### 1NC

#### Iran sanctions are at the top of the docket – Obama is spending capital to persuade Democrats to sustain a veto

Lobe, 12-27

Reporter for Inter Press Service(Jim, “Iran sanctions bill: Big test of Israel lobby power”

<http://www.arabamericannews.com/news/index.php?mod=article&cat=World&article=8046>)

WASHINGTON - This week’s introduction by a bipartisan group of 26 senators of a new sanctions bill against Iran could result in the biggest test of the political clout of the Israel lobby here in decades.¶ The White House, which says the bill could well derail ongoing negotiations between Iran and the U.S. and five other powers over Tehran’s nuclear program and destroy the international coalition behind the existing sanctions regime, has already warned that it will veto the bill if it passes Congress in its present form.¶ The new bill, co-sponsored by two of Congress’s biggest beneficiaries of campaign contributions by political action committees closely linked to the powerful American Israel Public Affairs Committee (AIPAC), would impose sweeping new sanctions against Tehran if it fails either to comply with the interim deal it struck last month in Geneva with the P5+1 (U.S., Britain, France, Russia, China plus Germany) or reach a comprehensive accord with the great powers within one year.¶ To be acceptable, however, such an accord, according to the bill, would require Iran to effectively dismantle virtually its entire nuclear program, including any enrichment of uranium on its own soil, as demanded by Israeli Prime Minister Benjamin Netanyahu.¶ The government of President Hassan Rouhani has warned repeatedly that such a demand is a deal-breaker, and even Secretary of State John Kerry has said that a zero-enrichment position is a non-starter.¶ The bill, the Nuclear Weapon Free Iran Act, also calls for Washington to provide military and other support to Israel if its government “is compelled to take military action in legitimate self-defense against Iran’s nuclear weapon program.”¶ The introduction of the bill last week by Republican Sen. Mark Kirk and Democratic Sen. Robert Menendez followed unsuccessful efforts by both men to get some sanctions legislation passed since the Geneva accord was signed Nov. 24.¶ Kirk at first tried to move legislation that would have imposed new sanctions immediately in direct contradiction to a pledge by the P5+1 in the Geneva accord to forgo any new sanctions for the six-month life of the agreement in exchange for, among other things, enhanced international inspections of Iran’s nuclear facilities and a freeze on most of its nuclear program.¶ Unable to make headway, Kirk then worked with Menendez to draw up the new bill which, because of its prospective application, would not, according to them, violate the agreement. They had initially planned to attach it to a defense bill before the holiday recess. But the Democratic leadership, which controls the calendar, refused to go along.¶ Their hope now is to pass it – either as a free-standing measure or as an amendment to another must-pass bill after Congress reconvenes Jan. 6.¶ To highlight its bipartisan support, the two sponsors gathered a dozen other senators from each party to co-sponsor it.¶ Republicans, many of whom reflexively oppose President Barack Obama’s positions on any issue and whose core constituencies include Christian Zionists, are almost certain to support the bill by an overwhelming margin. If the bill gets to the floor, the main battle will thus take place within the Democratic majority.¶ The latter find themselves torn between, on the one hand, their loyalty to Obama and their fear that new sanctions will indeed derail negotiations and thus make war more likely, and, on the other, their general antipathy for Iran and the influence exerted by AIPAC and associated groups as a result of the questionable perception that Israel’s security is uppermost in the minds of Jewish voters and campaign contributors (who, by some estimates, provide as much as 40 percent of political donations to Democrats in national campaigns).¶ The administration clearly hopes the Democratic leadership will prevent the bill from coming to a vote, but, if it does, persuading most of the Democrats who have already endorsed the bill to change their minds will be an uphill fight. If the bill passes, the administration will have to muster 34 senators of the 100 senators to sustain a veto – a difficult but not impossible task, according to Congressional sources.¶ That battle has already been joined. Against the 13 Democratic senators who signed onto the Kirk-Menendez bill, 10 Democratic Senate committee chairs urged Majority Leader Harry Reid, who controls the upper chamber’s calendar, to forestall any new sanctions legislation.

#### Obama’s strategy is working but failure scuttles the nuclear deal

Merry 1-1

Robert W. Merry, political editor of the National Interest, is the author of books on American history and foreign policy (Robert, “Obama may buck the Israel lobby on Iran” Washington Times, factiva)

Presidential press secretary Jay Carney uttered 10 words the other day that represent a major presidential challenge to the American Israel lobby and its friends on Capitol Hill. Referring to Senate legislation designed to force President Obama to expand economic sanctions on Iran under conditions the president opposes, Mr. Carney said: “If it were to pass, the president would veto it.”¶ For years, there has been an assumption in Washington that you can’t buck the powerful Israel lobby, particularly the American Israel Public Affairs Committee, or AIPAC, whose positions are nearly identical with the stated aims of Israeli Prime Minister Benjamin Netanyahu. Mr. Netanyahu doesn’t like Mr. Obama’s recent overture to Iran, and neither does AIPAC. The result is the Senate legislation, which is similar to a measure already passed by the House.¶ With the veto threat, Mr. Obama has announced that he is prepared to buck the Israel lobby — and may even welcome the opportunity. It isn’t fair to suggest that everyone who thinks Mr. Obama’s overtures to Iran are ill-conceived or counterproductive is simply following the Israeli lobby’s talking points, but Israel’s supporters in this country are a major reason for the viability of the sanctions legislation the president is threatening to veto.¶ It is nearly impossible to avoid the conclusion that the Senate legislation is designed to sabotage Mr. Obama’s delicate negotiations with Iran (with the involvement also of the five permanent members of the U.N. Security Council and Germany) over Iran’s nuclear program. The aim is to get Iran to forswear any acquisition of nuclear weapons in exchange for the reduction or elimination of current sanctions. Iran insists it has a right to enrich uranium at very small amounts, for peaceful purposes, and Mr. Obama seems willing to accept that Iranian position in the interest of a comprehensive agreement.¶ However, the Senate measure, sponsored by Sens. Robert Menendez, New Jersey Democrat; Charles E. Schumer, New York Democrat; and Mark Kirk, Illinois Republican, would impose potent new sanctions if the final agreement accords Iran the right of peaceful enrichment. That probably would destroy Mr. Obama’s ability to reach an agreement. Iranian President Hasan Rouhani already is under pressure from his country’s hard-liners to abandon his own willingness to seek a deal. The Menendez-Schumer-Kirk measure would undercut him and put the hard-liners back in control.¶ Further, the legislation contains language that would commit the United States to military action on behalf of Israel if Israel initiates action against Iran. This language is cleverly worded, suggesting U.S. action should be triggered only if Israel acted in its “legitimate self-defense” and acknowledging “the law of the United States and the constitutional responsibility of Congress to authorize the use of military force,” but the language is stunning in its brazenness and represents, in the view of Andrew Sullivan, the prominent blogger, “an appalling new low in the Israeli government’s grip on the U.S. Congress.”¶ While noting the language would seem to be nonbinding, Mr. Sullivan adds that “it’s basically endorsing the principle of handing over American foreign policy on a matter as grave as war and peace to a foreign government, acting against international law, thousands of miles away.”¶ That brings us back to Mr. Obama’s veto threat. The American people have made clear through polls and abundant expression (especially during Mr. Obama’s flirtation earlier this year with military action against Bashar Assad’s Syrian regime) that they are sick and weary of American military adventures in the Middle East. They don’t think the Iraq and Afghanistan wars have been worth the price, and they don’t want their country to engage in any other such wars.¶ That’s what the brewing confrontation between Mr. Obama and the Israel lobby comes down to — war and peace. Mr. Obama’s delicate negotiations with Iran, whatever their outcome, are designed to avert another U.S. war in the Middle East. The Menendez-Schumer-Kirk initiative is designed to kill that effort and cedes to Israel America’s war-making decision in matters involving Iran, which further increases the prospects for war. It’s not even an argument about whether the United States should come to Israel’s aid if our ally is under attack, but whether the decision to do so and when that might be necessary should be made in Jerusalem or Washington.¶ 2014 will mark the 100th anniversary of beginning of World War I, a conflict triggered by entangling alliances that essentially gave the rulers of the Hapsburg Empire power that forced nation after nation into a war they didn’t want and cost the world as many as 20 million lives. Historians have warned since of the danger of nations delegating the power to take their people into war to other nations with very different interests.¶ AIPAC’s political power is substantial, but this is Washington power, the product of substantial campaign contributions and threats posed to re-election prospects. According to the Center for Responsive Politics’ Open Secrets website, Sens. Kirk, Menendez and Schumer each receives hundreds of thousands of dollars a year in pro-Israel PAC money and each of their states includes concentrations of pro-Israel voters who help elect and re-elect them.¶ Elsewhere in the country, AIPAC’s Washington power will collide with the country’s clear and powerful political sentiment against further U.S. adventurism in the Middle East, particularly one as fraught with as much danger and unintended consequence as a war with Iran. If the issue gets joined, as it appears that it will, Mr. Obama will see that it gets joined as a matter of war and peace. If the Menendez-Schumer-Kirk legislation clears Congress and faces a presidential veto, the war-and-peace issue could galvanize the American people as seldom before.¶ If that happens, the strongly held opinions of a democratic public are liable to overwhelm the mechanisms of Washington power, and the vaunted influence of the Israel lobby may be seen as being not quite what it has been cracked up to be.

#### The plan causes an inter-branch fight – saps PC and derails his 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 causes a US-Iran war and Iranian prolif

WORLD TRIBUNE 11-13

[Obama said to suspend Iran sanctions without informing Congress, http://www.worldtribune.com/2013/11/13/obama-said-to-suspend-iran-sanctions-without-informing-congress/]

The administration has also pressured Congress to suspend plans for new sanctions legislation against Iran. The sources said the White House effort has encountered resistance from both Democrats and Republicans, particularly those in the defense and foreign affairs committees.¶ “I urge the White House and the Senate to learn from the lessons of the past and not offer sanctions relief in return for the false hopes and empty promises of the Iranian regime,” Rep. Ileana Ros-Lehtinen, chairwoman of the House Middle East and North Africa Subcommittee, said. “Instead, new rounds of sanctions must be implemented to gain further leverage because any misstep in calculations at this juncture will have devastating and irreversible consequences that will be difficult to correct retroactively.”¶ On Nov. 12, the White House warned that additional sanctions on Iran would mean war with the United States. White House press secretary Jay Carney, in remarks meant to intensify pressure on Congress, said sanctions would end the prospect of any diplomatic solution to Iran’s crisis. ¶ “The American people do not want a march to war,” Carney said. “It is important to understand that if pursuing a resolution diplomatically is disallowed or ruled out, what options then do we and our allies have to prevent Iran from acquiring a nuclear weapon?”¶ Still, the Senate Banking Committee has agreed to delay any vote on sanctions legislation until a briefing by Secretary of State John Kerry on Nov. 13. The sources said Kerry was expected to brief the committee on the P5+1 talks in Geneva that almost led to an agreement with Teheran.¶ “The secretary will be clear that putting new sanctions in place would be a mistake,” State Department spokeswoman Jen Psaki said on Nov. 12. “We are still determining if there’s a diplomatic path forward. What we are asking for right now is a pause, a temporary pause, in sanctions.”

#### Iran war escalates

White 11

July/August 2011 (Jeffrey—defense fellow at the Washington Institute for Near East Policy, What Would War With Iran Look Like, National Interest, p. http://www.the-american-interest.com/article-bd.cfm?piece=982)

A U.S.-Iranian war would probably not be fought by the United States and Iran alone. Each would have partners or allies, both willing and not-so-willing. Pre-conflict commitments, longstanding relationships, the course of operations and other factors would place the United States and Iran at the center of more or less structured coalitions of the marginally willing. A Western coalition could consist of the United States and most of its traditional allies (but very likely not Turkey, based on the evolution of Turkish politics) in addition to some Persian Gulf states, Jordan and perhaps Egypt, depending on where its revolution takes it. Much would depend on whether U.S. leaders could persuade others to go along, which would mean convincing them that U.S. forces could shield them from Iranian and Iranian-proxy retaliation, or at least substantially weaken its effects. Coalition warfare would present a number of challenges to the U.S. government. Overall, it would lend legitimacy to the action, but it would also constrict U.S. freedom of action, perhaps by limiting the scope and intensity of military operations. There would thus be tension between the desire for a small coalition of the capable for operational and security purposes and a broader coalition that would include marginally useful allies to maximize legitimacy. The U.S. administration would probably not welcome Israeli participation. But if Israel were directly attacked by Iran or its allies, Washington would find it difficult to keep Israel out—as it did during the 1991 Gulf War. That would complicate the U.S. ability to manage its coalition, although it would not necessarily break it apart. Iranian diplomacy and information operations would seek to exploit Israeli participation to the fullest. Iran would have its own coalition. Hizballah in particular could act at Iran’s behest both by attacking Israel directly and by using its asymmetric and irregular warfare capabilities to expand the conflict and complicate the maintenance of the U.S. coalition. The escalation of the Hizballah-Israel conflict could draw in Syria and Hamas; Hamas in particular could feel compelled to respond to an Iranian request for assistance. Some or all of these satellite actors might choose to leave Iran to its fate, especially if initial U.S. strikes seemed devastating to the point of decisive. But their involvement would spread the conflict to the entire eastern Mediterranean and perhaps beyond, complicating both U.S. military operations and coalition diplomacy.

