# 1NC

## 1

The affirmative re-inscribes the primacy of liberal legalism as a method of restraint—that paradoxically collapses resistance to Executive excesses.

**Margulies ‘11**

Joseph, Joseph Margulies is a Clinical Professor, Northwestern University School of Law. He was counsel of record for the petitioners in Rasul v. Bush and Munaf v. Geren. He now is counsel of record for Abu Zubaydah, for whose torture (termed harsh interrogation by some) Bush Administration officials John Yoo and Jay Bybee wrote authorizing legal opinions. Earlier versions of this paper were presented at workshops at the American Bar Foundation and the 2010 Law and Society Association Conference in Chicago., Hope Metcalf is a Lecturer, Yale Law School. Metcalf is co-counsel for the plaintiffs/petitioners in Padilla v. Rumsfeld, Padilla v. Yoo, Jeppesen v. Mohammed, and Maqaleh v. Obama. She has written numerous amicus briefs in support of petitioners in suits against the government arising out of counterterrorism policies, including in Munaf v. Geren and Boumediene v. Bush., “Terrorizing Academia,” http://www.swlaw.edu/pdfs/jle/jle603jmarguilies.pdf

In an observation more often repeated than defended, we are told that the attacks of September 11 “changed everything.” Whatever merit there is in this notion, it is certainly true that 9/11—and in particular the legal response set in motion by the administration of President George W. Bush—left its mark on the academy. Nine years after 9/11, it is time to step back and assess these developments and to offer thoughts on their meaning. In Part II of this essay, we analyze the post-9/11 scholarship produced by this “emergency” framing. We argue that legal scholars writing in the aftermath of 9/11 generally fell into one of three groups: unilateralists, interventionists, and proceduralists. Unilateralists argued in favor of tilting the allocation of government power toward the executive because the state’s interest in survival is superior to any individual liberty interest, and because the executive is best able to understand and address threats to the state. Interventionists, by contrast, argued in favor of restraining the executive (principally through the judiciary) precisely to prevent the erosion of civil liberties. Proceduralists took a middle road, informed by what they perceived as a central lesson of American history.1 Because at least some overreaction by the state is an inevitable feature of a national crisis, the most one can reasonably hope for is to build in structural and procedural protections to preserve the essential U.S. constitutional framework, and, perhaps, to minimize the damage done to American legal and moral traditions. Despite profound differences between and within these groups, legal scholars in all three camps (as well as litigants and clinicians, including the authors) shared a common perspective—viz., that repressive legal policies adopted by wartime governments are temporary departures from hypothesized peacetime norms. In this narrative, metaphors of bewilderment, wandering, and confusion predominate. The country “loses its bearings” and “goes astray.” Bad things happen until at last the nation “finds itself” or “comes to its senses,” recovers its “values,” and fixes the problem. Internment ends, habeas is restored, prisoners are pardoned, repression passes. In a show of regret, we change direction, “get back on course,” and vow it will never happen again. Until the next time, when it does. This view, popularized in treatments like All the Laws but One, by the late Chief Justice Rehnquist,2 or the more thoughtful and thorough discussion in Perilous Times by Chicago’s Geoffrey Stone,3 quickly became the dominant narrative in American society and the legal academy. **This narrative also figured heavily in the many challenges to Bush-era policies,** including by the authors. The narrative permitted litigators and legal scholars to draw upon what elsewhere has been referred to as America’s “civic religion”4 and to cast the courts in the role of hero-judges5 **whom we hoped would restore legal order.