such developments. India has indicated its intention of being the leading power throughout the South Asia-Indian Ocean region. Among other things, that would mean taking an interest in the stability of the Persian Gulf -- a thankless and frustrating task now undertaken by the United States. India is also a logical strategic counterweight to China in East Asia. There is little doubt that New Delhi frets about China's rising power and worries about possible PRC expansionism a decade or two from now. Indeed, Indian officials cited concerns about China as the principal reason for the decision to acquire a nuclear capability. Since then, Indian naval vessels have sailed into the South China Sea to participate in joint anti-piracy missions with the navies of various Southeast Asian countries. American leaders need to get past the obsolete images of India as the home of sclerotic socialism, feckless pacifism, or anti-American mischief making. Whatever the truth of those images in the past, they do not resemble today's India -- much less the great power that it is becoming. Bush policymakers need to treat India with respect and recognize that Indian and American economic and strategic interests are likely to coincide far more often than they conflict. Rumsfeld's comments aside, India is not an adversary of America -- unless shortsighted U.S. actions turn it into one.

## Impact

### A2: heg deesclatess

***\*\*\*Relations collapse inevitable without immigration liberalization***

--- even if the overall relationship is inevitable cooperation isn’t

-signal of protectionism

**Davis ’10** (Ted, School of Public Policy @ George Mason University, Association for Public Policy Analysis and Management, 2/18-20, “The Global Dynamic: of High-Skill Migration: The Case of U.S./India Relations”, https://www.appam.org/conferences/international/maastricht2010/sessions/downloads/389.1.pdf)

There is no reason to think that the present system of governing migration is optimal. Migration is a dynamic process, while the migration policy-making machinery is slow and cumbersome. The possibility that policy-makers will fail to capitalize on opportunities for mutual gain among sending and receiving countries is especially large for high-skill migration. At first glance, the case of India – U.S. relations would appear to contradict this point. As noted, both India and the U.S. have experienced significant benefits from migration and circulation. Yet many Indians still live in poverty and many Americans see India, its immigrants and offshore services, as a threat to their jobs and wages. Thus there is a growing tension between these countries that could impede, if not derail, further progress. Absent a program of cooperation, and perhaps exacerbated by the economic downturn, there is a risk that each country would be inclined to act unilaterally in pursuit of its own interests. However, these typically protectionist or nationalistic actions may impede the flow of immigrants, but it could impede the flow of ideas, reduce knowledge spillovers, and ultimately inhibit innovation and growth. Cooperation on migration offers an opportunity for countries to address the tensions that arise from immigration while opening avenues for pursuing common objectives and mutual prosperity. Though it may be desirable to consider a common system of migration across countries that transcend bilateral arrangements, such a system may not be able to address the unique dynamics that exist between countries. Nor should these relationships be viewed uniformly. Differences exist between sectors, such as technology services and medical services that call for their own strategies. This paper represents only a beginning point for understanding these ideas. Further research is planned to explore high-skill migration, the conditions that distinguish sectoral and country characteristics that contribute to the diverse nature of migration, and the varying governance mechanisms and their abilities to produce win-win results for high-skill migrants, domestic workers, firms, and countries.

## UQ

### A2: N/U – Won’t Pass

#### CIR will pass now --- extend KUHNHENN --- there’s bipartisan support, Boehner is coming around, Obama is pushing --- hold-ups are about process not product

#### Prefer the direction of the link—PC creates momentum--- more evidence

Orlando Sentinel, 11/1 (11/1/2013, “What we think: It'll take both parties to clear immigration logjam,” <http://articles.orlandosentinel.com/2013-11-01/news/os-ed-immigration-reform-congress-20131031_1_immigration-reform-comprehensive-reform-house-republicans>)

For those who thought the end of the government shutdown would provide a break from the partisan bickering in Washington, think again. The battle over comprehensive immigration reform could be every bit as contentious. Polls show the popular momentum is there for comprehensive reform, which would include a path to citizenship for many of the nation's 11 million undocumented immigrants. But it'll take plenty of political capital from President Obama and leaders in both parties on Capitol Hill to make it happen. Immigration-reform activists, who have been pushing for reform for years, are understandably impatient. This week police arrested 15 who blocked traffic at a demonstration in Orlando. There are plenty of selling points for comprehensive immigration reform. An opportunity for millions of immigrants to get on the right side of the law. Stronger border security. The chance for law enforcement to focus limited resources on real threats to public safety, instead of nannies and fruit pickers. A more reliable work force to meet the needs of key industries. Reforms to let top talent from around the world stay here after studying in U.S. universities. The Senate passed its version of comprehensive immigration in June. It includes all of the benefits above. Its path to citizenship requires undocumented immigrants to pay fines, learn English, pass a criminal background check and wait more than a decade. So far, House Republicans have balked, taking a piecemeal rather than comprehensive approach. Many members fear being challenged from the right for supporting "amnesty." Yet polls show the public supports comprehensive reform. In June, a Gallup poll found 87 percent of Americans — including 86 percent of Republicans — support a pathway to citizenship like the one outlined in the Senate bill. Florida Republican Sen. Marco Rubio took flak from tea-party supporters for spearheading the comprehensive bill. Now, apparently aiming to mend fences, he says immigration should be handled piecemeal. He's politically savvy enough to know that's a dead end. But comprehensive reform won't have a chance without President Obama making full use of his bully pulpit to promote it, emphasizing in particular all that undocumented immigrants would need to do to earn citizenship. House Democratic leaders will have to underscore the president's message.

