# 1NC

## 1NC Debt Ceiling DA

#### Obama’s pressuring the GOP with a strong display of Presidential strength and staying on message – the GOP will cave

Dovere, 10/1

(Edward, Politico, “Government shutdown: President Obama holds the line” <http://www.politico.com/story/2013/10/government-shutdown-president-obama-holds-the-line-97646.html?hp=f3>)

President Barack Obama started September in an agonizing, extended display of how little sway he had in Congress. He ended the month with a display of resolve and strength that could redefine his presidency. All it took was a government shutdown. This was less a White House strategy than simply staying in the corner the House GOP had painted them into — to the White House’s surprise, Obama was forced to do what he so rarely has as president: he said no, and he didn’t stop saying no. For two weeks ahead of Monday night’s deadline, Obama and aides rebuffed the efforts to kill Obamacare with the kind of firm, narrow sales pitch they struggled with in three years of trying to convince people the law should exist in the first place. There was no litany of doomsday scenarios that didn’t quite come true, like in the run-up to the fiscal cliff and the sequester. No leaked plans or musings in front of the cameras about Democratic priorities he might sacrifice to score a deal. After five years of what’s often seen as Obama’s desperation to negotiate — to the fury of his liberal base and the frustration of party leaders who argue that he negotiates against himself. Even his signature health care law came with significant compromises in Congress. Instead, over and over and over again, Obama delivered the simple line: Republicans want to repeal a law that was passed and upheld by the Supreme Court — to give people health insurance — or they’ll do something that everyone outside the GOP caucus meetings, including Wall Street bankers, seems to agree would be a ridiculous risk. “If we lock these Americans out of affordable health care for one more year,” Obama said Monday afternoon as he listed examples of people who would enjoy better treatment under Obamacare, “if we sacrifice the health care of millions of Americans — then they’ll fund the government for a couple more months. Does anybody truly believe that we won’t have this fight again in a couple more months? Even at Christmas?” The president and his advisers weren’t expecting this level of Republican melee, a White House official said. Only during Sen. Ted Cruz’s (R-Texas) 21-hour floor speech last week did the realization roll through the West Wing that they wouldn’t be negotiating because they couldn’t figure out anymore whom to negotiate with. And even then, they didn’t believe the shutdown was really going to happen until Saturday night, when the House voted again to strip Obamacare funding. This wasn’t a credible position, Obama said again Monday afternoon, but rather, bowing to “extraneous and controversial demands” which are “all to save face after making some impossible promises to the extreme right wing of their political party.” Obama and aides have said repeatedly that they’re not thinking about the shutdown in terms of political gain, but the situation’s is taking shape for them. Congress’s approval on dealing with the shutdown was at 10 percent even before the shutters started coming down on Monday according to a new CNN/ORC poll, with 69 percent of people saying the House Republicans are acting like “spoiled children.” “The Republicans are making themselves so radioactive that the president and Democrats can win this debate in the court of public opinion” by waiting them out, said Jim Manley, a Democratic strategist and former aide to Senate Majority Leader Harry Reid who has previously been critical of Obama’s tactics. Democratic pollster Stan Greenberg said the Obama White House learned from the 2011 debt ceiling standoff, when it demoralized fellow Democrats, deflated Obama’s approval ratings and got nothing substantive from the negotiations. “They didn’t gain anything from that approach,” Greenberg said. “I think that there’s a lot they learned from what happened the last time they ran up against the debt ceiling.” While the Republicans have been at war with each other, the White House has proceeded calmly — a breakthrough phone call with Iranian President Hassan Rouhani Friday that showed him getting things done (with the conveniently implied juxtaposition that Tehran is easier to negotiate with than the GOP conference), his regular golf game Saturday and a cordial meeting Monday with his old sparring partner Israeli Prime Minister Benjamin Netanyahu. White House press secretary Jay Carney said Monday that the shutdown wasn’t really affecting much of anything. “It’s busy, but it’s always busy here,” Carney said. “It’s busy for most of you covering this White House, any White House. We’re very much focused on making sure that the implementation of the Affordable Care Act continues.” Obama called all four congressional leaders Monday evening — including Boehner, whose staff spent Friday needling reporters to point out that the president hadn’t called for a week. According to both the White House and Boehner’s office, the call was an exchange of well-worn talking points, and changed nothing. Manley advised Obama to make sure people continue to see Boehner and the House Republicans as the problem and not rush into any more negotiations until public outrage forces them to bend. “He may want to do a little outreach, but not until the House drives the country over the cliff,” Manley said Monday, before the shutdown. “Once the House has driven the country over the cliff and failed to fund the government, then it might be time to make a move.” The White House believes Obama will take less than half the blame for a shutdown – with the rest heaped on congressional Republicans. The divide is clear in a Gallup poll also out Monday: over 70 percent of self-identifying Republicans and Democrats each say their guys are the ones acting responsibly, while just 9 percent for both say the other side is. If Obama is able to turn public opinion against Republicans, the GOP won’t be able to turn the blame back on Obama, Greenberg said. “Things only get worse once things begin to move in a particular direction,” he said. “They don’t suddenly start going the other way as people rethink this.”

#### The plan causes an inter-branch fight that derails Obama’s agenda

Kriner 10

Douglas Kriner, Assistant Profess of Political Science at Boston University, 2010, After the Rubicon: Congress, Presidents, and the Politics of Waging War, p. 67-69

Raising or Lowering Political Costs by Affecting Presidential Political Capital Shaping both real and anticipated public opinion are two important ways in which Congress can raise or lower the political costs of a military action for the president. However, focusing exclusively on opinion dynamics threatens to obscure the much broader political consequences of domestic reaction—particularly congressional opposition—to presidential foreign policies. At least since Richard Neustadt's seminal work Presidential Power, presidency scholars have warned that costly political battles in one policy arena frequently have significant ramifications for presidential power in other realms. Indeed, two of Neustadt's three "cases of command"—Truman's seizure of the steel mills and firing of General Douglas MacArthur—explicitly discussed the broader political consequences of stiff domestic resistance to presidential assertions of commander-in-chief powers. In both cases, Truman emerged victorious in the case at hand—yet, Neustadt argues, each victory cost Truman dearly in terms of his future power prospects and leeway in other policy areas, many of which were more important to the president than achieving unconditional victory over North Korea." 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." 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.6° 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 both 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 priorities, such as Social Security and immigration reform, failedperhaps 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. 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

#### That consumes his capital and causes a default

Lillis, 9/7

(Mike, The Hill, “Fears of wounding Obama weigh heavily on Democrats ahead of vote”

The prospect of wounding President Obama is weighing heavily on Democratic lawmakers as they decide their votes on Syria. Obama needs all the political capital he can muster heading into bruising battles with the GOP over fiscal spending and the debt ceiling. Democrats want Obama to use his popularity to reverse automatic spending cuts already in effect and pay for new economic stimulus measures through higher taxes on the wealthy and on multinational companies. But if the request for authorization for Syria military strikes is rebuffed, some fear it could limit Obama's power in those high-stakes fights. That has left Democrats with an agonizing decision: vote "no" on Syria and possibly encourage more chemical attacks while weakening their president, or vote "yes" and risk another war in the Middle East. “I’m sure a lot of people are focused on the political ramifications,” a House Democratic aide said. Rep. Jim Moran (D-Va.), a veteran appropriator, said the failure of the Syria resolution would diminish Obama's leverage in the fiscal battles. "It doesn't help him," Moran said Friday by phone. "We need a maximally strong president to get us through this fiscal thicket. These are going to be very difficult votes."

#### Collapses the global economy

Davidson 9-10

Adam Davidson 9/10/13, economy columnist for The New York Times, co-founder of Planet Money, NPR’s team of economics reporters, “Our Debt to Society,” NYT, <http://www.nytimes.com/2013/09/15/magazine/our-debt-to-society.html?pagewanted=all&_r=0>

If the debt ceiling isn’t lifted again this fall, some serious financial decisions will have to be made. Perhaps the government can skimp on its foreign aid or furlough all of NASA, but eventually the big-ticket items, like Social Security and Medicare, will have to be cut. At some point, the government won’t be able to pay interest on its bonds and will enter what’s known as sovereign default, the ultimate national financial disaster achieved by countries like Zimbabwe, Ecuador and Argentina (and now Greece). In the case of the United States, though, it won’t be an isolated national crisis. If the American government can’t stand behind the dollar, the world’s benchmark currency, then the global financial system will very likely enter a new era in which there is much less trade and much less economic growth. It would be, by most accounts, the largest self-imposed financial disaster in history.¶ Nearly everyone involved predicts that someone will blink before this disaster occurs. Yet a small number of House Republicans (one political analyst told me it’s no more than 20) appear willing to see what happens if the debt ceiling isn’t raised — at least for a bit. This could be used as leverage to force Democrats to drastically cut government spending and eliminate President Obama’s signature health-care-reform plan. In fact, Representative Tom Price, a Georgia Republican, told me that the whole problem could be avoided if the president agreed to drastically cut spending and lower taxes. Still, it is hard to put this act of game theory into historic context. Plenty of countries — and some cities, like Detroit — have defaulted on their financial obligations, but only because their governments ran out of money to pay their bills. No wealthy country has ever voluntarily decided — in the middle of an economic recovery, no less — to default. And there’s certainly no record of that happening to the country that controls the global reserve currency.¶ Like many, I assumed a self-imposed U.S. debt crisis might unfold like most involuntary ones. If the debt ceiling isn’t raised by X-Day, I figured, the world’s investors would begin to see America as an unstable investment and rush to sell their Treasury bonds. The U.S. government, desperate to hold on to investment, would then raise interest rates far higher, hurtling up rates on credit cards, student loans, mortgages and corporate borrowing — which would effectively put a clamp on all trade and spending. The U.S. economy would collapse far worse than anything we’ve seen in the past several years.¶ Instead, Robert Auwaerter, head of bond investing for Vanguard, the world’s largest mutual-fund company, told me that the collapse might be more insidious. “You know what happens when the market gets upset?” he said. “There’s a flight to quality. Investors buy Treasury bonds. It’s a bit perverse.” In other words, if the U.S. comes within shouting distance of a default (which Auwaerter is confident won’t happen), the world’s investors — absent a safer alternative, given the recent fates of the euro and the yen — might actually buy even more Treasury bonds. Indeed, interest rates would fall and the bond markets would soar.¶ While this possibility might not sound so bad, it’s really far more damaging than the apocalyptic one I imagined. Rather than resulting in a sudden crisis, failure to raise the debt ceiling would lead to a slow bleed. Scott Mather, head of the global portfolio at Pimco, the world’s largest private bond fund, explained that while governments and institutions might go on a U.S.-bond buying frenzy in the wake of a debt-ceiling panic, they would eventually recognize that the U.S. government was not going through an odd, temporary bit of insanity. They would eventually conclude that it had become permanently less reliable. Mather imagines institutional investors and governments turning to a basket of currencies, putting their savings in a mix of U.S., European, Canadian, Australian and Japanese bonds. Over the course of decades, the U.S. would lose its unique role in the global economy.¶ The U.S. benefits enormously from its status as global reserve currency and safe haven. Our interest and mortgage rates are lower; companies are able to borrow money to finance their new products more cheaply. As a result, there is much more economic activity and more wealth in America than there would be otherwise. If that status erodes, the U.S. economy’s peaks will be lower and recessions deeper; future generations will have fewer job opportunities and suffer more when the economy falters. And, Mather points out, no other country would benefit from America’s diminished status. When you make the base risk-free asset more risky, the entire global economy becomes riskier and costlier.

#### Collapse causes nuclear conflicts

Harris and Burrows 9

Mathew J. Burrows counselor in the National Intelligence Council and Jennifer Harris a member of the NIC’s Long Range Analysis Unit “Revisiting the Future: Geopolitical Effects of the Financial Crisis” The Washington Quarterly 32:2 https://csis.org/files/publication/twq09aprilburrowsharris.pdf

Increased Potential for Global Conflict¶ Of course, the report encompasses more than economics and indeed believes the¶ future is likely to be the result of a number of intersecting and interlocking¶ forces. With so many possible permutations of outcomes, each with ample opportunity for unintended consequences, there is a growing sense of insecurity.¶ Even so, history may be more instructive than ever. While we continue to¶ believe that the Great Depression is not likely to be repeated, the lessons to be¶ drawn from that period include the harmful effects on fledgling democracies and¶ multiethnic societies (think Central Europe in 1920s and 1930s) and on¶ the sustainability of multilateral institutions (think League of Nations in the¶ same period). There is no reason to think that this would not be true in the¶ twenty-first as much as in the twentieth century. For that reason, the ways in¶ which the potential for greater conflict could grow would seem to be even more¶ apt in a constantly volatile economic environment as they would be if change¶ would be steadier.¶ In surveying those risks, the report stressed the likelihood that terrorism and¶ nonproliferation will remain priorities even as resource issues move up on the¶ international agenda. Terrorism’s appeal will decline if economic growth¶ continues in the Middle East and youth unemployment is reduced. For those¶ terrorist groups that remain active in 2025, however, the diffusion of¶ technologies and scientific knowledge will place some of the world’s most¶ dangerous capabilities within their reach. Terrorist groups in 2025 will likely be a¶ combination of descendants of long established groupsinheriting¶ organizational structures, command and control processes, and training¶ procedures necessary to conduct sophisticated attacksand newly emergent¶ collections of the angry and disenfranchised that become self-radicalized,¶ particularly in the absence of economic outlets that would become narrower¶ in an economic downturn.¶ The most dangerous casualty of any economically-induced drawdown of U.S.¶ military presence would almost certainly be the Middle East. Although Iran’s¶ acquisition of nuclear weapons is not inevitable, worries about a nuclear-armed¶ Iran could lead states in the region to develop new security arrangements with¶ external powers, acquire additional weapons, and consider pursuing their own¶ nuclear ambitions. It is not clear that the type of stable deterrent relationship¶ that existed between the great powers for most of the Cold War would emerge¶ naturally in the Middle East with a nuclear Iran. Episodes of low intensity¶ conflict and terrorism taking place under a nuclear umbrella could lead to an¶ unintended escalation and broader conflict if clear red lines between those states¶ involved are not well established. The close proximity of potential nuclear rivals¶ combined with underdeveloped surveillance capabilities and mobile¶ dual-capable Iranian missile systems also will produce inherent difficulties in¶ achieving reliable indications and warning of an impending nuclear attack. The¶ lack of strategic depth in neighboring states like Israel, short warning and missile¶ flight times, and uncertainty of Iranian intentions may place more focus on¶ preemption rather than defense, potentially leading to escalating crises.Types of conflict that the world continues¶ to experience, such as over resources, could¶ reemerge, particularly if protectionism grows and¶ there is a resort to neo-mercantilist practices.¶ Perceptions of renewed energy scarcity will drive¶ countries to take actions to assure their future¶ access to energy supplies. In the worst case, this¶ could result in interstate conflicts if government¶ leaders deem assured access to energy resources,¶ for example, to be essential for maintaining domestic stability and the survival of¶ their regime. Even actions short of war, however, will have important geopolitical¶ implications. Maritime security concerns are providing a rationale for naval¶ buildups and modernization efforts, such as China’s and India’s development of¶ blue water naval capabilities. If the fiscal stimulus focus for these countries indeed¶ turns inward, one of the most obvious funding targets may be military. Buildup of¶ regional naval capabilities could lead to increased tensions, rivalries, and¶ counterbalancing moves, but it also will create opportunities for multinational¶ cooperation in protecting critical sea lanes. With water also becoming scarcer in¶ Asia and the Middle East, cooperation to manage changing water resources is¶ likely to be increasingly difficult both within and between states in a more¶ dog-eat-dog world.

## 1NC Drone Shift DA

#### Obama is prioritizing capture over drone strikes now

Corn 13

David Corn 13, Washington Bureau Chief at Mother Jones, 5/23/13, “Obama's Counterterrorism Speech: A Pivot Point on Drones and More?,” <http://www.motherjones.com/mojo/2013/05/obama-speech-drones-civil-liberties>

So Obama's speech Thursday on counterterrorism policies—which follows his administration's acknowledgment yesterday that it had killed four Americans (including Anwar al-Awlaki, an Al Qaeda leader in Yemen)—is a big deal, for with this address, Obama is self-restricting his use of drones and shifting control of them from the CIA to the military. And the president has approved making public the rules governing drone strikes.¶ The New York Times received the customary pre-speech leak and reported:¶ A new classified policy guidance signed by Mr. Obama will sharply curtail the instances when unmanned aircraft can be used to attack in places that are not overt war zones, countries like Pakistan, Yemen and Somalia. The rules will impose the same standard for strikes on foreign enemies now used only for American citizens deemed to be terrorists.¶ Lethal force will be used only against targets who pose "a continuing, imminent threat to Americans" and cannot feasibly be captured, Attorney General Eric H. Holder Jr. said in a letter to Congress, suggesting that threats to a partner like Afghanistan or Yemen alone would not be enough to justify being targeted.¶ These moves may not satisfy civil-liberties-minded critics on sthe right and the left. Obama is not declaring an end to indefinite detention or announcing the closing of Gitmo—though he is echoing his State of the Union vow to revive efforts to shut down that prison. Still, these moves would be unimaginable in the Bush years. Bush and Cheney essentially believed the commander in chief had unchallenged power during wartime, and the United States, as they saw it, remained at war against terrorism. Yet here is Obama subjecting the drone program to a more restrictive set of rules—and doing so publicly. This is very un-Cheney-like. (How soon before the ex-veep arises from his undisclosed location to accuse Obama of placing the nation at risk yet again?)¶ Despite Obama's embrace of certain Bush-Cheney practices and his robust use of drones, the president has tried since taking office to shift US foreign policy from a fixation on terrorism. During his first days in office, he shied away from using the "war on terrorism" phrase. And his national security advisers have long talked of Obama's desire to reorient US foreign policy toward challenges in the Pacific region. By handing responsibility for drone strikes to the military, Obama is helping CIA chief John Brennan, who would like to see his agency move out of the paramilitary business and devote more resources to its traditional tasks of intelligence gathering and analysis.¶ With this speech, Obama is not renouncing his administration's claim that it possesses the authority to kill an American overseas without full due process. The target, as Holder noted in that letter to Congress, must be a senior operational leader of Al Qaeda or an associated group who poses an "imminent threat of violent attack against the United States" and who cannot be captured, and Holder stated that foreign suspects now can only be targeted if they pose "a continuing, imminent threat to Americans." (Certainly, there will be debates over the meaning of "imminent," especially given that the Obama administration has previously used an elastic definition of imminence.) And Obama is not declaring an end to the dicey practice of indefinite detention or a conclusion to the fight against terrorism.

But the speech may well mark apivot point. Not shockingly, Obama is attempting to find middle ground, where there is more oversight and more restraint regarding activities that pose serious civil liberties and policy challenges. The McCainiacs of the world are likely to howl about any effort to place the effort to counter terrorism into a more balanced perspective. The civil libertarians will scoff at half measures. But Obama, at the least, is showing that he does ponder these difficult issues in a deliberative manner and is still attempting to steer the nation into a post-9/11 period. That journey, though, may be a long one.

#### Plan spurs shift towards drones

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)

The convergence thesis describes one manner in which law might respond to the cross-cutting pressures associated with the asymmetric warfare phenomenon—i.e., the pressure to reduce false positives (targeting, capture, or detention of the wrong individual) while also ensuring an adequate capacity to neutralize the non-state actors in question. One must bear in mind, however, that detention itself is not the only system of government action that can satisfy that latter interest. Other options exist, including the use of lethal force; the use of rendition to place individuals in detention at the hands of some other state; the use of persuasion to induce some other state to take custody of an individual through its own means; and perhaps also the use of various forms of surveillance to establish a sort of constructive, loose control over a person (though for persons located outside the United States it is unlikely that surveillance could be much more than episodic, and thus any resulting element of “control” may be quite weak).210¶ From the point of view of the individual involved, all but the last of these options are likely to be far worse experiences than U.S.-administered detention. In addition, all but the last are also likely to be far less useful for purposes of intelligence-gathering from the point of view of the U.S. government.211 Nonetheless, these alternatives may grow attractive to the government in circumstances where the detention alternative becomes unduly restricted, yet the pressure for intervention remains. The situation is rather like squeezing a balloon: the result is not to shrink the balloon, but instead to displace the pressure from one side to another, causing the balloon to distend along the unconstrained side. So too here: when one of these coercive powers becomes constrained in new, more restrictive ways, the displaced pressure to incapacitate may simply find expression through one of the alternative mechanisms. On this view **it is no surprise that lethal drone strikes have increased dramatically over the past two years**, that the Obama administration has refused to foreswear rendition, that in Iraq we have largely (though not entirely) outsourced our detention operations to the Iraqis, and that we now are progressing along the same path in Afghanistan.212¶ Decisions regarding the calibration of a detention system—the¶ management of the convergence process, if you will—thus take place in the shadow of this balloon-squeezing phenomenon. A thorough policy review would take this into account, as should any formal lawmaking process. For the moment, however, our formal law-making process is not directed at the detention-scope question. Instead, clarification and development with respect to the substantive grounds for detention takes place through the lens of habeas corpus litigation.

#### That causes great power war and hotspot escalation

Dowd 2013

(Alan W. Dowd, widely published writer on national defense, foreign policy, and international security including contributions to Parameters, Policy Review, The Journal of Diplomacy and International Relations, World Politics Review, American Outlook, The Baltimore Sun, The Washington Times, The National Post, The Wall Street Journal Europe, The Jerusalem Post, and The Financial Times Deutschland, Winter-Spring 2013, “Drone Wars: Risks and Warnings,” Parameters, http://www.strategicstudiesinstitute.army.mil/pubs/parameters/Issues/WinterSpring\_2013/1\_Article\_Dowd.pdf)

If these geo-political consequences of remote-control war do not get ¶ our attention, then the looming geo-strategic consequences should. If ¶ we make the argument that UCAV pilots are in the battlespace, then we are effectively saying that the battlespace is the entire earth. If that is the ¶ case, the unintended consequences could be dramatic.¶ First, if the battlespace is the entire earth, the enemy would seem to ¶ have the right to wage war on those places where UCAV operators are based. ¶ That’s a sobering thought, one few policymakers have contemplated.¶ Second, power-projecting nations are following America’s lead and ¶ developing their own drones to target their distant enemies by remote. ¶ An estimated 75 countries have drone programs underway.45 Many of ¶ these nations are less discriminating in employing military force than ¶ the United States—and less skillful. Indeed, drones may usher in a new ¶ age of accidental wars. If the best drones deployed by the best military ¶ crash more than any other aircraft in America’s fleet, imagine the accident rate for mediocre drones deployed by mediocre militaries. And then ¶ imagine the international incidents this could trigger between, say, India and Pakistan; North and South Korea; Russia and the Baltics or Poland ¶ or Georgia; China and any number of its wary neighbors.¶ China has at least one dozen drones on the drawing board or in production, and has announced plans to dot its coastline with 11 drone bases ¶ in the next two years.46 The Pentagon’s recent reports on Chinese military power detail “acquisition and development of longer-range UAVs ¶ and UCAVs . . . for long-range reconnaissance and strike”; development ¶ of UCAVs to enable “a greater capacity for military preemption”; and ¶ interest in “converting retired fighter aircraft into unmanned combat ¶ aerial vehicles.”47 At a 2011 air show, Beijing showcased one of its newest drones by playing a video demonstrating a pilotless plane tracking a US ¶ aircraft carrier near Taiwan and relaying targeting information.48¶ Equally worrisome, the proliferation of drones could enable nonpower-projecting nations—and nonnations, for that matter—to join the ¶ ranks of power-projecting nations. Drones are a cheap alternative to ¶ long-range, long-endurance warplanes. Yet despite their low cost, drones ¶ can pack a punch. And owing to their size and range, they can conceal ¶ their home address far more effectively than the typical, nonstealthy ¶ manned warplane. Recall that the possibility of surprise attack by drones ¶ was cited to justify the war against Saddam Hussein’s Iraq.49¶ Of course, cutting-edge UCAVs have not fallen into undeterrable ¶ hands. But if history is any guide, they will. Such is the nature of proliferation. Even if the spread of UCAV technology does not harm the ¶ United States in a direct way, it is unlikely that opposing swarms of ¶ semiautonomous, pilotless warplanes roaming about the earth, striking at will, veering off course, crashing here and there, and sometimes ¶ simply failing to respond to their remote-control pilots will do much to ¶ promote a liberal global order.¶ It would be ironic if the promise of risk-free warpresented by drones ¶ spawned a new era of danger for the United States and its allies.

## 1NC Courts CP

#### An appropriate appellate court should submit a writ of certification to the United States Supreme Court requesting clarification of Presidential authority to indefinitely detain. The Supreme Court should rule, issuing writs of mandamus, that the United States should create a National Security Court structured under Article III of the United States Constitution for the purposes of judicial review of the United States’ indefinite detention policy.

#### It solves

O’Brien ‘11

(David M. Orsquo;Brien is Leone Reaves and George W. Spicer Professor of Government and Foreign Affairs at the University of Virginia. He is the author of several books, including Constitutional Law and Politics and Storm Center: The Supreme Court in American Politics , winner of the American Bar Associationrsquo;s Silver Gavel Award and now in its widely adopted Seventh Edition.¶ *Storm Center: The Supreme Court in American Politics* W W Norton & Company Incorporated, 2011, TSW)

#### Although most cases now come as certiorari petitions, Congress provides that appellate courts may also submit a writ of certification to the Court, requesting the justices to clarify or "make¶ more certain" a point of federal law. The Court receives only¶ a handful of such cases each term. Congress also gave the Court¶ the power to issue certain extraordinary writs, or orders. In a¶ few cases, the Court may issue writs of mandamus and prohibition, ordering lower courts or public officials either to do some-¶ thing or to refrain from some action. In addition, the Court has¶ die power to grant writs of habeas corpus (“produce the body"),¶ enabling it to review cases by prisoners who claim that their constitutional rights have been violated and that they are unlawfully¶ imprisoned.