### DA

#### 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.

#### Prolif causes extinction

Horowitz 9

Professor of Political Science @ University of Pennsylvania [Michael Horowitz (Former Emory debater and NDT Champion), “The Spread of Nuclear Weapons and International Conflict: Does Experience Matter?,” Journal of Conflict Resolution, Volume 53 Number 2, April 2009 pg. 234-257]

Learning as states gain experience with nuclear weapons is complicated. While to some extent, **nuclear acquisition** might provide information about resolve or capabilities, it also **generates uncertainty about the way an actual conflict would go**—**given the new risk of nuclear escalation—and uncertainty about relative capabilities**. **Rapid proliferation** **may especially heighten uncertainty** given the potential for reasonable states to disagree at times about the quality of the capabilities each possesses. 2 What follows is an attempt to describe the implications of inexperience and incomplete information on the behavior of nuclear states and their potential opponents over time. Since it is impossible to detail all possible lines of argumentation and possible responses, the following discussion is necessarily incomplete. This is a first step. **The acquisition of nuclear weapons increases the confidence of adopters in their ability to impose costs in the case of a conflict and the expectations of likely costs if war occurs by potential opponents**. The key questions are whether nuclear states learn over time about how to leverage nuclear weapons and the implications of that learning, along with whether actions by nuclear states, over time, convey information that leads to changes in the expectations of their behavior—shifts in uncertainty— on the part of potential adversaries. Learning to Leverage? When a new state acquires nuclear weapons, how does it influence the way the state behaves and how might that change over time? Although **nuclear acquisition** might be orthogonal to a particular dispute, it **might be related to a particular security challenge, might signal revisionist aims with regard to an enduring dispute, or might signal the desire to reinforce the status quo**. This section focuses on how acquiring nuclear weapons influences both the new nuclear state and potential adversaries. In theory, systemwide perceptions of nuclear danger could allow new nuclear states to partially skip the early Cold War learning process concerning the risks of nuclear war and enter a proliferated world more cognizant of nuclear brinksmanship and bargaining than their predecessors. However, **each new nuclear state has to resolve its own particular civil–military issues surrounding operational control and plan its national strategy in light of its new capabilities**. Empirical research by Sagan (1993), Feaver (1992), and Blair (1993) suggests that viewing the behavior of other states does not create the necessary tacit knowledge; there is no substitute for experience **when it comes to handling a nuclear arsenal, even if experience itself cannot totally prevent accidents**. Sagan contends that civil–military **instability in many likely new proliferators and pressures generated by the requirements to handle the responsibility of dealing with nuclear weapons will skew decision making toward more offensive strategies** (Sagan 1995). The questions surrounding Pakistan’s nuclear command and control suggest there is no magic bullet when it comes to new nuclear powers’ making control and delegation decisions (Bowen and Wolvén 1999). Sagan and others focus on inexperience on the part of new nuclear states as a key behavioral driver. **Inexperienced operators and the bureaucratic desire to “justify” the costs spent developing nuclear weapons**, combined with organizational biases that may favor escalation to avoid decapitation—**the “use it or lose it” mind-set— may cause new nuclear states to adopt riskier launch postures, such as launch on warning, or at least be perceived that way by other states** (Blair 1993; Feaver 1992; Sagan 1995). 3 **Acquiring nuclear weapons** **could** alter state preferences **and make states more likely to escalate disputes once they start**, given their new capabilities. 4 But their general lack of experience at leveraging their nuclear arsenal and effectively communicating nuclear threats could mean **new nuclear states will be more likely to select adversaries poorly and to find themselves in disputes with resolved adversaries that will reciprocate militarized challenges**.

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#### The United States federal government should not increase restrictions on the war powers authority of the President of the United States.

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#### 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. Sovereignty necessarily functions in exception to the law. This exception is necessary to avoid the universal violence of the Law and the affirmative.

Rasch 2k

(William. "Conflict as a Vocation: Carl Schmitt and the Possibility of Politics." Theory Culture Society 17.1)

It is not difficult to see that the polemical elevation of sovereignty over the rule of law replicates a lively historical opposition, one that can be perhaps best evoked by that happy pair, Hobbes and Locke. Within the liberal tradition, the rule of law invokes reason and calculability in its battles against the arbitrary and potentially despotic whim of an unrestrained sovereign. The legitimacy of the sovereign is thus replaced by a legality that claims to provide its own immanent and unforced legitimacy. Predictable and universally accessible reason - the normative validity of an "uncorked consensus", to use the words of a prominent modern exponent - gently usurps, so it is claimed, the place that would otherwise be occupied by a cynical, pragmatic utilitarianism and the tyranny of a dark, incalculable will. The rule of law brings all the comforts of an uncontroversial, rule-based, normative security as if legality preceded by way of simple logical derivation, abolishing above all the necessity of decisions. Schmitt clearly will have none of this and in various writings attempts to expose what he considers to be the two-fold fallacy of the liberal position. As we have seen, if taken at its word, legality, or the rule of law, is seen by Schmitt to be impotent; it can neither legitimize nor effectively defend itself against determined enemies in times of crisis. Were law truly the opposite of force, it would cease to exist. But this self-description is deceptive, for if judged by its deeds, the same liberal regime that enunciates the self-evidence validity of universal norms strives to enact a universal consensus that is, indeed, far from uncorked. The rule of law inevitably reveals itself, precisely during moments of crisis, as the force of law, perhaps, not every bit as violent and "irrational" as the arbitrary tyrant, but nonetheless compelling and irresistible - indeed, necessarily so. Thus, Schmitt would argue the distinction between "decision", "force" and sovereignty", on the one hand, and the "rule of law", on the other, is based on a blithe and simple illusion. What agitates Schmitt is not the force, but the deception. More precisely, what agitates Schmitt is what he perceives to be the elimination of politics in the name of a higher legal or moral order. In its claim to a universal, normative, rule-bound validity, the liberal sleight-of-hand reveals itself to be not the opposite of force, but a force that outlaws opposition. In resurrecting the notion of sovereignty, therefore, Schmitt sees himself as one who rescues a legitimate notion of politics. Of course, this rescue attempt is itself political, a battle over the correct definition of politics. That is, we are not merely dealing with a logical problem, and not merely dealing with a desire to provide constitutional mechanisms that would prevent the self-dissolution of the constitution. Rather, we are dealing with a contest between a particularist notion of politics, in which individual conflicts can be resolved, but in which antagonism as a structure and reservoir of possible future conflicts is never destroyed, versus politics as the historical unfolding and pacific expansion of the universal morality. To evoke the long shadows of an ongoing contemporary debate, we are dealing with the difference between a politics of dissensus and a politics of consensus. Whereas the latter ideology entails an explicit or implicit belief in the "highest good" that can be rationally discerned and achieved, a "right regime", to use Leo Strauss's term, or the "just society" that hopes to actualize aspects of the City of God here on earth, the former stresses the necessity of determining a workable order where no single order bears the mantle of necessity, in fact, where all order is contingent, hence imperfect, and thus seeks to make the best of an inherently contradictory world by erecting structures that minimize self-inflicted damage. In Schmitt's eyes, the elements of such a structure must be the manifold of sovereign states. The liberal says there can only be one world-wide sovereign, the sovereignty of a universal moral and legal order. Schmitt counters with a plurality of equal sovereigns, for only in this way, he believes, can the economic and moral extinction of politics be prevented. Politics, on this view, is not the means by which the universally acknowledged good is actualized, but the mechanism that negotiates and limits disputes in the absence of any universally acknowledged good. Politics exists, in other words, because the just society does not.

### Legitimacy

#### Multiple alt causes ---

#### 1) Broader torture practices

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>

Beginning at least in 2002, the United States created and developed a policy instituting torture — what it calls “enhanced interrogation” — of its detainees in the “global war on terror”2 under the general framework of a state of necessity. Many of these torture techniques have already been used and refined by the Western powers during the 20th century.3 They are also built partially into U.S. “survival, evasion, resistance, escape” (sere) training program techniques, which reportedly also adapt techniques previously used by China.4 The logic of torture used as an information-seeking instrument in the current conflict, however, has entailed the creation of a large-scale institution of torture, spread among several countries, and implicating hundreds and perhaps thousands of people.5¶ This institution strikes at the heart of the very idea of human rights and core principles of liberal democratic society. It raises important and uncomfortable questions about the nature of human rights in the wake of the torture at Guantánamo and other sites, the policy and practice of extraordinary rendition, indefinite detentions and the suspension of due process and habeas corpus, the violation of domestic and international laws, and perhaps other features and goals of the program yet to come into the public light. The claim is a claim to exception or necessity to the suspension of laws and civil liberties in a moment of national emergency. This is not unusual, unfortunately. Most states have similar national emergency procedures, even if only implicit. The law will always be suspended in the name of survival and the global war on terror was framed as a matter of the survival of civilization. With self-defense being the moral justification of violence par excellence, extraordinary acts may be viewed as entirely legitimate in the defense of civilization. What should also concern us, however, is the suspension of rights in the name of political expediency. In other words, this is not only a moment for lawyers to rise to the occasion. The problem is political and philosophical. There is more at stake than the legally appropriate punishment of terrorists and credibility of certain public officials and agencies.¶ The prohibition of torture has been formal international law since the UN Declaration on Human Rights (1948) and the Geneva Conventions (1949). It is also generally assumed to be an international peremptory norm (jus cogens), a norm accepted universally by the international community that cannot be derogated, such as the norm of state sovereignty. The UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984/1987) and the non-binding Istanbul Protocol (1999), among other international legal instruments, further codified the norm into international law. Torture violates international law, usually domestic law (as, for example, in the 8th Amendment to the United States constitution banning “cruel and unusual punishment”), basic morality, and one of the fundamental shared norms of international society. Violation of the law entails criminality by definition. Violation of a basic shared norm entails a loss of moral and political standing, of credibility, trust, and legitimacy in international society.

#### 2) PRISM

Migranyan 7/5

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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.

#### Detention restrictions increases rendition and drone strikes — turns the advantage

Goldsmith, 12

(Law Prof-Harvard, 6/29, Proxy Detention in Somalia, and the Detention-Drone Tradeoff, 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.

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

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.

#### Credibility fails and isn’t key to heg

Drezner 11

Daniel W. Drezner, Professor of International Politics at the Fletcher School of Law and Diplomacy at Tufts University, Foreign Affairs, July/August 2011, "Does Obama Have a Grand Strategy?", <http://www.foreignaffairs.com/print/67869>

What went wrong? The administration, and many others, erred in believing that improved standing would give the United States greater policy leverage. The United States' standing among foreign publics and elites did rebound. But this shift did not translate into an appreciable increase in the United States' soft power. Bargaining in the G-20 and the UN Security Council did not get any easier. Soft power, it turns out, cannot accomplish much in the absence of a willingness to use hard power. The other problem was that China, Russia, and other aspiring great powers did not view themselves as partners of the United States. Even allies saw the Obama administration's supposed modesty as a cover for shifting the burden of providing global public goods from the United States to the rest of the world. The administration's grand strategy was therefore perceived as promoting narrow U.S. interests rather than global public goods.

#### 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.

#### Liberal order is locked in

G. John Ikenberry 11, Professor of Politics and International Affairs at Princeton University. “A World of Our Making”. Democracy A Journal of Ideas. Issue #21, Summer 2011. http://www.democracyjournal.org/21/a-world-of-our-making-1.php?page=1

The main alternatives to liberal order—both domestic and international—have more or less disappeared. The great liberal international era is not ending. Still, if the liberal order is not in crisis, its governance is. Yet, given the fundamental weakness of the past international orders—brought down by world wars and great economic upheavals—the challenges of reforming and renegotiating liberal world order are, if anything, welcome ones.