#### Will pass now --- compromise over citizenship is happening

ROXANA KOPETMAN / ORANGE COUNTY REGISTER, 1-6-’14, Immigration forces brace for a renewed battle, <http://www.ocregister.com/articles/immigration-596102-citizenship-percent.html>, jj

The new year is expected to bring more pressure on legislators and President Barack Obama not only to make big changes to immigration law, but to reconsider deportations, an issue that gained increasing attention from activists as the year progressed. In 2014, proponents of an overhaul expect to see new legislation. What that will look like is unclear. “We're reaching a compromise point,” predicted Alex Nowrasteh, immigration policy analyst for the Washington-based CATO Institute, a libertarian think tank. “There are about 30 (House) Republicans who support citizenship and about 85 who support legalization of some kind. I think they're going to find a compromise around legalizing, but not citizenship,” he said.

#### None of their non-uniques assume Obama’s conference strategy

Their evidence is in the context of a comprehensive immigration bill passing the house – we agree – that’s a pipedream – but the House will pass piecemeal legislation and go to conference with the Senate – which will lead to a comprehensive bill

* Boehner has upperhand

Iowa City Press Citizen, 1/3-’14, Our View: Still hope for needed reform of immigration law, <http://www.press-citizen.com/article/20140104/OPINION03/301040012/Our-View-Still-hope-needed-reform-immigration-law>, jj

Over the past few weeks, as Boehner has grown more publicly critical of the Tea Party opposition, the speaker has committed himself to supporting “step by step” moves to revise immigration laws. He isn’t yet on board with passing a comprehensive bill — like the one passed by the Senate over the summer — but he has signaled his willingness begin negotiating a deal. “The American people are skeptical of big, comprehensive bills, and frankly, they should be,” Boehner told reporters last month. “The only way to make sure immigration reform works this time is to address these complicated issues one step at a time. I think doing so will give the American people confidence that we’re dealing with these issues in a thoughtful way and a deliberative way.” The analysts predict that the best option would be for Boehner to push legislation in late spring or early summer — after most Republican lawmakers have moved through the primary process and can’t be attacked from the right because of their support for specific reforms. If the House passes a bill then, there would be sufficient time for further compromise in the conference committee phase. And if all goes well, the president would still be able to sign such legislation before the campaigns for the midterm elections get into full gear. And even if that mid-year effort fails, the legislation still could be brought up during the lame duck session in the last weeks of the year. Whether before or after the election, passing immigration reform would go a long way toward helping this Congress avoid the label of “most do-nothing Congress of all time.” But a bad bill is not necessarily better than no bill, and too many of the alternatives proposed in the House have been dismissed by immigration advocates as too little, too late. Whatever Boehner means right now by “step by step” measures is likely to seem inadequate to those who have been calling for more comprehensive immigration reform for years. And President Obama has been clear that, while he is open to taking a piecemeal approach during negotiations, those various parts still need to add up to the comprehensive nature of the bill passed by the Senate this summer. We remain optimistic that pragmatic politics will help ensure that the most significant immigration reform legislation in nearly four decades will somehow manage to make it through the legislative sausage-making process in a version that will be worthy of being signed into law by the president.

#### Will pass this spring but PC is key and window of opportunity is narrow

Jessica Michele Herring, 1-2, 2014, The Latino Post, Immigration Reform 2014: Boehner Said to Support 'Step by Step' Moves to Pass Immigration Reform, <http://www.latinopost.com/articles/2698/20140102/immigration-reform-2014-boehner-said-to-support-step-by-step-moves-to-pass-immigration-reform.htm>, jj