#### CP solves – empirically courts can restrict

Fisher 2005

(Louis Fisher, senior specialist in separation of Powers with the Congressional Research Service, September 2005, “Judicial Review of the War Power,” Presidential Studies Quarterly, Vol 35, No 3, http://www.constitutionproject.org/pdf/422.pdf)

The terrorist attacks of 9/11, followed by the creation of a military tribunal, treatment of detainees, and passage of the USA Patriot Act, brought to the fore again the ¶ question of what role federal courts should play in policing the war power. Contempo­¶ rary legal studies often argue that foreign affairs-and particularly issues of war and ¶ peace-lie beyond the scope of judicial jurisdiction and competence. However, the record ¶ over the past two centuries demonstrates that not only have courts decided war power ¶ issues many times, they have curbed presidential military actions in time of war.

#### Avoids politics

Whittington ‘05

(Keith E., Professor of Politics - Princeton University, "Interpose Your Friendly Hand: Political Supports for the Exercise of Judicial Review by the United States Supreme Court”, [The American Political Science Review](http://proquest.umi.com.proxy.lib.umich.edu/pqdweb?RQT=318&pmid=28600&TS=1245862067&clientId=17822&VInst=PROD&VName=PQD&VType=PQD), Nov., (99)4, p. 583)

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

## 1NC Schmitt K

#### Restrictions on executive war powers DO NOTHING for the state of political legal exception we live in and only gives further justification for violent intervention on the basis of legality

Dyzenhaus 05 (David, is a professor of Law and Philosophy at the University of Toronto, and a Fellow of the Royal Society of Canada, “Schmitt v. Dicey: Are States of Emergency Inside or Outside the Legal Order?” Cardozo Law Review 27)

Rossiter had in mind Lincoln's actions during the Civil War, including the proclamation by which Lincoln, without the prior authority of Congress, suspended habeas corpus. n35 Lincoln, he said, subscribed to a theory that in a time of emergency, the President could assume whatever legislative, executive, and judicial powers he thought necessary to preserve the nation, and could in the process break the "fundamental laws of the nation, if such a step were unavoidable." n36 This power included one ratified by the Supreme Court: "an almost unrestrained power to act toward insurrectionary citizens as if they were enemies of the United States, and thus place them outside the protection of the Constitution." Rossiter's difficulties here illustrate rather than solve the tensions inherent in the idea of constitutional dictatorship. On the one hand, he wants to assert that emergency rule in a liberal democracy can be constitutional in nature. "Constitutional" implies restraints and limits in accordance not only with law, but with fundamental laws. These laws are not the constitution that is in place for ordinary times; rather, they are the laws that govern the management of exceptional times - the eleven criteria that he developed for constitutional dictatorship. The criteria are either put within the discretion of the dictator - they are judgments about necessity - or are couched as limits that should be enshrined either in the constitution or in legislation. However, Rossiter does not properly address the fact that judgments about necessity are for the dictator to make, which means that these criteria are not limits or constraints but merely factors about which the dictator will have to decide. Other criteria look more like genuine limits. Moreover, they are limits that could be constitutionally enshrined - for example, the second criterion, which requires that the person who makes the decision that there is an emergency should not be the person who assumes dictatorial powers. Yet, as we have seen, Rossiter's foremost example of the modern constitutional dictator, Lincoln, not only gave himself dictatorial powers but, Rossiter supposes, had no choice but to do this. Moreover, if these criteria are constitutionally enshrined, so that part of the constitution is devoted to the rules that govern the time when the rest of the constitution might be suspended, they still form part of the constitution. So, no less than the ordinary constitution, what we can think of as the exceptional or emergency constitution - the constitution that governs the state of emergency - is subject to suspension should the dictator deem this necessary. This explains why, on the other hand, Rossiter equated emergency rule with potentially unlimited dictatorship, with Locke's idea of prerogative. And Rossiter said, "whatever the theory, in moments of extreme national emergency the facts have always been with ... John Locke." So Rossiter at one and the same time sees constitutional dictatorship as unconstrained in nature and as constrainable by principles - his eleven criteria. The upshot is that "constitutional" turns out not to mean what we usually take it to mean; rather, it is a misleading name for the hope that the person who assumes dictatorial powers does so because of a good faith evaluation that this is really necessary and with the honest and steadfast intention to return to the ordinary way of doing things as soon as possible. Giorgio Agamben is thus right to remark that the bid by modern theorists of constitutional dictatorship to rely on the tradition of Roman dictatorship is misleading. n39 They rely on that tradition in an effort to show that dictatorship is constitutional or law-governed. But in fact they show that dictatorship is in principle absolute - the dictator is subject to whatever limits he deems necessary, which means to no limits at all. As H.L.A. Hart described the sovereign within the tradition of legal positivism, the dictator is an uncommanded commander. n40 He [\*2015] operates within a black hole, in Agamben's words, "an emptiness of law." n41 Agamben thus suggests that the real analogue to the contemporary state of emergency is not the Roman dictatorship but the institution of iustitium, in which the law is used to produce a "juridical void" - a total suspension of law. n42 And in coming to this conclusion, Agamben sides with Carl Schmitt, his principal interlocutor in his book. However, it is important to see that Schmitt's understanding of the state of exception is not quite a legal black hole, a juridically produced void. Rather, it is a space beyond law, a space which is revealed when law recedes, leaving the state, represented by the sovereign, to act. In substance, there might seem to be little difference between a legal black hole and space beyond law since neither is controlled by the rule of law. But there is a difference in that nearly all liberal legal theorists find the idea of a space beyond law antithetical, even if they suppose that law can be used to produce a legal void. This is so especially if such theorists want to claim for the sake of legitimacy that law is playing a role, even if it is the case that the role law plays is to suspend the rule of law. Schmitt would have regarded such claims as an attempt to cling to the wreckage of liberal conceptions of the rule of law brought about by any attempt to respond to emergencies through the law. They represent a vain effort to banish the exception from legal order. Because liberals cannot countenance the idea of politics uncontrolled by law, they place a veneer of legality on the political, which allows the executive to do what it wants while claiming the legitimacy of the rule of law. We have seen that Rossiter presents a prominent example which supports Schmitt's view, and as I will now show, it is a depressing fact that much recent post 9/11 work on emergencies is also supportive of Schmitt's view. II. Responding to 9/11 For example, Bruce Ackerman in his essay, The Emergency Constitution, n43 starts by claiming that we need "new constitutional concepts" in order to avoid the downward spiral in protection of civil liberties that occurs when politicians enact laws that become increasingly repressive with each new terrorist attack. n44 We need, he says, to rescue the concept of "emergency powers ... from fascist thinkers like Carl Schmitt, who used it as a battering ram against liberal [\*2016] democracy." n45 Because Ackerman does not think that judges are likely to do, or can do, better than they have in the past at containing the executive during an emergency, he proposes mainly the creative design of constitutional checks and balances to ensure, as did the Roman dictatorship, against the normalization of the state of emergency. Judges should not be regarded as "miraculous saviors of our threatened heritage of freedom." n46 Hence, it is better to rely on a system of political incentives and disincentives, a "political economy" that will prevent abuse of emergency powers. He calls his first device the "supramajoritarian escalator" n48 - basically the requirement that a declaration of a state of emergency requires legislative endorsement within a very short time, and thereafter has to be renewed at short intervals, with each renewal requiring the approval of a larger majority of legislators. The idea is that it will become increasingly easy with time for even a small minority of legislators to bring the emergency to an end, thus decreasing the opportunities for executive abuse of power. n49 The second device requires the executive to share security intelligence with legislative committees and that a majority of the seats on these committees belong to the opposition party. Ackerman does see some role for courts. They will have a macro role should the executive flout the constitutional devices. While he recognizes both that the executive might simply assert the necessity to suspend the emergency constitution and that this assertion might enjoy popular support, he supposes that if the courts declare that the executive is violating the constitution, this will give the public pause and thus will decrease incentives on the executive to evade the constitution. n51 In addition, the courts will have a micro role in supervising what he regards as the inevitable process of detaining suspects without trial for the period of the emergency. Suspects should be brought to court and some explanation should be given of the grounds of their detention, not so that they can contest it - a matter which Ackerman does not regard as practicable - but in order both to give the suspects a public identity so that they do not disappear and to provide a basis for compensation once the emergency is over in case the executive turns out to have fabricated [\*2017] its reasons. He also wishes to maintain a constitutional prohibition on torture, which he thinks can be enforced by requiring regular visits by lawyers. Not only is the judicial role limited, but it is clear that Ackerman does not see the courts as having much to do with preventing a period of "sheer lawlessness." n53 Even within the section on the judiciary, he says that the real restraint on the executive will be the knowledge that the supramajoritarian escalator might bring the emergency to an end, whereupon the detainees will be released if there is no hard evidence to justify detaining them. In sum, according to Ackerman, judges have at best a minimal role to play during a state of emergency. We cannot really escape from the fact that a state of emergency is a legally created black hole, a lawless void. It is subject to external constraints, controls on the executive located at the constitutional level and policed by the legislature. But internally, the rule of law does next to no work; all that we can reasonably hope for is decency. But once one has conceded that internally a state of emergency is more or less a legal black hole because the rule of law, as policed by judges, has no or little purchase, it becomes difficult to understand how external legal constraints, the constitutionally entrenched devices, can play the role Ackerman sets out. Recall that Ackerman accepts that the reason we should not give judges more than a minimal role is the history of judicial failure to uphold the rule of law during emergencies in the face of executive assertions of a necessity to operate outside of law's rule. For that reason, he constructs a political economy to constrain emergency powers. But that political economy still has to be located in law in order to be enforceable, which means that Ackerman cannot help but rely on judges. But why should we accept his claim that we can rely on judges when the executive asserts the necessity of suspending the exceptional constitution, the constitution for the state of emergency, when one of his premises is that we cannot so rely? Far from rescuing the concept of emergency powers from Schmitt, Ackerman's devices for an emergency constitution, an attempt to update Rossiter's model of constitutional dictatorship, fails for the same reasons that Rossiter's model fails. Even as they attempt to respond to Schmitt's challenge, they seem to prove the claim that Schmitt made in late Weimar that law cannot effectively enshrine a distinction between constitutional dictatorship and dictatorship. They appear to be vain attempts to find a role for law while at the same time conceding that law has no role. Of course, this last claim trades on an ambiguity in the idea of the rule of law between, on the one hand, the rule of law, understood as the rule of substantive principles, and, on the other, rule by law, where as long as there is a legal warrant for what government does, government will be considered to be in compliance with the rule of law. Only if one holds to a fairly substantive or thick conception of the rule of law will one think that there is a point on a continuum of legality where rule by law ceases to be in accordance with the rule of law. Ackerman's argument for rule by law, by the law of the emergency constitution, might not answer Schmitt's challenge. But at least it attempts to avoid dignifying the legal void with the title of rule of law, even as it tries to use law to govern what it deems ungovernable by law. The same cannot be said of those responses to 9/11 that seem to suggest that legal black holes are not in tension with the rule of law, as long as they are properly created. While it is relatively rare to find a position that articulates so stark a view, it is quite common to find positions that are comfortable with grey holes, as long as these are properly created. A grey hole is a legal space in which there are some legal constraints on executive action - it is not a lawless void - but the constraints are so insubstantial that they pretty well permit government to do as it pleases. And since such grey holes permit government to have its cake and eat it too, to seem to be governing not only by law but in accordance with the rule of law, they and their endorsement by judges and academics might be even more dangerous from the perspective of the substantive conception of the rule of law than true black holes.

#### Our alternative is to recognize the necessity of the opposition. This requires the unchecked authority of the executive to respond to the exception.

Nagan and Haddad 12 (Winston and Aitza, "Sovereignty in Theory and Practice." San Diego International Law Journal 13)

Although Schmitt was German, his ideas about sovereignty, and the political exception have had influence on the American theory and practice of sovereignty. Carl Schmitt was a philosophic theorist of sovereignty during the Third Reich. n375 His ideas about sovereignty and its above the law placement in the political culture of the State have important parallels in the developing discourse in the United States about the scope of presidential authority and power. His views have attracted the attention of American theorists. Schmitt developed his view of sovereignty on the concept described as "the exception". n376 This idea suggests that the sovereign or executive may invoke the idea of exceptional powers which are distinct from the general theory of the State. In Schmitt's view, the normal condition of the functions of the theory of a State, rides with the existence of the idea of the "exception." The exception is in effect intrinsic to the idea of a normal State. In his view, [\*487] the normal legal order of a State depends on the existence of an exception. n377 The exception is based on the continuing existence of an existential threat to the State and it is the sovereign that must decide on the exception. n378 In short, the political life of a State comprises allies and enemies. For the purpose of Statecraft, "an enemy exists only when at least potentially, one fighting collectivity of people confronts another similar collectivity." n379 In this sense, the political reality of the State always confronts the issue of the survival of the group. This reality is explained as follows. The political is the most intense and extreme antagonism, and every concrete antagonism becomes that much more political the closer it approaches the most extreme point, that of the friend-enemy grouping. \*\*\* As an ever present possibility [war] is the leading presupposition which determines in a characteristic way human action and thinking and hereby creates a specifically political behavior.\*\*\* A world in which the possibility of war is utterly eliminated, a completely pacified globe, would be a world without the distinction between friend and enemy and hence a world without politics. n380 Schmitt's view bases the supremacy of the exception on the supremacy of politics and power. n381 Thus, the exception, as rooted in the competence of the executive, is not dependent on law for its authority but on the conditions of power and conflict, which are implicitly pre-legal. n382 The central idea is that in an emergency, the power to decide based on the exception accepts its normal superiority over law on the basis that the suspension of the law is justified by the pre-legal right to self-preservation. n383 Schmitt's view is a powerful justification for the exercise of extraordinary powers, which he regards as ordinary, by executive authority. This is a tempting view for executive officers but it may not be an adequate explanation of the interplay of power, legitimacy, and the constitutional foundations of a rule of law State. In a later section, we draw on insights from the New Haven School, which deals empirically with the problem of power and the problem of constituting authority using the methods of contextual mapping. Nonetheless, Schmitt's view provides support for theorists who seek to enlarge executive power on the unitary presidency theory.

## Legitimacy Adv

#### Cred is terminally low — lack of coherent security strategy means that individual actions (like the plan) aren’t perceived

Loyola 9/8

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Many of my fellow Syria hawks argue that the U.S. should strike because its “credibility” is at stake. They mean “credibility” in the sense of credible U.S. power to maintain peace and security, particularly the ability to project a credible threat. We certainly have a credibility problem, but the problem is much worse than most hawks seem to realize. It arises not just from Obama’s head-in-the-sand pacifism but — more important — from the lack of a consensus national-security strategy that is rationally related to the threats we face abroad. ¶ The Bush doctrine focused on the confluence of rogue regimes, terrorism, and weapons of mass destruction. It called for early preemption of gathering threats and the spread of democracy to drain the swamp in which threats take root. But the Bush doctrine was largely discredited by the trauma of the Iraq war, particularly among independents and younger conservatives of a more isolationist bent. The doctrine was replaced in the Obama administration by a fluffy collection of meaningless platitudes and campaign talking points. Since then, America has been almost totally permissive of rogue regimes that support terrorism and proliferate WMD. It no longer has any real policy of confronting them. Hence there is no real “threat” against Syria or Iran, and if there is no threat, there can’t be a credible threat. ¶ It certainly is worrisome that Obama is in danger of not following through on an explicit threat against Syria’s use of chemical weapons. But the source of his threat was not U.S. national-security policy. It was an “international norm” that matters mostly to proponents of world government among the academic Left. That group does not have enough influence to provide Obama with a solid majority in favor of strikes, so Obama has had to go looking for support among proponents of the old Bush doctrine. And they insist that any military strikes must materially weaken the Assad regime, enough to bring it down or at least push Assad to the negotiating table. To get their support, the administration is expanding the target list. But that does not mean Obama has embraced the Bush policy (which Bush himself often shied away from) of confronting rogue regimes that support terrorism and proliferate WMD. Even if he carries through on his threat, the threat doesn’t stem from any consensus policy, so strikes can’t make the policy more credible. ¶ Simply put, there is no national-security policy right now. That’s why we have a credibility problem. Following through on one isolated threat is not going to prevent U.S. credibility from diminishing further, because U.S. credibility is already zero. We know this by looking at the Persian Gulf, where a constant rotation of several aircraft-carrier strike forces — armadas of terrifying power — are having exactly the same effect on Iranian policy as a bunch of ducks floating in the water.

#### 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

#### No spillover — lack of credibility in one commitment doesn’t affect others at all

MacDonald 11

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

Second, pessimists overstate the extent to which a policy of retrenchment can damage a great power's capabilities or prestige. Gilpin, in particular, assumes that a great power's commitments are on equal footing and interdependent. In practice, however, great powers make commitments of varying degrees that are functionally independent of one another. Concession in one area need not be seen as influencing a commitment in another area.25 Far from being perceived as interdependent, great power commitments are often seen as being rivalrous, so that abandoning commitments in one area may actually bolster the strength of a commitment in another area. During the Korean War, for instance, President Harry Truman's administration explicitly backed away from total victory on the peninsula to strengthen deterrence in Europe.26 Retreat in an area of lesser importance freed up resources and signaled a strong commitment to an area of greater significance.

#### Hegemony isn’t key to peace

Fettweis, 11   
Christopher J. Fettweis, Department of Political Science, Tulane University, 9/26/11, Free Riding or Restraint? Examining European Grand Strategy, Comparative Strategy, 30:316–332, EBSCO

It is perhaps worth noting that there is no evidence to support a direct relationship between the relative level of U.S. activism and international stability. In fact, the limited data we do have suggest the opposite may be true. During the 1990s, the United States cut back on its defense spending fairly substantially. By 1998, the United States was spending $100 billion less on defense in real terms than it had in 1990.51 To internationalists, defense hawks and believers in hegemonic stability, this irresponsible “peace dividend” endangered both national and global security. “No serious analyst of American military capabilities,” argued Kristol and Kagan, “doubts that the defense budget has been cut much too far to meet America’s responsibilities to itself and to world peace.”52 On the other hand, if the pacific trends were not based upon U.S. hegemony but a strengthening norm against interstate war, one would not have expected an increase in global instability and violence. The verdict from the past two decades is fairly plain: The world grew more peaceful while the U**nited** S**tates** cut its forces. No state seemed to believe that its security was endangered by a less-capable United States military, or at least none took any action that would suggest such a belief. No militaries were enhanced to address power vacuums, no security dilemmas drove insecurity or arms races, and no regional balancing occurred once the stabilizing presence of the U.S. military was diminished. The rest of the world acted as if the threat of international war was not a pressing concern, despite the reduction in U.S. capabilities. Most of all, the United States and its allies were no less safe. The incidence and magnitude of global conflict declined while the United States cut its military spending under President Clinton, and kept declining as the Bush Administration ramped the spending back up. No complex statistical analysis should be necessary to reach the conclusion that the two are unrelated. Military spending figures by themselves are insufficient to disprove a connection between overall U.S. actions and international stability. Once again, one could presumably argue that spending is not the only or even the best indication of hegemony, and that it is instead U.S. foreign political and security commitments that maintain stability. Since neither was significantly altered during this period, instability should not have been expected. Alternately, advocates of hegemonic stability could believe that relative rather than absolute spending is decisive in bringing peace. Although the United States cut back on its spending during the 1990s, its relative advantage never wavered. However, even if it is true that either U.S. commitments or relative spending account for global pacific trends, then at the very least stability can evidently be maintained at drastically lower levels of both. In other words, even if one can be allowed to argue in the alternative for a moment and suppose that there is in fact a level of engagement below which the United States cannot drop without increasing international disorder, a rational grand strategist would still recommend cutting back on engagement and spending until that level is determined. Grand strategic decisions are never final; continual adjustments can and must be made as time goes on. Basic logic suggests that the United States ought to spend the minimum amount of its blood and treasure while seeking the maximum return on its investment. And if the current era of stability is as stable as many believe it to be, no increase in conflict would ever occur irrespective of U.S. spending, which would save untold trillions for an increasingly debt-ridden nation. It is also perhaps worth noting that if opposite trends had unfolded, if other states had reacted to news of cuts in U.S. defense spending with more aggressive or insecure behavior, then internationalists would surely argue that their expectations had been fulfilled. If increases in conflict would have been interpreted as proof of the wisdom of internationalist strategies, then logical consistency demands that the lack thereof should at least pose a problem. As it stands, the only evidence we have regarding the likely systemic reaction to a more restrained United States suggests that the current peaceful trends are unrelated to U.S. military spending. Evidently the rest of the world can operate quite effectively without the presence of a global policeman. Those who think otherwise base their view on faith alone.

#### Heg is unsustainable

Layne 10

(Christopher Layne, Professor and Robert M. Gates Chair in National Security at Texas A&M's George H.W. Bush School of Government & Public Service. "Graceful decline: the end of Pax Americana". The American Conservative. May 2010. http://findarticles.com/p/articles/mi\_7060/is\_5\_9/ai\_n5422359

China's economy has been growing much more rapidly than the United States' over the last two decades and continues to do so, maintaining audacious 8 percent growth projections in the midst of a global recession. Leading economic forecasters predict that it will overtake the U.S. as the world's largest economy, measured by overall GDP, sometime around 2020. Already in 2008, China passed the U.S. as the world's leading manufacturing nation--a title the United States had enjoyed for over a century--and this year China will displace Japan as the world's second-largest economy. Everything we know about the trajectories of rising great powers tells us that China will use its increasing wealth to build formidable military power and that it will seek to become the dominant power in East Asia. Optimists contend that once the U.S. recovers from what historian Niall Ferguson calls the "Great Repression"--not quite a depression but more than a recession--we'll be able to answer the Chinese challenge. The country, they remind us, faced a larger debt-GDP ratio after World War II yet embarked on an era of sustained growth. They forget that the postwar era was a golden age of U.S. industrial and financial dominance, trade surpluses, and persistent high growth rates. Those days are gone. The United States of 2010 and the world in which it lives are far different from those of 1945. Weaknesses in the fundamentals of the American economy have been accumulating for more than three decades. In the 1980s, these problems were acutely diagnosed by a number of writers--notably David Calleo, Paul Kennedy, Robert Gilpin, Samuel Huntington, and James Chace--who predicted that these structural ills would ultimately erode the economic foundations of America's global preeminence. A spirited late-1980s debate was cut short, when, in quick succession, the Soviet Union collapsed, Japan's economic bubble burst, and the U.S. experienced an apparent economic revival during the Clinton administration. Now the delayed day of reckoning is fast approaching. Even in the best case, the United States will emerge from the current crisis with fundamental handicaps. The Federal Reserve and Treasury have pumped massive amounts of dollars into circulation in hope of reviving the economy. Add to that the $1 trillion-plus budget deficits that the Congressional Budget Office (CBO) predicts the United States will incur for at least a decade. When the projected deficits are bundled with the persistent U.S. current-account deficit, the entitlements overhang (the unfunded future liabilities of Medicare and Social Security), and the cost of the ongoing wars in Iraq and Afghanistan, there is reason to worry about the United States' fiscal stability. As the CBO says, "Even if the recovery occurs as projected and the stimulus bill is allowed to expire, the country will face the highest debt/GDP ratio in 50 years and an increasingly unsustainable and urgent fiscal problem**."** The dollar's vulnerability is the United States' geopolitical Achilles' heel. Its role as the international economy's reserve currency ensures American preeminence, and if it loses that status, hegemony will be literally unaffordable. As Cornell professor Jonathan Kirshner observes, the dollar's vulnerability "presents potentially significant and underappreciated restraints upon contemporary American political and military predominance." Fears for the dollar's long-term health predated the current financial and economic crisis. The meltdown has amplified them and highlighted two new factors that bode ill for continuing reserve-currency status. First, the other big financial players in the international economy are either military rivals (China) or ambiguous allies (Europe) that have their own ambitions and no longer require U.S. protection from the Soviet threat. Second, the dollar faces an uncertain future because of concerns that its value will diminish over time. Indeed, China, which has holdings estimated at nearly $2 trillion, is worried that America will leave it with huge piles of depreciated dollars. China's vote of no confidence is reflected in its recent calls to create a new reserve currency. In coming years, the U.S. will be under increasing pressure to defend the dollar by preventing runaway inflation. This will require it to impose fiscal self-discipline through some combination of budget cuts, tax increases, and interest-rate hikes**.** Given that the last two options could choke off renewed growth, there is likely to be strong pressure to slash the federal budget. But it will be almost impossible to make meaningful cuts in federal spending without deep reductions in defense expenditures. Discretionary non-defense domestic spending accounts for only about 20 percent of annual federal outlays. So the United States will face obvious "guns or butter" choices. As Kirshner puts it, the absolute size of U.S. defense expenditures are "more likely to be decisive in the future when the U.S. is under pressure to make real choices about taxes and spending. When borrowing becomes more difficult, and adjustment more difficult to postpone, choices must be made between raising taxes, cutting non-defense spending, and cutting defense spending." Faced with these hard decisions, Americans will find themselves afflicted with hegemony fatigue.