There are four reasons to think that some type of updated and reorganized liberal international order will persist. First, the old and traditional mechanism for overturning international order—great-power war—is no longer likely to occur. Already, the contemporary world has experienced the longest period of great-power peace in the long history of the state system. This absence of great-power war is no doubt due to several factors not present in earlier eras, namely nuclear deterrence and the dominance of liberal democracies. Nuclear weapons—and the deterrence they generate—give great powers some confidence that they will not be dominated or invaded by other major states. They make war among major states less rational and there-fore less likely. This removal of great-power war as a tool of overturning international order tends to reinforce the status quo. The United States was lucky to have emerged as a global power in the nuclear age, because rival great powers are put at a disadvantage if they seek to overturn the American-led system. The cost-benefit calculation of rival would-be hegemonic powers is altered in favor of working for change within the system. But, again, the fact that great-power deterrence also sets limits on the projection of American power presumably makes the existing international order more tolerable. It removes a type of behavior in the system—war, invasion, and conquest between great powers—that historically provided the motive for seeking to overturn order. If the violent over-turning of international order is removed, a bias for continuity is introduced into the system.

Second, the character of liberal international order itself—**with or without** American **hegemonic leadership**—reinforces continuity. The complex interdependence that is unleashed in an open and loosely rule-based order generates expanding realms of exchange and investment that result in a growing array of firms, interest groups, and other sorts of political stakeholders who seek to preserve the stability and openness of the system. Beyond this, the liberal order is also relatively easy to join. In the post-Cold War decades, countries in different regions of the world have made democratic transitions and connected themselves to various parts of this system. East European countries and states within the old Soviet empire have joined NATO. East Asian countries, including China, have joined the World Trade Organization (WTO). Through its many multilateral institutions, the liberal international order facilitates integration and offers support for states that are making transitions toward liberal democracy. Many countries have also experienced growth and rising incomes within this order. Comparing international orders is tricky, but the current liberal international order, seen in comparative perspective, does appear to have unique characteristics that encourage integration and discourage opposition and resistance.

Third, the states that are rising today do not constitute a potential united opposition bloc to the existing order. There are so-called rising states in various regions of the world. China, India, Brazil, and South Africa are perhaps most prominent. Russia is also sometimes included in this grouping of rising states. These states are all capitalist and most are democratic. They all gain from trade and integration within the world capitalist system. They all either are members of the WTO or seek membership in it. But they also have very diverse geopolitical and regional interests and agendas. They do not constitute either an economic bloc or a geopolitical one. Their ideologies and histories are distinct. They share an interest in gaining access to the leading institutions that govern the international system. Sometimes this creates competition among them for influence and access. But it also orients their struggles toward the reform and reorganization of governing institutions, not to a united effort to overturn the underlying order.

Fourth, all the great powers have alignments of interests that will continue to bring them together to negotiate and cooperate over the management of the system. All the great powers—old and rising—are status-quo powers. All are beneficiaries of an open world economy and the various services that the liberal international order provides for capitalist trading states. All worry about religious radicalism and failed states. Great powers such as Russia and China do have different geopolitical interests in various key trouble spots, such as Iran and South Asia, and so disagreement and noncooperation over sanctions relating to nonproliferation and other security issues will not disappear. But the opportunities for managing differences with frameworks of great-power cooperation exist and will grow.

#### Or it’s 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.

### Afghanistan

#### Can’t solve Afghan judiciary—human capacity is prerequisite and doesn’t exist

ICG 10

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

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

<<<THEIR EVIDENCE BEGINS>>>

The distortions created in the justice system by lack of due process and arbitrary detentions under both Afghan institutions and the U.S. military are highly problematic. Until there is a substantial change in U.S. policy that provides for the transparent application of justice and fair trials for detainees, the insurgency will always be able to challenge the validity of the international community’s claim that it is genuinely interested in the restoration of the rule of law. If the international community is serious about this claim, then more must be done to ensure that the transition from U.S. to Afghan control of detention facilities is smooth, transparent and adheres to international law.

#### No one models American courts – Canada is the model

Law, Professor of Law and Professor of Political Science, Washington University in St. Louis, and Versteeg, Associate Professor, University of Virginia School of Law, June 2012

(David S. and Mila, “THE DECLINING INFLUENCE OF THE UNITED STATES CONSTITUTION,” 87 N.Y.U.L. Rev. 762, Lexis)

In 1987, to mark the bicentennial of the U.S. Constitution, Time magazine released a special issue in which it called the Constitution "a gift to all nations" and proclaimed proudly that 160 of the 170 nations then in existence had modeled their constitutions upon our own. n2 As boastful as the claim may be, the editors of Time were not entirely without reason. Over its two centuries of history, the U.S. Constitution has had an immense impact on the development of constitutionalism around the world. n3 Constitutional law has been called [\*765] one of the "great exports" of the United States. n4 In a number of countries, constitutional drafters have copied extensively, and at times verbatim, from the text of the U.S. Constitution. n5 Countless more foreign constitutions have been characterized as this country's "constitutional offspring." n6

It is widely assumed among scholars and the general public alike that the United States remains "the hegemonic model" for constitutionalism in other countries. n7 The U.S. Constitution in particular continues to be described as "the essential prototype of a written, single-document constitution." n8 There can be no denying the popularity of [\*766] the Constitution's most important innovations, such as judicial review, entrenchment against legislative change, and the very idea of written constitutionalism. n9 Today, almost 90% of all countries possess written constitutional documents backed by some kind of judicial enforcement. n10 As a result, what Alexis de Tocqueville once described as an American peculiarity is now a basic feature of almost every state. n11

There are growing suspicions, however, that America's days as a constitutional hegemon are coming to an end. n12 It has been said that [\*767] the United States is losing constitutional influence because it is increasingly out of sync with an evolving global consensus on issues of human rights. n13 Indeed, to the extent that other countries still look to the United States as an example, their goal may be less to imitate American constitutionalism than to avoid its perceived flaws and mistakes. n14 Scholarly and popular attention has focused in particular upon the influence of American constitutional jurisprudence. The reluctance of the U.S. Supreme Court to pay "decent respect to the opinions of mankind" n15 by participating in an ongoing "global judicial dialogue" n16 is supposedly diminishing the global appeal and influence of American constitutional jurisprudence. n17 **Studies conducted by** [\*768] **scholars in other countries** have begun to **yield empirical evidence that citation to U.S. Supreme Court decisions by foreign courts is** in fact **on the decline**. n18 By contrast, however, the extent to which the U.S. Constitution itself continues to influence the adoption and revision of constitutions in other countries remains a matter of speculation and anecdotal impression.

**With** the help of **an extensive data set** of our own creation **that spans all national constitutions over the last six decades**, this Article explores the extent to which various prominent constitutions - including the U.S. Constitution - epitomize generic rights constitutionalism or are, instead, increasingly out of sync with evolving global practice. **A stark contrast can be drawn between the declining attraction of the U.S. Constitution as a model for other countries and the increasing attraction of the model provided by America's neighbor to the north**, **Canada**. We also address the possibility that today's constitution makers look for inspiration not only to other national constitutions, but also to regional and international human rights instruments such as the Universal Declaration of Human Rights and the European Convention on Human Rights. Our findings do little to assuage American fears of diminished influence in the constitutional sphere.

Part I introduces the data and methods used in this Article to quantify constitutional content and measure constitutional similarity. Part II describes the global mainstream of rights constitutionalism, in the form of a set of rights that can be found in the vast majority of the [\*769] world's constitutions. From this core set of rights, we construct a hypothetical generic bill of rights that exemplifies current trends in rights constitutionalism. We then identify the most and least generic constitutions in the world, measured by their similarity to this generic bill of rights, and we pinpoint the ways in which the rights-related provisions of the U.S. Constitution depart from this generic model.

Part III documents the growing divergence of the U.S. Constitution from the global mainstream of written constitutionalism. Whether the analysis is global in scope or focuses more specifically upon countries that share historical, legal, political, or geographic ties to the United States, the conclusion remains the same: **The U.S. Constitution has become an increasingly unpopular model for constitutional framers elsewhere**. Possible explanations include the sheer brevity of the Constitution, its imperviousness to formal amendment, its omission of some of the world's generic constitutional rights, and its inclusion of certain rights that are increasingly rare by global standards.

Parts IV and V tackle the question of whether a prominent constitution from some other country has supplanted the U.S. Constitution as a model for global constitutionalism. Part IV contrasts the growing deviance of the U.S. Constitution from global constitutional practice with the increasing popularity of the Canadian approach to rights constitutionalism. Unlike its American counterpart, the Canadian Constitution has remained squarely within the constitutional mainstream. Indeed, **when Canada departed from the mainstream by adopting a new constitution**, **other countries followed its lead**. Closer examination reveals, however, that the popularity of the Canadian model is largely confined to countries with an Anglo-American legal tradition. In other words, our analysis suggests that Canada is in the vanguard of what might be called a Commonwealth model of rights constitutionalism, but not necessarily of global constitutionalism as a whole.

Part V considers whether the widely celebrated constitutions of Germany, South Africa, or India might instead be leading the way for global constitutionalism. **Although all** three are currently **more mainstream than the U.S. Constitution**, we find little evidence that global constitution-writing practices have been strongly shaped by any of the three.

Part VI explores the possibility that transnational human rights instruments have begun to shape the practice of formal constitutionalism at the national level. The evidence that international and regional human rights treaties may be serving as models for domestic constitutions varies significantly from treaty to treaty. In particular, [\*770] we find that the average constitution has increasingly grown to resemble the International Covenant on Civil and Political Rights and the European Convention on Human Rights, as well as the African Charter on Human and Peoples' Rights and the Charter of Civil Society for the Caribbean Community. There is little evidence, however, that any of these treaties is actually responsible for generating global consensus as to what rights demand formal constitutional protection. Although these treaties may express and reinforce preexisting global constitutional trends, they do not appear to define those trends in the first place.

Finally, the Conclusion discusses **possible explanations for the declining influence of American constitutionalism**. These **include a broad decline in American hegemony** across a range of spheres, **a judicial aversion to constitutional comparativism**, **a historical and normative commitment to American exceptionalism**, **and sheer constitutional obsolescence**.

#### Instability is inevitable but wont escalate

Finel 9 [Dr. Bernard I. Finel, an Atlantic Council contributing editor, is a senior fellow at the American Security Project, “Afghanistan is Irrelevant,” Apr 27 http://www.acus.org/new\_atlanticist/afghanistan-irrelevant]

It is now a deeply entrenched conventional wisdom that the decision to “abandon” Afghanistan after the Cold War was a tragic mistake. In the oft-told story, our “abandonment” led to civil war, state collapse, the rise of the Taliban, and inevitably terrorist attacks on American soil. This narrative is now reinforced by dire warnings about the risks to Pakistan from instability in Afghanistan. Taken all together, critics of the Afghan commitment now find themselves facing a nearly unshakable consensus in continuing and deepen our involvement in Afghanistan. The problem with the consensus is that virtually every part of it is wrong. Abandonment did not cause the collapse of the state. Failed states are not always a threat to U.S. national security. And Pakistan’s problems have little to do with the situation across the border. First, the collapse of the Afghan state after the Soviet withdrawal had little to do with Western abandonment. Afghanistan has always been beset by powerful centrifugal forces. The country is poor, the terrain rough, the population divided into several ethnic groups. Because of this, the country has rarely been unified even nominally and has never really had a strong central government. The dominant historical political system in Afghan is warlordism. This is not a consequence of Western involvement or lack thereof. It is a function of geography, economics, and demography. Second, there is no straight-line between state failure and threats to the United States. Indeed, the problem with Afghanistan was not that it failed but rather that it “unfailed” and becameruled by the Taliban. Congo/Zaire is a failed state. Somalia is a failed state. There are many parts of the globe that are essentially ungoverned. Clearly criminality, human rights abuses, and other global ills flourish in these spaces. But the notion that any and all ungoverned space represents a core national security threat to the United States is simply unsustainable. Third, the problem was the Taliban regime was not that it existed. It was that it was allowed to fester without any significant response or intervention. We largely sought to ignore the regime — refusing to recognize it despite its control of 90% of Afghan territory. Aside from occasional tut-tutting about human rights violations and destruction of cultural sites, the only real interaction the United States sought with the regime was in trying to control drugs. Counter-drug initiatives are not a sound foundation for a productive relationship for reasons too numerous to enumerate here. Had we recognized the Taliban and sought to engage the regime, it is possible that we could have managed to communicate red lines to them over a period of years. Their failure to turn over bin Laden immediately after 9/11 does not necessarily imply an absolute inability to drive a wedge between the Taliban and al Qaeda over time. Fourth, we are now told that defeating the Taliban in Afghanistan is imperative in order to help stabilize Pakistan. But, most observers seem to think that Pakistan is in worse shape now — with the Taliban out of power and American forces in Afghanistan — than it was when the Taliban was dominant in Afghanistan. For five years from 1996 to 2001, the Taliban ruled Afghanistan and the Islamist threat to Pakistan then was unquestionably lower. This is not surprising actually. Insurgencies are at their most dangerous — in terms of threat of contagion — when they are fighting for power. The number of insurgencies that actually manage to sponsor insurgencies elsewhere after taking power is surprising low. The domino theory is as dubious in the case of Islamist movements as it was in the case of Communist expansion. There is a notion that “everything changed on 9/11.” We are backing away as a nation from that concept in the case of torture. Perhaps we should also come to realize that our pre-9/11 assessment of the strategic value and importance of Afghanistan was closer to the mark that our current obsession with it. We clearly made some mistakes in dealing with the Taliban regime. But addressing those mistakes through better intelligence, use of special forces raids, and, yes, diplomacy is likely a better solution than trying to build and sustain a reliable, pro-Western government in Kabul with control over the entire country.