House Speaker John Boehner has indicated that he may support limited immigration reforms in 2014, giving immigration activists hope that comprehensive immigration reform will pass this year. Boehner already showed some signs of moving toward reform in recent months. He recently hired Rebecca Tallent, an immigration advisor to Sen. John McCain. Tallent fought for comprehensive immigration overhauls in 2003 and 2007. Tallent's hiring, as well as Boehner's critical comments of Tea Party Republicans who opposed the budget deal in Congress, indicate that he wants to pass reform, despite opposition from conservative GOP members. Boehner said that Tea Party groups, which are against an immigration compromise, have "lost all credibility." This week, Boehner's aides said he wants to initiate "step by step" moves to revise immigration measures, according to The New York Times. Other House Republicans, who see immigration reform as a way to gain Hispanic voters ahead of the 2016 presidential election, said they could pass separate bills that would provide a faster path to citizenship for agricultural laborers, increase the number of visas for high-tech workers, and allow young immigrants who came to America as children to become citizens. Aides still say that Boehner is opposed to a single, comprehensive immigration reform bill, like the one passed by the Senate in June. The Senate-passed measure calls for tightened border security and a path to citizenship for 11 million undocumented immigrants. "The American people are skeptical of big, comprehensive bills, and frankly, they should be," Boehner told reporters recently. "The only way to make sure immigration reform works this time is to address these complicated issues one step at a time. I think doing so will give the American people confidence that we're dealing with these issues in a thoughtful way and a deliberative way." President Obama also said that he is open to a piecemeal approach on immigration, but only if it does not abandon the goals passed by the Senate this summer. However, policy analysts say that reconciling the Senate goals with those of Republicans in a piecemeal fashion will be difficult. "We've got to grab the brass ring while it's there," said Kevin Appleby, the director of migration policy at the United States Conference of Catholic Bishops. "I've been in this debate long enough to know you can't rely on anything happening at a certain time or on assurances that we're going to do something this year." While immigration activists are calling for an overhaul in 2014, lawmakers say they plan to pass legislation in the House by May or June, after most Republicans are through with their primary campaigns. They plan to reach a compromise that Obama could sign before the 2014 midterm elections next fall. "That's our first window," said Jim Wallis, president of Sojourners, a Christian social justice organization in Washington that is working to change the immigration laws. "We are organizing, mobilizing, getting ready here. I do really think that we have a real chance at this in the first half of the year."

#### Budget deal creates momentum

Margaret Talev, 1-5-‘14, Bloomberg, Obama Finds Last Year’s Political Wrangles in New Year’s In-Box, <http://www.bloomberg.com/news/2014-01-05/obama-finds-last-year-s-political-wrangles-in-new-year-s-in-box.html>, jj

At the same time, aides to the president expressed optimism in vacation briefings that a bipartisan budget deal struck last month to avert a government shutdown for two years will pave the way on these issues as well as larger goals including immigration reform. New ‘Momentum’ “At the beginning of the new year, we’re hopeful that Congress can capitalize on the bipartisan momentum generated by last year’s small budget deal and make progress on other economic priorities, including extending employment benefits,” said White House spokesman Josh Earnest. That optimism was echoed by House Speaker John Boehner’s spokesman Brendan Buck. “The takeaway from the year-end budget deal should be that we can accomplish things if we focus on the common ground and not get hung up on issues that divide us,” he said. “This year will only be productive if the White House has learned that lesson.”

### PC Up

#### Obama’s political capital is rebounding now

Obeidallah, The Daily Beast, 1-3-14

(Dean, “6 Reasons This Could Be Obama’s Best Year as President,” <http://www.thedailybeast.com/articles/2014/01/03/6-reasons-this-could-be-obama-s-best-year-as-president.html>)