#### Multilateral coop will always structurally fail regardless of their internal link

Barma et al., 13

(Naazneen, assistant professor of national-security affairs at the Naval Postgraduate School; Ely Ratner, a fellow at the Center for a New American Security; and Steven Weber, professor of political science and at the School of Information at the University of California, Berkeley, March/April 2013, “The Mythical Liberal Order,” The National Interest, http://nationalinterest.org/print/article/the-mythical-liberal-order-8146)

Assessed against its ability to solve global problems, the current system is falling progressively further behind on the most important challenges, including financial stability, the “responsibility to protect,” and coordinated action on climate change, nuclear proliferation, cyberwarfare and maritime security. The authority, legitimacy and capacity of multilateral institutions dissolve when the going gets tough—when member countries have meaningfully different interests (as in currency manipulations), when the distribution of costs is large enough to matter (as in humanitarian crises in sub-Saharan Africa) or when the shadow of future uncertainties looms large (as in carbon reduction). Like a sports team that perfects exquisite plays during practice but fails to execute against an actual opponent, global-governance institutions have sputtered precisely when their supposed skills and multilateral capital are needed most. ¶ WHY HAS this happened? The hopeful liberal notion that these failures of global governance are merely reflections of organizational dysfunction that can be fixed by reforming or “reengineering” the institutions themselves, as if this were a job for management consultants fiddling with organization charts, is a costly distraction from the real challenge. A decade-long effort to revive the dead-on-arrival Doha Development Round in international trade is the sharpest example of the cost of such a tinkering-around-the-edges approach and its ultimate futility. Equally distracting and wrong is the notion held by neoconservatives and others that global governance is inherently a bad idea and that its institutions are ineffective and undesirable simply by virtue of being supranational. ¶ The root cause of stalled global governance is simpler and more straightforward. “Multipolarization” has come faster and more forcefully than expected. Relatively authoritarian and postcolonial emerging powers have become leading voices that undermine anything approaching international consensus and, with that, multilateral institutions. It’s not just the reasonable demand for more seats at the table. That might have caused something of a decline in effectiveness but also an increase in legitimacy that on balance could have rendered it a net positive.¶ Instead, global governance has gotten the worst of both worlds: a decline in both effectiveness and legitimacy. The problem is not one of a few rogue states acting badly in an otherwise coherent system. There has been no real breakdown per se. There just wasn’t all that much liberal world order to break down in the first place. The new voices are more than just numerous and powerful. They are truly distinct from the voices of an old era, and they approach the global system in a meaningfully different way.¶

#### No climate multilateralism — nationalism ensures gridlock

Held 13

David Held 13, Professor of Politics and International Relations, at the University of Durham AND Thomas Hale, Postdoctoral Research Fellow at the Blavatnik School of Government, Oxford University AND Kevin Young, Assistant Professor in the Department of Political Science at the University of Massachusetts Amherst, 5/24/13, “Gridlock: the growing breakdown of global cooperation,” <http://www.opendemocracy.net/thomas-hale-david-held-kevin-young/gridlock-growing-breakdown-of-global-cooperation>

Gridlock exists across a range of different areas in global governance today, from security arrangements to trade and finance. This dynamic is, arguably, most evident in the realm of climate change. The diffusion of industrial production across the world—a process enabled by economic globalization—has created a situation in which the basic consumption of each individual directly affects the life chances of every other individual on the planet, as well as the life chances of future generations.¶ This is a powerful and entirely new form of global interdependence. Bluntly put, the future of our civilization depends on our ability to cooperate across borders. And yet, despite twenty years of multilateral negotiations under the UN, a global deal on climate change mitigation or adaptation remains elusive, with differences between developed countries, which have caused the problem, and developing countries, which will drive future emissions, forming the core barrier to progress. Unless we overcome gridlock in climate negotiations, as in other issue areas, we will be unable to continue to enjoy the peace and prosperity we have inherited from the postwar order.¶ There are, of course, several forces that might work against gridlock. These include the potential of social movements to uproot existing political constraints, catalysed by IT innovation and the use of associated technology for coordination across borders; the capacity of existing institutions to adapt and accommodate factors such as emerging multipolarity (the shift from the G-5/7 to the G-20 is one example); and efforts at institutional reform which seek to alter the organizational structure of global governance (for example, proposals to reform the Security Council or to establish a financial transaction tax). ¶ Whether there is the political will or leadership to move beyond gridlock remains a pressing question. Social movements find it difficult to convert protests into consolidated institutional change. At the same time, the political leadership of the great power blocs appears dogged by national concerns: Washington is sharply divided, Europe is preoccupied with the future of the Euro and China is absorbed by the challenge of sustaining economic growth as the prime vehicle of domestic legitimacy. Against this background, the further deepening of gridlock and the continuing failure to address global collective action problems appears likely.

#### No impact - threat overestimated and adaption solves

Mendelsohn 9

(Robert O. the Edwin Weyerhaeuser Davis Professor, Yale School of¶ Forestry and Environmental Studies, Yale University, June 2009, “Climate Change and¶ Economic Growth,” online: http://www.growthcommission.org/storage/cgdev/documents/¶ gcwp060web.pdf

The heart of the debate about climate change comes from a number of warnings from scientists and others that give the impression that human induced climate change is an immediate threat to society (IPCC 2007a,b; Stern 2006.) Millions of people might be vulnerable to health effects (IPCC 2007b) crop production might fall in the low latitudes (IPCC 2007b), water supplies might dwindle (IPCC 2007b), precipitation might fall in arid regions (IPCC 2007b), extreme events will grow exponentially (Stern 2006), and between 20-30 percent of species will risk extinction (IPCC 2007b). Even worse, there may be catastrophic events such as the melting of Greenland or Antarctic ice sheets causing severe sea level rise, which would inundate hundreds of millions of people. (Dasgupta et al. 2009) Proponents argue there is no time to waste. Unless greenhouse gases are cut dramatically today, economic growth and wellbeing may be at risk (Stern 2006). These statements are largely alarmist and misleading. Although climate change is a serious problem that deserves attention, society’s immediate behavior has an extremely low probability of leading to catastrophic consequences. The science and economics of climate change is quite clear that emissions over the next few decades will lead to only mild consequences. The severe impacts predicted by alarmists require a century (or two in the Case of Stern 2006) of no mitigation. Many of the predicted impacts assume there will be no or little adaptation. the net economic impacts from climate change over the next 50 years will take more than a century or even a millennium to unfold and many of these “potential” impacts will never occur because people will adapt. It is not at all apparent that immediate and dramatic policies need to be developed to thwart long‐range climate risks. What is needed are long-run balanced responses.

#### 6 degree warming’s inevitable

AP 9

(Associated Press, Six Degree Temperature Rise by 2100 is Inevitable: UNEP, September 24, <http://www.speedy-fit.co.uk/index2.php?option=com_content&do_pdf=1&id=168>)

Earth's temperature is likely to jump six degrees between now and the end of the century even if every country cuts greenhouse gas emissions as proposed, according to a United Nations update. Scientists looked at emission plans from 192 nations and calculated what would happen to global warming. The projections take into account 80 percent emission cuts from the U.S. and Europe by 2050, which are not sure things. The U.S. figure is based on a bill that passed the House of Representatives but is running into resistance in the Senate, where debate has been delayed by health care reform efforts. Carbon dioxide, mostly from the burning of fossil fuels such as coal and oil, is the main cause of global warming, trapping the sun's energy in the atmosphere. The world's average temperature has already risen 1.4 degrees since the 19th century. Much of projected rise in temperature is because of developing nations, which aren't talking much about cutting their emissions, scientists said at a United Nations press conference Thursday. China alone adds nearly 2 degrees to the projections. "We are headed toward very serious changes in our planet," said Achim Steiner, head of the U.N.'s environment program, which issued the update on Thursday. The review looked at some 400 peer-reviewed papers on climate over the last three years. Even if the developed world cuts its emissions by 80 percent and the developing world cuts theirs in half by 2050, as some experts propose, the world is still facing a 3-degree increase by the end of the century, said Robert Corell, a prominent U.S. climate scientist who helped oversee the update. Corell said the most likely agreement out of the international climate negotiations in Copenhagen in December still translates into a nearly 5-degree increase in world temperature by the end of the century. European leaders and the Obama White House have set a goal to limit warming to just a couple degrees. The U.N.'s environment program unveiled the update on peer-reviewed climate change science to tell diplomats how hot the planet is getting. The last big report from the Nobel Prize-winning Intergovernmental Panel on Climate Change came out more than two years ago and is based on science that is at least three to four years old, Steiner said. Global warming is speeding up, especially in the Arctic, and that means that some top-level science projections from 2007 are already out of date and overly optimistic. Corell, who headed an assessment of warming in the Arctic, said global warming "is accelerating in ways that we are not anticipating." Because Greenland and West Antarctic ice sheets are melting far faster than thought, it looks like the seas will rise twice as fast as projected just three years ago, Corell said. He said seas should rise about a foot every 20 to 25 years.

#### CO2 isn’t key

Watts 12

Watts, 25-year climate reporter, works with weather technology, weather stations, and weather data processing systems in the private sector, 7/25/’12

(Anthony, <http://wattsupwiththat.com/2012/07/25/lindzen-at-sandia-national-labs-climate-models-are-flawed/>)

ALBUQUERQUE, N.M. — Massachusetts Institute of Technology professor Richard Lindzen, a global warming skeptic, told about 70 Sandia researchers in June that too much is being made of climate change by researchers seeking government funding. He said their data and their methods did not support their claims.¶ “Despite concerns over the last decades with the greenhouse process, they oversimplify the effect,” he said. “Simply cranking up CO2 [carbon dioxide] (as the culprit) is not the answer” to what causes climate change.¶ Lindzen, the ninth speaker in Sandia’s Climate Change and National Security Speaker Series, is Alfred P. Sloan professor of meteorology in MIT’s department of earth, atmospheric and planetary sciences. He has published more than 200 scientific papers and is the lead author of Chapter 7 (“Physical Climate Processes and Feedbacks”) of the International Panel on Climate Change’s (IPCC) Third Assessment Report. He is a member of the National Academy of Sciences and a fellow of the American Geophysical Union and the American Meteorological Society.¶ For 30 years, climate scientists have been “locked into a simple-minded identification of climate with greenhouse-gas level. … That climate should be the function of a single parameter (like CO2) has always seemed implausible. Yet an obsessive focus on such an obvious oversimplification has likely set back progress by decades,” Lindzen said.¶ For major climates of the past, other factors were more important than carbon dioxide. Orbital variations have been shown to quantitatively account for the cycles of glaciations of the past 700,000 years, he said, and the elimination of the arctic inversion, when the polar caps were ice-free, “is likely to have been more important than CO2 for the warm episode during the Eocene 50 million years ago.”¶ There is little evidence that changes in climate are producing extreme weather events, he said. “Even the IPCC says there is little if any evidence of this. In fact, there are important physical reasons for doubting such anticipations.”¶ Lindzen’s views run counter to those of almost all major professional societies. For example, the American Physical Society statement of Nov. 18, 2007, read, “The evidence is incontrovertible: Global warming is occurring.” But he doesn’t feel they are necessarily right. “Why did the American Physical Society take a position?” he asked his audience. “Why did they find it compelling? They never answered.”¶ Speaking methodically with flashes of humor — “I always feel that when the conversation turns to weather, people are bored.” — he said a basic problem with current computer climate models that show disastrous increases in temperature is that relatively small increases in atmospheric gases lead to large changes in temperatures in the models.¶ But, he said, “predictions based on high (climate) sensitivity ran well ahead of observations.”¶ Real-world observations do not support IPCC models, he said: “We’ve already seen almost the equivalent of a doubling of CO2 (in radiative forcing) and that has produced very little warming.”¶He disparaged proving the worth of models by applying their criteria to the prediction of past climatic events, saying, “The models are no more valuable than answering a test when you have the questions in advance.”¶ Modelers, he said, merely have used aerosols as a kind of fudge factor to make their models come out right. (Aerosols are tiny particles that reflect sunlight. They are put in the air by industrial or volcanic processes and are considered a possible cause of temperature change at Earth’s surface.)¶ Then there is the practical question of what can be done about temperature increases even if they are occurring, he said. “China, India, Korea are not going to go along with IPCC recommendations, so … the only countries punished will be those who go along with the recommendations.”¶ He discounted mainstream opinion that climate change could hurt national security, saying that “historically there is little evidence of natural disasters leading to war, but economic conditions have proven much more serious. Almost all proposed mitigation policies lead to reduced energy availability and higher energy costs. All studies of human benefit and national security perspectives show that increased energy is important.”¶ He showed a graph that demonstrated that more energy consumption leads to higher literacy rate, lower infant mortality and a lower number of children per woman.¶ Given that proposed policies are unlikely to significantly influence climate and that lower energy availability could be considered a significant threat to national security, to continue with a mitigation policy that reduces available energy “would, at the least, appear to be irresponsible,” he argued.¶ Responding to audience questions about rising temperatures, he said a 0.8 of a degree C change in temperature in 150 years is a small change. Questioned about five-, seven-, and 17-year averages that seem to show that Earth’s surface temperature is rising, he said temperatures are always fluctuating by tenths of a degree.

#### No impact to disease – they either burn out or don’t spread

Posner 05

(Richard A, judge on the U.S. Court of Appeals, Seventh Circuit, and senior lecturer at the University of Chicago Law School, Winter. “Catastrophe: the dozen most significant catastrophic risks and what we can do about them.” http://findarticles.com/p/articles/mi\_kmske/is\_3\_11/ai\_n29167514/pg\_2?tag=content;col1)

Yet the fact that Homo sapiens has managed to survive every disease to assail it in the 200,000 years or so of its existence is a source of genuine comfort, at least if the focus is on extinction events. There have been enormously destructive plagues, such as the Black Death, smallpox, and now AIDS, but none has come close to destroying the entire human race. There is a biological reason. Natural selection favors germs of limited lethality; they are fitter in an evolutionary sense because their genes are more likely to be spread if the germs do not kill their hosts too quickly. The AIDS virus is an example of a lethal virus, wholly natural, that by lying dormant yet infectious in its host for years maximizes its spread. Yet there is no danger that AIDS will destroy the entire human race. The likelihood of a natural pandemic that would cause the extinction of the human race is probably even less today than in the past (except in prehistoric times, when people lived in small, scattered bands, which would have limited the spread of disease), despite wider human contacts that make it more difficult to localize an infectious disease. The reason is improvements in medical science. But the comfort is a small one. Pandemics can still impose enormous losses and resist prevention and cure: the lesson of the AIDS pandemic. And there is always a lust time.

## Terrorism Adv

#### Exec flexibility on detention powers now

Tomatz 13

Michael Tomatz 13, Colonel, B.A., University of Houston, J.D., University of Texas, LL.M., The Army Judge Advocate General Legal Center and School (2002); serves as the Chief of Operations and Information Operations Law in the Pentagon. AND Colonel Lindsey O. Graham B.A., University of South Carolina, J.D., University of South Carolina, serves as the Senior Individual Mobilization Augmentee to The Judge Advocate Senior United States Senator from South Carolina, “NDAA 2012: CONGRESS AND CONSENSUS ON ENEMY DETENTION,” 69 A.F. L. Rev. 1

President Obama signed the NDAA "despite having serious reservations with certain provisions that regulate the detention, interrogation, and prosecution of suspected terrorists." n114 While the Administration voiced concerns throughout the legislative process, those concerns were addressed and ultimately resulted in a bill that preserves the flexibility needed to adapt to changing circumstances and upholds America's values. The President reiterated his support for language in Section 1021 making clear that the new legislation does not limit or expand the scope of Presidential authority under the AUMF or affect existing authorities "relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States." n115¶ The President underscored his Administration "will not authorize the indefinite military detention without trial of American citizens" and will ensure any authorized detention "complies with the Constitution, the laws of war, and all other applicable law." n116 Yet understanding fully the Administration's position requires recourse to its prior insistence that the Senate Armed Services Committee remove language in the original bill which provided that U.S. citizens and lawful resident aliens captured in the United States would not be subject to Section 1021. n117 There appears to be a balancing process at work here. On the one hand, the Administration is in lock-step with Congress that the NDAA should neither expand nor diminish the President's detention authority. On the other hand, policy considerations led the President to express an intention to narrowly exercise this detention authority over American citizens.¶ The overriding point is that the legislation preserves the full breadth and depth of detention authority existent in the AUMF, to include the detention of American citizens who join forces with Al Qaida. This is a dynamic and changing conflict. If a home-grown terrorist destroys a U.S. target, the FBI gathers the evidence, and a U.S. Attorney prosecutes, traditional civilian criminal laws govern, and the military detention authority resident in the NDAA need never come into play. This is a reasonable and expected outcome in many cases. The pending strike on rail targets posited in this paper's introduction, where intelligence sources reveal an inchoate attack involving American and foreign nationals operating overseas and at home, however, may be precisely the type of scenario where military detention is not only preferred but vital to thwarting the attack, conducting interrogations about known and hidden dangers, and preventing terrorists from continuing the fight.

#### Judicial review of foreign policy decks the executive flexibility necessary to solve prolif, terror, and the rise of hostile powers---link threshold is low

Blomquist 10

Robert Blomquist 10, Professor of Law, Valparaiso University School of Law, THE JURISPRUDENCE OF AMERICAN NATIONAL SECURITY PRESIPRUDENCE, 44 Val. U.L. Rev. 881

Supreme Court Justices--along with legal advocates--need to conceptualize and prioritize big theoretical matters of institutional design and form and function in the American national security tripartite constitutional system. By way of an excellent introduction to these vital issues of legal theory, the Justices should pull down from the library shelf of the sumptuous Supreme Court Library in Washington, D.C. (or more likely have a clerk do this chore) the old chestnut, The Legal Process: Basic Problems in the Making and Application of Law by the late Harvard University law professors Henry M. Hart and Albert M. Sacks. n7 Among the rich insights on institutional design coupled with form and function in the American legal system that are germane to the Court's interpretation of national security law-making and decision-making by the President are several pertinent points. First, "Hart and Sacks' intellectual starting point was the interconnectedness of human beings, and the usefulness of law in helping us coexist peacefully together." n8 By implication, therefore, the Court should be mindful of the unique [\*883] constitutional role played by the POTUS in preserving peace and should prevent imprudent judicial actions that would undermine American national security. Second, Hart and Sacks, continuing their broad insights of social theory, noted that legal communities establish "institutionalized[] procedures for the settlement of questions of group concern" n9 and regularize "different procedures and personnel of different qualifications . . . appropriate for deciding different kinds of questions" n10 because "every modern society differentiates among social questions, accepting one mode of decision for one kind and other modes for others-e.g., courts for 'judicial' decisions and legislatures for 'legislative' decisions" n11 and, extending their conceptualization, an executive for "executive" decisions. n12 Third, Professors Hart and Sacks made seminal theoretical distinctions between rules, standards, principles, and policies. n13 While all four are part of "legal arrangements [\*884] in an organized society," n14 and all four of these arrangements are potentially relevant in judicial review of presidential national security decisions, principles and policies n15 are of special concern because of the sprawling, inchoate, and rapidly changing nature of national security threats and the imperative of hyper-energy in the Executive branch in responding to these threats. n16¶ The Justices should also consult Professor Robert S. Summers's masterful elaboration and amplification of the Hart and Sacks project on enhancing a flourishing legal system: the 2006 opus, Form and Function in a Legal System: A General Study. n17 The most important points that [\*885] Summers makes that are relevant to judicial review of American national security presiprudence are three key considerations. First, a "conception of the overall form of the whole of a functional [legal] unit is needed to serve the founding purpose of defining, specifying, and organizing the makeup of such a unit so that it can be brought into being and can fulfill its own distinctive role" n18 in synergy with other legal units to serve overarching sovereign purposes for a polity. The American constitutional system of national security law and policy should be appreciated for its genius in making the POTUS the national security sentinel with vast, but not unlimited, powers to protect the Nation from hostile, potentially catastrophic, threats. Second, "a conception of the overall form of the whole is needed for the purpose of organizing the internal unity of relations between various formal features of a functional [legal] unit and between each formal feature and the complementary components of the whole unit." n19 Thus, Supreme Court Justices should have a thick understanding of the form of national security decision-making conceived by the Founders to center in the POTUS; the ways the POTUS and Congress historically organized the processing of national security through institutions like the National Security Council and the House and Senate intelligence committees; and the ways the POTUS has structured national security process through such specific legal forms as Presidential Directives, National Security Decision Directives, National Security Presidential Decision Directives, Presidential Decision Directives, and National Security Policy Directives in classified, secret documents along with typically public Executive Orders. n20 Third, according to Summers, "a conception of the overall form of the whole functional [legal] unit is needed to organize further the mode of operation and the instrumental capacity of the [legal] unit." n21 So, the Supreme Court should be aware that tinkering with national security decisions of the POTUS--unless clearly necessary to counterbalance an indubitable violation of the text of the Constitution--may lead to unforeseen negative second-order consequences in the ability of the POTUS (with or without the help of Congress) to preserve, protect, and defend the Nation. n22¶ [\*886] B. Geopolitical Strategic Considerations Bearing on Judicial Interpretation¶ Before the United States Supreme Court Justices form an opinion on the legality of national security decisions by the POTUS, they should immerse themselves in judicially-noticeable facts concerning what national security expert, Bruce Berkowitz, in the subtitle of his recent book, calls the "challengers, competitors, and threats to America's future." n23 Not that the Justices need to become experts in national security affairs, n24 but every Supreme Court Justice should be aware of the following five basic national security facts and conceptions before sitting in judgment on presiprudential national security determinations.¶ (1) "National security policy . . . is harder today because the issues that are involved are more numerous and varied. The problem of the day can change at a moment's notice." n25 While "[y]esterday, it might have been proliferation; today, terrorism; tomorrow, hostile regional powers" n26, the twenty-first century reality is that "[t]hreats are also more likely to be intertwined--proliferators use the same networks as narco-traffickers, narco-traffickers support terrorists, and terrorists align themselves with regional powers." n27¶ (2) "Yet, as worrisome as these immediate concerns may be, the long-term challenges are even harder to deal with, and the stakes are higher. Whereas the main Cold War threat--the Soviet Union--was brittle, most of the potential adversaries and challengers America now faces are resilient." n28¶ (3) "The most important task for U.S. national security today is simply to retain the strategic advantage. This term, from the world of military doctrine, refers to the overall ability of a nation to control, or at least influence, the course of events." n29 Importantly, "[w]hen you hold [\*887] the strategic advantage, situations unfold in your favor, and each round ends so that you are in an advantageous position for the next. When you do not hold the strategic advantage, they do not." n30¶ (4) While "keeping the strategic advantage may not have the idealistic ring of making the world safe for democracy and does not sound as decisively macho as maintaining American hegemony," n31 maintaining the American "strategic advantage is critical, because it is essential for just about everything else America hopes to achieve--promoting freedom, protecting the homeland, defending its values, preserving peace, and so on." n32¶ (5) The United States requires national security "agility." n33 It not only needs "to refocus its resources repeatedly; it needs to do this faster than an adversary can focus its own resources." n34¶ [\*888] As further serious preparation for engaging in the jurisprudence of American national security presiprudence in hotly contested cases and controversies that may end up on their docket, our Supreme Court Justices should understand that, as Walter Russell Mead pointed out in an important essay a few years ago, n35 the average American can be understood as a Jacksonian pragmatist on national security issues. n36 "Americans are determined to keep the world at a distance, while not isolating ourselves from it completely. If we need to take action abroad, we want to do it on our terms." n37 Thus, recent social science survey data paints "a picture of a country whose practical people take a practical approach to knowledge about national security. Americans do not bother with the details most of the time because, for most Americans, the details do not matter most the time." n38 Indeed, since the American people "do know the outlines of the big picture and what we need to worry about [in national security affairs] so we know when we need to pay greater attention and what is at stake. This is the kind of knowledge suited to a Jacksonian." n39¶ Turning to how the Supreme Court should view and interpret American presidential measures to oversee national security law and policy, our Justices should consider a number of important points. First, given the robust text, tradition, intellectual history, and evolution of the institution of the POTUS as the American national security sentinel, n40 and the unprecedented dangers to the United States national security after 9/11, n41 national security presiprudence should be accorded wide latitude by the Court in the adjustment (and tradeoffs) of trading liberty and security. n42 Second, Justices should be aware that different presidents [\*889] institute changes in national security presiprudence given their unique perspective and knowledge of threats to the Nation. n43 Third, Justices should be restrained in second-guessing the POTUS and his subordinate national security experts concerning both the existence and duration of national security emergencies and necessary measures to rectify them. "During emergencies, the institutional advantages of the executive are enhanced", n44 moreover, "[b]ecause of the importance of secrecy, speed, and flexibility, courts, which are slow, open, and rigid, have less to contribute to the formulation of national policy than they do during normal times." n45 Fourth, Supreme Court Justices, of course, should not give the POTUS a blank check--even during times of claimed national emergency; but, how much deference to be accorded by the Court is "always a hard question" and should be a function of "the scale and type of the emergency." n46 Fifth, the Court should be extraordinarily deferential to the POTUS and his executive subordinates regarding questions of executive determinations of the international laws of war and military tactics. As cogently explained by Professors Eric Posner and Adrian Vermeule, n47 "the United States should comply with the laws of war in its battle against Al Qaeda"--and I would argue, other lawless terrorist groups like the Taliban--"only to the extent these laws are beneficial to the United States, taking into account the likely response of [\*890] other states and of al Qaeda and other terrorist organizations," n48 as determined by the POTUS and his national security executive subordinates.