**6 But by framing the Bush Administration’s response as the latest in a series of regrettable but temporary deviations from a hypothesized liberal norm, the legal academy ignored the more persistent, and decidedly illiberal, authoritarian tendency in American thought to demonize communal “others” during moments of perceived threat. Viewed in this light, what the dominant narrative identified as a brief departure caused by a military crisis is more accurately seen as part of a recurring process of intense stigmatization tied to periods of social upheaval, of which war and its accompanying repressions are simply representative (and particularly acute) illustrations. It is worth recalling, for instance, that the heyday of the Ku Klux Klan in this country, when the organization could claim upwards of 3 million members, was the early-1920s, and that the period of greatest Klan expansion began in the summer of 1920, almost immediately after the nation had “recovered” from the Red Scare of 1919–20.7 Klan activity during this period, unlike its earlier and later iterations, focused mainly on the scourge of the immigrant Jew and Catholic, and flowed effortlessly from the anti-alien, anti-radical hysteria of the Red Scare. Yet this period is almost entirely unaccounted for in the dominant post-9/11 narrative of deviation and redemption, which in most versions glides seamlessly from the madness of the Red Scare to the internment of the Japanese during World War II.8 And because we were studying the elephant with the wrong end of the telescope, we came to a flawed understanding of the beast. In Part IV, we argue that the interventionists and unilateralists came to an incomplete understanding by focusing almost exclusively on what Stuart Scheingold called “the myth of rights”—the belief that if we can identify, elaborate, and secure judicial recognition of the legal “right,” **political structures and policies will adapt their behavior to the requirements of the law** and change will follow more or less automatically.9 Scholars struggled to define the relationship between law and security primarily through exploration of structural10 and procedural questions, and, to a lesser extent, to substantive rights. And they examined the almost limitless number of subsidiary questions clustered within these issues. Questions about the right to habeas review, for instance, generated a great deal of scholarship about the handful of World War II-era cases that the Bush Administration relied upon, including most prominently Johnson v. Eisentrager and Ex Parte Quirin. 11 Regardless of political viewpoint, a common notion among most unilateralist and interventionist scholars was that when law legitimized or delegitimized a particular policy, **this would have a direct and observable effect on actual behavior**. The premise of this scholarship, in other words, was that policies “struck down” by the courts, or credibly condemned as lawless by the academy, would inevitably be changed—and that this should be the focus of reform efforts. Even when disagreement existed about the substance of rights or even which branch should decide their parameters, it reflected shared acceptance of the primacy of law, often to the exclusion of underlying social or political dynamics. Eric Posner and Adrian Vermeule, for instance, may have thought, unlike the great majority of their colleagues, that the torture memo was “standard fare.”12 But their position nonetheless accepted the notion that if the prisoners had a legal right to be treated otherwise, then the torture memo authorized illegal behavior and must be given no effect.13 Recent developments, however, cast doubt on two grounding ideas of interventionist and unilateralist scholarship—viz., that post-9/11 policies were best explained as responses to a national crisis (and therefore limited in time and scope), and that the problem was essentially legal (and therefore responsive to condemnation by the judiciary and legal academy). One might have reasonably predicted that in the wake of a string of Supreme Court decisions limiting executive power, apparently widespread and bipartisan support for the closure of Guantánamo during the 2008 presidential campaign, and the election of President Barack Obama, which itself heralded a series of executive orders that attempted to dismantle many Bush-era policies, the nation would be “returning” to a period of respect for individual rights and the rule of law. Yet the period following Obama’s