With the economy improving and Obamacare working, the president has a lot to be optimistic about. “Obama is done! He’s a lame duck. It’s over for the president.” These are the type of the comments we saw in the media as 2013 came to a close. As some political pundits saw it, Obama can forget seeing any of his proposals enacted and should simply enjoy the perks of being president -like free cable and limo rides. Could they be right? Sure, it’s possible. Obama’s approval ratings are near his lowest as president and his disapproval rating is at 54 percent, his worst ever. With that said, 2014 could be a great year for the president—in fact, it could be his best ever. I know some of you are thinking: I must be crazy. Well, a lot of people who have been called crazy later went on to be recognized as geniuses. Of course, some who were labeled as “crazy” actually turned out to have mental disorders. In either event, here are the six reasons that 2014 could be Obama’s finest. 1. The US economy is improving: A good economy generally equals higher approval ratings for president and in turn more political capital for him to push for his proposals. Even President Clinton had an approval rating of 73% in the midst of his impeachment. Why? One big reason was the US economy was strong with unemployment at 4.5% and falling. Currently, the US economy appears poised for growth. The unemployment rate is at its lowest point during the Obama administration at 7%. This is in sharp contrast to the 10% unemployment rate we saw at one time in Obama’s first term. In addition, the stock market just had its best year since 1997, the GDP for the third quarter of 2013 grew at a surprisingly strong 3.6% annual rate and the IMF recently raised its 2014 growth projection for the US economy. 2. Obamacare will get better: It has to-It can’t get worse. And Obamacare was the number 1 reason cited in a recent NBC News/WSJ poll for why people gave the president only a 43% approval rating. But here’s the thing: The Obamacare website issues are now behind us and over 2 million people and counting have signed up for the program. That means Obamacare will soon be judged on its actual merits—not on website issues nor on the constant Republican fear mongering about the law’s uncertainties. If we start hearing stories from Americans whose lives have been made better by this law, expect to see public support rise. 3. Obama has key issues on his side: President Obama recently stated that 2014 will be his “Year of action.” So expect to see him push hard on issue like immigration reform and raising the minimum wage. Both of these have broad public support. Immigration reform -including a pathway to citizenship as Obama has championed-has the support of 73% of voters. On minimum wage, a November Gallup Poll found that 76% of Americans support a raise form the current level of $7.25 an hour to $9—including 76% of independent voters. Obama is in a win-win situation on these two issues. They pass and it helps him as well as Congressional Dems. The Republicans block them and it will hurt their standing. 4. Republican Party has no ideas: Frankly, the only issue the badly splintered Republican Party seems to agree upon is to repeal Obamacare. That’s a lot to stake your entire 2014 midterm election campaign on—especially given that there’s a real possibility that Obamacare becomes more popular during the year. If the Obamacare issues fades, so, too, do the GOP’s chances of success in 2014 election since the only other issue getting them press is the infighting between its Tea Party and establishment wings. 5. Political fortunes change fast: Anyone remember right after the government shutdown in October headlines declaring, “Major damage to GOP after shutdown?” Polls at that time found that the public favored Democrats 50% to 42% over Republicans in generic Congressional match ups. Flash forward just two months later and pollsters now find Republicans leading Democrats 49% to 44%. Who knows where we will stand by November 2014 but all you can say for sure is that the current polls numbers are about as meaningful as the storyline on Duck Dynasty. 6. 2013 was so bad for Obama he can only go up: When we look back a year from now on the fortunes of President Obama, it will, of course, be contrasted to 2013. Lets be honest: There are some benefits to having really bad year—namely, it’s easier to make the next one appear better.

### A2: Thumpers – Top Level

#### Immigration sucks out all the oxygen- it’s the top issue

John Linder served in Congress for 18 years from Georgia 12-30-2013 http://www.theblaze.com/contributions/linder-letter-immigration-reform-will-be-the-issue-of-2014/-

Every year another issue sucks all of the oxygen out of Washington, D.C. It will be billed as “the Issue of a Generation” and will be driven by politics rather than policy. If the proposed solution requires more government it will get favorable traction in the media. In 1997, it was tobacco. Gun control is always just a tragedy away. Global Warming worked for a while. However, with 17 years of no warming behind us those folks have turned to Global Wierding: Storms, droughts, freezes, or whatever else that might occur that you can be blamed for. That issue, thankfully, is going away too. Obamacare was it for several years, but it seems not to be working out as intended so it is time to turn your attention to the new issue of our generation – Comprehensive Immigration Reform. And 2014 will be the year in which we must repair our immigration laws that are, as you know, irretrievably broken.

#### It’s top of the agenda

Mike Ludwig is a Truthout reporter, 1-6-’14, The Year of the Immigrant Rights Movement, <http://truth-out.org/news/item/21006-the-year-of-the-immigrant-rights-movement>, jj

President Obama recently said that immigration reform is one of his top priorities for 2014, and observers point out that recent moves by Boehner's office suggest that the House may take up immigration reform during the next year despite opposition from hardline Tea Party members who oppose giving undocumented people a path to citizenship and support harsh immigration policies that would expand deportation and detention efforts.

### A2: Budget

#### Comes before budget

Lisa Lerer & Roxana Tiron - Oct 24, 2013, Bloomberg, Republicans After Shutdown Seen Losing Again on Immigration, <http://www.bloomberg.com/news/2013-10-24/republicans-after-shutdown-seen-losing-again-defying-immigration.html>, jj

Immigration First The president has no nationwide barnstorming tour scheduled to promote the issue, according to administration officials, who asked for anonymity to discuss internal strategy. In remarks after the partial government shutdown ended last week, Obama listed immigration first among three legislative priorities, along with action on the budget and passage of a farm bill.

### A2: Unemployment Benefits

#### Reid pushes and it’s just a procedural vote

Jason Seher, 1-5-’14, CNN, 5 tests for kumbaya on Capitol Hill, <http://politicalticker.blogs.cnn.com/2014/01/05/5-things-that-will-measure-obama-congress-comity/>, jj

Still, despite the growing chorus of discord and doubters, Reid remained confident he could find the 60 votes necessary to clear the first procedural hurdle in the deeply divided body on Monday.