#### No Taliban resurgence—every condition is wrong.

**Shafi 6/19/13** (Ahmad, Foreign Policy, Afghan journalist and a former producer for National Public Radio, June 19, 2013, “The un-happening of a civil war”, <http://afpak.foreignpolicy.com/posts/2013/06/19/the_un_happening_of_a_civil_war>, ZBurdette)

As coalition troops prepare to leave Afghanistan next December, reports of an impending civil war, sensationalized and embellished by foreign press mostly, have dominated many international headlines. These reports cite rampant corruption in the Afghan government, violent insurgency, spectacular attacks by the Taliban in major cities, fears of more restrictions on women's rights, and ethnic divisions as signs of a doomsday awaiting to befall post-2014 Afghanistan.

But if you ask ordinary Afghans about their future in 2015 and beyond, they are more likely to express fears about an economic recession, increased violence by militants, total abandonment by the international community, and uncertainty about President Karzai's replacement than a civil war or a triumphant return of the Taliban to power.

This discrepancy is because the political dynamics in today's Afghanistan are radically different from those in 1992, when various armed factions of anti-Soviet rebels took power. Back then, the mujahedeen, as they called themselves, enjoyed a certain level of public support. There were no independent media outlets, no civil institutions, and no major commitments by the international community to support Afghanistan after the communists' fall. In 1992, Afghans did not have the opportunity to democratically elect their leaders and thousands of armed rebels took positions outside the gates of Kabul, effectively cutting off the capital from the rest of the country. Most importantly, the Soviet Union, Afghanistan's primary patron, not only ended all of its aid to the Afghan National Army (ANA), but ceased to exist as a country itself.

Afghans take these factors into account when they calculate their future. Uncertainty and economic fears may be well founded and prevalent, but no one in Afghanistan believes the takeover of a half-finished construction site by a bunch of violent extremists, whose grim visions are so far away from the realities of today's Afghanistan, is an indication of a looming civil war like the one they experienced in the 1990s. In fact, many are dismayed when foreign analysts and reporters call fighting between Afghan security forces and foreign extremists in the mountains of Kunar and Nuristan provinces a civil war, but consider NATO advisers training and supporting the ANA as part of the invasion.

While some foreign analysts appear to have concluded a post-withdrawal Taliban takeover is inevitable, public opinion surveys inside Afghanistan show that Afghans beg to differ en masse. For example, a 2012 public opinion survey by the Asia Foundation found that Afghans' confidence in their security forces and in their future has steadily risen over the last six years. In fact, the foundation found that this confidence, especially in the ANA, runs in the 90th percentile (93 percent of Afghans expressed a "fair amount" or a "great deal" confidence in ANA). Meanwhile, sympathy for insurgents has declined steadily, especially in the last few years as the Taliban and other militant groups have stepped up their violent terror campaign, primarily attacking and killing civilians in the country. The survey's findings show that almost two-thirds of Afghans now oppose the armed insurgents. This data clearly indicates that the elusive leader of the Taliban is as likely to win a free and fair election for the Afghan presidency as the Newtown shooter would for becoming the governor of Connecticut.

### Iraq

#### No Iraqi instability -- civilian government integration

Arraf 13 (Jane Arraf, Correspondent for the Christian Science Monitor, August 1, 2013“Why bombings and jailbreaks won't tip Iraq back into civil war”, <http://www.csmonitor.com/World/Middle-East/2013/0801/Why-bombings-and-jailbreaks-won-t-tip-Iraq-back-into-civil-war>, we reject the ableist language used in the evidence, AB)

At checkpoints across Baghdad, plainclothes intelligence officers watch for suspicious cars while police scan vehicles with metal wands in a largely futile attempt to detect bombs. Despite the Iraqi government’s attempt to combat a record wave of bombings, the attacks across central and southern Iraq are paralyzing the country, leaving many Iraqis to suffer through a long hot summer with neither public services nor security. But seven years after an Al Qaeda bombing of a Shiite shrine touched off a civil war, attacks aimed at reigniting a sectarian battle have failed to provoke wider conflict. Although the country continues to reel from the explosions, enough has changed since 2006 that even continued attacks are unlikely to bring Iraq back to the brink of war, officials and many analysts say. “There are car bombs but there are restraints also. We’ve been there and we don’t want to go there again,” says Foreign Minister Hoshyar Zebari, whose own ministry was hit by a truck bomb four years ago. "Before people said ‘No, we will not be involved in the political process. We’ve been robbed, we’ve been cheated, and that’s why we’re going to fight',” says Mr. Zebari, referring to widespread Sunni boycotts of Iraq’s first elections. “Now the situation is completely different because all the communities are engaged in parliament, in government, in running their provinces, in administration as a whole.”

#### No Iraq war or instability - no interest

Arraf 13 (Jane Arraf, Correspondent for the Christian Science Monitor, August 1, 2013“Why bombings and jailbreaks won't tip Iraq back into civil war”, <http://www.csmonitor.com/World/Middle-East/2013/0801/Why-bombings-and-jailbreaks-won-t-tip-Iraq-back-into-civil-war>, we reject the ableist language used in the evidence, AB)

Invested in stability While little of it trickles down, Iraq’s oil revenue has helped make participating in government an appealing option for both Sunni and Shiite factions willing to lay down arms and enter the political process. Shiite cleric Muqtada Sadr has gone from commanding a militia that played a main role in Iraq’s sectarian violence to a mainstream political figure who has so far kept his movement’s armed wing in check. National elections, which in 2010 resulted in a fragile coalition government cobbled together by Prime Minister Nouri al Maliki, are only a year away. “Believe me, everyone is preparing for next year – that’s why no one has an interest in blowing up a sectarian war,” Zebari says.

#### No Spillover – other countries won’t get drawn in

[Maloney](http://www.brookings.edu/experts/maloneys.aspx) et al. ‘7

–Senior Fellow, [Foreign Policy](http://www.brookings.edu/foreign-policy.aspx), [Saban Center for Middle East Policy](http://www.brookings.edu/saban.aspx). Suzanne 2007. “Why the Iraq War Won’t Engulf the Mideast”. http://www.brookings.edu/opinions/2007/0628iraq\_maloney.aspx

Long before the Bush administration began selling "the surge" in Iraq as a way to avert a general war in the Middle East, observers both inside and outside the government were growing concerned about the potential for armed conflict among the regional powers. Underlying this anxiety was a scenario in which Iraq's sectarian and ethnic violence spills over into neighboring countries, producing conflicts between the major Arab states and Iran as well as Turkey and the Kurdistan Regional Government. These wars then destabilize the entire region well beyond the current conflict zone, involving heavyweights like Egypt. This is scary stuff indeed, but with the exception of the conflict between Turkey and the Kurds, the scenario is far from an accurate reflection of the way Middle Eastern leaders view the situation in Iraq and calculate their interests there. It is abundantly clear that major outside powers like Saudi Arabia, Iran and Turkey are heavily involved in Iraq. These countries have so much at stake in the future of Iraq that it is natural they would seek to influence political developments in the country. Yet, the Saudis, Iranians, Jordanians, Syrians, and others are very unlikely to go to war either to protect their own sect or ethnic group or to prevent one country from gaining the upper hand in Iraq. The reasons are fairly straightforward. First, Middle Eastern leaders, like politicians everywhere, are primarily interested in one thing: self-preservation. Committing forces to Iraq is an inherently risky proposition, which, if the conflict went badly, could threaten domestic political stability. Moreover, most Arab armies are geared toward regime protection rather than projecting power and thus have little capability for sending troops to Iraq. Second, there is cause for concern about the so-called blowback scenario in which jihadis returning from Iraq destabilize their home countries, plunging the region into conflict. Middle Eastern leaders are preparing for this possibility. Unlike in the 1990s, when Arab fighters in the Afghan jihad against the Soviet Union returned to Algeria, Egypt and Saudi Arabia and became a source of instability, Arab security services are being vigilant about who is coming in and going from their countries. In the last month, the Saudi government has arrested approximately 200 people suspected of ties with militants. Riyadh is also building a 700 kilometer wall along part of its frontier with Iraq in order to keep militants out of the kingdom. Finally, there is no precedent for Arab leaders to commit forces to conflicts in which they are not directly involved. The Iraqis and the Saudis did send small contingents to fight the Israelis in 1948 and 1967, but they were either ineffective or never made it. In the 1970s and 1980s, Arab countries other than Syria, which had a compelling interest in establishing its hegemony over Lebanon, never committed forces either to protect the Lebanese from the Israelis or from other Lebanese. The civil war in Lebanon was regarded as someone else's fight. Indeed, this is the way many leaders view the current situation in Iraq. To Cairo, Amman and Riyadh, the situation in Iraq is worrisome, but in the end it is an Iraqi and American fight. As far as Iranian mullahs are concerned, they have long preferred to press their interests through proxies as opposed to direct engagement. At a time when Tehran has access and influence over powerful Shiite militias, a massive cross-border incursion is both unlikely and unnecessary. So Iraqis will remain locked in a sectarian and ethnic struggle that outside powers may abet, but will remain within the borders of Iraq. The Middle East is a region both prone and accustomed to civil wars. But given its experience with ambiguous conflicts, the region has also developed an intuitive ability to contain its civil strife and prevent local conflicts from enveloping the entire Middle East. Iraq's civil war is the latest tragedy of this hapless region, but still a tragedy whose consequences are likely to be less severe than both supporters and opponents of Bush's war profess.

#### Civil war won’t escalate – limited by physical constraints and other countries won’t enter into the fray.

Dreyfuss ‘7

(Independent Journalist, March, <http://www.washingtonmonthly.com/features/2007/0703.dreyfuss.html>)

Second, although battle lines are hardening and militias on both sides are becoming self-sustaining, the civil war is limited by physical constraints. Neither the Sunnis nor the Shiites have much in the way of armor or heavy weapons—tanks, major artillery, helicopters, and the like. Without heavy weaponry, neither side can take the war deep into the other’s territory. “They’re not good on offense,” says Warren Marik, a retired CIA officer who worked in Iraq in the 1990s. “They can’t assault positions.” Shiites may have numbers on their side. But because the Sunnis have most of Iraq’s former army officers, and their resistance militia boasts thousands of highly trained soldiers, they’re unlikely to be overrun by the Shiite majority. Equally, the minority Sunnis won’t be able to seize Shiite parts of Baghdad or major Shiite cities in the south. Presuming neither side gets its hands on heavy weapons, once you take U.S. forces out of the equation the Sunnis and Shiites would ultimately reach an impasse.

<Continues>

A third fear is that Iraq’s neighbors will support their proxies in this fight. Indeed, they probably will—but within limits. Iran, which is already assisting various Shiite parties (especially the Supreme Council for the Islamic Revolution in Iraq), would continue to do so. And Sunni Arab states like Saudi Arabia, Egypt, and Jordan would line up behind Iraq’s Sunnis. Even so, neither Shiite Iran nor the Sunni Arab countries would likely risk a regional conflagration by providing their Iraqi proxies with the heavy weapons that would enable them to wage offensive operations in each other’s heartland.

#### Can’t solve – their advocate says they need to amend the Iraqi Constitution, pass legislation on the federal courts, and establish tenure processes for judges

Pimental and Anderson 13, Associate and Assistant Professors of Law

[June 2013, David Pimentel is Visiting Associate Professor of Law, Ohio Northern University; Brian Anderson is a Reference Librarian and Assistant Professor, also at Ohio Northern University, “Judicial Independence in Post-Conflict Iraq: Establishing the Rule of Law in an Islamic Constitutional Democracy”, http://works.bepress.com/cgi/viewcontent.cgi?article=1013&context=david\_pimentel]

There is nothing routine about post-conflict justice. Every post-conflict society faces a unique set of circumstances, and Iraq is no exception. The problem of creating an independent judiciary in Iraq is exacerbated by a number of factors. Among these are the explicit recognition of the law of Islam in the Iraqi Constitution, the inability to pass legislation on the Federal Courts of Iraq, leaving several provisions of the Iraqi Constitution unimplemented, and the impact of the de-Ba’athification authority in Iraq, which has power effectively to remove judges from office based on allegations that they were too closely tied to the prior regime. The absence of a law on federal courts leaves several other critical elements of judicial independence unaddressed, including provisions for the tenure, reappointment, and removal of judges. Serious concerns about security for judges in Iraq only further complicate the prospects for judicial independence there in the foreseeable future. Any hope for a functional state competent to establish and maintain the Rule of Law in Iraq depends on the success of efforts to address each of these challenges. It is a tall order.