election has been marked by an increasingly retributive and venomous narrative surrounding Islam and national security. **Precisely when the dominant narrative would have predicted change** and redemption, we have seen retreat and retrenchment. This conundrum is not adequately addressed by dominant strands of post-9/11 legal scholarship. In retrospect, it is surprising that much post-9/11 scholarship appears to have set aside critical lessons from previous decades as to the relationship among law, society and politics.14 Many scholars have long argued in other contexts that rights—or at least the experience of rights—are subject to political and social constraints, particularly for groups subject to historic marginalization. Rather than self-executing, rights are better viewed as contingent political resources, capable of mobilizing public sentiment and generating social expectations.15 From that view, a victory in Rasul or Boumediene no more guaranteed that prisoners at Guantánamo would enjoy the right to habeas corpus than a victory in Brown v. Board16 guaranteed that schools in the South would be desegregated.17 Rasul and Boumediene, therefore, should be seen as part (and probably only a small part) of a varied and complex collection of events, including the fiasco in Iraq, the scandal at the Abu Ghraib prison, and the use of warrantless wiretaps, as well as seemingly unrelated episodes like the official response to Hurricane Katrina. These and other events during the Bush years merged to give rise to a powerful social narrative critiquing an administration committed to lawlessness, content with incompetence, and engaged in behavior that was contrary to perceived “American values.”18 Yet the very success of this narrative, culminating in the election of Barack Obama in 2008, produced quiescence on the Left, even as it stimulated massive opposition on the Right. The result has been the emergence of a counter-narrative about national security that has produced a vigorous social backlash such that most of the Bush-era policies will continue largely unchanged, at least for the foreseeable future.19 Just as we see a widening gap between judicial recognition of rights in the abstract and the observation of those rights as a matter of fact, there appears to be an emerging dominance of proceduralist approaches, which take as a given that rights dissolve under political pressure, and, thus, are best protected by basic procedural measures. But that stance falls short in its seeming readiness to trade away rights in the face of political tension. First, it accepts the tropes du jour surrounding radical Islam—namely, that it is a unique, and uniquely apocalyptic, threat to U.S. security. In this, proceduralists do not pay adequate heed to the lessons of American history and sociology. And second, it endorses too easily the idea that procedural and structural protections will protect against substantive injustice in the face of popular and/or political demands for an outcome-determinative system that cannot tolerate acquittals. Procedures only provide protection, however, if there is sufficient political support for the underlying right. Since the premise of the proceduralist scholarship is that such support does not exist, it is folly to expect the political branches to create meaningful and robust protections. In short, a witch hunt does not become less a mockery of justice when the accused is given the right to confront witnesses. And a separate system (especially when designed for demonized “others,” such as Muslims) cannot, by definition, be equal. In the end, we urge a fuller embrace of what Scheingold called “the politics of rights,” which recognizes the contingent character of rights in American society. We agree with Mari Matsuda, who observed more than two decades ago that rights are a necessary but not sufficient resource for marginalized people with little political capital.20 To be effective, therefore, we must look beyond the courts and grapple with the hard work of long-term change with, through and, perhaps, in spite of law. These are by no means new dilemmas, but the post-9/11 context raises difficult and perplexing questions that deserve study and careful thought as our nation settles into what appears to be a permanent emergency.