### A2: Farm Bill

#### Comes before farm-bill

Lisa Lerer & Roxana Tiron - Oct 24, 2013, Bloomberg, Republicans After Shutdown Seen Losing Again on Immigration, <http://www.bloomberg.com/news/2013-10-24/republicans-after-shutdown-seen-losing-again-defying-immigration.html>, jj

Immigration First The president has no nationwide barnstorming tour scheduled to promote the issue, according to administration officials, who asked for anonymity to discuss internal strategy. In remarks after the partial government shutdown ended last week, Obama listed immigration first among three legislative priorities, along with action on the budget and passage of a farm bill.

## Link

### A2: Winners Win---Top Level

#### The plan isn’t a win---our links prove it has no supporters. Also, don’t know how this works --- you read a court aff

#### Also doesn’t disprove that Obama won’t fight the plan

***( ) Link outweighs “winners win” on timeframe***

**Silber ‘7**

(PhD Political Science & Communication – focus on the Rhetoric of Presidential Policy-Making – Prof of Poli Sci – Samford, [Marissa, WHAT MAKES A PRESIDENT QUACK?, Prepared for delivery at the 2007 Annual Meeting of the American Political Science Association, August 30th-September 2nd, 2007, UNDERSTANDING LAME DUCK STATUS THROUGH THE EYES OF THE MEDIA AND POLITICIANS]

Important to the discussion of political capital is whether or not it can be replenished over a term. If a President expends ***p***olitical ***c***apital on his agenda, can it be replaced? Light suggests that “capital declines over time – public approval consistently falls: midterm losses occur” (31). Capital can be rebuilt, but ***only to a limited extent***. The decline of capital makes it difficult to access information, recruit more expertise and maintain energy. If a lame duck President can be defined by a loss of political capital, this paper helps determine if such capital can be replenished or if a lame duck can accomplish little. Before determining this, a definition of a lame duck President must be developed.

#### Wins don’t spillover---capital is finite---prioritizing issues is key

Schultz 13 David Schultz is a professor at Hamline University School of Business, where he teaches classes on privatization and public, private and nonprofit partnerships. He is the editor of the Journal of Public Affairs Education (JPAE). “Obama's dwindling prospects in a second term,” MinnPost, 1/22, http://www.minnpost.com/community-voices/2013/01/obamas-dwindling-prospects-second-term

Four more years for Obama. Now what? What does Barack Obama do in his second term and what can he accomplish? Simply put, his options are limited and the prospects for major success quite limited. Presidential power is the power to persuade, as Richard Neustadt famously stated. Many factors determine presidential power and the ability to influence including personality (as James David Barber argued), attitude toward power, margin of victory, public support, support in Congress, and one’s sense of narrative or purpose. Additionally, presidential power is temporal, often greatest when one is first elected, and it is contextual, affected by competing items on an agenda. All of these factors affect the political power or capital of a president. Presidential power also is a finite and generally decreasing product. The first hundred days in office – so marked forever by FDR’s first 100 in 1933 – are usually a honeymoon period, during which presidents often get what they want. FDR gets the first New Deal, Ronald Reagan gets Kemp-Roth, George Bush in 2001 gets his tax cuts. Presidents lose political capital, support But, over time, presidents lose political capital. Presidents get distracted by world and domestic events, they lose support in Congress or among the American public, or they turn into lame ducks. This is the problem Obama now faces. Obama had a lot of political capital when sworn in as president in 2009. He won a decisive victory for change with strong approval ratings and had majorities in Congress — with eventually a filibuster margin in the Senate, when Al Franken finally took office in July. Obama used his political capital to secure a stimulus bill and then pass the Affordable Care Act. He eventually got rid of Don’t Ask, Don’t Tell and secured many other victories. But Obama was a lousy salesman, and he lost what little control of Congress that he had in the 2010 elections.

### Other part of Hirsch

#### Reject Hirsh---he’s a staff writer with no qualifications---hasn’t conducted any studies

#### PC’s real, observable, and quantifiable---scholarly work proves---and you should reject quibbles like Hirsh

Kimberly L. Casey 8, Visiting Assistant Professor of Political Science at William Jewel College, 2008, “Defining Political Capital: A Reconsideration of Bourdieu’s Interconvertibility Theory,” http://lilt.ilstu.edu/critique/spring%202008/casey.pdf