#### Alt causes to instability- US troop presence and brutality

Van Auken 1-9

Bill Van Auken, Centre for Research on Globalization, “US Imperialism and Iraq’s Descent Into Civil War,” 1/9/14, <http://www.globalresearch.ca/us-imperialism-and-iraqs-descent-into-civil-war/5364322> SJE

The barbaric attack on Fallujah constituted a war crime. In its aims, scope and ferocity, it was comparable to the kind of collective punishment meted out by the Nazis against resisting populations in occupied Europe. It was emblematic of the criminal character of the entire US war. Foisted onto the American people with lies about non-existent “weapons of mass destruction” and ties between Baghdad and Al Qaeda, the war was a premeditated act of aggression launched to further US imperialist aims to assert hegemony over the Middle East and its vast energy reserves. Having failed to secure a guarantee of legal immunity for remaining US troops, Obama ordered the last of them withdrawn from Iraq little more than two years ago. The Iraqi people, however, have been left to deal with the bitter legacy of nearly nine years of US military occupation. Meanwhile, Washington’s quest for hegemony in the region has continued, most notably through the war to topple Muammar Gaddafi in Libya and its fomenting and support for a war for regime change against the government of Bashar al-Assad in Syria. In Fallujah and Ramadi, the consequences of the crimes of US imperialism, both past and present, have come together in an explosive form. The confrontation, presented by the corporate media as a struggle against Al Qaeda terrorists, has deep roots in the sectarian divisions that were instigated by the US war and occupation as part of a deliberate divide-and-rule strategy. They succeeded in pitting Iraq’s majority Shi’ite population against the minority Sunnis, while the Kurdish minority in the north has been allowed to pursue regional autonomy, while conflicts over borders and rights to oil wealth threaten to erupt into civil war there as well.

## Solvency

### 1NC International Waters

#### Obama will circumvent detention policies using international waters

Sullivan 13

(Eileen Sullivan, Associated Press reporter, covering counterterrorism, 10/8/13, <http://apnews.myway.com/article/20131008/DA99R0R81.html>, “Did Obama swap 'black' detention sites for ships?”, AB)

WASHINGTON (AP) - Instead of sending suspected terrorists to Guantanamo Bay or secret CIA "black" sites for interrogation, the Obama administration is questioning terrorists for as long as it takes aboard U.S. naval vessels. And it's doing it in a way that preserves the government's ability to ultimately prosecute the suspects in civilian courts. That's the pattern emerging with the recent capture of Abu Anas al-Libi, one of the FBI's most wanted terrorists, long-sought for his alleged role in the 1998 bombings of U.S. embassies in Africa. He was captured in a raid Saturday and is being held aboard the USS San Antonio, an amphibious warship mainly used to transport troops. Questioning suspected terrorists aboard U.S. warships in international waters is President Barack Obama's answer to the Bush administration detention policies that candidate Obama promised to end. The strategy also makes good on Obama's pledge to prosecute terrorists in U.S. civilian courts, which many Republicans have argued against. But it also raises questions about using "law of war" powers to circumvent the safeguards of the U.S. criminal justice system. By holding people in secret prisons, known as black sites, the CIA was able to question them over long periods, using the harshest interrogation tactics, without giving them access to lawyers. Obama came to office without a ready replacement for those secret prisons. The concern was that if a terrorist was sent directly to court, the government might never know what intelligence he had. With the black sites closed and Obama refusing to send more people to the U.S. detention facility at Guantanamo Bay, Cuba, it wasn't obvious where the U.S. would hold people for interrogation. And that's where the warships came in. On Saturday, the Army's Delta Force and Libyan operatives captured al-Libi in a raid. A team of U.S. investigators from the military, intelligence agencies and the Justice Department has been sent to question him on board the San Antonio, two law enforcement officials told The Associated Press. The San Antonio was in the Mediterranean as part of the fleet preparing for now-canceled strikes on Syria last month. Al-Libi, who was indicted in 2000 for his involvement in the 1998 bombings of U.S. embassies in Africa, was being held on the warship in military custody under the laws of war, which means a person can be captured and held indefinitely as an enemy combatant, one of the officials said. Both spoke on condition of anonymity to discuss the ongoing investigation. As of Monday, al-Libi had not been read his Miranda rights, which include the rights to remain silent and speak with an attorney. And it was unclear when al-Libi would be brought to the U.S. to face charges. "It appears to be an attempt to use assertion of law of war powers to avoid constraint and safeguards in the criminal justice system," said Hina Shamsi, an attorney with the American Civil Liberties Union and the director of the civil rights organization's national security project. "I am very troubled if this is the pattern that the administration is setting for itself."

### 1NC Obama Circumvents

#### Obama will disregard the Court – he’s on record

Pyle 12

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

Preventive Detention

But this is not the only double standard that Obama's attorney general has endorsed. Like his predecessors, Holder has chosen to deny some prisoners any trials at all, either because the government lacks sufficient evidence to guarantee their convictions or because what “evidence” it does have is fatally tainted by torture and would deeply embarrass the United States if revealed in open court. At one point, the president considered asking Congress to pass a preventive detention law. Then he decided to institute the policy himself and defy the courts to overrule him, thereby forcing judges to assume primary blame for any crimes against the United States committed by prisoners following a court-ordered release (Serwer 2009).¶ According to Holder, courts and commissions are “essential tools in our fight against terrorism” (Holder 2009). If they will not serve that end, the administration will disregard them. The attorney general also assured senators that if any of the defendants are acquitted, the administration will still keep them behind bars. It is difficult to imagine a greater contempt for the rule of law than this refusal to abide by the judgment of a court. Indeed, it is grounds for Holder's disbarment.¶ As a senator, Barack Obama denounced President Bush's detentions on the ground that a “perfectly innocent individual could be held and could not rebut the Government's case and has no way of proving his innocence” (Greenwald 2012). But, three years into his presidency, Obama signed just such a law. The National Defense Authorization Act of 2012 authorized the military to round up and detain, indefinitely and without trial, American citizens suspected of giving “material support” to alleged terrorists. The law was patently unconstitutional, and has been so ruled by a court (Hedges v. Obama 2012), but President Obama's only objection was that its detention provisions were unnecessary, because he already had such powers as commander in chief. He even said, when signing the law, that “my administration will not authorize the indefinite military detention without trial of American citizens,” but again, that remains policy, not law (Obama 2011). At the moment, the administration is detaining 40 innocent foreign citizens at Guantanamo whom the Bush administration cleared for release five years ago (Worthington 2012b).¶ Thus, Obama's “accomplishments” in the administration of justice “are slight,” as the president admitted in Oslo, and not deserving of a Nobel Prize. What little he has done has more to do with appearances than substance. Torture was an embarrassment, so he ordered it stopped, at least for the moment. Guantanamo remains an embarrassment, so he ordered it closed. He failed in that endeavor, but that was essentially a cosmetic directive to begin with, because a new and larger offshore prison was being built at Bagram Air Base in Afghanistan—one where habeas petitions could be more easily resisted. The president also decided that kidnapping can continue, if not in Europe, then in Ethiopia, Somalia, and Kenya, where it is less visible, and therefore less embarrassing (Scahill 2011). Meanwhile, his lawyers have labored mightily to shield kidnappers and torturers from civil suits and to run out the statute of limitations on criminal prosecutions. Most importantly, kidnapping and torture remain options, should al-Qaeda strike again. By talking out of both sides of his mouth simultaneously, Obama keeps hope alive for liberals and libertarians who believe in equal justice under law, while reassuring conservatives that America's justice will continue to be laced with revenge.¶ It is probably naïve to expect much more of an elected official. Few presidents willingly give up power or seek to leave their office “weaker” than they found it. Few now have what it takes to stand up to the national security state or to those in Congress and the corporations that profit from it. Moreover, were the president to revive the torture policy, there would be insufficient opposition in Congress to stop him. The Democrats are too busy stimulating the economies of their constituents and too timid to defend the rule of law. The Republicans are similarly preoccupied, but actually favor torture, provided it can be camouflaged with euphemisms like “enhanced interrogation techniques” (Editorial 2011b).

### 1NC Congress Blocks

#### Congress will backlash - that bars the Court from exercising its authority

Vladeck 11

Professor of Law and Associate Dean for Scholarship @ American University [Stephen I. Vladeck, “Why Klein (Still) Matters: Congressional Deception and the War on Terrorism,” Journal of National Security Law, Volume 5, 6/16/2011, 9:38 AM

Six weeks later, Congress enacted the USA PATRIOT Act, which included a series of controversial revisions to immigration, surveillance, and other law enforcement authorities.34 But it would be over four years before Congress would again pass a key counterterrorism initiative, enacting the Detainee Treatment Act of 2005 (DTA)35 after—and largely in response to—the Supreme Court’s grant of certiorari in Hamdan v. Rumsfeld.36 In the five years since, Congress had enacted a handful of additional antiterrorism measures, including the Military Commissions Act (MCA) of 2006,37 as amended in 2009,38 the Protect America Act of 2007,39 and the 2008 amendments40 to the Foreign Intelligence Surveillance Act of 1978, known in shorthand as the FAA.41 And yet, although Congress has spoken in these statutes both to the substantive authority for military commissions and to the scope of the government’s wiretapping and other surveillance powers, it has otherwise left some of the central debates in the war on terrorism completely unaddressed.42 Thus, Congress has not revisited the scope of the AUMF since September 18, 2001, even as substantial questions have been raised about whether the conflict has extended beyond that which Congress could reasonably be said to have authorized a decade ago.43 Nor has Congress intervened, despite repeated requests that it do so, to provide substantive, procedural, or evidentiary rules in the habeas litigation arising out of the military detention of noncitizen terrorism suspects at Guantánamo.44

As significantly, at the same time as Congress has left some of these key questions unanswered, it has also attempted to keep courts from answering them. Thus, the DTA and the MCA purported to divest the federal courts of jurisdiction over habeas petitions brought by individuals detained at Guantánamo and elsewhere.45 Moreover, the 2006 MCA precluded any lawsuit seeking collaterally to attack the proceedings of military commissions,46 along with “any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.”47 And although the Supreme Court in Boumediene invalidated the habeas-stripping provision as applied to the Guantánamo detainees,48 the same language has been upheld as applied elsewhere,49 and the more general non-habeas jurisdiction-stripping section has been repeatedly enforced by the federal courts in other cases.50¶ Such legislative efforts to forestall judicial resolution of the merits can also be found in the telecom immunity provisions of the FAA,51 which provided that telecom companies could not be held liable for violations of the Telecommunications Act committed in conjunction with certain governmental surveillance programs.52 Thus, in addition to changing the underlying substantive law going forward, the FAA pretermitted a series of then-pending lawsuits against the telecom companies.53¶ Analogously, Congress has attempted to assert itself in the debate over civilian trials versus military commissions by barring the use of appropriated funds to try individuals held at Guantánamo in civilian courts,54 and by also barring the President from using such funds to transfer detainees into the United States for continuing detention or to other countries, as well.55 Rather than enact specific policies governing criteria for detention, treatment, and trial, Congress’s modus operandi throughout the past decade has been to effectuate policy indirectly by barring (or attempting to bar) other governmental actors from exercising their core authority, be it judicial review or executive discretion. ¶ Wasserman views these developments as a period of what Professor Blasi described as “constitutional pathology,” typified by “an unusually serious challenge to one or more of the central norms of the constitutional regime.” Nevertheless, part of how Wasserman defends the “Klein vulnerable” provisions of the MCA and FAA is by concluding that the specific substantive results they effectuate can be achieved by Congress, and so Klein does not stand in the way. But if Redish and Pudelski’s reading of Klein is correct, then the fact that Congress could reach the same substantive results through other means is not dispositive of the validity of these measures. To the contrary, the question is whether any of these initiatives were impermissibly “deceptive,” such that Congress sought to “vest the federal courts with jurisdiction to adjudicate but simultaneously restrict the power of those courts to perform the adjudicatory function in the manner they deem appropriate.”56 pg. 257-259

# 2NC

## Warfighting

### 2NC Overview

#### 2 - Heg - perception of weak Presidential crisis response collapses it

Bolton 9

John R. Bolton 9, Senior fellow at the American Enterprise Institute & Former U.S. ambassador to the United Nations, “The danger of Obama's dithering,” Los Angeles Times, October 18, <http://articles.latimes.com/2009/oct/18/opinion/oe-bolton18>

Weakness in American foreign policy in one region often invites challenges elsewhere, because our adversaries carefully follow diminished American resolve. Similarly, presidential indecisiveness, whether because of uncertainty or internal political struggles, signals that the United States may not respond to international challenges in clear and coherent ways. Taken together, weakness and indecisiveness have proved historically to be a toxic **combination for America's global interests**. That is exactly the combination we now see under President Obama. If anything, his receiving the Nobel Peace Prize only underlines the problem. All of Obama's campaign and inaugural talk about "extending an open hand" and "engagement," especially the multilateral variety, isn't exactly unfolding according to plan. Entirely predictably, we see more clearly every day that diplomacy is not a policy but only a technique. **Absent** presidential leadership, **which at a minimum means** clear policy direction and persistence in the face of criticism and adversity**, engagement simply embodies** weakness and indecision.