#### No nuclear terror- lack of resources, expertise, facilities, and certainty

Stalcup ‘12

[Travis C. Stalcup is a George and Barbara Bush Fellow at the George H.W. Bush School of Government and Public Service at Texas A&M University. <http://journal.georgetown.edu/2012/09/11/a-better-plan-for-port-security-by-travis-stalcup/> ETB]

However, the most competent and well-financed terrorists groups would face difficulty in mustering the resources, expertise and facilities to enrich nuclear material in meaningful quantities. Randomized spot checks would create doubt that an attack using shipping containers would succeed. Even if a terrorist group were to obtain nuclear material or a weapon, it is unlikely that it would expend the vast resources required to deliver it on such an uncertain operation. The uncertainty created by spot checks in addition to the enormous technical and financial obstacles a terrorist group faces would serve to deter.

#### Empirics and studies prove

Mauroni ‘12

(Al, senior policy analyst with the Air Force. A former Army officer, he has over twenty-five years experience in military chemical, biological, nuclear, and radiological (CBRN) defense policy and program development. He is a graduate of Carnegie-Mellon University and has a master’s of science in administration from Central Michigan University. He is the author of six books and more than two-dozen articles on the topic. His latest book is Where Are the WMDs? (Naval Press Institute, 2006), Volume VIII, “Nuclear Terrorism: Are We Prepared?” http://www.hsaj.org/?fullarticle=8.1.9)

The source of the threat is important to this discussion, even more so than the specific nature of the threat. By merely stating their intent to obtain “weapons of mass destruction” and their presence in Pakistan, a nuclear weapon-owning state, al Qaeda has caused the USG to attribute the group with nearly apocalyptic power to successfully attack the United States with a nuclear weapon.[7](javascript:void(0);)Most USG literature on the topic of WMD terrorism does not talk about al Qaeda specifically; rather, the general term “terrorist groups” or even more generic term “non-state actors” is used. I prefer the term “sub-state groups” to describe these organizations. The phrase “non-state actor” can apply to a large cast of characters, including private security firms, paramilitary units, criminal organizations, drug cartels, “lone gunmen,” and vigilantes, as well as terrorists and insurgents — basically anyone who is using violence as a method of persuasion outside of the government’s authority. We are mostly concerned about those foreign violent extremist groups who aspire to transnational activities.¶ The popular assumption is that terrorists are actively working with “rogue nations” to exploit WMD materials and technology, or bidding for materials and technology on some nebulous global black market. They might be buying access to scientists and engineers who used to work on state WMD programs. The historical record doesn’t demonstrate that. An examination of any of the past annual reports of the National Counterterrorism Center reveals that the basic modus operandi of terrorists and insurgents is to use conventional military weapons, easily acquired commercial (or improvised) explosives, and knives and machetes.[8](javascript:void(0);) It is relatively easy to train laypersons to use military firearms, such as the AK-47 automatic rifle and the RPG-7 rocket launcher. These groups have technical experts who develop improvised explosive devices using available and accessible materials from the local economy. Conventional weapons have known weapon effects and minimal challenges in handling and storing. Terrorists get their material and technology where they can. They don’t have the time, funds, or interests to get exotic. It’s what we see, over and over again.¶ Military chemical/biological (CB) warfare agents, radiological material, and nuclear weapons are not easily obtained, outside of government laboratories. Nation states invest large amounts of people and funds to develop and test specific unconventional weapons, and if they were to give or sell these weapons to terrorists, one of two things could happen — either the weapons would be traced back to them, or the weapons might be used someplace where the nation-state really didn’t want those weapons used. In theory, scientists recruited by sub-state groups could develop small quantities of military CB warfare agents, but the lack of access to fissile material would frustrate any ambitious engineer trying to build an improvised nuclear device.¶ There are other hypotheses as to why sub-state groups have been unable to obtain nuclear weapons and/or fissile material on the “global market.” It could be that, despite the available information about nuclear weapons, these groups haven’t developed the expertise, skills, or experience to design a nuclear weapon. It takes time, resources, and a secure facility to successfully develop such a weapon, and international efforts to combat terrorism may have been successful in stopping such efforts. It could be that the scientists and engineers who are attracted to sub-state groups are not capable of designing weapons. It is a particularly challenging task to take a particularly hazardous material, developed in a laboratory, and turn it into a reliable military weapon of mass destruction. Last, it could be that sub-state groups have been frustrated by the numerous black-market scams and intelligence sting operations, in which fraudulent persons claimed to have nuclear material.[9](javascript:void(0);)¶ Sub-state groups are interested in chemical, biological, radiological, and nuclear (CBRN) hazards, however, because senior political leaders and military leaders publicly state, over and over again, how dangerous a release of these materials would be to the American public. So of course terrorists are interested in CBRN hazards, but they don’t have the expertise to produce the specialized military warfare agents, they don’t have any training in handling or storing them, and they don’t understand how to deliver the agents to their targets with any degree of effectiveness. So one might see some attempts to steal chlorine gas cylinders from water treatment sites, some occasional attempts to produce ricin toxin from castor beans, stories about a few grams of radioactive material stolen from a facility — these are not materials that cause mass casualty events. But the fear persists, and so government leaders spend billions every year to reduce the already minute possibility that some sub-state group does develop or steal a nuclear weapon for the purposes of employing it against the United States. This leads to our public policy discussion: to understand how effectively the USG is performing in this case.

#### Won’t cause extinction

Frost ‘12

[Katie Frost is a 2012 Master in Public Policy candidate at the John F. Kennedy School of Government at Harvard University. <http://harvardkennedyschoolreview.com/nuclear-terrorism-are-you-prepared/> ETB]

The horrors of nuclear terrorism are almost unimaginable, too terrible to think about, and certainly politically unpopular to discuss. Yet the nuclear threat the United States faces today is ultimately survivable. Unlike the Cold War fear of apocalyptic nuclear exchange, a single nuclear blast, as would likely be the case in a terrorist attack, would not topple the United States. Not even close. It would be a devastating, world-changing event, but the United States would live to fight another day. However, the country should have a plan on how to soften the blow, respond, and ultimately recover from an attack.

**No impact to bioterror**

**Mueller 10**

[John, Woody Hayes Chair of National Security Studies at the Mershon Center for International Security Studies and a Professor of Political Science at The Ohio State University, A.B. from the University of Chicago, M.A. and Ph.D. @ UCLA, Atomic Obsession – Nuclear Alarmism from Hiroshima to Al-Qaeda, Oxford University Press]

Properly developed and deployed, biological weapons could potentially, if thus far only in theory, kill hundreds of thousands, perhaps even millions, of people. The discussion remains **theoretical** because biological weapons have scarcely ever been used. For the most destructive results, they need to be **dispersed** in very **low-altitude** aerosol clouds. Since aerosols do not appreciably settle, pathogens like anthrax (which is not easy to spread or catch and is not contagious) would probably have to be sprayed **near nose level**. Moreover, **90 percent** of the microorganisms are likely to **die** during the process of aerosolization, while their effectiveness could be reduced still further by **sunlight**, **smog**, **humidity**, and **temperature changes**.

Explosive methods of dispersion may destroy the organisms, and, except for anthrax spores, long-term **storage** of lethal organisms in bombs or warheads is difficult: even if refrigerated, most of the organisms have a **limited lifetime**. Such weapons can take days or **weeks** to have **full effect**, during which time they can be **countered** with medical and civil defense measures. In the summary judgment of two careful analysts, delivering microbes and toxins over a wide area in the form most suitable for inflicting mass casualties-as an aerosol that could be inhaled-requires a delivery system of **enormous sophistication**, and **even then** effective dispersal could **easily be disrupted** by unfavorable environmental and meteorological conditions.

#### Al-Qaeda is dead – attacks fail and ideology dead

Bergen 12 (Peter Bergen, CNN national security analyst, is the author of "Manhunt: The Ten-Year Search for bin Laden, From 9/11 to Abbottabad.", 6/6/2012, "And now, only one senior al Qaeda leader left", edition.cnn.com/2012/06/05/opinion/bergen-al-qaeda-whos-left/index.html)

Washington (CNN) -- The news that Abu Yahya **al-Libi, the No.2 leader of al Qaeda, is now confirmed to have been killed in a CIA drone strike** in Pakistan's tribal region along the border with Afghanistan further underlines that **the terrorist group that launched the 9/11 attacks is now more or less out of business**. Under President Barack Obama, CIA drone strikes have killed 15 of the most important players in al Qaeda, according to a count maintained by the New America Foundation (a nonpartisan think tank where I am a director). Similarly, President George W. Bush also authorized drone strikes that killed 16 important al Qaeda operatives in Pakistan while he was in office. As a result, **according to senior U.S. counterterrorism officials, there now remains only one leader of any consequence in al Qaeda and that is Ayman al-Zawahiri**, the tetchy Egyptian surgeon who became the head of the group following the death of its founder, Osama bin Laden, in a U.S. Navy SEAL raid in Pakistan in May 2011. **Zawahiri**, presumably, **is keenly aware of the fate of so many of his longtime colleagues in al Qaeda**. He will be expending considerable energy not to end up on the business end of a missile fired by a CIA drone if he, too, is hiding in the Pakistani tribal regions where the drone strikes have been concentrated. Meanwhile, **Zawahiri faces an almost impossible task to follow through on al Qaeda's main mission: attacking the United States**, or failing that, one of its close allies. **Al Qaeda hasn't conducted a successful attack in the West since** the bombings on London's transportation system on July 7, **2005**, and of course, **the group hasn't succeeded in attacking the United States for more than a decade**. **There are,** however, **al Qaeda's regional affiliates still to contend with**. The most virulent of those is the Yemen-based Al Qaeda in the Arabian Peninsula. It was **AQAP** that **tried to bring down Northwest Flight 253** over Detroit on Christmas Day 2009 using a Nigerian recruit who had secreted a hard-to-detect bomb in his underwear, and it was AQAP that smuggled bombs in printer cartridges onto cargo planes bound for the U.S. in October 2010. Last month came news that a spy had penetrated AQAP and had retrieved a new generation of underwear bomb that the group's bomb maker had apparently recently designed to bring down a commercial jet. But **all of AQAP's plots to bring down planes have had one thing in common: They failed**. **Some might say that that while al Qaeda the organization may be basically dead, its ideology continues to thrive and to inspire "lone wolves**" to attack the United States. In fact, **lone wolves inspired by jihadist ideology have managed to kill a total of 17 Americans** in the United States **since 9/11**, according to a tally maintained by the New America Foundation. Meanwhile, **54 Americans are reported to be killed every year by lightning**, according to the National Weather Service. In other words, to the average American, **lightning is about 30 times more deadly than jihadist terrorism**. Few Americans harbor irrational fears about being killed by a lightning bolt. Abu Yahya al-Libi's death on Monday should remind them that **fear of al Qaeda in its present state is** even more **irrational**.

## Solvency

#### The president will circumvent the aff

McNeal 8

Gregory McNeal 08, Visiting Assistant Professor of Law, Pennsylvania State University Dickinson School of Law. The author previously served as an academic consultant to the former Chief Prosecutor, Department of Defense Office of Military Commissions, “ARTICLE: BEYOND GUANTANAMO, OBSTACLES AND OPTIONS,” August 08, 103 Nw. U. L. Rev. Colloquy 29

3. Executive Forum-Discretion--Any reform which allows for adjudication of guilt in different forums, each with differing procedural protections, raises serious questions of legitimacy and also incentivizes the Executive to use "lesser" forms of justice--nonprosecution or prosecutions by military commission. In this section, my focus is on the incentives which compel the Executive to not prosecute, or to prosecute in military commissions rather than Article III courts. Understanding the reason for these discretionary decisions will guide reformers pondering whether a new system will actually be used by the next President.¶ There are two primary concerns that executive actors face when selecting a forum: protecting intelligence and ensuring trial outcomes. Executive forum-discretion is a different form of prosecutorial discretion with a different balancing inquiry from the one engaged in by courts. Where prosecutorial discretion largely deals with the charges a defendant will face, executive forum-discretion impacts the procedural protections a defendant can expect at both the pretrial and trial phase. Where balancing by Courts largely focuses on ensuring a just outcome which protects rights, the balancing engaged in by executive actors has inwardly directed objectives [\*50] which value rights only to the degree they impact the Executive's self interest.¶Given the unique implications flowing from forum determinations, reformers can benefit from understanding why an executive actor chooses one trial forum over another. I contend that there are seven predictive factors that influence executive discretion; national security court reformers should be aware of at least the two most salient predictive factors: trial outcomes and protection of intelligence equities. n112 The Executive's balancing of factors yields outcomes with direct implications for fundamental notions of due process and substantial justice. Any proposed reform is incomplete without thoroughly addressing the factors that the Executive balances.

#### No solvency—wouldn’t be seen as different from the squo

Davis 7

Benjamin Davis 07, professor at the University of Toledo College of Law, 7/12/07, “Against a US 'Terrorists' Court',” <http://jurist.law.pitt.edu/forumy/2007/07/against-us-terrorist-court.php>

What a sad day! I am amazed! Law professors who are preventive detention advocates! A National Security Court! Have things gone this far in this country that people are really mulling seriously the merits of a preventive detention regime? Is the hysteria this crazy? ¶ I would ask all people of goodwill to take a quick look through the various cases that the federal courts have dismissed on state secret, federal officer immunity, political question etc. doctrines where people held in detention have complained of "horrendous" treatment and the courts have shown absolutely no interest in exploring those claims. I would ask you to look at the recent “standing” decision of the Court of Appeals in the ACLU vs. NSA case and recognize that, once an issue is presented in this environment in a national security context, if one complains the courts does not want to hear you as those fearful of having lost rights are not considered sufficiently harmed. All of those decisions have been made by eminent federal judges and the necklace of decisions from the perspective of vindication of basic rules of international law or constitutional law (as the lower court did in the case of ACLU vs. NSA but the Appeals Court did not) is terribly troubling. And with the decisions that appear to be shifting against the “little guy” in this term of the Supreme Court I as one am terribly concerned that ultimate appellate review will not be better.¶ Might I suggest that this is a further iteration from the Presidential Military Order, through the CSRTs and MCAs, through centralizing in the DC Court of Appeal, now into a fourth mutation to keep moving the ball on what we are doing. It is like an intoxication with improvisation.

#### NSC doesn’t solve—it perpetuates the squo

Hilde 9

Thomas Hilde 9, professor at the University of Maryland School of Public Policy, “Beyond Guantanamo. Restoring U.S. Credibility on Human Rights,” Heinrich Böll Foundation, <http://www.boell.org/downloads/hbf_Beyond_Guantanamo_Thomas_Hilde(2).pdf>

This approach suggests that a national security court would have adequate means by which to judge not the actions of detainees, as with regular courts, but the risk of detainees engaging in harmful actions, even absent evidence. Such an approach appears to deny the notion of due process. It is also difficult to see how this approach would not generate the problem it ostensibly seeks to prevent; that is, the creation of enemies through detention policy. A 2008 document signed by 27 legal scholars opposes “any effort to extend the status quo by establishing either (1) a comprehensive system of long-term “preventive” detention without trial for suspected terrorists, or (2) a specialized national security court to make “preventive” detention determinations and ultimately to try terrorism suspects….” for the basic reason that, despite “dressed up procedures, these proposals would make some of the most notorious aspects of the current failed system permanent.” The authors add that perhaps “most fundamental is the fact that the supporters of these proposals typically fail to make clear who should be detained, much less how such individuals, once designated, can prove they are no longer a threat. Without a reasonably precise definition, not only is arbitrary and indefinite detention possible, it is nearly inevitable.”33 Some of the authors, however, conclude that evidence on the part of the government that a detainee has “engaged in belligerent acts or has directly participated in hostilities against the United States” may be the exceptional case justifying “continued detention.”34 Again, however, this distinction remains fluid enough as to be an arbitrary judgment by government officials.

#### Article III courts can’t solve—delays and security issues kill due process

Guiora 9

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

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

# 2NC

## Drone Shift

#### The drone-detention trade-off is real, even if they’re right about inability to capture in the FATA eliminating detention sets a dangerous precedent that’s modeled and collapses US credibility and democratic accountability- turns the whole aff

Trombly 10 (Daniel Trombly, Defense Contractor and author for the New American Century, “Is there a detention/drone trade-off?” MAY 19, 2010, <http://slouchingcolumbia.wordpress.com/2010/05/19/is-there-a-detentiondrone-trade-off/>)

By some accounts, the growing reliance on drone strikes is partly a result of the Obama administration’s bid to repair the damage to America’s image abroad in the wake of Bush-era allegations of torture and secret detentions. Besides putting an end to harsh interrogation methods, the president issued executive orders to ban secret CIA detention centers and close the Guantanamo Bay prison camp. Some current and former counterterrorism officials say an unintended consequence of these decisions may be that capturing wanted militants has become a less viable option. As one official said: “There is nowhere to put them.” A former U.S. intelligence official, who was involved in the process until recently, said: “I got the sense: ‘What the hell do we do with this guy if we get him?’ It’s not the primary consideration but it has to be a consideration.” This argument echoes the more controversial assertion by Marc Thiessen that “Dead terrorists tell no tales.” However, unlike Thiessen, I would not criticize Obama for “killing too many terrorists,” nor do I think that detention and interrogation in places such as Guantanamo is valuable enough to justify the undermining of American law nor the lost opportunities of a successful strike to serve as a pretext to ending the Predator campaign. However, it does sharpen the problem the Obama administration has had with reinventing the “war on terror” as a principled, law-bound counter-terrorism campaign. Upholding the rule of law makes terrorists more difficult to detain, prosecute, and convict because of the inadequacies and intricacies of American and international law for dealing with al Qaeda operatives in Pakistan. The drone strikes remind me of another common South Asian practice for dealing with criminals who might not face justice – encounter killings. In an encounter killing, police shoot a suspect who might otherwise be taken alive because they believe the court system will not properly punish them for their presumed wrongs. They are incompatible with the legal principles of presumed innocence, but so too is the nature of terrorism, where there is a premium on preventative action. It is difficult to situate a policy that permits the airborne obliteration of a suspect sleeping at home, but mandates that once captured, he has the full scope of Constitutional rights, within American law. Gitmo provided a functional, if heinous, gray area between those alternatives. Given the limitations of America’s law enforcement capacities in Pakistan, in the absence of that gray area, killing will become more preferable. But realistically, capture is not a real option for America in the NWFP or FATA, or the rest of Pakistan for that matter. Guantanamo Bay has no bearing on that issue. But what happens when you take a practice such as an “encounter killing” and do it in another country? What happens when you do it with attack aircraft, hundreds of times over? The illuminating contrast this article demonstrates is between the Obama administration’s rhetoric of replacing the “war on terror” with a Constitutional framework that respects the law. Instead, what we are really seeing is a war. Conducting huge numbers of extrajudicial killings using military equipment in a foreign country is not law enforcement. It is not even counter-terrorism. It is war. Drone strikes are useful, but they are not a replacement for the necessary adjustments to American and international law needed to accommodate counter-terrorism. Just because the aircraft are unmanned and CIA-operated does not make them legal, nor does it make the damage they do any less controversial in Pakistan. Given the legal ambiguities and potential for blow-back, we cannot continue pushing their use without developing viable alternatives. We cannot wantonly use a tool of war and continue proclaiming our adherence to the rule of law.

#### Here is comparative evidence -- Drones are worse than detention for international perception

Rohde 13 (Stephen, Constitutional lawyer and Chair of the ACLU Foundation of Southern California, “Bush Detained Alleged Terrorists Without Due Process - Obama Is Killing Them With Drones”, 3/13/13, <http://www.truth-out.org/opinion/item/15086-bush-detained-terrorists-without-due-process-obama-is-killing-them-with-drones>)

In the context of the serious constitutional issues surrounding Obama's drone policy, there is much to learn from these Supreme Court decisions. Before and after 9/11, the US military has been fully capable of capturing and detaining alleged terrorists. Even in the war on terror, the court has consistently held that before alleged terrorists, Americans and noncitizens alike, can be denied "life, liberty or property," they are entitled to due process. The court has consistently rejected the presidential claim to unilateral authority to detain suspected terrorists, without charges, without lawyers and without trial. Since alleged terrorists - Americans and noncitizens alike - cannot be denied "liberty" without due process, surely they cannot be denied "life" without due process. The men whom Bush detained in Guantanamo Bay, like the men whom Obama killed by targeted drones, were all accused of being dangerous terrorists who posed a grave threat to America. Yet once Rasul, Iqbal, Hicks, Hamdi, Hamdan and Boumediene were afforded due process, they were eventually released and are alive today. When Padilla and al-Marri were afforded due process, represented by legal counsel, they were duly tried and convicted in a court of law and are serving their sentences. But al-Awlaki, his 16-year-old son, Khan and the others were NOT afforded due process. Instead, they were placed on Obama's "kill list" and were systematically targeted and summarily killed by drones. Summary execution is illegal, as it violates the right of the accused to a fair trial before a punishment of death. Almost all constitutions or legal systems based on common law have prohibited execution without the decision and sentence of a competent judge. The UN's International Covenant on Civil and Political Rights declares that "Every human being has the inherent right to life. This right shall be protected by law. No man shall be deprived of his life arbitrarily." "[The death] penalty can only be carried out pursuant to a final judgment rendered by a competent court." (ICCPR Articles 6.1 and 6.2) Major treaties such as the Geneva Convention and Hague Convention protect the rights of captured regular and irregular members of an enemy's military, along with civilians from enemy states. Prisoners of war must be treated in carefully defined ways which ban summary execution. "No sentence shall be passed and no penalty shall be executed on a person found guilty of an offence except pursuant to a conviction pronounced by a court offering the essential guarantees of independence and impartiality." (Second Protocol of the Geneva Conventions (1977) Article 6.2) Obama's use of a "kill list" and the systematic targeting and summary killing of individuals by drones is an unspeakable violation of the constitution, international law and human rights. President Obama's legacy will forever be tarnished, and our constitutional system forever diminished, unless he immediately suspends his illegal policy of targeted drone killings and subjects the entire program to open, transparent and independent review.

#### Drones turn terrorism

#### 1) They allow recruitment of extremists – larger internal link than the turn

Abbas 13

Hassan, Former Senior Advisor, Belfer Center for Science and International Affairs (Harvard), “How Drones Create More Terrorists,” The Atlantic, 8/23, <http://www.theatlantic.com/international/archive/2013/08/how-drones-create-more-terrorists/278743/>

Recently, strong evidence has begun to suggest that terrorists use drone strikes as a recruitment tool. Of course, the value of drones in the arena of intelligence-gathering and secret surveillance of foes (and even friends) is unmistakable. In warzones too, it can support ground operations in significant and even decisive ways. None of this is controversial, though the ones on the receiving end will certainly not like it. What is debatable is its use as a counter-terrorism instrument in theaters that are not declared war zones, or in cases where a sovereign state is not fully and publicly on board with this policy. Lack of transparency in regulations that govern this new type of warfare, the unverifiable nature of targets, and questions over the credibility of intelligence only complicates the matter.¶ Mark Bowden's important contribution to the drone debate raises critical questions that policy makers will be wise to consider for the future use of this new tool of war. One of the important arguments mentioned in the piece revolves around the notion that drone strikes might be less provocative than ground assaults for terrorists, meaning that standard warfare might create more terrorists than drones do. Lets first accept what is obvious: more civilians are killed in standard warfare, and the history of warfare in the 20th century sufficiently proves the point. When it comes to drones strikes, the ratio of civilian deaths is certainly lower, but the issue is not about the number of civilian casualties alone. The inherently secret nature of the weapon creates a persistent feeling of fear in the areas where drones hover in the sky, and the hopelessness of communities that are on the receiving end of strikes causes severe backlash -- both in terms of anti-U.S. opinion and violence.¶ Response to drone strikes comes in many varieties. First, revenge is targeted at those within the easy range of the insurgents and militants. The victims of those revenge terrorist attacks also consider the drone strikes responsible for all the mayhem. Consequently, terrorists and ordinary people are drawn closer to each other out of sympathy, whereas a critical function of any successful counter-terrorism policy is to win over public confidence so that they join in the campaign against the perpetrators of terror. Poor public awareness -- which is often a function of inadequate education -- about terrorist organizations indeed plays a role in building this perspective. Public outrage against drone strikes circuitously empowers terrorists. It allows them space to survive, move around, and maneuver. Pakistan is a perfect example of this phenomenon.¶ Many in Pakistan now believe that drone strikes tend to motivate Al Qaeda and the Pakistani Taliban to conduct terrorist attacks that target Pakistan's security forces as well as civilians. The duplicity of Pakistan's political and military elite in giving a green light to the U.S. drone policy proved to be counterproductive. The sponsors and supporters of drone strikes in U.S. policy circles apparently ignored the wider socio-political impact and indirect costs when evaluating its efficacy.