Abstract: This article examines the concept “political capital” (PC) and its context in American politics. Political capital is ill-defined, little understood, yet an important concept for understanding political exchange and relationships in the political arena. I establish a definition based upon Pierre Bourdieu’s interconvertibility theory, which indicates that capital types, such as economic, social, and symbolic forms, interact and can be exchanged for one another. Since the material and non-material components of capital variations are transposable, it can be argued that no capital form is essentially “pure”—every type of capital contains elements of other varieties. Political capital, therefore, is an amalgamation of capital types combined in various ways for specific political markets. It is market demand that shapes capital formation. Capital elements from other capital types inherent in the candidacy market are identified as an example. An index for measuring this variant of political capital is created, demonstrating its conceptual viability. ¶ Introduction: After the 2004 U.S. presidential election, George W. Bush publicized his intent to utilize “political capital” for future projects garnered as a result of his victory. But what exactly is political capital? However much the term is bandied about by politicians or the press, political capital has no established definition in political science literature. Although it remains ill-defined and unmeasured, it is an important concept for understanding political exchange and relationships in the political arena despite the reservations some political scientists have expressed about its applicability because of its complex material and nonmaterial associations. An analysis of sociologist Pierre Bourdieu’s interconvertibility theory allows for conceptualization of material and non-material of interactions among capital forms making it possible to define political capital and design an index to measure it based upon previous capital literature.¶ To develop an empirical basis for political capital, this article first examines the associations it connotes in the popular press today. In contrast, a definition of political capital based upon capitalization literature and Bourdieu’s interconvertibility theory is presented. Then, a theory of political capital functions and markets are suggested. Theorizing leads to proposals for objective means of identification and measurement. To illustrate the market association between capital and politics, an index associated with the resources associated with the candidacy market is offered. The paper concludes with directions that studying the concept of political capital may take towards theory-building and framework creation.¶ Defining Political Capital ¶ It is erroneous to refer a “body” of PC literature when seeking a definition. Most writers and concerned actors who invoke the term political capital assume that its meaning is understood. It is inferred to be an entity which political actors possess, build up and spend. 1 However, a definition of “political capital” is typically never stated—the reader or observer is left to determine their own definition based upon the politician’s or journalist’s usage of the term (Suellentrop 2004; Kennicott 2004; “A Year of Setbacks” 2005; and Froomkin 2004). The subjectivity is not reflective of what political capital conceptually means in and to the political arena. Without a sound definition that accurately portrays the elements of political capital as it works within a political marketplaces, such as the electoral arena, and among office holders (executive, legislative, and judicial), bureaucracy, and in society in general, the concept is meaningless. ¶ Defining and utilizing PC as a viable political variable can evolve from the proliferation of capital theories in various fields of study. Political capital can and should be associated with a wide variety of previous “capital” interpretations. The key to explicating political capital is within capital literatures and how they address materialism, non-materialism, and combining the two elements.2¶ The theory of capital is traditionally associated with economics. There is no clear consensus in defining capital as an ideological function applicable beyond material exchange as expounded in economic capital theory, however. Yet nonmaterial forms of capital are well established in scholarly literature. Most of the “capital type” definitions hover around the meaning and terminology of economic capital. Certain theorists believe that all capital forms, regardless of their composition or purpose, connect in some way with economic capital. 3 Pierre Bourdieu’s work is invaluable in understanding capital as conceptually distinguishable from its individual aberrations as a material phenomenon. Bourdieu extends the ideas and metaphor of economic interest (material or physical pursuits) to include non-economic goods and services (symbolic or nonmaterial pursuits). Within this conceptualization, Bourdieu constructs a science of practices that “analyzed all human functions as ‘oriented towards the maximization of material or symbolic profit.’” 4 His theory of capital has limitations, however. He relies on ideal types and lacks the empirical research needed to support much theory. It is impossible to refer to capital-types and not acknowledge Bourdieu’s contributions to multiple capital species (Bourdieu1986; Kane 2001; Putnam 2001; Becker 1993); Fitz-Enz 2000; Davenport 1999; Marr 2005).

**2NC – Fight to Defend**

#### Plan is a perceived loss for Obama that saps his capital

Loomis, 7 --- Department of Government at Georgetown

(3/2/2007, Dr. Andrew J. Loomis is a Visiting Fellow at the Center for a New American Security, “Leveraging legitimacy in the crafting of U.S. foreign policy,” pg 35-36, [http://citation.allacademic.com//meta/p\_mla\_apa\_research\_citation/1/7/9/4/8/pages179487/p179487-36.php](http://citation.allacademic.com/meta/p_mla_apa_research_citation/1/7/9/4/8/pages179487/p179487-36.php))

Declining political authority encourages defection. American political analyst Norman Ornstein writes of the domestic context,

In a system where a President has limited formal power, perception matters. The reputation for success—the belief by other political actors that even when he looks down, a president will find a way to pull out a victory—is the most valuable resource a chief executive can have. Conversely, the widespread belief that the Oval Office occupant is on the defensive, on the wane or without the ability to win under adversity can lead to disaster, as individual lawmakers calculate who will be on the winning side and negotiate accordingly. In simple terms, winners win and losers lose more often than not.

Failure begets failure. In short, a president experiencing declining amounts of political capital has diminished capacity to advance his goals. As a result, political allies perceive a decreasing benefit in publicly tying themselves to the president, and an increasing benefit in allying with rising centers of authority. A president’s incapacity and his record of success are interlocked and reinforce each other. Incapacity leads to political failure, which reinforces perceptions of incapacity. This feedback loop accelerates decay both in leadership capacity and defection by key allies.