#### Turns afghan and iraq

Goldsmith, 9

(Law Prof-Harvard, 2/4, “Long-Term Terrorist Detention and Our National Security Court,” http://www.brookings.edu/~/media/research/files/papers/2009/2/09%20detention%20goldsmith/0209\_detention\_goldsmith.pdf

These three concerns challenge the detention paradigm. They do nothing to eliminate the need for detention to prevent detainees returning to the battlefield. But many believe that we can meet this need by giving trials to everyone we want to detain and then incarcerating them under a theory of conviction rather than of military detention. I disagree. For many reasons, **it is too risky for the U.S. government to deny itself the traditional military detention power altogether,** and to commit itself instead to try or release every suspected terrorist. For one thing, **military detention will be necessary in Iraq and Afghanistan** for the foreseeable future. For another, we likely cannot secure convictions of all of the dangerous terrorists at Guantánamo, much less all future dangerous terrorists, who legitimately qualify for non-criminal military detention. The evidentiary and procedural standards of trials, civilian and military alike, are much higher than the analogous standards for detention. With some terrorists too menacing to set free, the standards will prove difficult to satisfy. Key evidence in a given case may come from overseas and verifying it, understanding its provenance, or establishing its chain of custody in the manners required by criminal trials may be difficult. This problem is exacerbated when evidence was gathered on a battlefield or during an armed skirmish. The problem only grows when the evidence is old. And perhaps most importantly, **the use of such evidence in a criminal process may compromise intelligence sources and methods,** requiring the disclosure of the identities of confidential sources or the nature of intelligence-gathering techniques, such as a sophisticated electronic interception capability. Opponents of non-criminal detention observe that despite these considerations, the government has successfully prosecuted some Al Qaeda terrorists—in particular, Zacharias Moussaoui and Jose Padilla. This is true, but it does not follow that prosecutions are achievable in every case in which disabling a terrorist suspect represents a surpassing government interest. Moreover, the Moussaoui and Padilla prosecutions highlight an under-appreciated cost of trials, at least in civilian courts. The Moussaoui and Padilla trials were messy affairs that stretched, and some observers believe broke, our ordinary criminal trial conceptions of conspiracy law and the rights of the accused, among other things. The Moussaoui trial, for example, watered down the important constitutional right of the defendant to confront witnesses against him in court, and the Padilla trial rested on an unprecedentedly broad conception of conspiracy.15 An important but under-appreciated cost of using trials in all cases is that these prosecutions will invariably bend the law in ways unfavorable to civil liberties and due process, and these changes, in turn, will invariably spill over into non-terrorist prosecutions and thus skew the larger criminal justice process.16 A final problem with using any trial system, civilian or military, as the sole lawful basis for terrorist detention is that the trials can result in short sentences (as the first military commission trial did) or even acquittal of a dangerous terrorist.17 In criminal trials, guilty defendants often go free because of legal technicalities, government inability to introduce probative evidence, and other factors beyond the defendant's innocence. These factors are all exacerbated in terrorist trials by the difficulties of getting information from the place of capture, by classified information restrictions, and by stale or tainted evidence. One way to get around this problem is to assert the authority, as the Bush administration did, to use non-criminal detention for persons acquitted or given sentences too short to neutralize the danger they pose. But such an authority would undermine the whole purpose of trials and would render them a sham. As a result, putting a suspect on trial can make it hard to detain terrorists the government deems dangerous. For example, the government would have had little trouble defending the indefinite detention of Salim Hamdan, Osama Bin Laden's driver, under a military detention rationale. Having put him on trial before a military commission, however, it was stuck with the light sentence that Hamdan is completing at home in Yemen. As a result of these considerations, insistence on the exclusive use of criminal trials and the elimination of non-criminal detention would significantly raise the chances of releasing dangerous terrorists who would return to kill Americans or others. Since noncriminal military detention is clearly a legally available option—at least if it is expressly authorized by Congress and contains adequate procedural guarantees—this risk should be unacceptable. In past military conflicts, the release of an enemy soldier posed risks. But they were not dramatic risks, for there was only so much damage a lone actor or small group of individuals could do.18 Today, however, that lone actor can cause far more destruction and mayhem because technological advances are creating ever-smaller and ever-deadlier weapons. It would be astounding if the American system, before the advent of modern terrorism, struck the balance between security and liberty in a manner that precisely reflected the new threats posed by asymmetric warfare. We face threats from individuals today that are of a different magnitude than threats by individuals in the past; having government authorities that reflect that change makes sense.

### 2NC AT: Chesney - Judicial Intervention Inevitable

#### Here’s an honest highlighting of their ev

Chesney 13, Law Prof at UT (November, Robert, BEYOND THE BATTLEFIELD, BEYOND AL QAEDA: THE DESTABILIZING LEGAL ARCHITECTURE OF COUNTERTERRORISM, 112 Mich. L. Rev. 163)

The government will not be able to simply ride out the legal friction generated by the fragmentation of al Qaeda and the shift toward shadow war. Those trends do not merely shift unsettled questions of substantive law to the forefront of the debate; they also greatly increase the prospects for a new round of judicial intervention focusing on those substantive questions. 1. Military Detention Consider military detention first. Fresh judicial intervention regarding the substantive law of detention is a virtual certainty. It will come in connection with the lingering Guantanamo population, and it will come as well in connection with any future detainees taken into custody on a long-term basis, regardless of where they might be held. a. Existing Guantanamo Detainees Most of the existing Guantanamo detainees have already had a shot at habeas relief, and many lost on both the facts and the law. But some of them can and will pursue a second shot, should changing conditions call into question the legal foundation for the earlier rulings against them. n202 The first round of Guantanamo habeas decisions depended in almost every instance on the existence of a meaningful tie to ongoing hostilities in Afghanistan, as did the Supreme Court's 2004 decision in Hamdi. Indeed, Justice O'Connor in Hamdi was at pains to caution that at some point in the future this baseline condition making LOAC relevant could unravel. n203 The declining U.S. role in combat operations in Afghanistan goes directly to that point. This decline will open the door to a second wave of Guantanamo litigation, with detainees arguing that neither LOAC nor the relevant statutory authorities continues to apply. This argument may or may not succeed on the merits. At first blush, the NDAA FY12 would seem to present a substantial obstacle to the detainees. That statute expressly codifies detention authority as to members (and supporters) of al Qaeda, the Afghan Taliban, and "associated forces," n204 thus grounding detention authority directly in domestic law rather than requiring courts to impute such authority into the 2001 AUMF by implication from LOAC (as the Supreme Court had to do in [\*214] Hamdi itself). But it is not quite so simple. The same section of the NDAA FY12 relinks the question of detention authority to LOAC after all. It specifies that statutory detention authority as an initial matter exists solely "pending disposition under the law of war." n205 And although it then lists long-term military detention as a possible disposition option, the statute specifically defines this authority as "detention under the law of war without trial until the end of the hostilities authorized by the [AUMF]." n206 A court confronted with this language might interpret it in a manner consistent with the government's borderless-conflict position, such that the drawdown in Afghanistan would not matter. But it might not. The repeated references to the "law of war" in the statute--that is to LOAC--might lead at least some judges to conduct a fresh field-of-application analysis regarding the extent to which LOAC remains applicable in light of the drawdown, and judges might then read the results back into the NDAA FY12. I am not saying that this is the likely outcome or that any such analysis would necessarily reject the government's borderless-conflict position. I am just saying that judges eventually will decide these matters without real guidance from Congress (unless Congress clarifies its intentions in the interim). Note, too, that any such judicial interpretations may well have far broader implications than just the fate of the particular detainee in question; a ruling that LOAC has no application in a given situation would cast a long shadow over any other LOAC-based actions the U.S. government might undertake in the same or similar contexts (including targeting measures). Regardless of what occurs in Afghanistan, the existing Guantanamo detainee population might also find occasion to come back to court should the decline of the core al Qaeda organization continue to the point where it can plausibly be described as defunct. In such a case, it is likely that at least some current al Qaeda detainees would revive their habeas petitions in order to contend that the demise of the organization also means the demise of detention authority over members of the defunct group. This argument would be particularly likely to come from those who were held on the ground of membership in al Qaeda but who the government had not shown to have been otherwise involved in hostile acts. This would be a challenging argument to make; the government would surely respond that al Qaeda would no longer be defunct if some of its members were set free. But setting that possible response aside, such a petition could compel the government to litigate the question of whether the continuing existence of various "franchises," like AQAP or al-Shabaab, suffices to preserve detention authority over al Qaeda members. That is, such a challenge could lead a judge to weigh in on the organizational boundary question.

#### Chesney concedes the US can just not responds to the legal intervention

Chesney 13, Law Prof at UT (November, Robert, BEYOND THE BATTLEFIELD, BEYOND AL QAEDA: THE DESTABILIZING LEGAL ARCHITECTURE OF COUNTERTERRORISM, 112 Mich. L. Rev. 163, AB)

At first blush these pronouncements give the impression that the legal issues identified above might cease to matter. On closer inspection, however, that is far from certain. First, the president’s speech by no means promised to end the use of long-term military detention, either for the Guantanamo detainees or for those non-Afghan detainees still in\_U.S. custody in Afghanistan.” The size of those populatIons will likely shift, but some number of them will remain, along with the legal dilemmas they present. Second, it remains far from certain just how restrictive the use of force will be under color of the president’s newly articulated framework. The president was quite clear that when force was used, it would continue to be under color of the 2001 AUMF subject to the law of armed conflict, at least for the near future The legal questions raised by that model accordingly will remain, even if the number of new instances implicating them shrinks going forward. With or without these changes, of course, the government might simply choose to do nothing in response to the legal uncertainties described above.20’ That is, it might conclude that it can ride out the increasing legal friction without encountering resistance of a kind that actually upends policy or practice. Such hopes would likely be dashed, however. I explain why below and then conclude with a brief discussion of proactive, realistic steps that the government might take instead.

#### The Courts will defer

Bazzle, J.D., Georgetown University Law Center, ‘12

[Timothy, “SHUTTING THE COURTHOUSE DOORS:¶ INVOKING THE STATE SECRETS PRIVILEGE TO THWART¶ JUDICIAL REVIEW IN THE AGE OF TERROR”, Civil Rights Law Journal, Vol. 23, No. 1, 2012,]

The war on terror has led to an increased use of the state secrets¶ privilege by the Executive Branch—to dismiss legal challenges to¶ widely publicized and controversial government actions—ostensibly¶ aimed at protecting national security from terrorist threats.1¶ Faced¶ with complaints that allege indiscriminate and warrantless surveillance,2¶ tortious detention, and torture that flouts domestic and international law,3¶ courts have had to reconcile impassioned appeals for¶ private justice with the government’s unyielding insistence on protecting national security. Courts, almost unanimously, have cast their lot¶ with national security, granting considerable deference to government¶ assertions of the state secrets principle. This deference to state secrets¶ shows no signs of abating; indeed, the growing trend is for courts to¶ dismiss these legal challenges pre-discovery,4¶ even before the private¶ litigants have had the chance to present actual, non-secret evidence to¶ meet their burden of proof. Although many looked optimistically at¶ President Obama’s inauguration as a chance to break decisively from¶ the Bush Administration’s aggressive application of the state secrets privilege,5¶ the Obama Administration has largely disappointed on the¶ state-secrets front, asserting the privilege with just as much fervor—if¶ not as much regularity6¶ —as its predecessor.7¶ Judicial deference to such claims of state secrecy, whether the¶ claims merit privileged treatment, exacts a decisive toll on claimants,¶ permanently shutting the courthouse doors to their claims and interfering with public and private rights.8¶ Moreover, courts’ adoption of a¶ sweeping view of the state secrets privilege has raised the specter of¶ the government disingenuously invoking state secrets to conceal government misbehavior under the guise of national security.9¶ By granting greater deference to assertions of the state secrets privilege, courts¶ share responsibility for eroding judicial review as a meaningful check¶ on Executive Branch excesses. This Article argues for a return to a¶ narrowly tailored state secrets privilege—one that ensures that individuals who allege a credible claim of government wrongdoing retain¶ their due process rights.