#### 2) Military commanders agree – they embolden rivals and trashes counterterrorism progress

Shane 13

Scott, syndicated journalist specializing in the United States intelligence community and CT, “Debate Aside, Number of Drone Strikes Drops Sharply,” NYT, 5/21, <http://www.nytimes.com/2013/05/22/us/debate-aside-drone-strikes-drop-sharply.html?pagewanted=alland_r=0>

Reports of innocent civilians killed by drones — whether real or, as American officials often assert, exaggerated — have shaken the claims of precise targeting. The strikes have become a staple of Qaeda propaganda, cited to support the notion that the United States is at war with Islam. They have been described by convicted terrorists as a motivation for their crimes, including the failed attack on a Detroit-bound airliner in 2009 and the attempted car bombing of Times Square in 2010.¶ Notably, a growing list of former senior Bush and Obama administration security officials have expressed concern that the short-term gains of drone strikes in eliminating specific militants may be outweighed by long-term strategic costs. Among the cautionary voices are Michael V. Hayden, who as C.I.A. director in 2008 oversaw the first escalation of strikes in Pakistan; Stanley A. McChrystal, the retired general who commanded American forces in Afghanistan; James E. Cartwright, the former vice chairman of the Joint Chiefs of Staff; and Dennis C. Blair, the former director of national intelligence.¶ “I think the strikes have been tremendously effective,” said Mr. Hayden, a retired Air Force general, who said he was speaking generally and not discussing any particular operation. “But circumstances change. We’re in a much safer place than we were before, and maybe it’s time to recalibrate.”¶ Mr. Hayden said that through 2008, the “first-order effect of these operations — that a dangerous man is dead” was viewed as so important that other consequences were set aside. But with a diminished terrorist threat, he said, the negative effects of the strikes deserve greater consideration. Among them, he said, were alienating the leadership of countries where the strikes occur; losing intelligence from allies whose laws prohibit support for targeted killings; an eroding political consensus in the United States; and “creating a recruiting poster for Al Qaeda.”¶ One of Mr. Obama’s ambitions on taking office was to forge a new, more positive American image in the Muslim world. But the drone strikes, along with the president’s failure to carry out his promise to close the Guantánamo Bay prison in Cuba, have helped drive the United States’ approval rating to new lows in many Muslim countries. In Pakistan, for instance, 19 percent of those surveyed by the Pew Research Center had a positive view of the United States in the last year of George W. Bush’s presidency. By last year, the approval rating had fallen to 12 percent.¶ “Globally these operations are hated,” said Micah Zenko, a scholar at the Council on Foreign Relations who wrote a major study of targeted killing this year. “It’s the face of American foreign policy, and it’s an ugly face.”

#### 3) The hydra effect

Blum 10

Gabriella Blum 10, Assistant Professor of Law, Harvard Law School, and Philip Heymann, the James Barr Professor of Law, Harvard Law School, June 27, 2010, “Law and Policy of Targeted Killing,” Harvard National Security Journal, http://harvardnsj.org/wp-content/uploads/2010/06/Vol-1\_Blum-Heymann\_Final.pdf

An immediate consequence of eliminating leaders of terrorist organizations will sometimes be what may be called the Hydra effect, the rise of more—and more resolute—leaders to replace them. The decapitating of the organization may also invite retaliation by the other members and followers of the organization. Thus, when Israel assassinated Abbas Mussawi, Hezbollah‘s leader in Lebanon, in 1992, a more charismatic and successful leader, Hassan Nassrallah, succeeded Mussawi. The armed group then avenged the assassination of its former leader in two separate attacks, blowing up Israeli and Jewish targets in Buenos Aires, killing over a hundred people and injuring hundreds more.¶ Targeted killing may also interfere with important gathering of critical intelligence. The threat of being targeted will drive current leaders into hiding, making the monitoring of their movements and activities by the counterterrorist forces more difficult. Moreover, if these leaders are found and killed, instead of captured, the counterterrorism forces lose the ability to interrogate them to obtain potentially valuable information about plans, capabilities, or organizational structure.¶ The political message flowing from the use of targeted killings may be harmful to the attacking country’s interest, as it emphasizes the disparity in power between the parties and reinforces popular support for the terrorists, who are seen as a David fighting Goliath. Moreover, by resorting to military force rather than to law enforcement, targeted killings might strengthen the sense of legitimacy of terrorist operations, which are sometimes viewed as the only viable option for the weak to fight against a powerful empire. If collateral damage to civilians accompanies targeted killings, this, too, may bolster support for what seems like the just cause of the terrorists, at the same time as it weakens domestic support for fighting the terrorists.¶ When targeted killing operations are conducted on foreign territory, they run the risk of heightening international tensions between the targeting government and the government in whose territory the operation is conducted. Israel’s relations with Jordan became dangerously strained following the failed attempt in September 1997 in Jordan to assassinate Khaled Mashaal, the leader of Hamas. Indeed, international relations may suffer even where the local government acquiesces in the operation, but the operation fails or harms innocent civilians, bringing the local government under political attack from domestic constituencies (recall the failed attack in Pakistan on Al-Zawahiri that left eighteen civilians dead).¶ Even if there is no collateral damage, targeted killings in another country’s territory threatens to draw criticism from local domestic constituencies against the government, which either acquiesced or was too weak to stop the operation in its territory. Such is the case now in both Pakistan and Yemen, where opposition forces criticize the governments for permitting American armed intervention in their countries.¶ The aggression of targeted killings also runs the risk of spiraling hatred and violence, numbing both sides to the effects of killing and thus continuing the cycle of violence. Each attack invites revenge, each revenge invites further retaliation. Innocent civilians suffer whether they are the intended target of attack or its unintentional collateral consequences.¶ Last but not least, exceptional measures tend to exceed their logic. As in the case of extraordinary detention or interrogation methods, there is a danger of over-using targeted killings, both within and outside of the war on terrorism. A particular danger in this context arises as the killing of a terrorist often proves a simpler operation than protracted legal battles over detention, trial, extradition, and release.

#### Drones second to detention now – plan reverses that

Levine 13

Adam, managing editor for CNN's Washington bureau, “Kerry says Pakistan Drone Strikes to End 'Very Soon'” CNN, 8/2, http://www.cnn.com/2013/08/01/politics/pakistan-drones

In May, Obama defended the use of drone strikes as a necessary evil, but one that must be used with more temperance as the United States' security situation evolves.¶ America prefers to capture, interrogate and prosecute terrorists, but there are times when this isn't possible, Obama said in a speech at the National Defense University in Washington.

#### Detention preferred to drones now – high presidential authority key

Vladeck 12

Stephen I., Professor of Law at the Washington College of Law at American University, “Detention Policies: What Role for Judicial Review?” ABA Journal, October, <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 link debate goes decisively neg –

#### 1) Empirics

Goldsmith 12

(Jack, Professor of Law @ Harvard “Proxy Detention in Somalia, and the Detention-Drone Tradeoff,” June, <http://www.lawfareblog.com/2012/06/proxy-detention-in-somalia-and-the-detention-drone-tradeoff/>)

There has been speculation about the effect of the Obama administration’s pinched detention policy – i.e. no new detainees brought to GTMO, and no new detainees to Parwan (Afghanistan) from outside Afghanistan – on its other counterterrorism policies. I have long believed there must be some tradeoff between narrowing U.S. detention capabilities and other counterterrorism options, at least implicitly, and not necessarily for the better. As I wrote three years ago, in response to news reports that the Obama administration’s cutback on USG detentions resulted in more USG drone strikes and more outsourcing of rendition, detention, and interrogation:¶ There are at least two problems with this general approach to incapacitating terrorists. First, it is not ideal for security. Sometimes it would be more useful for the United States to capture and interrogate a terrorist (if possible) than to kill him with a Predator drone. Often the United States could get better information if it, rather than another country, detained and interrogated a terrorist suspect. Detentions at Guantanamo are more secure than detentions in Bagram or in third countries.¶ The second problem is that terrorist suspects often end up in less favorable places. Detainees in Bagram have fewer rights than prisoners at Guantanamo, and many in Middle East and South Asian prisons have fewer yet. Likewise, most detainees would rather be in one of these detention facilities than be killed by a Predator drone. We congratulate ourselves when we raise legal standards for detainees, but in many respects all we are really doing is driving the terrorist incapacitation problem out of sight, to a place where terrorist suspects are treated worse.¶ The main response to this argument – especially as it applies to the detention-drone tradeoff – has been to deny any such tradeoff on the ground that there are no terrorists outside of Afghanistan (a) whom the United States is in a position to capture on the ground (as opposed to kill from the sky), and (b) whom the USG would like to detain and interrogate. Dan Klaidman’s book provides some counter-evidence, but I will save my analysis of that for a review I am writing. Here I would like to point to an important story by Eli Lake that reveals that the “United States soldiers have been hunting down al Qaeda affiliates in Somalia”; that U.S. military and CIA advisers work closely with the Puntland Security Force in Somalia, in part to redress piracy threats but mainly to redress threats from al-Shabab; that the Americans have since 2009 captured and brought to the Bosaso Central Prison sixteen people (unclear how many are pirates and how many are al-Shabab); and that American interrogators are involved in questioning al-Shabab suspects. The thrust of Lake’s story is that the conditions of detention at the Bosaso Central Prison are atrocious. But the story is also important for showing that that the United States is involved outside of Afghanistan in capturing members of terrorists organizations that threaten the United States, and does have a national security need to incapacitate and interrogate them. It does not follow, of course, that the USG can or should be in the business of detaining every al-Shabab suspect currently detained in the Bosaso Central Prison. But the Lake story does show that the alternatives to U.S. detention are invariably worse from a human rights perspective. It portends (along with last month’s WPR Report and related DOD press release) that our creeping involvement on the ground in places like Somalia and Yemen mean that the USG will in fact be in a position to capture higher-level terrorists in al Qaeda affiliates. And that in turn suggests that the factual premise underlying the denial of a detention-drone tradeoff will become harder and harder to defend.

#### 2) Avoiding objections – causes a shift to targeted killing and extraditing prisoners

Goldsmith 9

Jack Goldsmith 09, a professor at Harvard Law School and a member of the Hoover Institution Task Force on National Security and Law, assistant attorney general in the Bush administration, 5/31/09, “The Shell Game on Detainees and Interrogation,” <http://www.washingtonpost.com/wp-dyn/content/article/2009/05/29/AR2009052902989.html>

The cat-and-mouse game does not end there. As detentions at Bagram and traditional renditions have come under increasing legal and political scrutiny, the Bush and Obama administrations have relied more on other tactics. They have secured foreign intelligence services to do all the work -- capture, incarceration and interrogation -- for all but the highest-level detainees. And they have increasingly employed targeted killings, a tactic that eliminates the need to interrogate or incarcerate terrorists but at the cost of killing or maiming suspected terrorists and innocent civilians alike without notice or due process.¶ There are at least two problems with this general approach to incapacitating terrorists. First, it is not ideal for security. Sometimes it would be more useful for the United States to capture and interrogate a terrorist (if possible) than to kill him with a Predator drone. Often the United States could get better information if it, rather than another country, detained and interrogated a terrorist suspect. Detentions at Guantanamo are more secure than detentions in Bagram or in third countries.¶ The second problem is that terrorist suspects often end up in less favorable places. Detainees in Bagram have fewer rights than prisoners at Guantanamo, and many in Middle East and South Asian prisons have fewer yet. Likewise, most detainees would rather be in one of these detention facilities than be killed by a Predator drone. We congratulate ourselves when we raise legal standards for detainees, but in many respects all we are really doing is driving the terrorist incapacitation problem out of sight, to a place where terrorist suspects are treated worse.¶ It is tempting to say that we should end this pattern and raise standards everywhere. Perhaps we should extend habeas corpus globally, eliminate targeted killing and cease cooperating with intelligence services from countries that have poor human rights records. This sentiment, however, is unrealistic. The imperative to stop the terrorists is not going away. The government will find and exploit legal loopholes to ensure it can keep up our defenses.¶ This approach to detention policy reflects a sharp disjunction between the public's view of the terrorist threat and the government's. After nearly eight years without a follow-up attack, the public (or at least an influential sliver) is growing doubtful about the threat of terrorism and skeptical about using the lower-than-normal standards of wartime justice.¶ The government, however, sees the terrorist threat every day and is under enormous pressure to keep the country safe. When one of its approaches to terrorist incapacitation becomes too costly legally or politically, it shifts to others that raise fewer legal and political problems. This doesn't increase our safety or help the terrorists. But it does make us feel better about ourselves.

#### Even if the tradeoff isn’t 1-1, there is still a trade-off - their evidence only focuses on FATA regions which is a terrible model – even if they win this, all of the other areas where drones strikes are down create a unique scenario for drone ramp up

Chesney 11 – THEIR AUTHOR

(Robert Chesney 11, Charles I. Francis Professor in Law at the UT School of Law as well as a non-resident Senior Fellow at Brookings, "Examining the Evidence of a Detention-Drone Strike Tradeoff", October 17, [www.lawfareblog.com/2011/10/examining-the-evidence-of-a-detention-drone-strike-tradeoff/](http://www.lawfareblog.com/2011/10/examining-the-evidence-of-a-detention-drone-strike-tradeoff/), KB)

Having said all that: it does not follow that there is no detention-targeting tradeoff at work. I’m just saying that drone strikes in the FATA typically should not be understood in that way (though there might be limited exceptions where a capture raid could have been feasible). Where else to look, then, for evidence of a detention/targeting tradeoff?¶ Bear in mind that it is not as if we can simply assume that the same number of targets emerge in the same locations and circumstances each year, enabling an apples-to-apples comparison. But set that aside.¶ First, consider locations that (i) are outside Afghanistan (since we obviously still do conduct detention ops for new captures there) and (ii) entail host-state government control over the relevant territory plus a willingness either to enable us to conduct our own ops on their territory or to simply effectuate captures themselves and then turn the person(s) over to us. This is how most GTMO detainees captured outside Afghanistan ended up at GTMO. Think Bosnia with respect to the Boumediene petitioners, Pakistan’s non-FATA regions, and a variety of African and Asian states where such conditions obtained in years past. In such locations, we seem to be using neither drones nor detention. Rather, we either are relying on host-state intervention or we are limiting ourselves to surveillance. Very hard to know how much of each might be going on, of course. If it is occuring often, moreover, it might reflect a decline in host-state willigness to cooperate with us (in light of increased domestic and diplomatic pressure from being seen to be responsible for funneling someone into our hands, and the backdrop understanding that, in the age of wikileaks, we simply can’t promise credibly that such cooperation will be kept secret). In any event, this tradeoff is not about detention versus targeting, but something much more complex and difficult to measure.

#### Increased drone use sets a precedent that causes South China Sea conflict

Roberts 13

(Kristen, News Editor at National Journal, “When the Whole World Has Drones”, 3/22/13, <http://www.nationaljournal.com/magazine/when-the-whole-world-has-drones-20130321>)

And that’s a NATO ally seeking the capability to conduct missions that would run afoul of U.S. interests in Iraq and the broader Middle East. Already, Beijing says it considered a strike in Myanmar to kill a drug lord wanted in the deaths of Chinese sailors. What happens if China arms one of its remote-piloted planes and strikes Philippine or Indian trawlers in the South China Sea? Or if India uses the aircraft to strike Lashkar-e-Taiba militants near Kashmir? “We don’t like other states using lethal force outside their borders. It’s destabilizing. It can lead to a sort of wider escalation of violence between two states,” said Micah Zenko, a security policy and drone expert at the Council on Foreign Relations. “So the proliferation of drones is not just about the protection of the United States. It’s primarily about the likelihood that other states will increasingly use lethal force outside of their borders.” LOWERING THE BAR Governments have covertly killed for ages, whether they maintained an official hit list or not. Before the Obama administration’s “disposition matrix,” Israel was among the best-known examples of a state that engaged, and continues to engage, in strikes to eliminate people identified by its intelligence as plotting attacks against it. But Israel certainly is not alone. Turkey has killed Kurds in Northern Iraq. Some American security experts point to Russia as well, although Moscow disputes this. In the 1960s, the U.S. government was involved to differing levels in plots to assassinate leaders in Congo and the Dominican Republic, and, famously, Fidel Castro in Cuba. The Church Committee’s investigation and subsequent 1975 report on those and other suspected plots led to the standing U.S. ban on assassination. So, from 1976 until the start of President George W. Bush’s “war on terror,” the United States did not conduct targeted killings, because it was considered anathema to American foreign policy. (In fact, until as late as 2001, Washington’s stated policy was to oppose Israel’s targeted killings.) When America adopted targeted killing again—first under the Bush administration after the September 11 attacks and then expanded by President Obama—the tools of the trade had changed. No longer was the CIA sending poison, pistols, and toxic cigars to assets overseas to kill enemy leaders. Now it could target people throughout al-Qaida’s hierarchy with accuracy, deliver lethal ordnance literally around the world, and watch the mission’s completion in real time. The United States is smartly using technology to improve combat efficacy, and to make war-fighting more efficient, both in money and manpower. It has been able to conduct more than 400 lethal strikes, killing more than 3,500 people, in Afghanistan, Pakistan, Yemen, Somalia, and North Africa using drones; reducing risk to U.S. personnel; and giving the Pentagon flexibility to use special-forces units elsewhere. And, no matter what human-rights groups say, it’s clear that drone use has reduced the number of civilians killed in combat relative to earlier conflicts. Washington would be foolish not to exploit unmanned aircraft in its long fight against terrorism. In fact, defense hawks and spendthrifts alike would criticize it if it did not. “If you believe that these folks are legitimate terrorists who are committing acts of aggressive, potential violent acts against the United States or our allies or our citizens overseas, should it matter how we choose to engage in the self-defense of the United States?” asked Rep. Mike Rogers, R-Mich., chairman of the House Intelligence Committee. “Do we have that debate when a special-forces team goes in? Do we have that debate if a tank round does it? Do we have the debate if an aircraft pilot drops a particular bomb?” But defense analysts argue—and military officials concede—there is a qualitative difference between dropping a team of men into Yemen and green-lighting a Predator flight from Nevada. Drones lower the threshold for military action. That’s why, according to the Council on Foreign Relations, unmanned aircraft have conducted 95 percent of all U.S. targeted killings. Almost certainly, if drones were unavailable, the United States would not have pursued an equivalent number of manned strikes in Pakistan. And what’s true for the United States will be true as well for other countries that own and arm remote piloted aircraft. “The drones—the responsiveness, the persistence, and without putting your personnel at risk—is what makes it a different technology,” Zenko said. “When other states have this technology, if they follow U.S. practice, it will lower the threshold for their uses of lethal force outside their borders. So they will be more likely to conduct targeted killings than they have in the past.” The Obama administration appears to be aware of and concerned about setting precedents through its targeted-strike program. When the development of a disposition matrix to catalog both targets and resources marshaled against the United States was first reported in 2012, officials spoke about it in part as an effort to create a standardized process that would live beyond the current administration, underscoring the long duration of the counterterrorism challenge. Indeed, the president’s legal and security advisers have put considerable effort into establishing rules to govern the program. Most members of the House and Senate Intelligence committees say they are confident the defense and intelligence communities have set an adequate evidentiary bar for determining when a member of al-Qaida or an affiliated group may be added to the target list, for example, and say that the rigor of the process gives them comfort in the level of program oversight within the executive branch. “They’re not drawing names out of a hat here,” Rogers said. “It is very specific intel-gathering and other things that would lead somebody to be subject for an engagement by the United States government.”

#### South China Sea conflicts cause extinction

Wittner 11

(Lawrence S. Wittner, Emeritus Professor of History at the State University of New York/Albany, Wittner is the author of eight books, the editor or co-editor of another four, and the author of over 250 published articles and book reviews. From 1984 to 1987, he edited Peace & Change, a journal of peace research., 11/28/2011, "Is a Nuclear War With China Possible?", www.huntingtonnews.net/14446)

While nuclear weapons exist, there remains a danger that they will be used. After all, for centuries national conflicts have led to wars, with nations employing their deadliest weapons. The current deterioration of U.S. relations with China might end up providing us with yet another example of this phenomenon. The gathering tension between the United States and China is clear enough. Disturbed by China’s growing economic and military strength, the U.S. government recently challenged China’s claims in the South China Sea, increased the U.S. military presence in Australia, and deepened U.S. military ties with other nations in the Pacific region. According to Secretary of State Hillary Clinton, the United States was “asserting our own position as a Pacific power.” But need this lead to nuclear war? Not necessarily. And yet, there are signs that it could. After all, both the United States and China possess large numbers of nuclear weapons. The U.S. government threatened to attack China with nuclear weapons during the Korean War and, later, during the conflict over the future of China’s offshore islands, Quemoy and Matsu. In the midst of the latter confrontation, President Dwight Eisenhower declared publicly, and chillingly, that U.S. nuclear weapons would “be used just exactly as you would use a bullet or anything else.” Of course, China didn’t have nuclear weapons then. Now that it does, perhaps the behavior of national leaders will be more temperate. But the loose nuclear threats of U.S. and Soviet government officials during the Cold War, when both nations had vast nuclear arsenals, should convince us that, even as the military ante is raised, nuclear saber-rattling persists. Some pundits argue that nuclear weapons prevent wars between nuclear-armed nations; and, admittedly, there haven’t been very many—at least not yet. But the Kargil War of 1999, between nuclear-armed India and nuclear-armed Pakistan, should convince us that such wars can occur. Indeed, in that case, the conflict almost slipped into a nuclear war. Pakistan’s foreign secretary threatened that, if the war escalated, his country felt free to use “any weapon” in its arsenal. During the conflict, Pakistan did move nuclear weapons toward its border, while India, it is claimed, readied its own nuclear missiles for an attack on Pakistan. At the least, though, don’t nuclear weapons deter a nuclear attack? Do they? Obviously, NATO leaders didn’t feel deterred, for, throughout the Cold War, NATO’s strategy was to respond to a Soviet conventional military attack on Western Europe by launching a Western nuclear attack on the nuclear-armed Soviet Union. Furthermore, if U.S. government officials really believed that nuclear deterrence worked, they would not have resorted to championing “Star Wars” and its modern variant, national missile defense. Why are these vastly expensive—and probably unworkable—military defense systems needed if other nuclear powers are deterred from attacking by U.S. nuclear might? Of course, the bottom line for those Americans convinced that nuclear weapons safeguard them from a Chinese nuclear attack might be that the U.S. nuclear arsenal is far greater than its Chinese counterpart. Today, it is estimated that the U.S. government possesses over five thousand nuclear warheads, while the Chinese government has a total inventory of roughly three hundred. Moreover, only about forty of these Chinese nuclear weapons can reach the United States. Surely the United States would “win” any nuclear war with China. But what would that “victory” entail? A nuclear attack by China would immediately slaughter at least 10 million Americans in a great storm of blast and fire, while leaving many more dying horribly of sickness and radiation poisoning. The Chinese death toll in a nuclear war would be far higher. Both nations would be reduced to smoldering, radioactive wastelands. Also, radioactive debris sent aloft by the nuclear explosions would blot out the sun

and bring on a “nuclear winter” around the globe—destroying agriculture, creating worldwide famine, and generating chaos and destruction.

## Legitimacy Adv

#### PRISM

Migranyan 7/5

(Andranik is the director of the Institute for Democracy and Cooperation in New York. He is also a professor at the Institute of International Relations in Moscow, a former member of the Public Chamber and a former member of the Russian Presidential Council. “Scandals Harm U.S. Soft Power,” 2013, http://nationalinterest.org/commentary/scandals-harm-us-soft-power-8695)

For the past few months, the United States has been rocked by a series of scandals. It all started with the events in Benghazi, when Al Qaeda-affiliated terrorists attacked the General Consulate there and murdered four diplomats, including the U.S. ambassador to Libya. Then there was the scandal exposed when it was revealed that the Justice Department was monitoring the calls of the Associated Press. The Internal Revenue Service seems to have targeted certain political groups. Finally, there was the vast National Security Agency apparatus for monitoring online activity revealed by Edward Snowden. Together, these events provoke a number of questions about the path taken by contemporary Western societies, and especially the one taken by America.¶ Large and powerful institutions, especially those in the security sphere, have become unaccountable to the public, even to representatives of the people themselves. Have George Orwell’s cautionary tales of total government control over society been realized?¶ At the end of the 1960s and the beginning of the 1970s, my fellow students and I read Orwell’s 1984 and other dystopian stories and believed them to portray fascist Germany or the Soviet Union—two totalitarian regimes—but today it has become increasingly apparent that Orwell, Huxley and other dystopian authors had seen in their own countries (Britain and the United States) certain trends, especially as technological capabilities grew, that would ultimately allow governments to exert total control over their societies. The potential for this type of all-knowing regime is what Edward Snowden revealed, confirming the worst fears that the dystopias are already being realized.¶ On a practical geopolitical level, the spying scandals have seriously tarnished the reputation of the United States. They have circumscribed its ability to exert soft power; the same influence that made the U.S. model very attractive to the rest of the world. This former lustre is now diminished. The blatant everyday intrusions into the private lives of Americans, and violations of individual rights and liberties by runaway, unaccountable U.S. government agencies, have deprived the United States of its authority to dictate how others must live and what others must do. Washington can no longer lecture others when its very foundational institutions and values are being discredited—or at a minimum, when all is not well “in the state of Denmark.”¶ Perhaps precisely because not all is well, many American politicians seem unable to adequately address the current situation. Instead of asking what isn’t working in the government and how to ensure accountability and transparency in their institutions, they try, in their annoyance, to blame the messenger—as they are doing in Snowden’s case. Some Senators hurried to blame Russia and Ecuador for anti-American behavior, and threatened to punish them should they offer asylum to Snowden.¶ These threats could only cause confusion in sober minds, as every sovereign country retains the right to issue or deny asylum to whomever it pleases. In addition, the United States itself has a tradition of always offering political asylum to deserters of the secret services of other countries, especially in the case of the former Soviet Union and other ex-socialist countries. In those situations, the United States never gave any consideration to how those other countries might react—it considered the deserters sources of valuable information. As long as deserters have not had a criminal and murderous past, they can receive political asylum in any country that considers itself sovereign and can stand up to any pressure and blackmail.¶ Meanwhile, the hysteria of some politicians, if the State Department or other institutions of the executive branch join it, can only accelerate the process of Snowden’s asylum. For any country he might ask will only be more willing to demonstrate its own sovereignty and dignity by standing up to a bully that tries to dictate conditions to it. In our particular case, political pressure on Russia and President Putin could turn out to be utterly counterproductive. I believe that Washington has enough levelheaded people to understand that fact, and correctly advise the White House. The administration will need sound advice, as many people in Congress fail to understand the consequences of their calls for punishment of sovereign countries or foreign political leaders that don’t dance to Washington’s tune.¶ Judging by the latest exchange between Moscow and Washington, it appears that the executive branches of both countries will find adequate solutions to the Snowden situation without attacks on each other’s dignity and self-esteem. Russia and the United States are both Security Council members, and much hinges on their decisions, including a slew of common problems that make cooperation necessary.¶ Yet the recent series of scandals has caused irreparable damage to the image and soft power of the United States. I do not know how soon this damage can be repaired. But gone are the days when Orwell was seen as a relic of the Cold War, as the all-powerful Leviathan of the security services has run away from all accountability to state and society. Today the world is looking at America—and its model for governance—with a more critical eye.