The central point of this review of the presidential literature is that the sources of presidential influence—and thus their prospects for enjoying success in pursuing preferred foreign policies—go beyond the structural factors imbued by the Constitution. Presidential authority is affected by ideational resources in the form of public perceptions of legitimacy. The public offers and rescinds its support in accordance with normative trends and historical patterns, non-material sources of power that affects the character of U.S. policy, foreign and domestic.

This brief review of the literature suggests how legitimacy norms enhance presidential influence in ways that structural powers cannot explain. Correspondingly, increased executive power improves the prospects for policy success. As a variety of cases indicate—from Woodrow Wilson’s failure to generate domestic support for the League of Nations to public pressure that is changing the current course of U.S. involvement in Iraq—the effective execution of foreign policy depends on public support. Public support turns on perceptions of policy legitimacy. As a result, policymakers—starting with the president—pay close attention to the receptivity that U.S. policy has with the domestic public. In this way, normative influences infiltrate policy-making processes and affect the character of policy decisions.

#### President has to spend political capital defending war powers

Samples, 11 --- director of the Center for Representative Government at CATO

(10/27/2011, John, “Congress Surrenders the War Powers: Libya, the United Nations, and the Constitution,” <http://www.cato.org/sites/cato.org/files/pubs/pdf/pa687.pdf>))

But political representation has other fac-ets. It has given voice to public dissatisfaction about wars proper and limited wars. Con-gress “has historically been actively engaged in debates over the proper conduct of major military initiatives. It has proposed, publicly debated, and voted on various legislative initiatives to authorize or curtail the use of force.” Congress has also held hearings about the conduct of limited and proper wars. 215 Many believe that such legislative actions have little effect on the president. Yet such ac-tions can affect the cost-benefit calculations of the president in pursuing or failing to pur-sue a limited war. Congress can raise the costs of a policy by shaping and mobilizing public opinion against a war, thereby increasing the cost in political capital a president must pay to sustain a policy. Congressional actions also signal disunity (or unity) to foreign actors, who in turn act on their expectations, thereby raising the costs of a limited war. Congressional actions also affect presidential expec-tations about how the conduct of a war will be received in the legislature; Congress can thus influence presidential policies without directly overturning them. 216 Systematic evi-dence indicates that since 1945 Congress has been able to influence presidential policies through these means. 217 Although short of constitutional propriety, congressional voice can matter in war-making.

### A2: stimson

#### Obama would fight to retain authority, even if he supported the plan’s practice

Gordon Silverstein, UC Berkeley Assistant Professor, December 2009, Bush, Cheney, and the Separation of Powers: A Lasting Legal Legacy?, http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1161&context=schmooze\_papers

Less than six months into the new administration, many of Obama’s staunch supporters have been surprised—even appalled—that the new president not only had failed to fully repudiate many of the Bush-Cheney **legal** policies, but in some instances, actually seems to be embracing and extending those policy choices (Gerstein 2009; Goldsmith 2009a, 2009b; Greenwald 2009a, 2009b; Herbert 2009; Savage 2009a). In areas ranging from the assertion of the state secrets privilege in efforts to shut down lawsuits over warrantless wiretapping (Al-Haramain v. Obama; Jewel v. NSA) and extraordinary rendition (Mohamed v. Jeppesen Dataplan) to those concerning lawsuits over detention and treatment at Guantánamo (Bostan v. Obama) and the reach of habeas corpus to Bagram Air Force Base in Afghanistan (Al Maqaleh v. Gates), as well as the continuing use of signing statements, the new Obama administration’s policies in a number of areas that were of intense interest during the campaign certainly do appear less dramatically different than one might have expected. Does this suggest that Obama actually will salvage and enhance the Bush-Cheney legal legacy? Early evidence suggests the answer is no. **There is a critical difference between policy and the legal foundation** on which that policy is constructed. The policies may be quite similar, at least in the first few months of the new administration, but the legal legacy will turn on the underlying legal arguments, the legal foundation on which these policies are built. Here we find a dramatic difference between Obama and Bush. Both are **clearly interested in maintaining strong executive power**, but whereas Bush built his claims on broad constitutional arguments, insisting that the executive could act largely unhampered by the other branches of government, the Obama administration has made clear that its claims to power are built on statutes passed by Congress, along with interpretations and applications of existing judicial doctrines. It may be the case, as one of the Bush administration’s leading Office of Legal Counsel attorneys argued, that far from reversing Bush-era policies, the new administration “has copied most of the Bush program, has expanded some of it, and has narrowed only a bit” (Goldsmith 2009a). But what is profoundly different are the constitutional and legal default foundations on which these policies, and the assertions of executive power to enforce them, are built. **Obama**, like virtually every chief executive in American History, **seems committed to building and holding executive power**. But unlike Bush, Obama is developing a far more traditional approach to this task, building his claims not on constitutional assertions of inherent power, but rather interpreting and applying existing statutes and judicial doctrines or, where needed, seeking fresh and expansive legislative support for his claims.