### 2NC AT: Smith - EU Relations

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

Blum 9

Stephanie Blum 09, attorney for the Transportation Security Administration. She received a master’s degree in security studies from the Naval Postgraduate School in December 2008. She received a law degree from The University of Chicago Law School in 1999, “The Why and How of Preventative Detention in the War on Terror,” <http://www.brookings.edu/~/media/research/files/papers/2009/2/09%20detention%20goldsmith/0209_detention_goldsmith.pdf>

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

They are Resilient

Dennison, policy fellow – European Council on Foreign Relations, 2/25/’13

(Susi, “Kerry’s first trip gives clues on EU-US relations,” http://www.ecfr.eu/blog/entry/kerrys\_first\_trip\_gives\_clues\_on\_eu\_us\_relations)

The European Council on Foreign Relations' (ECFR) latest "scorecard," which tracks the effectiveness of European foreign policy year on year, found that in 2012 EU-US ties were resilient.

We cited as evidence the success of the G8 summit at Camp David and the Nato summit in Chicago in May 2012, compared with the G20 summit in Los Cabos a month later, which delivered little and drew precious little attention.

Whatever the intention may have been with regard to continuing or reducing US resources in MENA, throughout 2012, American attention kept being drawn to the region.

From supporting Arab transitions, most notably in Egypt, to the ongoing conflict in Syria, to the Iranian nuclear programme and Israel's Operation Pillar of Defence in Gaza in autumn, the US remained watchful.

In the majority of these dossiers co-ordination with the EU has remained close, on the E3+3 process on Iran, through the Friends of Syria Group and at the UN.

As a result, the European External Action Service (EEAS) delegation in Washington is one of a select few EEAS missions which has begun to play a serious negotiation and co-ordination role in advancing EU policy.

### 2NC AT: Marguiles 10 - Deference Bad

#### AND Obama guts the power of journalists and whistleblowers anyway

Washington’s Blog 11-3-13

http://www.washingtonsblog.com/2013/11/u-s-points-out-that-only-tyrants-treat-journalists-as-terrorists-then-does-it-itself.html

The U.S. government is targeting whistleblowers in order to keep its hypocrisy secret … so that it can keep on doing the opposite of what it tells other countries to do.¶ As part of this effort to suppress information which would reveal the government’s hypocrisy, the American government – like the British government – is treating journalists as terrorists.¶ Journalism is not only being criminalized in America, but investigative reporting is actually treated like terrorism.¶ The government admits that journalists could be targeted with counter-terrorism laws (and here). For example, after Pulitzer Prize winning journalist Chris Hedges, journalist Naomi Wolf, Pentagon Papers whistleblower Daniel Ellsberg and others sued the government to enjoin the NDAA’s allowance of the indefinite detention of Americans – the judge asked the government attorneys 5 times whether journalists like Hedges could be indefinitely detained simply for interviewing and then writing about bad guys. The government refused to promise that journalists like Hedges won’t be thrown in a dungeon for the rest of their lives without any right to talk to a judge¶ After the government’s spying on the Associated Press made it clear to everyone that the government is trying to put a chill journalism, the senior national-security correspondent for Newsweek tweeted:¶ Serious idea. Instead of calling it Obama’s war on whistleblowers, let’s just call it what it is: Obama’s war on journalism.¶ Moreover:¶ The Pentagon recently smeared USA Today reporters because they investigated illegal Pentagon propaganda¶ Reporters covering the Occupy protests were targeted for arrest¶ The Bush White House worked hard to smear CIA officers, bloggers and anyone else who criticized the Iraq war¶ In an effort to protect Bank of America from the threatened Wikileaks expose of the bank’s wrongdoing, the Department of Justice told Bank of America to a hire a specific hardball-playing law firm to assemble a team to take down WikiLeaks (and see this)¶ And the American government has been instrumental in locking up journalists in America (and here), Yemen and elsewhere for the crime of embarrassing the U.S. government.

### 2NC Link Wall

#### Multiple links to judicial review ---

#### 1) Priorities – the plan 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) We lose the cases --- emboldens terrorism

Goldsmith 6

Jack Goldsmith 06, a law professor at Harvard, and Eric A. Posner, a law professor at the University of Chicago, 8/4/06, “A Better Way on Detainees,” <http://www.washingtonpost.com/wp-dyn/content/article/2006/08/03/AR2006080301257.html>

Everyone involved in the contentious negotiations between the White House and Congress over the proper form for military commissions seems to agree on at least one thing: that al-Qaeda and Taliban terrorists ought to be prosecuted. We think this assumption is wrong: Terrorist trials are both unnecessary and unwise.¶ The United States holds more than 400 terrorism suspects at Guantanamo Bay, and 500 or so more at Bagram air base in Afghanistan. Five years after the Sept. 11 attacks, it has announced plans for military trials for only 10 of these detainees. The 10 do not include the al-Qaeda leaders in U.S. custody or the numerous small fry who served as foot soldiers for al-Qaeda or the Taliban. They are, at best, medium-fry terrorists.¶ Why only 10? Because it is difficult to try terrorists in this war. For most detainees, the government lacks evidence of overt crimes such as murder. It can prosecute these detainees only for the vague and problematic crime of conspiracy to commit a terrorist act based on membership in and training with al-Qaeda or the Taliban. Beyond this problem, witnesses are scattered around the globe, and much of the evidence is in a foreign language, or classified, or hearsay -- in many cases all of these things.¶ Even if these obstacles are overcome, the prosecution of Zacarias Moussaoui shows that trials of political enemies are more difficult, more time-consuming and, in the end, more circuslike than an ordinary criminal trial. The defendant or his lawyers will use a trial not to contest guilt but rather to rally followers and demoralize foes.¶ These are some of the reasons the Bush administration sought to use military commissions with fewer procedural protections than ordinary trials. But commissions have proved politically and legally difficult to implement. Even if they can be made to work, skeptics will still regard them as kangaroo courts.¶ There is a better and easier way to deal with captured terrorists. The Supreme Court has made clear that the conflicts with al-Qaeda and the Taliban are governed by the laws of war, and the laws of war permit detention of enemy soldiers without charge or trial until hostilities end. The purpose of wartime detention is not to punish but to prevent soldiers from returning to the battlefield. A legitimate wartime detainee is dangerous, like a violent mental patient subject to civil confinement, and that is reason enough to hold him. This has been the legal justification for terrorist detentions to date, and it will almost certainly be the basis for future detentions.¶ The main concern with military detentions is that the war will last a long time, perhaps indefinitely. If so, detention could mean a life sentence. We don't yet know whether this concern is warranted. But there are several ways to assure Americans and the world that the system is as fair and humane as circumstances permit.¶ Congress should require a rigorous process for determining the status of enemy combatants that includes some form of representation for the detainee. It should establish periodic review, perhaps yearly, to determine whether the detainee remains dangerous and thus warrants continued detention. It should insist that detainees live in genuinely humane conditions appropriate for very long-term detention. And it should urge the president to endeavor to transfer detainees to their home countries when feasible, and with appropriate human rights guarantees.¶ The executive branch has already introduced many elements of this system. With congressional blessing and amplification, the system will appear more legitimate and will better withstand judicial and public scrutiny.¶ Such a system will not assuage the complaints of those, especially our allies, who reject the military model for terrorism and abhor long-term detention without trial. But Congress and the president have consistently endorsed the military model since Sept. 11. And our allies have not proposed a better system than military detention that both ensures American security and respects human rights. Politicized trials would do little more to address these concerns of our allies, and we have no feasible alternative to military detention for most terrorists in custody.

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

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>

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.

## Solvency

## Legit

## Afghan

### 2NC Ext #1 - Alt Causes ICG

ICG says multiple obstacles

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

U.S. detention policy has frequently been cited by Afghan and international legal experts as one of the chief obstacles to restoring balance to the Afghan justice system and citizens’ faith in the rule of law

### AT: Withdrawal

#### No withdrawal

Hirsh 13 (Michael Hirsh, chief correspondent for National Journal, May 13th 2013, “NATO's Plan for Afghanistan Post-2014: A 'Stable Instability'”, <http://www.theatlantic.com/international/archive/2013/05/natos-plan-for-afghanistan-post-2014-a-stable-instability/275803/>, AB)

Many Americans think we're winding down in Afghanistan by the end of next year, for better or for worse. We're not. Despite America's evident desire to extricate itself from the nation's longest war, Taliban fighters, criminal gangs, and other insurgents continue to terrorize much of Afghanistan, making travel around the country as difficult as it's ever been. And the grim bargain that has dogged U.S. efforts in Afghanistan since the beginning of President Obama's "surge" still holds: The United States must find a way to supply and support an Afghan national army and police force that Washington has largely built but which is barely in its adolescence, although it is already 10 times the size of the fierce Taliban insurgency it is fighting. Senior commanders with the American-led International Security Assistance Force, which consists of 28 NATO countries and 22 other participating nations, say that substantial aid and military support is going to be necessary well after the scheduled withdrawal at the end of 2014. "For some time to come, it's our expectation that we will need to supply the Afghans [with] air support, certainly, counter-IED support, logistic support, and a number of areas where their capabilities are not at the level where they need to be at," Lt. Gen. Nick Carter, the deputy ISAF commander, said in an interview in Kabul over the weekend. "It's our expectation that we'll need to continue to build those areas for some time to come and probably beyond 2014."

# 1NR

### Ov

#### We control timeframe – sanctions cause a global nuclear war in months

Press TV 11/13

“Global nuclear conflict between US, Russia, China likely if Iran talks fail”, <http://www.presstv.ir/detail/2013/11/13/334544/global-nuclear-war-likely-if-iran-talks-fail/>

A global conflict between the US, Russia, and China is likely in the coming months should the world powers fail to reach a nuclear deal with Iran, an American analyst says.¶ “If the talks fail, if the agreements being pursued are not successfully carried forward and implemented, then there would be enormous international pressure to drive towards a conflict with Iran before [US President Barack] Obama leaves office and that’s a very great danger that no one can underestimate the importance of,” senior editor at the Executive Intelligence Review Jeff Steinberg told Press TV on Wednesday. ¶ “The United States could find itself on one side and Russia and China on the other and those are the kinds of conditions that can lead to miscalculation and general roar,” Steinberg said. ¶ “So the danger in this situation is that if these talks don’t go forward, we could be facing a global conflict in the coming months and years and that’s got to be avoided at all costs when you’ve got countries like the United States, Russia, and China with” their arsenals of “nuclear weapons,” he warned. ¶ The warning came one day after the White House told Congress not to impose new sanctions against Tehran because failure in talks with Iran could lead to war. ¶ White House press secretary Jay Carney called on Congress to allow more time for diplomacy as US lawmakers are considering tougher sanctions. ¶ "This is a decision to support diplomacy and a possible peaceful resolution to this issue," Carney said. "The American people do not want a march to war." ¶ Meanwhile, US Secretary of State John Kerry is set to meet with the Senate Banking Committee on Wednesday to hold off on more sanctions on the Iranian economy. ¶ State Department spokeswoman Jen Psaki said Kerry "will be clear that putting new sanctions in place would be a mistake." ¶ "While we are still determining if there is a diplomatic path forward, what we are asking for right now is a pause, a temporary pause in sanctions. We are not taking away sanctions. We are not rolling them back," Psaki added.