#### American hypocrisy in the Middle East destroys credibility

MacDonald 9-5

Neil Macdonald 9/5/13, Senior Washington Correspondent for CBC News, “Obama's indecision on Syria strains U.S. credibility: Neil Macdonald,” <http://www.cbc.ca/news/world/story/2013/09/04/f-vp-obama-congress-syria-missile-strike-neil-macdonald.html>

In fact, “red lines” are old hat in the Middle East. They are constantly being set, violated and moved. The term was popular there before it ever entered the American lexicon.¶ But in a region where people remember the betrayal of the Sykes-Picot agreement as though it was yesterday (Great Britain and France secretly carved up the Middle East between them after World War One), and regard the Crusades as though they happened last week, it is the long history of American and other Western actions that burdens the U.S.¶ Americans might move on after a week or so; the rest of the world doesn’t.¶ Take chemical weapons. Obama and Kerry are boiling righteously about their use in Syria, but Washington was considerably less outraged just a few decades ago.¶ There is ample evidence America supplied Saddam Hussein with the precursors for the chemical weapons he used in battle against Iran in the 1980s. Even when he turned them on his own citizens, and the U.S. Senate was finally persuaded to pass economic sanctions, the House of Representatives stopped them dead.¶ The Reagan administration, which propped up tyrants throughout the region, opposed taking any action.¶ “I always found it ironic,” Rep. Chris Van Hollen said last week, “that the United States went to war on false pretenses that Saddam Hussein had chemical weapons and weapons of mass destruction in 2003, when he did not have them, but failed to take any action in 1988 when he actually used them.”¶ One suspects Iraqis felt that irony, too. Certainly they remember George H.W. Bush telling them to rise up after the first Gulf War, before leaving them to Saddam’s tender mercies.¶ Going back much further, there is still debate over whether British colonial authorities deployed chemical weapons as part of the wholesale slaughter its air force carried out to suppress Iraqi uprisings after the First World War.¶ Certainly Winston Churchill was keen. "I am strongly in favour of using poisoned gas against uncivilised tribes . . . [to] spread a lively terror,” wrote the great man.¶ Empty declarations¶ In any event, does anyone think the average Syrian distinguishes between the rape and torture and bombs and bullets Assad’s executioners have used to dispatch their wives and husbands and children, and the sarin gas he’s alleged to have dropped in the suburbs of Damascus last month?¶ It’s just as likely they recall George W. Bush’s empty inaugural declarations in 2005 about protecting the oppressed of the world from dictators. And of course, Barack Obama’s words as he went to war against Muammar Ghaddafi two and a half years ago: “As President, I refused to wait for the images of slaughter and mass graves before taking action.”¶ More than 100,000 Syrian corpses later, Obama has done nothing.¶ Yes, the White House did announce in June that as a result of earlier chemical weapons attacks by Assad, it was authorizing the CIA to arm the Syrian rebels. But as of today, those arms remain undelivered.¶ More than two years ago, Obama and his officials began declaring that Assad must go. Now, fearing who might come next, “regime change” in Syria is out, and “containment” is in. Any military strikes will somehow be limited to deterring use of chemical weapons without influencing the outcome of the civil war — as though such a thing is possible.¶ In Egypt, the United States is now backing and financially supporting the military junta that removed a democratically elected president from office and massacred his supporters. Because American law forbids the provision of financial aid to any government installed by a coup, Obama has simply chosen not to call it a coup.¶ The list goes on. And on.

#### Multilateralism fails — multiple interlocking factors create gridlock

Held 13

David Held 13, Professor of Politics and International Relations, at the University of Durham AND Thomas Hale, Postdoctoral Research Fellow at the Blavatnik School of Government, Oxford University AND Kevin Young, Assistant Professor in the Department of Political Science at the University of Massachusetts Amherst, 5/24/13, “Gridlock: the growing breakdown of global cooperation,” <http://www.opendemocracy.net/thomas-hale-david-held-kevin-young/gridlock-growing-breakdown-of-global-cooperation>

The Doha round of trade negotiations is deadlocked, despite eight successful multilateral trade rounds before it. Climate negotiators have met for two decades without finding a way to stem global emissions. The UN is paralyzed in the face of growing insecurities across the world, the latest dramatic example being Syria. Each of these phenomena could be treated as if it was independent, and an explanation sought for the peculiarities of its causes. Yet, such a perspective would fail to show what they, along with numerous other instances of breakdown in international negotiations, have in common.¶ Global cooperation is gridlocked across a range of issue areas. The reasons for this are not the result of any single underlying causal structure, but rather of several underlying dynamics that work together. Global cooperation today is failing not simply because it is very difficult to solve many global problems – indeed it is – but because previous phases of global cooperation have been incredibly successful, producing unintended consequences that have overwhelmed the problem-solving capacities of the very institutions that created them. It is hard to see how this situation can be unravelled, given failures of contemporary global leadership, the weaknesses of NGOs in converting popular campaigns into institutional change and reform, and the domestic political landscapes of the most powerful countries.

#### Multilateralism fails — multiple interlocking factors create gridlock

Held 13

David Held 13, Professor of Politics and International Relations, at the University of Durham AND Thomas Hale, Postdoctoral Research Fellow at the Blavatnik School of Government, Oxford University AND Kevin Young, Assistant Professor in the Department of Political Science at the University of Massachusetts Amherst, 5/24/13, “Gridlock: the growing breakdown of global cooperation,” <http://www.opendemocracy.net/thomas-hale-david-held-kevin-young/gridlock-growing-breakdown-of-global-cooperation>

The Doha round of trade negotiations is deadlocked, despite eight successful multilateral trade rounds before it. Climate negotiators have met for two decades without finding a way to stem global emissions. The UN is paralyzed in the face of growing insecurities across the world, the latest dramatic example being Syria. Each of these phenomena could be treated as if it was independent, and an explanation sought for the peculiarities of its causes. Yet, such a perspective would fail to show what they, along with numerous other instances of breakdown in international negotiations, have in common.¶ Global cooperation is gridlocked across a range of issue areas. The reasons for this are not the result of any single underlying causal structure, but rather of several underlying dynamics that work together. Global cooperation today is failing not simply because it is very difficult to solve many global problems – indeed it is – but because previous phases of global cooperation have been incredibly successful, producing unintended consequences that have overwhelmed the problem-solving capacities of the very institutions that created them. It is hard to see how this situation can be unravelled, given failures of contemporary global leadership, the weaknesses of NGOs in converting popular campaigns into institutional change and reform, and the domestic political landscapes of the most powerful countries.

#### Experts agree

Hsu 10

(Jeremy, Live Science Staff, July 19, pg. <http://www.livescience.com/culture/can-humans-survive-extinction-doomsday-100719.html>)

His views deviate sharply from those of most experts, who don't view climate change as the end for humans. Even the worst-case scenarios discussed by the Intergovernmental Panel on Climate Change don't foresee human extinction. "The scenarios that the mainstream climate community are advancing are not end-of-humanity, catastrophic scenarios," said Roger Pielke Jr., a climate policy analyst at the University of Colorado at Boulder. Humans have the technological tools to begin tackling climate change, if not quite enough yet to solve the problem, Pielke said. He added that doom-mongering did little to encourage people to take action. "My view of politics is that the long-term, high-risk scenarios are really difficult to use to motivate short-term, incremental action," Pielke explained. "The rhetoric of fear and alarm that some people tend toward is counterproductive." Searching for solutions One technological solution to climate change already exists through carbon capture and storage, according to Wallace Broecker, a geochemist and renowned climate scientist at Columbia University's Lamont-Doherty Earth Observatory in New York City. But Broecker remained skeptical that governments or industry would commit the resources needed to slow the rise of carbon dioxide (CO2) levels, and predicted that more drastic geoengineering might become necessary to stabilize the planet. "The rise in CO2 isn't going to kill many people, and it's not going to kill humanity," Broecker said. "But it's going to change the entire wild ecology of the planet, melt a lot of ice, acidify the ocean, change the availability of water and change crop yields, so we're essentially doing an experiment whose result remains uncertain."

#### No positive feedbacks - takes out 100% of the impact

Vahrenholt 12

Fritz Vahrenholt 12, Honorary Professor of chemistry at the University of Hamburg, former Umweltsenator in the German Ministry for Environment, Scientific Reviewer for the 2010 IPCC, June 18, 2012, “Global warming: second thoughts of an environmentalist,” The Telegraph, online: http://www.telegraph.co.uk/comment/9338939/Global-warming-second-thoughts-of-an-environmentalist.html

Furthermore, what is little known is that CO2 also requires a strong amplifier if it were to aggressively shape future climate as envisaged by the IPCC. CO2 alone, without so-called feedbacks, would only generate a moderate warming of 1.1°C per CO2 doubling. The IPCC assume in their models that there are strong amplification processes, including water vapour and cloud effects which, however, are also still poorly understood, like solar amplification. These are the shaky foundations for the IPCC's alarming prognoses of a temperature rise of up to 4.5°C for a doubling of CO2.¶ In the last 10 years the solar magnetic field dropped to one of its lowest levels in the last 150 years, indicating lower intensity in the decades ahead. This may have contributed to the halt in global warming and is likely to continue for a while, until it may resume gradually around 2030/2040. Based on the past natural climate pattern, we should expect that by 2100 temperatures will not have risen more than 1°C, significantly less than proposed by the IPCC.¶ Climate catastrophe would have been called off and the fear of a dangerously overheated planet would go down in history as a classic science error. Rather than being largely settled, there are more and more open climate questions which need to be addressed in an impartial and open-minded way.

#### Long timeframe and adaption checks, EVEN in the worst-case scenario

Barrett 7

Barrett, professor of natural resource economics – Columbia University, ‘7¶ (Scott, Why Cooperate? The Incentive to Supply Global Public Goods, introduction)

First, climate change does not threaten the survival of the human species.5 If unchecked, it will cause other species to become extinction (though biodiversity is being depleted now due to other reasons). It will alter critical ecosystems (though this is also happening now, and for reasons unrelated to climate change). It will reduce land area as the seas rise, and in the process displace human populations. “Catastrophic” climate change is possible, but not certain. Moreover, and unlike an asteroid collision, large changes (such as sea level rise of, say, ten meters) will likely take centuries to unfold, giving societies time to adjust. “Abrupt” climate change is also possible, and will occur more rapidly, perhaps over a decade or two. However, abrupt climate change (such as a weakening in the North Atlantic circulation), though potentially very serious, is unlikely to be ruinous. Human-induced climate change is an experiment of planetary proportions, and we cannot be sur of its consequences. Even in a worse case scenario, however, global climate change is not the equivalent of the Earth being hit by mega-asteroid. Indeed, if it were as damaging as this, and if we were sure that it would be this harmful, then our incentive to address this threat would be overwhelming. The challenge would still be more difficult than asteroid defense, but we would have done much more about it by now.

#### Their models are flawed

Stockwell 11

David Stockwell 11, Researcher at the San Diego Supercomputer Center, Ph.D. in Ecosystem Dynamics from the Australian National University, developed the Genetic Algorithm for Rule-set Production system making contributions modeling of invasive species, epidemiology of human diseases, the discovery of new species, and effects on species of climate change, April 21, 2011, “Errors of Global Warming Effects Modeling,” online: <http://landshape.org/enm/errors-of-global-warming-effects-modeling/>

Predictions of massive species extinctions due to AGW came into prominence with a January 2004 paper in Nature called Extinction Risk from Climate Change by Chris Thomas et al.. They made the following predictions: ¶ “we predict, on the basis of mid-range climate-warming scenarios for 2050, that 15â€“37% of species in our sample of regions and taxa will be â€˜committed to extinctionâ€™.¶ Subsequently, three communications appeared in Nature in July 2004. Two raised technical problems, including one by the eminent ecologist Joan Roughgarden. Opinions raged from “Dangers of Crying Wolf over Risk of Extinctions” concerned with damage to conservationism by alarmism, through poorly written press releases by the scientists themselves, and Extinction risk [press] coverage is worth the inaccuracies stating “we believe the benefits of the wide release greatly outweighed the negative effects of errors in reporting”.¶ Among those believing gross scientific inaccuracies are not justified, and such attitudes diminish the standing of scientists, I was invited to a meeting of a multidisciplinary group of 19 scientists, including Dan Bodkin from UC Santa Barbara, mathematician Matt Sobel, Craig Loehle and others at the Copenhagen base of BjÃ¸rn Lomborg, author of The Skeptical Environmentalist. This resulted in Forecasting the Effects of Global Warming on Biodiversity published in 2007 BioScience. We were particularly concerned by the cavalier attitude to model validations in the Thomas paper, and the field in general: ¶ Of the modeling papers we have reviewed, only a few were validated. Commonly, these papers simply correlate present distribution of species with climate variables, then replot the climate for the future from a climate model and, finally, use one-to-one mapping to replot the future distribution of the species, without any validation using independent data. Although some are clear about some of their assumptions (mainly equilibrium assumptions), readers who are not experts in modeling can easily misinterpret the results as valid and validated. For example, Hitz and Smith (2004) discuss many possible effects of global warming on the basis of a review of modeling papers, and in this kind of analysis the unvalidated assumptions of models would most likely be ignored.¶ The paper observed that few mass extinctions have been seen over recent rapid climate changes, suggesting something must be wrong with the models to get such high rates of extinctions. They speculated that species may survive in refugia, suitable habitats below the spatial scale of the models.¶ Another example of an unvalidated assumptions that could bias results in the direction of extinctions, was described in chapter 7 of my book Niche Modeling.¶ When climate change shifts a species’ niche over a landscape (dashed to solid circle) the response of that species can be described in three ways: dispersing to the new range (migration), local extirpation (intersection), or expansion (union). Given the probability of extinction is correlated with range size, there will either be no change, an increase (intersection), or decrease (union) in extinctions depending on the dispersal type. Thomas et al. failed to consider range expansion (union), a behavior that predominates in many groups. Consequently, the methodology was inherently biased towards extinctions.¶ One of the many errors in this work was a failure to evaluate the impact of such assumptions.¶ The prevailing view now, according to Stephen Williams, coauthor of the Thomas paper and Director for the Center for Tropical Biodiversity and Climate Change, and author of such classics as “Climate change in Australian tropical rainforests: an impending environmental catastrophe”, may be here.¶ Many unknowns remain in projecting extinctions, and the values provided in Thomas et al. (2004) should not be taken as precise predictions. … Despite these uncertainties, Thomas et al. (2004) believe that the consistent overall conclusions across analyses establish that anthropogenic climate warming at least ranks alongside other recognized threats to global biodiversity. ¶ So how precise are the figures? Williams suggests we should just trust the beliefs of Thomas et al. — an approach referred to disparagingly in the forecasting literature as a judgmental forecast rather than a scientific forecast (Green & Armstrong 2007). These simple models gloss over numerous problems in validating extinction models, including the propensity of so-called extinct species quite often reappear. Usually they are small, hard to find and no-one is really looking for them.

#### Their appeals to scientific consensus shut down democratic deliberation and reinforce technocracy—proven by someone like Hansen who is a hack scientist but is in NASA so we trust him

**McKitrick**, professor of economics – University of Guelph, 11/22/**‘11**

(Ross, “Fix it or fold it,” Financial Post, <http://opinion.financialpost.com/2011/11/22/fix-it-or-fold-it/>)

For many years, **attempts to encourage debate on global warming science or policy have run into the obstacle that the** UN Intergovernmental Panel on Climate Change (**IPCC**) **has issued definitive statements**, and **therefore—the reasoning goes**—the era of **debate is over.** **The IPCC is made up of** thousands of the world’s **top scientists, it has** one of the most **rigorous** and exhaustive **review** processes in the history of science, **and** the **oversight** by 195 member governments **ensures balance**, transparency and accountability. Or so we are told.¶ **These claims about the IPCC are not true**, but until relatively recently few were willing to question what they were told. Things began to change in 2009 with the leak of the Climategate emails, which prompted some observers to begin questioning their assumptions about the IPCC. Then this fall, Canadian investigative journalist Donna **Laframboise** released her book The Delinquent Teenager Who Was Mistaken for the World’s Top Climate Expert, a superb exposé of the IPCC that **shows** convincingly **that the IPCC has evolved into an activist organization bearing little resemblance to the picture of scientific probity painted by its promoters and activist allies.**¶On Monday, news emerged of another release of **thousands of new Climategate emails**, with early indications that some of them **add to concerns about the IPCC** that arose from the 2009 disclosures.¶ I am pleased to announce the publication of a report I have written that provides systematic detail on the procedures of the IPCC and makes the case for reforming them. **My study**, called What is Wrong With the IPCC? A Proposal for Radical Reform, was published by the Global Warming Policy Foundation in the U.K., and includes a foreword by the Hon. John Howard, former prime minister of Australia.¶ The first thing to note about this report is that it is not about science. It **is about the policies, procedures and administrative structures in the IPCC.** A third of the report consists simply of explanations of how the IPCC works. The more people learn such details, the more they will see that the IPCC does not come close to living up to the hype.¶ **Most people would not consider themselves sufficiently well-trained to adjudicate conflicting claims on the science of global warming.** But **you don’t have to be a scientist to be capable of understanding when an investigative procedure is biased.** **The IPCC** assessment **process has material defects**, which are **sufficiently serious** and numerous **to put into question the soundness of** some of **its** most heavily promoted **claims.**¶What are some of the flaws? **IPCC report-writing teams are cherry-picked in an opaque process by a secretive bureau in Geneva, with no effective requirements to ensure representation of diverse viewpoints. Environmentalist campaign groups are heavily overrepresented in** the resulting **author lists. Conflicts of interest abound** throughout the report-writing process, whereby **select authors are asked to review their own work and** that of **their critics**, inevitably **concluding in their own favour.** **The expert review process has become little more than elegant stagecraft**, creating an illusion of adversarial cross-examination while **concealing the reality of unchecked author bias.** **Unlike** in **regular** academic **peer review** procedures, **IPCC authors are allowed to overrule reviewers, and even to rewrite the text after the close of the peer review process.**¶In my report I provide **case studies** that **trace key sections of past IPCC reports through the drafting, review and publication stages, showing how evidence was manipulated or changed after** the close of **peer review.** Some of these incidents had already been documented, but some of them can only now be fully explained because of the disclosure of email traffic among IPCC authors in both the Climategate archives and in files obtained under recent U.K. freedom of information rulings.¶ I also look at the review of IPCC procedures undertaken last year by the Inter-Academy Council (IAC). The IAC report picked up on some of the major problems I also identify, but the task of devising and implementing reforms fell to **the IPCC plenary panel**, an unwieldy and passive assembly of delegates from 195 member states, whose manifest **indifference** **allowed the IPCC leadership to gut** the **reforms before they were ever implemented.**¶My report presents a set of reform proposals that are based on the simple notion that the IPCC assessment process should be made as rigorous as an ordinary academic journal. The surprise for many readers will be how radical the required changes would be.¶ In a surprise, and fast-breaking development, **Monday** morning **saw the release of** more than **5,000 fresh emails of climate scientists connected with the U.K. Climate Research Unit.** They will be examined over the next few days with intense interest. Having read several hundred so far, most are simply the usual traffic among active scholars. But **the ones that pertain to the IPCC process fully support the contentions in my report.**¶For instance, I discuss the problem that **IPCC** chapter **authors are able to recruit** contributing authors (**CAs**) **in an opaque process that does not ensure a diversity of views.** The **resulting uniformity is obvious** simply from looking at the list of authors, but we can now see the confirmatory evidence in the email traffic. In a pair of emails (nos. 0714 and 3205), ­IPCC lead author Phil **Jones goes through lists of possible CAs with his** IPCC **coauthor** Kevin **Trenberth, declaring** “**Getting people we know and trust is vital.”** **He** then **categorizes** his **recommendations based**, not on whether the person is the most qualified but **on whether the person is “on the right side”** (namely agrees with him), or whether he “trusts” him or not. At one point he dismisses a particular expert who “has done a lot but I don’t trust him.” **This kind of cronyism is shown by the emails to be rampant in the IPCC.**

#### Previous temperature spikes disprove the impact

**Singer**, PhD physics – Princeton University and professor of environmental science – UVA, consultant – NASA, GAO, DOE, NASA, Carter, PhD paleontology – University of Cambridge, adjunct research professor – Marine Geophysical Laboratory @ James Cook University, and Idso, PhD Geography – ASU, **‘11**

(S. Fred, Robert M. and Craig, “Climate Change Reconsidered,” 2011 Interim Report of the Nongovernmental Panel on Climate Change)

Research from locations around the world reveal a significant period of elevated air temperatures that immediately preceded the Little Ice Age, during a time that has come to be known as the Little Medieval Warm Period. A discussion of this topic was not included in the 2009 NIPCC report, but we include it here to demonstrate the existence of another set of real-world data that do not support the IPCC‘s claim that temperatures of the past couple of decades have been the warmest of the past one to two millennia. In one of the more intriguing aspects of his study of global climate change over the past three millennia, Loehle (2004) presented a graph of the Sargasso Sea and South African temperature records of Keigwin (1996) and Holmgren et al. (1999, 2001) that reveals the existence of a major spike in surface air temperature that began sometime in the early 1400s. This abrupt and anomalous warming pushed the air temperatures of these two records considerably above their representations of the peak warmth of the twentieth century, after which they fell back to pre-spike levels in the mid-1500s, in harmony with the work of McIntyre and McKitrick (2003), who found a similar period of higher-than-current temperatures in their reanalysis of the data employed by Mann et al. (1998, 1999).

#### That’s sufficient to trigger their impact

Harvey 11

Harvey, environment reporter – the Guardian, 11/9/’11¶ (Fiona, <http://www.guardian.co.uk/environment/2011/nov/09/fossil-fuel-infrastructure-climate-change>)

Climate scientists estimate that global warming of 2C above pre-industrial levels marks the limit of safety, beyond which climate change becomes catastrophic and irreversible. Though such estimates are necessarily imprecise, warming of as little as 1.5C could cause dangerous rises in sea levels and a higher risk of extreme weather – the limit of 2C is now inscribed in international accords, including the partial agreement signed at Copenhagen in 2009, by which the biggest developed and developing countries for the first time agreed to curb their greenhouse gas output.

#### Past tipping point even if they reduced all emissions to zero

O'Carroll, 9

Eoin O'Carroll, CSM staff writer, 1/27/2009, " Report calls climate change ‘irreversible’ ," http://features.csmonitor.com/environment/2009/01/27/report-calls-climate-change-irreversible/

Even if all the world’s smokestacks and tailpipes were to suddenly stop spewing CO2, if all the trees everywhere were to be left standing, and if all the remaining coal, oil, and gas were to stay in the ground, the planet would still feel the effects of global warming a millennium from now. That’s the conclusion of a sobering new report published in the Proceedings of the National Academy of Sciences. The study found that, even as atmospheric concentrations of carbon dioxide decline, the oceans, which are slowing down global warming by absorbing heat, will seek equilibrium with the atmosphere by re-releasing it.On the Horizons blog, the Monitor’s Pete Spotts quotes Susan Solomon, a senior researcher with the National Oceanographic and Atmospheric Administration and the lead author of the study: “The same thing that is holding back climate change today will keep it going in the very long term, and that is the oceans.” Combine this with the tendency for carbon dioxide to persist in the atmosphere for centuries, and global warming becomes a juggernaut that will take many, many generations to turn around. “People have imagined that if we stopped emitting carbon dioxide the climate would go back to normal in 100 years, 200 years; that’s not true,” said Ms. Solomon, according to the Associated Press.