### Yes Link

#### Courts link

Mirengoff 10 [Paul E. Mirengoff, JD Stanford, Attorney in DC, http://webcache.googleusercontent.com/search?q=cache:aNOGdaFrKhYJ:www.fed-soc.org/debates/dbtid.41/default.asp+obama+minimalism+blame+court+confirmation&cd=1&hl=en&ct=clnk&gl=us&client=firefox-a, 6-23-10]

There's a chance that the Democrats' latest partisan innovation will come back to haunt them. Justice Sotomayor and soon-to-be Justice Kagan are on record having articulated a traditional, fairly minimalist view of the role of judges. If a liberal majority were to emerge -- or even if the liberals prevail in a few high profile cases -- the charge of "deceptive testimony" could be turned against them. And if Barack Obama is still president at that time, he likely will receive some of the blame.

### 1NC – Gitmo

***Indefinite detention restrictions will cost Obama tremendous political capital***

Matthew **Waxman**, July 30, 20**13,** law professor at Columbia Law School, where he co-chairs the Roger Hertog Program on Law and National Security. He is also Adjunct Senior Fellow for Law and Foreign Policy at the Council on Foreign Relations and a member of the Hoover Institution Task Force on National Security and Law. He previously served in senior policy positions at the State Department, Defense Department, and National Security Council, “Closing Guantanamo Would Still Leave Some Toughest Decisions for the Next President,” Lawfare Blog, <http://www.lawfareblog.com/2013/07/closing-guantanamo-would-still-leave-some-toughest-decisions-for-the-next-president/>, KEL

At last week’s Senate Judiciary subcommittee hearing, **advocates of closing Guantanamo**, such as chairman Dick Durbin and Human Rights First president Elisa Massimino, **talked about how to close Guantanamo: in particular, by transferring or releasing most detainees to other countries and then moving the remainder into the U**nited **S**tates. Of those moved into the United States, many would be prosecuted (whether in civilian or military courts), but an undetermined number of very dangerous detainees would continue to be held without criminal trial under law-of-war authority until cessation of hostilities – that is, until the end of the ongoing war against al Qaida and its close allies. Some version of this seems to me to be the only realistic approach to closing Guantanamo. Although **pulling this off will require that** President ***Obama spend tremendous political capital***, it would actually push some very difficult decisions onto his successor’s shoulders, too.

###  Detention Links

#### Plan requires sustained involvement of Obama

Walter E. Kuhn 11\*, \* Minority Chief Counsel, United States Senate Judiciary Committee, Subcommittee on the Constitution, Civil Rights and Human Rights. J.D. Duke University School of Law, 2006; B.A, University of North Carolina at Chapel Hill, 2003. 2011, Seton Hall Legislative Journal, 35 Seton Hall Legis. J. 221, ARTICLE: THE TERRORIST DETENTION REVIEW REFORM ACT: DETENTION POLICY AND POLITICAL REALITY, Lexis, jj

Despite an early flurry of activity and a deadline imposed to close the detention center at Guantanamo Bay, the Obama administration has shown little appetite for confronting the difficult issues relating to detention in the War on Terror. Other than a relatively minor revamping of the military commissions system, President Obama's pre-election criticism of Bush administration policies and post-election discussion of charting a new course in detention policy has dissolved into paralysis and procrastination. Political demagoguery and legitimate policy differences among senators and congressmen create an environment inhospitable to the development of consensus detention legislation, but those obstacles could be overcome with leadership from the President. § Marked 10:14 § Without that leadership, though, detention policy has merely become a tool used by those on both the political left and right for their own electoral reasons.

With the political branches unwilling or unable to confront detention policy in a serious and substantive way, day-to-day policymaking has largely fallen to the federal judiciary. This abdication serves those politicians interested in detention policy only as a political issue, as they can periodically score points off of the latest developments while avoiding the responsibility of legislating. In fact, the very reasons that make the avoidance of detention policy attractive [\*271] - responsibility for a complex policy implicating national security and civil liberties - demand the input of all branches of government. When a detainee is released or determined to be lawfully held, the American people should be confident that the decision was a result of a policy developed through thoughtful interaction between the branches of government. Currently, that is not the case.

If enacted, TDERRA or similar legislation would provide much-needed congressional and presidential input into detainee habeas proceedings. Undoubtedly, the issues are complex, the stakes are high, and the politics are potent, but Congress and the President should coalesce to bless some form of procedural rules for these proceedings. In their absence, habeas petitions continue to be adjudicated with the judges suffering from a lack of procedural clarity, the litigants unable to expect decisional consistency, and the American people impacted by detention policy written by a single, unelected branch of government.