#### Turns heg and cred

**Daremblum, Hudson Institute senior fellow, 11**

(Jaime, 10/25/11, “Iran Dangerous Now, Imagine it Nuclear,” Real Clear World, accessed 10/3/13, <http://www.hudson.org/index.cfm?fuseaction=publication_details&id=8439>, kns)

What would it mean if such a regime went nuclear? Let's assume, for the sake of argument, that a nuclear-armed Iran would never use its atomic weapons or give them to terrorists. Even under that optimistic scenario, Tehran's acquisition of nukes would make the world an infinitely more dangerous place. For one thing, it would surely spark a wave of proliferation throughout the Greater Middle East, with the likes of Turkey, Egypt, and Saudi Arabia - all Sunni-majority Muslim countries - going nuclear to counter the threat posed by Shiite Persian Iran. For another, it would gravely weaken the credibility of U.S. security guarantees. After all, Washington has repeatedly said that the Islamic Republic will not be permitted to get nukes. If Tehran demonstrated that these warnings were utterly hollow, rival governments and rogue regimes would conclude that America is a paper tiger. Once Tehran obtained nuclear weapons, it would have the ultimate trump card, the ultimate protection against outside attack. Feeling secure behind their nuclear shield, the Iranians would almost certainly increase their support for global terrorism and anti-American dictatorships. They would no longer have to fear a U.S. or Israeli military strike. Much like nuclear-armed North Korea today, Iran would be able to flout international law with virtual impunity. If America sought to curb Iranian misbehavior through economic sanctions, Tehran might well respond by flexing its muscles in the Strait of Hormuz. As political scientist Caitlin Talmadge explained in a 2008 analysis, "Iranian closure of the Strait of Hormuz tops the list of global energy security nightmares. Roughly 90 percent of all Persian Gulf oil leaves the region on tankers that must pass through this narrow waterway opposite the Iranian coast, and land pipelines do not provide sufficient alternative export routes. Extended closure of the strait would remove roughly a quarter of the world's oil from the market, causing a supply shock of the type not seen since the glory days of OPEC." Think about that: The world's leading state sponsor of terrorism has the ability to paralyze destabilize the global economy, and, if not stopped, it may soon have nuclear weapons. As a nuclear-armed Iran steadily expanded its international terror network, the Western Hemisphere would likely witness a significant jump in terrorist activity. Tehran has established a strategic alliance with Venezuelan leader Hugo Chávez, and it has also developed warm relations with Chávez acolytes in Bolivia, Ecuador, and Nicaragua while pursuing new arrangements with Argentina as an additional beachhead in Latin America Three years ago, the U.S. Treasury Department accused the Venezuelan government of "employing and providing safe harbor to Hezbollah facilitators and fundraisers." More recently, in July 2011, Peru's former military chief of staff, Gen. Francisco Contreras, told the Jerusalem Post that "Iranian organizations" are aiding and cooperating with other terrorist groups in South America. According to Israeli intelligence, the Islamic Republic has been getting uranium from both Venezuela and Bolivia. Remember: Tehran has engaged in this provocative behavior without nuclear weapons. Imagine how much more aggressive the Iranian dictatorship might be after crossing the nuclear Rubicon. It is an ideologically driven theocracy intent on spreading a radical Islamist revolution across the globe. As the Saudi plot demonstrates, no amount of conciliatory Western diplomacy can change the fundamental nature of a regime that is defined by anti-Western hatred and religious fanaticism.

### A2 PC Failing (Rogin)

#### Obama strategy working – momentum is actually AGAINST the bill

Haaretz 1/10 < Iran sanctions have majority backing in Senate, but is it enough to override a veto?, http://www.haaretz.com/news/middle-east/1.567977>#SPS

More than half the U.S. Senate has signed on to a bill that would intensify sanctions against Iran. But in a sign of the so-far successful effort by the White House to keep the bill from reaching a veto-busting 67 supporters, only 16 Democrats are on board, according to JTA.¶ The number of senators cosponsoring the bill, introduced by Sens. Mark Kirk (R-Ill.) and Robert Menendez (D-N.J.), reached 58 this week, up from just 33 before the Christmas holiday break.¶ Notably only one of the 25 who signed up in recent days -- Sen. Michael Bennet (D-Colo.) -- is a Democrat, a sign of intense White House lobbying among Democrats to oppose the bill.

### A2 PC Alienates Dems (Rogin)

#### Capital is not just about bargaining, it’s about focus – the plan’s expenditure of capital prevents Obama from maintaining a consistent message on Iran sanctions and it means he’ll lose the ability to ask for favors

Moore 13

Guardian's US finance and economics editor.(Heidi, “Syria: the great distraction” The Guardian, <http://www.theguardian.com/commentisfree/2013/sep/10/obama-syria-what-about-sequester>)

Political capital – the ability to horse-trade and win political favors from a receptive audience – is a finite resource in Washington. Pursuing misguided policies takes up time, but it also eats up credibility in asking for the next favor. It's fair to say that congressional Republicans, particularly in the House, have no love for Obama and are likely to oppose anything he supports. That's exactly the reason the White House should stop proposing policies as if it is scattering buckshot and focus with intensity on the domestic tasks it wants to accomplish, one at a time.

### A2 Reid Won’t Allow a Vote (O Keefe)

Uniqueness for us- PC is what allows reid to not bring sanctions up for a vote

Kaper 12-6

(Stacy, National Journal, “Reid in Hot Seat on Iran Sanctions” This article appears in the December 6, 2013, edition of NJ Daily. http://www.nationaljournal.com/daily/reid-in-hot-seat-on-iran-sanctions-20131205

Harry Reid is in the hot seat on the question of whether to allow a vote on Iran sanctions legislation, and it will only get hotter when the Senate returns from recess next week.¶ The administration is unleashing a full-court press to sell its interim nuclear deal with Iran, and it has been waging a campaign for months to convince Congress to hold off on any additional sanctions action. But several lawmakers on both sides of the aisle who strongly support Israel insist that it was the pressure of sanctions that brought Iran to the negotiating table on its nuclear-weapons capabilities. They argue the threat of additional sanctions now is necessary to hold Iran's feet to the fire.¶ This all puts Reid in an incredibly tough bind.¶ The Senate majority leader has so far blocked any vote on additional Iran sanctions from coming to the floor. Despite comments that he madebefore the interim agreement was announced that the Senate needs to leave "legislative … options open to act on a new bipartisan sanctions bill in December," he has since hedged, saying the Senate will act "appropriately" and that "if we need stronger sanctions, I am sure we will do that."¶ Senior Republican Senate aides say they don't see signs of Reid capitulating.¶ Many on and off Capitol Hill monitoring the situation closely say they have a hard time imagining Reid would call for a vote on Iran sanctions legislation any time soon.¶ "I believe Senator Reid will try to give the administration the time it needs to sell this deal a little bit more on the Hill," former Reid spokesman Jim Manley said. "His job as leader is to protect the administration's priorities."¶ Danielle Pletka, a vice president for foreign and defense policy studies at the American Enterprise Institute, said Reid might find the pressure from the White House overwhelming.¶ "I believe that Reid's caucus will want a vote, but Reid may well refuse in order to protect the president's desire to have a free hand to warm up with Iran," she said.¶ But it is also unclear how long Reid can resist pressure from his colleagues.

### A2 Thumpers

#### Top of the agenda

Egelko, 12/26/13

(Bob, San Francisco Chronicle, “Feinstein, Boxer side with Obama in Iran sanctions dispute” <http://blog.sfgate.com/nov05election/2013/12/26/feinstein-boxer-side-with-obama-in-iran-sanctions-dispute/>

A showdown is looming in the Senate next month over increased U.S. sanctions on Iran that could unravel a tentative international agreement over Iranian nuclear development, with President Obama on one side and Israel on the other. And California’s senators, Democrats Dianne Feinstein and Barbara Boxer, usually staunch allies of Israel, are both siding with Obama.¶ The Nov. 24 agreement requires Iran to freeze its nuclear program, halt work on a heavy-water reactor and stop enriching uranium beyond 5 percent of purity, far below the weapons-grade level. It also provides for daily inspections by international weapons monitors. In exchange, the international community agreed to suspend some of the sanctions, to the tune of $7 billion a year, that have frozen transactions with Iranian oil, banking and other industries. The six-month deal, intended as a prelude to a long-term agreement, was approved by Iran’s new president, Hassan Rouhani, and the U.S., Great Britain, Russia, China, France and Germany.¶ The agreement was immediately denounced by Israeli President¶ Benjamin Netanyahu as a sham that would allow Iran to develop nuclear weapons. Israel, which has the only nuclear arsenal in the Middle East, has threatened a pre-emptive military strike on Iran’s nuclear facilities. Meanwhile, Israel’s U.S.-based lobbyists, led by the American Israel Public Affairs Committee, are backing a sanctions bill in the Senate that has divided the Democratic Party.¶ The bill would impose additional economic sanctions if Iran either fails to comply with the terms of the six-month agreement or, more significantly, refuses to dismantle its entire uranium enrichment program within a year. Another provision would require the United States to provide economic and military support if Israel was “compelled to take military action in legitimate self-defense” against what the bill describes as Iran’s nuclear weapons program.¶ The bipartisan measure has 26 cosponsors, led by Senate Foreign Relations Committee Chairman Robert Menedez, D-N.J., and Sen. Mark Kirk, R-Ill. Another cosponsor is the Senate’s third-ranking Democrat, Chuck Schumer of New York.¶ “A credible threat of future sanctions will require Iran to cooperate and act in good faith at the negotiating table,” Menendez said in a statement.¶ But Rouhani said the legislation, if passed, would be a deal-breaker, and Obama has promised to veto it if it reaches his desk. Last week, 10 Senate Democratic committee chairs sent a letter to Majority Leader Harry Reid, D-Nev., urging him to keep the bill from coming to a vote.¶ The signers included Feinstein, chairwoman of the Intelligence Committee, Boxer, head of Environment and Public Works, and Sen. Tim Johnson of South Dakota, whose Banking Committee would normally hear the bill. The letter cited a recent U.S. intelligence assessment that concluded new sanctions “would undermine the prospects for a successful comprehensive nuclear agreement with Iran.”¶ Reid kept the bill off the pre-holiday calendar, but Menendez and Kirk plan to bring it up once Congress reconvenes Jan. 6. With Republicans solidly in support and congressional elections looming, the measure — in addition to its international consequences — could pose political problems for the Democrats.

### Link

**An adverse Court ruling will cause Obama defiance – triggers a Constitutional showdown**

**Posner and Vermeule, 10**

\*professor of law at the University of Chicago AND \*\*professor of law at Harvard (Eric and Adrian, The Executive Unbound, p. 207-210)

The **9/11** attack **provided a reminder of just how extensive the president’s power is.** The executive claimed the constitutional authority to, in effect, use emergency powers. Because Congress provided redundant statutory authority, and **the Supreme Court has steadfastly refused to address the ultimate merits of the executive’s constitutional claims**, these claims were never tested in a legal or public forum. But **it is worth trying to imagine what would have happened if Congress had refused to pass the Authorization for Use of Military Force and the Supreme Court had ordered the executive to release detainees** in a contested case. We think that **the executive, backed up as it was by popular opinion, would have refused to obey**. And, indeed, **for just that reason, Congress would never have refused** its imprimatur **and the Supreme Court would never have stood in the executive’s way**. **The major check on the executive’s power to declare an emergency and to use emergency powers is—political**.

**Implementation guarantees the link - translating decisions into action is highly politicized**

**Johnson 99**

Charles A. Johnson, Professor of Political Science @ Texas A&M University, and Bradley C. Canon, Professor of Political Science @ University of Kentucky, JUDICIAL POLICIES: IMPLEMENTATION AND IMPACT, 1999, p.3-4

**Political actors and institutions who follow through on these decisions make the judicial policy.** Certainly, the judges who enforced desegregation in southern school districts or busing decisions anywhere were subject to political pressures from a variety of sources. Similar pressures affected school board decisions regarding the role of religion in schools. **Even presidential politics may become intertwined with judicial policies, as did Richard Nixon's 1968 "law and order" presidential campaign** criticizing the Supreme Court's criminal justice decisions or the explosive issue of abortion in the 1980 presidential election. **Like the Congress, the Supreme Court and lower courts must rely on others to translate policy into action. And like the processes of formulating legislative, executive, and judicial policies, the process of translating those decisions into action is often a political one subject to a variety of pressures from a variety of political actors in the system.**

**The plan creates a partisan pushback against Obama – derails his agenda**

**Shane 11**

Shane, Ohio State law school chair 2011¶ (Peter, “ARTICLE: The Obama Administration and the Prospects for a Democratic Presidency in a Post-9/11 World”, 56 N.Y.L. Sch. L. Rev. 27, lexis)

The second is politics. **With the country still grappling with the effects of a devastating recession, as well as the need for pressing action on healthcare, climate change, and immigration, the President might well want to avoid the appearance of diluting his focus**. Moreover, since the Johnson administration**, Republicans have consistently**--and with some success--**cowed the Democrats by portraying them as soft on national security issues. The partisan pushback against any Obama administration effort to reinvigorate the rule of law in the national security context is likely to be vicious, threatening to erode whatever modicum of goodwill might otherwise be available to accomplish seemingly more concrete and immediate objectives. This, of course, is not hypothetical. We can see it in Republican efforts to derail the closing of Guantanamo** and in proposals to prohibit the trial of foreign terrorists in civilian courts n108--a practice that Republicans seemed happier to live with under George W. Bush. n109