#### Warming locked in—current construction and no international deal means it will be runaway

Harvey 11

Harvey, environment reporter – the Guardian, 11/9/’11¶ (Fiona, <http://www.guardian.co.uk/environment/2011/nov/09/fossil-fuel-infrastructure-climate-change>)

The world is likely to build so many fossil-fuelled power stations, energy-guzzling factories and inefficient buildings in the next five years that it will become impossible to hold global warming to safe levels, and the last chance of combating dangerous climate change will be "lost for ever", according to the most thorough analysis yet of world energy infrastructure.¶ Anything built from now on that produces carbon will do so for decades, and this "lock-in" effect will be the single factor most likely to produce irreversible climate change, the world's foremost authority on energy economics has found. If this is not rapidly changed within the next five years, the results are likely to be disastrous.¶ "The door is closing," Fatih Birol, chief economist at the International Energy Agency, said. "I am very worried – if we don't change direction now on how we use energy, we will end up beyond what scientists tell us is the minimum [for safety]. The door will be closed forever."¶ If the world is to stay below 2C of warming, which scientists regard as the limit of safety, then emissions must be held to no more than 450 parts per million (ppm) of carbon dioxide in the atmosphere; the level is currently around 390ppm. But the world's existing infrastructure is already producing 80% of that "carbon budget", according to the IEA's analysis, published on Wednesday. This gives an ever-narrowing gap in which to reform the global economy on to a low-carbon footing.¶ If current trends continue, and we go on building high-carbon energy generation, then by 2015 at least 90% of the available "carbon budget" will be swallowed up by our energy and industrial infrastructure. By 2017, there will be no room for manoeuvre at all – the whole of the carbon budget will be spoken for, according to the IEA's calculations.¶ Birol's warning comes at a crucial moment in international negotiations on climate change, as governments gear up for the next fortnight of talks in Durban, South Africa, from late November. "If we do not have an international agreement, whose effect is put in place by 2017, then the door to [holding temperatures to 2C of warming] will be closed forever," said Birol.¶ But world governments are preparing to postpone a speedy conclusion to the negotiations again. Originally, the aim was to agree a successor to the 1997 Kyoto protocol, the only binding international agreement on emissions, after its current provisions expire in 2012. But after years of setbacks, an increasing number of countries – including the UK, Japan and Russia – now favour postponing the talks for several years.¶ Both Russia and Japan have spoken in recent weeks of aiming for an agreement in 2018 or 2020, and the UK has supported this move. Greg Barker, the UK's climate change minister, told a meeting: "We need China, the US especially, the rest of the Basic countries [Brazil, South Africa, India and China] to agree. If we can get this by 2015 we could have an agreement ready to click in by 2020." Birol said this would clearly be too late. "I think it's very important to have a sense of urgency – our analysis shows [what happens] if you do not change investment patterns, which can only happen as a result of an international agreement."¶ Nor is this a problem of the developing world, as some commentators have sought to frame it. In the UK, Europe and the US, there are multiple plans for new fossil-fuelled power stations that would contribute significantly to global emissions over the coming decades.¶ The Guardian revealed in May an IEA analysis that found emissions had risen by a record amount in 2010, despite the worst recession for 80 years. Last year, a record 30.6 gigatonnes (Gt) of carbon dioxide poured into the atmosphere from burning fossil fuels, a rise of 1.6Gt on the previous year. At the time, Birol told the Guardian that constraining global warming to moderate levels would be "only a nice utopia" unless drastic action was taken.¶ The new research adds to that finding, by showing in detail how current choices on building new energy and industrial infrastructure are likely to commit the world to much higher emissions for the next few decades, blowing apart hopes of containing the problem to manageable levels. The IEA's data is regarded as the gold standard in emissions and energy, and is widely regarded as one of the most conservative in outlook – making the warning all the more stark. The central problem is that most industrial infrastructure currently in existence – the fossil-fuelled power stations, the emissions-spewing factories, the inefficient transport and buildings – is already contributing to the high level of emissions, and will do so for decades. Carbon dioxide, once released, stays in the atmosphere and continues to have a warming effect for about a century, and industrial infrastructure is built to have a useful life of several decades.¶ Yet, despite intensifying warnings from scientists over the past two decades, the new infrastructure even now being built is constructed along the same lines as the old, which means that there is a "lock-in" effect – high-carbon infrastructure built today or in the next five years will contribute as much to the stock of emissions in the atmosphere as previous generations.¶ The "lock-in" effect is the single most important factor increasing the danger of runaway climate change, according to the IEA in its annual World Energy Outlook, published on Wednesday.

#### Existing carbon triggers the impact

Rirdan 12

Daniel Rirdan 12, founder of The Exploration Company, “The Right Carbon Concentration Target”, June 29, <http://theenergycollective.com/daniel-rirdan/89066/what-should-be-our-carbon-concentration-target-and-forget-politics?utm_source=feedburner&utm_medium=feed&utm_campaign=The+Energy+Collective+%28all+posts%29>

James Hansen and other promi­nent cli­ma­tol­o­gists are call­ing to bring the CO2 atmos­pheric level to 350 parts per million. In fact, an orga­ni­za­tion, 350.org, came around that ral­ly­ing cry. This is far more radical than most politicians are willing to entertain. And it is not likely to be enough. The 350ppm target will not reverse the clock as far back as one may assume. It was in 1988 that we have had these level of car­bon con­cen­tra­tion in the air. But wait, there is more to the story. 1988-levels of CO2 with 2012-levels of all other green­house gases bring us to a state of affairs equiv­a­lent to that around 1994 (2.28 w/m2). And then there are aerosols. There is good news and bad news about them. The good news is that as long as we keep spewing mas­sive amounts of particulate matter and soot into the air, more of the sun’s rays are scattered back to space, over­all the reflec­tiv­ity of clouds increases, and other effects on clouds whose over­all net effect is to cool­ing of the Earth sur­face. The bad news is that once we stop polluting, stop run­ning all the diesel engines and the coal plants of the world, and the soot finally settles down, the real state of affairs will be unveiled within weeks. Once we fur­ther get rid of the aerosols and black car­bon on snow, we may be very well be worse off than what we have had around 2011 (a pos­si­ble addi­tion of 1.2 w/m2). Thus, it is not good enough to stop all green­house gas emis­sions. In fact, it is not even close to being good enough. A carbon-neutral econ­omy at this late stage is an unmit­i­gated disaster. There is a need for a carbon-negative economy. Essentially, it means that we have not only to stop emitting, to the tech­no­log­i­cal extent pos­si­ble, all green­house gases, but also capture much of the crap we have already out­gassed and lock it down. And once we do the above, the ocean will burp its excess gas, which has come from fos­sil fuels in the first place. So we will have to draw down and lock up that carbon, too. We have taken fos­sil fuel and released its con­tent; now we have to do it in reverse—hundreds of bil­lions of tons of that stuff.

#### The Heg debate is OVER - U.S. decline is not only inevitable, it has arrived. The U.S. must accept China’s ascendancy

Layne 12

Christopher Layne 2012 (is Robert M. Gates Chair in Intelligence and National Security at the George Bush School of Government and Public Service at Texas A&M University; ISQ\* peer reviewed: ISI Journal Citation Reports® Ranking: 2010: International Relations: 10 / 73; Political Science: 18 / 139 Impact Factor: 1.523) “This Time It's Real: The End of Unipolarity and the Pax Americana” International Studies Quarterly, 1-11

The Cold War’s end stifled the burgeoning late 1980s’ debate about America’s relative decline while triggering a new debate about unipolarity. In the Great Recession’s aftermath, a verdict on those debates now can be rendered. First, it turns out the declinists were right after all. The United States’ power has declined relatively. By 2014, the US share of global GDP will shrink to 18%, which is well below the “normal” post–World War II share of 22% to 25% (Nye 1991, 2011). Just as the 1980s declinists predicted, chronic budget and current account deficits, overconsumption, undersaving, and deindustrialization have exacted their toll on the American economy. Judgment also now can be rendered on the debate between balance of power realists and unipolar stability theorists. As balance of power realists predicted, one new great power already has emerged to act as a counterweight to American power, with others waiting in the wings. In contrast to unipolar stability theorists who said unipolarity would extend well into the twenty-first century, balance of power realists predicted that unipolarity would come to an end around 2010. Instead of looking at the trend lines fueling China’s rise and America’s decline, unipolar stability theorists were wrong because they relied on static measures of national power and failed to grasp the velocity of China’s rise. If, indeed, it has not already done so, sometime this decade—perhaps as early as 2016—China’s GDP will surpass the United States’. No longer is China an emerging great power; it is a “risen” one. The debate about unipolarity is over. The balance of power realists have won. The distribution of power in international political system is shifting dramatically. The US grand strategy must respond to the emerging constellation of power. Yet, US policymakers and many security studies scholars are in thrall to a peculiar form of denialism. First, they believe the world still is unipolar even in the face of overwhelming evidence that it is not. Second, they believe that even if unipolarity were to end, there would be no real consequences for the United States because it will still be the “pivotal” power in international politics, and the essential features of the “liberal order”—the Pax Americana—will remain in place even though no longer buttressed by the US economic and military power that have undergirded it since its inception after World War II. This is myopic. Hegemonic decline always has consequences. As the twenty-first century’s second decade begins, history and multipolarity are staging a comeback. The world figures to become a much more turbulent place geopolitically than it was during the era of the Pax Americana. Accepting the reality of the Unipolar Exit—coming to grips with its own decline and the end of unipolarity symbolized by China’s rise—will be the United States’ central grand strategic preoccupation during the next ten to fifteen years.

#### Past two decades prove

Mearsheimer 2011

(John J., R. Wendell Harrison Distinguished Service Professor of Political Science at the University of Chicago, The National Interest, Imperial by Design, lexis)

One year later, Charles Krauthammer emphasized in "The Unipolar Moment" that the United States had emerged from the Cold War as by far the most powerful country on the planet.2 He urged American leaders not to be reticent about using that power "to lead a unipolar world, unashamedly laying down the rules of world order and being prepared to enforce them." Krauthammer's advice fit neatly with Fukuyama's vision of the future: the United States should take the lead in bringing democracy to less developed countries the world over. After all, that shouldn't be an especially difficult task given that America had awesome power and the cunning of history on its side. U.S. grand strategy has followed this basic prescription for the past twenty years, mainly because most policy makers inside the Beltway have agreed with the thrust of Fukuyama's and Krauthammer's early analyses. The results, however, have been disastrous. **The United States has been at war for a startling two out of every three years since 1989, and there is no end in sight**. As anyone with a rudimentary knowledge of world events knows, **countries that continuously fight wars invariably build powerful national-security bureaucracies that undermine civil liberties and make it difficult to hold leaders accountable for their behavior**; and they invariably end up adopting ruthless policies normally associated with brutal dictators. The Founding Fathers understood this problem, as is clear from James Madison's observation that "no nation can preserve its freedom in the midst of continual warfare." **Washington's pursuit of policies like assassination, rendition and torture over the past decade, not to mention the weakening of the rule of law at home, shows that their fears were justified**. To make matters worse, the United States is now engaged in protracted wars in Afghanistan and Iraq that have so far cost well over a trillion dollars and resulted in around forty-seven thousand American casualties. The pain and suffering inflicted on Iraq has been enormous. Since the war began in March 2003, more than one hundred thousand Iraqi civilians have been killed, roughly 2 million Iraqis have left the country and 1.7 million more have been internally displaced. Moreover, the American military is not going to win either one of these conflicts, despite all the phony talk about how the "surge" has worked in Iraq and how a similar strategy can produce another miracle in Afghanistan. We may well be stuck in both quagmires for years to come, in fruitless pursuit of victory. The United States has also been unable to solve three other major foreign-policy problems. Washington has worked overtime-with no success-to shut down Iran's uranium-enrichment capability for fear that it might lead to Tehran acquiring nuclear weapons. And the United States, unable to prevent North Korea from acquiring nuclear weapons in the first place, now seems incapable of compelling Pyongyang to give them up. Finally, every post-Cold War administration has tried and failed to settle the Israeli-Palestinian conflict; all indicators are that this problem will deteriorate further as the West Bank and Gaza are incorporated into a Greater Israel. The unpleasant truth is that the United States is in a world of trouble today on the foreign-policy front, and this state of affairs is only likely to get worse in the next few years, as Afghanistan and Iraq unravel and the blame game escalates to poisonous levels. Thus, it is hardly surprising that a recent Chicago Council on Global Affairs survey found that "looking forward 50 years, only 33 percent of Americans think the United States will continue to be the world's leading power." Clearly, the heady days of the early 1990s have given way to a pronounced pessimism.

#### Their laundry list of vague impacts is academic junk – conflicts can’t just emerge

Fettweis, 11

Christopher J. Fettweis, Department of Political Science, Tulane University, 9/26/11, Free Riding or Restraint? Examining European Grand Strategy, Comparative Strategy, 30:316–332, EBSCO

Assertions that without the combination of U.S. capabilities, presence and commitments instability would return to Europe and the Pacific Rim are usually rendered in rather vague language. If the United States were to decrease its commitments abroad, argued Robert Art, “the world will become a more dangerous place and, sooner or later, that will redound to America’s detriment.”53 From where would this danger arise? Who precisely would do the fighting, and over what issues? Without the United States, would Europe really descend into Hobbesian anarchy? Would the Japanese attack mainland China again, to see if they could fare better this time around? Would the Germans and French have another go at it? In other words, where exactly is hegemony is keeping the peace? With one exception, these questions are rarely addressed. That exception is in the Pacific Rim. Some analysts fear that a de facto surrender of U.S. hegemony would lead to a rise of Chinese influence. Bradley Thayer worries that Chinese would become “the language of diplomacy, trade and commerce, transportation and navigation, the internet, world sport, and global culture,” and that Beijing would come to “dominate science and technology, in all its forms” to the extent that soon the world would witness a Chinese astronaut who not only travels to the Moon, but “plants the communist flag on Mars, and perhaps other planets in the future.”54 Indeed China is the only other major power that has increased its military spending since the end of the Cold War, even if it still is only about 2 percent of its GDP. Such levels of effort do not suggest a desire to compete with, much less supplant, the United States. The much-ballyhooed, decade-long military buildup has brought Chinese spending up to somewhere between one-tenth and one-fifth of the U.S. level. It is hardly clear that a restrained United States would invite Chinese regional, must less global, political expansion. Fortunately one need not ponder for too long the horrible specter of a red flag on Venus, since on the planet Earth, where war is no longer the dominant form of conflict resolution, the threats posed by even a rising China would not be terribly dire. The dangers contained in the terrestrial security environment are less severe than ever before. Believers in the pacifying power of hegemony ought to keep in mind a rather basic tenet: When it comes to policymaking, specific threats are more significant than vague, unnamed dangers. Without specific risks, it is just as plausible to interpret U.S. presence as redundant, as overseeing a peace that has already arrived. Strategy should not be based upon vague images emerging from the dark reaches of the neoconservative imagination. Overestimating Our Importance One of the most basic insights of cognitive psychology provides the final reason to doubt the power of hegemonic stability: Rarely are our actions as consequential upon their behavior as we perceive them to be. A great deal of experimental evidence exists to support the notion that people (and therefore states) tend to overrate the degree to which their behavior is responsible for the actions of others. Robert Jervis has argued that two processes account for this overestimation, both of which would seem to be especially relevant in the U.S. case.55 First, believing that we are responsible for their actions gratifies our national ego (which is not small to begin with; the United States is exceptional in its exceptionalism). The hubris of the United States, long appreciated and noted, has only grown with the collapse of the Soviet Union.56 U.S. policymakers famously have comparatively little knowledge of—or interest in—events that occur outside of their own borders. If there is any state vulnerable to the overestimation of its importance due to the fundamental misunderstanding of the motivation of others, it would have to be the United States. Second, policymakers in the United States are far more familiar with our actions than they are with the decision-making processes of our allies. Try as we might, it is not possible to fully understand the threats, challenges, and opportunities that our allies see from their perspective. The European great powers have domestic politics as complex as ours, and they also have competent, capable strategists to chart their way forward. They react to many international forces, of which U.S. behavior is only one. Therefore, for any actor trying to make sense of the action of others, Jervis notes, “in the absence of strong evidence to the contrary, the most obvious and parsimonious explanation is that he was responsible.”57 It is natural, therefore, for U.S. policymakers and strategists to believe that the behavior of our allies (and rivals) is shaped largely by what Washington does. Presumably Americans are at least as susceptible to the overestimation of their ability as any other people, and perhaps more so. At the very least, political psychologists tell us, we are probably not as important to them as we think. The importance of U.S. hegemony in contributing to international stability is therefore almost certainly overrated. In the end, one can never be sure why our major allies have not gone to, and do not even plan for, war. Like deterrence, the hegemonic stability theory rests on faith; it can only be falsified, never proven. It does not seem likely, however, that hegemony could fully account for twenty years of strategic decisions made in allied capitals if the international system were not already a remarkably peaceful place. Perhaps these states have no intention of fighting one another to begin with, and our commitments are redundant. European great powers may well have chosen strategic restraint because they feel that their security is all but assured, with or without the United States.

#### Heg decline will be peaceful - deductive and empirical evidence goes negative

Parent 11

Assistant for of pol sci, U Miami. PhD in pol sci, Columbia—and—Paul MacDonald—assistant prof of pol sci, Williams (Joseph, Graceful Decline?;The Surprising Success of Great Power Retrenchment, Intl. Security, Spring 1, p. 7)

Some observers might dispute our conclusions, arguing that hegemonic transitions are more conflict prone than other moments of acute relative decline. We counter that there are deductive and empirical reasons to doubt this argument. Theoretically, hegemonic powers should actually find it easier to manage acute relative decline. Fallen hegemons still have formidable capability, which threatens grave harm to any state that tries to cross them. Further, they are no longer the top target for balancing coalitions, and recovering hegemons may be influential because they can play a pivotal role in alliance formation. In addition, hegemonic powers, almost by deªnition, possess more extensive overseas commitments; they should be able to more readily identify and eliminate extraneous burdens without exposing vulnerabilities or exciting domestic populations. We believe the empirical record supports these conclusions. In particular, periods of hegemonic transition do not appear more conºict prone than those of acute decline. The last reversal at the pinnacle of power was the AngloAmerican transition, which took place around 1872 and was resolved without armed confrontation. The tenor of that transition may have been inºuenced by a number of factors: both states were democratic maritime empires, the United States was slowly emerging from the Civil War, and Great Britain could likely coast on a large lead in domestic capital stock. Although China and the United States differ in regime type, similar factors may work to cushion the impending Sino-American transition. Both are large, relatively secure continental great powers, a fact that mitigates potential geopolitical competition. 93 China faces a variety of domestic political challenges, including strains among rival regions, which may complicate its ability to sustain its economic performance or engage in foreign policy adventurism.

## Solvency

#### Plan causes extraordinary rendition shift

Anderson 9

Kenneth Anderson 09, Professor of International Law at American University, 5/31, “Security Issues Like Squeezing Jello? Reversion to the Mean? Jack Goldsmith on the Effects of Security Alternatives,” <http://opiniojuris.org/2009/05/31/security-issues-like-squeezing-jello-reversion-to-the-mean-jack-goldsmith-on-the-effects-of-security-alternatives/#sthash.TB1xcePu.dpuf>

One way you might look at this is that there is a sort-of national security constant that remains in equilibrium over time, using one tactic or another, gradually evolving but representing over time a reversion to the national security mean. Or you might say that national security, seen over time, looks a little like squeezing jello – if squeezed one place it pops out another. ¶ I think Jack is right that the administration – any administration – tends to strive for a certain equilibrium, as it is confronted with a flow of threats that the public discounts to near-zero but which it does not see itself quite so able to do, however much it might want to. However, as the op-ed also notes, and I agree, these methods are not completely equivalent or compensating. That is so not just with regards to third party costs, but also with respect to security as such. Intelligence gathering, by all accounts not very effective to begin with, has become much more difficult. This is not compensation, it is a seemingly permanent downward shift in the security mean. ¶ Besides the consequences that Jack identifies, I would add that the current move to semi-compensating policies means two things. First, intelligence is likely to be increasingly outsourced to foreign intelligence services. That can provide valuable information, but it will be increasingly uncorroborated and subject to filtering by those services. That is not good. ¶ Second, in a somewhat unrelated matter, I would guess that future conflicts, where not fought by Predator, will be increasingly outsourced to proxy forces. ¶ In the focus on intelligence and security, I think this second point has not received sufficient attention. The United States has a long familiarity with proxy forces as a form of deniability, among other things – Ronald Reagan, for example, faced with many limitations placed by Congress on his uses of force, found proxy forces an essential element of his foreign policy, in Central America particularly. The domestic risks that policy can entail are illustrated by the Iran-Contra contra-temps; on the other hand, Reagan was reasonably successful in pursuing his administration’s anti-Communist and anti-Soviet policy aims in Salvador and Nicaragua, among other places, by proxy forces. ¶ But I would be quite surprised if proxy war were not today under active discussion for places like Somalia (where we have already undertaken measures close to it) and other places. More precisely, I would surprised if it were not an active discussion among the New Liberal Realists of the Obama administration, whatever the transnationalists say or think.¶ In any case, whether those last two speculations prove true or not, the tendency of the administration to seek compensating policies seems likely at a minimum to complicate the issues of Guantanamo, Bagram, and other matters besides.

#### Means they solve nothing

McGill 12

Anna-Katherine Staser McGill 12, School of Graduate and Continuing Studies in Diplomacy, Norwich University, David Gray, Campbell University, Summer 2012, “Challenges to International Counterterrorism Intelligence Sharing,” <http://globalsecuritystudies.com/McGill%20Intel%20Share.pdf>

The CIA’s use of “extraordinary rendition”, the practice of transporting a suspect to a third country for interrogation, has also stoked the ire of many traditional allies. Critics charge that this tactic quite simply allows the CIA to sidestep international laws and obligations by conducting interrogations in nations with poor human-rights records. In 2003, an Italian magistrate formally indicted 13 CIA agents for allegedly kidnapping an Italian resident and transporting him to a third country for interrogation. Ultimately 22 CIA agents and one US military officer were convicted in absentia of crimes connected to the abduction (Stewart, 1). The case not only heightened criticism of the US in Italy but challenged U.S. strategic communications aimed at reducing anti-Americanism worldwide (Reveron 462). According to Julianne Smith, director of the Europe program at the Center for Strategic and International Studies (CSIS), “[extraordinary rendition] makes it extremely difficult [for European governments] to stand shoulder-to-shoulder with the U.S.” (Heller 1).

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## Human Rights

#### US rights abuses are inevitable­

Hilde 9

Thomas Hilde 09, professor at the University of Maryland School of Public Policy, “Beyond Guantanamo. Restoring U.S. Credibility on Human Rights,” Heinrich Böll Foundation, <http://www.boell.org/downloads/hbf_Beyond_Guantanamo_Thomas_Hilde(2).pdf>

Apart from these practical issues, however, the very existence of the U.S. torture institution points to a deeper crisis at the core of the liberal democratic conception of human rights. Historically, the foundational principles of liberal democracy include human dignity, individual autonomy, and the primacy of liberty. The doctrine suggests, in Locke’s and Mill’s formulations, that normative or regulatory limitations on individual autonomy and liberty are justifiable only when individuals cause harm to others or when they engage in acts of cruelty that deny others’ dignity, autonomy, and liberty. These de jure principles of liberalism have often hung in a precarious balance with de facto violations of those principles: the universalizing impulse of principles of individual dignity and freedom in tension with violent means for protecting or preserving a society from enemies both real and imagined. Such contradictions have always been at the heart of the struggle to articulate a robust and legitimate conception of human rights embedded in liberal democratic institutions as the principle of equal respect for all persons. ¶ Consider the liberal notion of toleration, for instance — how far does one tolerate the intolerant? How far does one extend human rights to enemies who wish to destroy you? At what point does the state’s defense of a society or constitution become an assault on human dignity and liberty? Liberalism, despite de facto violations of its principles, attempts to give reason to the management of this balance between substance (its core values — say, autonomy) and procedure (its means of defending those values — say, habeas corpus or universal suffrage). Institutions may fail in practice to live up to these principles — such as in the case of racial bias in criminal sentencing — but the ideals are perhaps most important in giving guidance to and procedures for the ongoing reconstruction of society’s institutions. One important strength of liberal democracy is precisely in its ongoing deliberation through democratic means over the meaning of its basic principles. Such deliberation at its best both defines those principles and is simultaneously an instance of them in action. This perpetual balancing act between substance and procedure defines many of the institutions of modern liberal democracy and, indeed, much of international law. For such a state, however, institutionalization of torture represents liberalism’s preservationist procedures tipping the balance towards an increasingly authoritarian defense of its substance. A torturing society, especially a society with an open policy of torture (which is where the “torture works” argument leads), is no longer a liberal democratic society respectful of human dignity and freedom. Indeed, here the basic principles of liberal democratic society are inconvenient obstacles in the pursuit of other goals. The complexity of the current issues requires more than legal and moral accountability.

#### No spillover—legal and public investigations are key

Hilde 9

Thomas Hilde 09, professor at the University of Maryland School of Public Policy, “Beyond Guantanamo. Restoring U.S. Credibility on Human Rights,” Heinrich Böll Foundation, <http://www.boell.org/downloads/hbf_Beyond_Guantanamo_Thomas_Hilde(2).pdf>

To summarize, genuine accountability is the route to lasting credibility in the wake of Guantanamo. Accountability comes in several parts, all necessary: legal, public-moral, and pragmatic. Legal accountability is important as both retribution for crimes committed, for reasserting the rule of law by which a decent and secure society lives, and for its power of deterrence from future human rights abuses. Public-moral accountability involves the public expression of a liberal democracy recalibrating the balance between its substance and its procedures. Restoring credibility does not take place in private. A public accounting is particularly important in response to a corrosion of the norms and principles on which such a society stands. What I refer to as pragmatic accountability is the understanding that a full and effective accounting requires a renewed focus on the empathetic element common to human rights. It requires making known the stories of those who are abused, even when they have also committed atrocities, so that we at a minimum ensure a defense against dehumanization. Ultimately, a reflective people must understand that the conditions preparing the way for human rights abuses derive from insecurity writ large. These economic, political, personal, and cultural insecurities are structural conditions that give rise to such acts as terrorism, torture, and other crimes. In terms of short-term policy, then, a legal investigation through the Justice Department and a broader public investigation through its elected representatives are both critical elements to accountability and ultimately credibility.

## Terror Adv

#### Both Congress and the Courts have given Obama full authority to indefinitely detain

RT 7/18

Russia Today, “Obama wins back the right to indefinitely detain under NDAA,” 2013, http://rt.com/usa/obama-ndaa-appeal-suit-229/

The Obama administration has won the latest battle in their fight to indefinitely detain US citizens and foreigners suspected of being affiliated with terrorists under the National Defense Authorization Act of 2012.¶ ¶ Congress granted the president the authority to arrest and hold individuals accused of terrorism without due process under the NDAA, but Mr. Obama said in an accompanying signing statement that he will not abuse these privileges to keep American citizens imprisoned indefinitely. These assurances, however, were not enough to keep a group of journalists and human rights activists from filing a federal lawsuit last year, which contested the constitutionality of Section 1021, the particular provision that provides for such broad power.¶ ¶ A federal judge sided with the plaintiffs originally by granting an injunction against Section 1021, prompting the Obama administration to request an appeal last year. On Wednesday this week, an appeals court in New York ruled in favor of the government and once again allowed the White House to legally indefinitely detain persons that fit in the category of enemy combatants or merely provide them with support. ¶Now with this week’s appellate decision, plaintiffs intend on taking their case to the Supreme Court. Should the high court agree to hear their argument, the top justices in the US may finally weigh in on the controversial counterterrorism law.¶ The so-called “indefinite detention” provision of last year’s National Defense Authorization Act has been at the center of debate since before President Barack Obama autographed the bill in December 2011, but a federal lawsuit filed by Pulitzer Prize-winning war correspondent Chris Hedges and others only two weeks after it went into effect remains as relevant as ever in light of a decision delivered Wednesday by the US Court of Appeals for the Second Circuit. ¶ The plaintiffs in case had previously been successful in convincing a federal district judge to keep Section 1021 from being put on the books, but the latest ruling negates an earlier injunction and once again reestablished the government’s right to indefinitely detain people under the NDAA.¶ Tangerine Bolen, a co-plaintiff in the case alongside Hedges, told RT, “Losing one battle is not losing the war. This war is an assault on truth itself. It flaunts reason, sanity and basic decency. We will not stand down in the face of these egregious assaults on our rights and liberties.”¶ In a statement published to TruthDig, Hedges called the ruling “distressing” and said, “It means there is no recourse now either within the Executive, Legislative or Judicial branches of government to halt the steady assault on our civil liberties and most basic Constitutional rights.”¶ Section 1021 of the NDAA reads in part that the president of the US can indefinitely imprison any person who was part of or substantially supported al-Qaeda, the Taliban or associated forces engaged in hostilities against the US or its coalition partners, as well as anyone who commits a "belligerent act" against the US under the law of war, "without trial, until the end of the hostilities.” The power to do as much was allegedly granted to the commander-in-chief after the Authorization to Use Military Force was signed into law shortly after the September 11, 2001 terrorist attacks, but a team of plaintiffs have argued that Section 1021 provides the White House with broad, sweeping powers that put the First Amendment-guaranteed rights to free speech and assembly at risk while also opening the door for the unlawful prosecution of anyone who can be linked to an enemy of the state.¶ Only two weeks after the 2012 NDAA was signed into law, Hedges filed a lawsuit against the Obama administration challenging the constitutional validity of Section 1021.¶ “I have had dinner more times than I can count with people whom this country brands as terrorists … but that does not make me one,” he said at the time.¶ Naomi Wolf, an American author, told the Guardian last year that she has skipped meetings with individuals and dropped stories that she believed are newsworthy “for no other reason than to avoid potential repercussions under the bill.” ¶ Hedges first filed suit on Jan 13, 2012, and was eventually joined by a number of activists, reporters and human rights workers from both the US and abroad, including Pentagon Papers leaker Daniel Ellsberg, journalist Alexa O’Brien, Revolution Truth founder Bolen and Icelandic PM Birgitta Jónsdóttir. District Court Judge Katherine Forrest granted the plaintiffs a preliminary injunction against Section 1021 that May, only to make that decision permanent four months later. The Obama administration filed a stay against that injunction just days after, though, and the appeals court ruled this week that Judge Forrest’s decision must be vacated.¶ Carl Mayer, an attorney for the plaintiffs, previously told RT that he expected the White House to lose the appeal. “The Obama administration has now lost three times. They lost the temporary injunction, they lost the motion for reconsideration and they lost the hearing for permanent injunction. I say three strikes and you’re out,” he said. ¶ But with the court’s 3-0 ruling this week, a federal panel concluded that the plaintiffs involved in the suit do not have standing to challenge Section 1021. In doing so, however, they offered what is the most official interpretation yet of a law that has continuously attracted criticism for nearly two years now.¶ After years of debate, the appeals court said once and for all that the NDAA does not apply to American citizens, and rehashed the Obama administration’s insistence that it simply reaffirmed rights afforded to the government through the AUMF.¶ “Section 1021(e) provides that Section 1021 just does not speak — one way or the other — to the government’s authority to detain citizens, lawful resident aliens or any other persons captured or arrested in the United States,” the court ruled.¶ “We thus conclude, consistent with the text and buttressed in part by the legislative history, that Section 1021 means this: With respect to individuals who are not citizens, are not lawful resident aliens and are not captured or arrested within the United States, the President’s AUMF authority includes the authority to detain those responsible for 9/11 as well as those who were a 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 — a detention authority that Section 1021 concludes was granted by the original AUMF.”¶ “But with respect to citizens, lawful resident aliens, or individuals captured or arrested in the United States, Section 1021 simply says nothing at all,” it concluded.¶ The AUMF, however, is still open to interpretation. An earlier legal ruling concluded that the AUMF “clearly and unmistakable” authorized detaining those who were “part of or supporting forces hostile to the US.” Then a memo issued in March 2009 just weeks’ into Pres. Obama’s first term even added that the government has the authority “to detain persons who were part of or substantially supported” anyone engaged in hostilities against US or its partners.¶ “In any event, the March 2009 Memo took the view that ‘the AUMF is not limited to persons captured on the battlefields of Afghanistan’ nor to those ‘directly participating in hostilities,’” the appeals court noted. When the DC Circuit weighed in further down the road, it determined that the AUMF authorized detention for those who “purposefully and materially support” those hostile forces, although this week’s ruling makes note that the Circuit Court has failed to ever figure out what “support” exactly means.¶ “The government contends that Section 1021 simply reaffirms authority that the government already had under the AUMF, suggesting at times that the statute does next to nothing at all. Plaintiffs take a different view,” wrote the court this week.¶ Definitions aside, however, the appeals court wrote that Hedges and his American co-plaintiffs lack standing to challenge the indefinite detention provisions since a subsection of that rule, 1021(e), frees US citizens from detention under the NDAA.¶ “We recognize that Section 1021 perhaps could have been drafted in a way that would have made this clearer and that the absence of any reference to American citizens in Section 1021(b) led the district court astray in this case. Perhaps the last-minute inclusion of Section 1021(e) as an amendment introduced on the floor of the Senate explains the somewhat awkward construction,” wrote the court. “But that is neither here nor there. It is only our construction, just described, that properly gives effect to the text of all of the parts of Section 1021 and thus reflects congressional intent.”¶ At the same time, though, the appeals court acknowledged that Iceland’s Jónsdóttir, co-plaintiff Kai Wargalla of Germany and other foreign persons could be detained indefinitely under the NDAA. Although Jónsdóttir has argued that her well-documented affiliation with the anti-secrecy group WikiLeaks — particularly with regards to classified material its published much to the chagrin of the US government — is enough to land her in hot water, the court said indefinite imprisonment in a military jail cell is an unrealistic fear and she therefore lacks standing.¶ Jónsdóttir, 46, has been a member of the Iceland parliament since 2009, the same year that US Army Private first class Bradley Manning began supplying materials to WikiLeaks. Jónsdóttir and WikiLeaks founder Julian Assange worked directly with raw video footage supplied by Manning showing a US helicopter fatally wounding innocent civilians and journalists, which the website later released under the name “Collateral Murder.” And although Pfc. Manning is currently on trial for “aiding the enemy” by supplying WikiLeaks — and indirectly al-Qaeda — with that intelligence, the court said Jónsdóttir herself has nothing to fear. ¶ “The claims of Jónsdóttir and Wargalla stand differently. Whereas Section 1021 says nothing about the government’s authority to detain citizens, it does have real meaning regarding the authority to detain individuals who are not citizens or lawful resident aliens and are apprehended abroad,” the court ruled.¶ Elsewhere, the judges wrote that the government insists that WikiLeaks and Manning provided “some support” to hostile forces by publishing classified intelligence, and that the 25-year-old Army private is indeed facing prosecution for such that could put him away for life.¶ “One perhaps might fear that Jónsdóttir’s and Wargalla’s efforts on behalf of WikiLeaks could be construed as making them indirect supporters of al-Qaeda and the Taliban as well,” wrote the court. “The government rejoins that the term ‘substantial support’ cannot be construed so in this particular context. Rather, it contends that the term must be understood — and limited — by reference to who would be detainable in analogous circumstances under the laws of war.”¶ Because “plaintiffs have provided no basis for believing that the government will place Jónsdóttir and Wargalla in military detention for their supposed substantial support,” the court has rejected their lawsuit.¶ “In sum, Hedges and O’Brien do not have Article III standing to challenge the statute because Section 1021 simply says nothing about the government’s authority to detain citizens,” concluded the court. “While Section 1021 does have meaningful effect regarding the authority to detain individuals who are not citizens or lawful resident aliens and are apprehended abroad, Jónsdóttir and Wargalla have not established standing on this record. We vacate the permanent injunction and remand for further proceedings consistent with this opinion.”¶ Meanwhile, the court’s decision did little to resolve what actually is allowed under the AUMF. In fact, the court said Section 1021 “does not foreclose the possibility that previous 'existing law' may permit the detention of American citizens,” making note of American Yaser Esam Hamdi and a three-year ordeal that left him without the right to habeas corpus or an attorney after he was picked up in post-9/11 Afghanistan on suspicion of terroristic ties. Instead, it confirmed that foreign citizens engaged with substantially supporting hostile forces— neither of which term is still properly defined — can be locked up in military jails.

#### 1) Priorities – judicial review puts focus on executive compliance at the forefront – that detracts from military missions that are the bedrock of our security

McCarthy 9

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

Empirically, judicial demands on executive branch procedural compliance, if unchecked, become steadily more demanding over time. The executive naturally responds by being more internally exacting to avoid problems. Progressively, executive compliance, initially framed and understood as a reasonably modest set of burdens to promote the integrity of judicial proceedings, becomes instead a consuming priority and expenditure, which, if permitted in the context of warfare, would inevitably detract from the military mission that is the bedrock of our national security. ¶ In the fore here, plainly, are such matters as discovery and confrontation rights. If the courts were given final authority, while hostilities are ongoing, to second-guess the executive’s decision to detain a combatant by scrutinizing reports that summarize the basis for detention, it is only a short leap to the court’s asking follow-up questions or determining that testimony, perhaps subject to cross-examination, is appropriate. Are we to make combat personnel available for these proceedings? Shall we take them away from the battle we have sent them to fight so they can justify to the satisfaction of a judge the capture of an alien enemy combatant that has already been approved by military commanders? Given the fog and anxiety of war, shall we expect them to render events as we would an FBI agent describing the circumstances of a domestic arrest? ¶ Nor is that the end of the intractable national security problems. What if capture was effected by our allies rather than our own forces (as was the case, for example, with the jihadist who was the subject of the Hamdi case)? Shall we try to compel affidavits or testimony from members of, say, the Northern Alliance? What kinds of strains will be put on our essential wartime alliances if they are freighted with requests to participate in American legal proceedings, and possibly compromise intelligence methods and sources – all for the purpose of providing heightened due process to the very terrorists who were making war on those allies? ¶ These are lines that Congress must draw. Leaving them for the courts themselves to sort out would place us on a path toward full-blown civilian trials for alien enemy combatants – the very outcome the creation of a new system was intended to avoid.

#### 2) Time - restrictions delay critical executive action - key to prevent terrorism

Tomatz 13

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Reading the tea leaves of judicial dicta may be fraught with difficulty, but one certainly discerns from these pragmatic guidelines a view that the Executive should be accorded reasonable deference in matters of preventive detention. This deference is strongest during the early phases of detention, when facts are unclear, when the risks of release are acute, and the dangers of substituting a judicial judgment for that of the military or the Commander-in-Chief is greatest. If the Government learns that al-Qaeda operatives have invaded the U.S. bent on detonating explosives near chemical-laden rail cars, the overwhelming national effort must be directed toward destroying or detaining those forces intent on harming the country. This is not the time for Miranda and presentment but for concerted, decisive action bounded by the law of war. Every instrument of national power must be brought to bear, both military and civilian. If it makes the most sense for the FBI to detain someone, they should do so. If the military has the most information and can most quickly and effectively detain and interrogate, then consistent with military regulations, they should do so.¶ The process of understanding the depth and breadth of the danger, connecting the web of those involved, determining the possibility of future attacks takes time. It remains essential to afford the Commander-in-Chief adequate time and decision space to maximize the opportunity to defeat the threat and prevent future attacks.That is why the NDAA imposes no temporal limits, why it avoids geographic restrictions and why it grants no special protections to citizens who take up arms with the enemy. As Hamdan and Boumerdiene make clear, there are limits to the Court's deference. The more time that passes, the greater the consequences of an erroneous deprivation of liberty and the greater the risk of not affording someone a reasonable opportunity to challenge the basis for their detention. If there is consensus on the matter of process in preventive detention, it appears to mean reasonable deference followed by increased scrutiny with the passage of time. It means judicial review bounded by pragmatism, and it means balancing very real security concerns against the need to protect individuals from arbitrary deprivation of liberty.

#### 3) Unrestricted authority – its key – the plan makes combatting terrorism impossible

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Recent statements by Administration officials reflect these principles. This begins with a core recognition, shared by Congress, the President and the judiciary that the United States is in an armed conflict with al-Qaeda, the Taliban and associated forces. As the State Department's Legal Advisor Harold Koh emphasized in his March 2010 speech to the Annual Meeting of the American Society of International Law, as a matter of international law, the United States has acted in accordance with the inherent right of self-defense within the United Nations Charter. n344 This right, moreover, was explicitly recognized by the U.N. Security Council in its first post-9/11 U.N. Security Council Resolution. n345 As Mr. Koh also pointed out, as a matter of domestic law, Congress, through the AUMF, expressly authorized the use of all necessary and appropriate force to counter al-Qaeda. This link to legislative authority is critically important because "when the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate." n346 Further, the Supreme Court as early as Hamdi viewed the AUMF as invoking law of war authority, and as Mr. Koh noted, the habeas cases endorse the "overall proposition that individuals who are part of an organized armed group like al-Qaeda can be [\*58] subject to law of war detention for the duration of the current conflict." n347 This evidences a strong meeting of the minds that the grave threat posed by al-Qaeda and its associated forces wholly justified the Government's recourse to the right of self-defense and law of war authorities, and a resounding rejection of a purely domestic law enforcement model.¶ In his February 2012 speech at Yale Law School, Department of Defense General Counsel Jeh Johnson offered cogent insight into counterterrorism principles about "which the top national security lawyers in [the] Administration broadly agree." n348 First, the AUMF is the "bedrock of the military's domestic legal authority." Second, the statutory authorization in the AUMF is "not open-ended" in that the definition of those against whom force may be authorized is specifically tailored to target al-Qaeda, Taliban or associated forces directly involved in the 9/11 attacks or persons who were part of, or substantially supported, those forces that are engaging in hostilities against the United States or its coalition partners. As Mr. Johnson then explained, Congress, the Executive and Judicial branches have all joined in embracing this interpretation. n349 Additionally, he noted that the AUMF is without geographic limitation to Afghanistan, a legal fact that is crucial given that "over the last 10 years al-Qaeda has not only become more decentralized, [but has also] migrated away from Afghanistan to other parts of the world." n350 Finally, he stated that where a U.S. citizen becomes a belligerent fighting against the United States, under Quirin and Hamdi that individual, like their non-citizen counterpart, becomes a valid military objective. n351 Though Jeh Johnson was referring to the justification for targeted killing, n352 as a legal matter, the justification for targeting a U.S. citizen enemy belligerent equally justifies his or her preventive detention under the law of war.

#### 4) Signaling – Weak detention responses emboldens terrorists

McCarthy 9

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3. Terrorism prosecutions create the conditions for more terrorism. The treatment of a national security problem as a criminal justice issue has consequences that imperil Americans. To begin with, there are the obvious numerical and motivational results. As noted above, the justice system is simply incapable, given its finite resources, of meaningfully countering the threat posed by international terrorism. Of equal salience, prosecution in the justice system actually increases the threat because of what it conveys to our enemies. Nothing galvanizes an opposition, nothing spurs its recruiting, like the combination of successful attacks and a conceit that the adversary will react weakly. (Hence, bin Laden’s well-known allusion to people’s instinctive attraction to the “strong horse” rather than the “weak horse,” and his frequent citation to the U.S. military pullout from Lebanon after Hezbollah’s 1983 attack on the marine barracks, and from Somalia after the 1993 “Black Hawk Down” incident). For militants willing to immolate themselves in suicide-bombing and hijacking operations, mere prosecution is a provocatively weak response. Put succinctly, where they are the sole or principal response to terrorism, trials in the criminal justice system inevitably cause more terrorism: they leave too many militants in place and they encourage the notion that the nation may be attacked with relative impunity.

#### 5) Influx – the plan causes it which overwhelms security measures

McNeal 8

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Unfortunately for any new system, terrorism trials require a lot of resources. A necessary component of any system to replace military commissions is security cleared personnel and secure facilities which protect intelligence. Even in military commissions, prosecutors have frequently been unable to convince other agencies to allow the use of intelligence information [\*46] in military commissions. n94 This inability occurs despite the fact that military commission personnel are required to obtain Top Secret/SCI clearances, a clearance that exceeds the Secret clearance held by the average member of the military. n95 Thus, despite this high clearance, attorneys were unable to obtain the necessary use authority for intelligence information, or they were able to obtain use authority only for closed proceedings that lack the perception of legitimacy of open proceedings. If military commissions' prosecutors cannot successfully convince other government agencies to clear information for use before the current military commissions, the prospects for a transition to a reformed system are dim without specific and detailed reforms. Thus, so long as the options of detention without trial, or trial in closed session exist, those options will always trump open sessions.¶ The experience of the Department of Justice in Article III terrorism trials also suggests obstacles for a transition to national security courts. While a recent Human Rights First report concluded that "the criminal justice system is reasonably well-equipped to handle most international terrorism cases," n96 the report analyzed cases individually so its conclusions are not generalizable to a scenario involving an influx of eighty detainees. Moreover, two similar reports issued by the Federal Judicial Center admit that terrorism cases present unique security challenges for the federal courts. n97 Recurring issues identified in the reports were a lack of security clearances for defense counsel impairing attorney-client communication, a lack of clearances for court staff, significant delays processing clearances, and a lack of secure facilities for reviewing classified evidence--all challenges which resulted in varied solutions which may not be duplicable across federal courts.¶ Article III courts, while capable of individually resolving problems posed by terrorism cases, do so on a case-by-case basis yielding different rights depending on what district the case is in. Federal districts have varied resources and facilities, which creates a disparity amongst the courts regarding how they handle intelligence information. For example, the reports show while some courts have a Sensitive Compartmented Information Facility (SCIF) for review of classified evidence, others lack a SCIF. In [\*47] one case, this lack of resources required the storage of documents in another district court. n98 In another case, the judge traveled to CIA headquarters to review relevant documents. n99 One case even involved a U.S. Attorney instructing a judge not to proceed when his questioning might reveal secret evidence! n100¶ These examples highlight the challenges courts face when handling the intelligence information found in most terrorism cases. For military commissions, the challenge was securing permission to use classified information. In federal courts, each district possesses a tenuous ability to handle terrorism cases on a small scale, but a massive influx of terrorism cases might overwhelm this ability. Before reformers can move detainees into the federal court system, Congress must allocate funding and prioritize a system for creating security cleared personnel and facilities. If reformers create a national security court, the challenge of noncooperative agencies and the administrative challenges of federal courts would be consolidated in one jurisdiction, n101 but these problems would still need to be addressed. In transition, intelligence agencies may refuse to release the information required to successfully prosecute the eighty triable detainees.

#### 6) Evidence – plan sets the bar too high – foreign government will refuse to cooperate which makes combatting terrorism impossible

Blum 9

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A second reason for preventive detention and President Bush’s enemy-combatant policy is incapacitation. As explained previously, the battlefield in this war on terror is no longer an actual zone of combat but includes otherwise peaceful civilian areas. Incapacitation as a rationale for preventive detention is obviously more compelling if the terrorist suspect is detained by military personnel on an actual battlefield during hostilities, such as Hamdi, but loses some persuasiveness when the terrorist suspect is detained by the FBI in an American city that is not involved in a battle, such as Padilla and al-Marri. An argument can be made, however, that terrorists, if not incapacitated when caught in a civilian area, may then leave for a zone of combat in Afghanistan or Iraq, or commit terrorist attacks in civilian areas. Critics respond that the criminal justice system can incapacitate terrorist suspects caught in a peaceful civilian area by the filing of criminal charges—not by labeling them as enemy combatants when they are not captured in a zone of combat. While it would be impractical to require “soldiers in the field to worry about warrants, lawyers, Miranda, forensic evidence, and chains of custody if we want to win the war on terrorism,”146 such an argument cannot honestly apply to the situations of Padilla and al-Marri, who were detained in the U.S. by the FBI (not soldiers) and not on an actual battlefield.¶ During the oral argument in Hamdi, Clement argued that incapacitation of Hamdi was a legitimate rationale for designating him an enemy combatant.147 Clement posited that the Bush Administration needed to detain Hamdi so he would not rejoin the battlefield while the United States had 10,000 American troops in Afghanistan.148 According to an affidavit from a DOD official (i.e., the Mobbs declaration), Hamdi surrendered to the Northern Alliance who turned him over to U.S. authorities. Thus, the Mobbs declaration is based on hearsay from a Northern Alliance official who informed the United States that Hamdi was fighting for the Taliban in Afghanistan with an assault rifle.149 Significantly, Hamdi was never allowed to challenge the facts presented in this affidavit. According to his father, Hamdi was in Afghanistan on a humanitarian mission.¶ Justice O’Connor, in her plurality opinion in Hamdi, explicitly upheld incapacitation as a justification for preventive detention as long as the individual was held only for the duration of hostilities and allowed an opportunity to challenge the designation as an enemy combatant: “Because detention to prevent combatant’s return to the battlefield is a fundamental incident of waging war, in permitting the use of ‘necessary and appropriate force,’ Congress has clearly and unmistakably authorized detention in the narrow circumstances considered here.”150 Significantly, after this ruling, the Bush Administration did not provide Hamdi a meaningful opportunity to challenge his designation as an enemy combatant or the underlying facts asserted in the Mobbs declaration. Rather, in October 2004, the government released Hamdi to Saudi Arabia after it determined that he no longer posed a threat to the United States, thereby undermining—to some extent—the Bush Administration’s rationale for detaining this dangerous individual.151¶ Nonetheless, there is evidence to suggest that al-Qaeda detainees who have been released have returned to the battlefield.152 In April 2008, a Kuwaiti man released from Guantanamo Bay in 2005 blew himself up in a suicide bombing in Iraq killing six people.153 The Bush Administration stated “that as many as 12 people released from Guantanamo . . . returned to the battlefield to fight . . . against U.S. interests.”154¶ Although the Supreme Court has upheld the rationale of incapacitation of a terrorist suspect caught in an active zone of combat (e.g., Hamdi), it has not addressed whether incapacitation of terrorist suspects caught by the FBI in an American city is justified (e.g., Padilla and al-Marri). Certainly, in some cases, the filing of criminal charges is one uncontroversial way to incapacitate terrorist suspects caught in a civilian area. Yet, advocates of preventive detention argue that there may not be sufficient admissible evidence to detain a terrorist suspect under the traditional criminal justice system. For instance, a foreign government may provide intelligence about an individual but refuse to provide any admissible evidence, the evidence may have been obtained by unsavory means and therefore inadmissible, or the evidence could compromise sources and methods. Michael Chertoff, former federal appellate judge and former Secretary of Homeland Security, asked a chilling question at an American Bar Association Standing Committee on Law and National Security meeting in 2004.155 He assumed it was September 10, 2001, and FBI agents just received word from a reliable and confidential source that members of an international terrorist organization were planning to hijack commercial airliners and bomb New York and Washington, D.C. Chertoff pondered what the FBI could legally do.156 While FBI agents could arrest the members to disrupt their plans, it would be hard to hold them on specific charges based on the confidential nature of the sources and the hearsay nature of the evidence. It would seem, at a minimum, that these individuals should be arrested and incapacitated at least for a short time to disrupt their plans. Such incapacitation, however, would negate the idea of innocent until proven guilty. Chertoff suggested that America needed changes to its current legal system that balance these real security threats with civil liberties.157 According to former Deputy Attorney General George Terwilliger, “the use of criminal prosecutions to incapacitate terrorists is proving to be clumsy, inadequate and, civil libertarians should note, taking law enforcement powers where they have never gone before.”158 Thus, it appears that one rationale for preventive detention is interruption of plans, even if specific criminal charges cannot be made within forty-eight hours of arrest, as is the usual requirement under the Fourth Amendment of the Constitution.159