Legalism underpins the violence of empire and creates the conditions of possibility for liberal violence.

Dossa ‘99

Shiraz, Department of Political Science, St. Francis Xavier University, Antigonish, Nova Scotia, “Liberal Legalism: Law, Culture and Identity,” The European Legacy, Vol. 4, No. 3, pp. 73-87,1

No discipline in the rationalized arsenal of modernity is as rational, impartial, objective as the province of law and jurisprudence, in the eyes of its liberal enthusiasts. Law is the exemplary countenance of the conscious and calculated rationality of modern life, **it is the** emblematic face of liberal civilization. Law and legal rules symbolize the spirit of science, the march of human progress. As Max Weber, the reluctant liberal theorist of the ethic of rationalization, asserted: judicial formalism enables the legal system to operate like a technically **rational machine**. Thus it guarantees to individuals and groups within the system a relative of maximum of freedom, and greatly increases for them the possibility of predicting the legal consequences of their action. In this reading, law encapsulates the western capacity to bring order to nature and human beings, to turn the ebb and flow of life into a "rational machine" under the tutelage of "judicial formalism".19 Subjugation of the Other races in the colonial empires was motivated by power and rapacity, but it was justified and indeed rationalized, by an appeal to the civilizing influence of religion and law: western Christianity and liberal law. To the imperialist mind, "the civilizing mission of law" was fundamental, though Christianity had a part to play in this program.20 Liberal colonialists visualized law, civilization and progress as deeply connected and basic, they saw western law as neutral, universally relevant and desirable. The first claim was right in the liberal context, the second thoroughly false. In the liberal version, the mythic and irrational, emblems of thoughtlessness and fear, had ruled all life-forms in the past and still ruled the lives of the vast majority of humanity in the third world; in thrall to the majesty of the natural and the transcendent, primitive life flourished in the environment of traditionalism and lawlessness, hallmarks of the epoch of ignorance. By contrast, liberal ideology and modernity were abrasively unmythic, rational and controlled. Liberal order was informed by knowledge, science, a sense of historical progress, a continuously improving future. But this canonical, secular, bracing self-image, is tendentious and substantively illusory: it blithely scants the bloody genealogy and the extant historical record of liberal modernity, liberal politics, and particularly liberal law and its impact on the "lower races" (Hobson). In his Mythology of Modern Law, Fitzpatrick has shown that the enabling claims of liberalism, specifically of liberal law, are not only untenable but implicated in canvassing a racist justification of its colonial past and in eliding the racist basis of the structure of liberal jurisprudence.21 Liberal law is mythic in its presumption of its neutral, objective status. Specifically, the liberal legal story of its immaculate, analytically pure origin obscures and veils not just law's own ruthless, violent, even savage and disorderly trajectory, but also its constitutive association with imperialism and racism.22 In lieu of the transcendent, divine God of the "lower races", modern secular law postulated the gods of History, Science, Freedom. Liberal law was to be the instrument for realizing the promise of progress that the profane gods had decreed. Fitzpatrick's invasive surgical analysis lays bare the underlying logic of law's self-articulation in opposition to the values of cultural-racial Others, and its strategic, continuous reassertion of liberalism's superiority and the civilizational indispensability of liberal legalism. Liberal law's self-presentation presupposes a corrosive, debilitating, anarchic state of nature inhabited by the racial Others and lying in wait at the borders of the enlightened modern West. This mythological, savage Other, creature of raw, natural, unregulated fecundity and sexuality, justified the liberal conquest and control of the racially Other regions.23 Law's violence and resonant savagery on behalf of the West in its imperial razing of cultures and lands of the others, has been and still is, justified in terms of the necessary, beneficial spread of liberal civilization. Fitzpatrick's analysis parallels the impassioned deconstruction of this discourse of domination initiated by Edward Said's Orientalism, itself made possible by the pioneering analyses of writers like Aime Cesaire and Frantz Fanon. Fitzpatrick's argument is nevertheless instructive: his focus on law and its machinations unravels the one concrete province of imperial ideology that is centrally modern and critical in literally transforming and refashioning the human nature of racial Others. For liberal law carries on its back the payload of "progressive", pragmatic, **instrumental modernity**, its ideals of order and rule of law, its articulation of human rights and freedom, its ethic of procedural justice, its hostility to the sacred, to transcendence or spiritual complexity, its recasting of politics as the handmaiden of the nomos, its valorization of scientism and rationalization in all spheres of modern life. Liberal law is not synonymous with modernity tout court, but it is the exemplary voice of its rational spirit, **the custodian of its civilizational ambitions.** For the colonized Others, no non-liberal alternative is available: a non-western route to economic progress is inconceivable in liberal-legal discourse. For even the truly tenacious in the third world will never cease to be, in one sense or another, the outriders of modernity: their human condition condemns them to **playing perpetual catch-up**, eternally subservient to Western economic and technological superiority in a epoch of self-surpassing modernity.24 If the racially Other nations suffer exclusion globally, the racially other minorities inside the liberal loop enjoy the ambiguous benefits of inclusion. As legal immigrants or refugees, they are entitled to the full array of rights and privileges, as citizens (in Canada, France, U.K., U.S—Germany is the exception) they acquire civic and political rights as a matter of law. Formally, they are equal and equally deserving. In theory liberal law is inclusive, but concretely it is routinely **partial and invidious**. Inclusion is conditional: it depends on how robustly the new citizens wear and deploy their cultural difference. Two historical facts account for this phenomenon: liberal law's role in western imperialism and the Western claim of civilizational superiority that pervades the culture that sustains liberal legalism. Liberal law, as the other of the racially Other within its legal jurisdiction, differentiates and locates this other in the enemy camp of the culturally raw, irreducibly foreign, making him an unreliable ally or citizen. Law's suspicion of the others socialized in "lawless" cultures is instinctive and undeniable. Liberal law's constitutive bias is in a sense incidental: the real problem is racism or the racist basis of liberal ideology and culture.25 The internal racial other is not the juridical equal in the mind of liberal law but the juridically and humanly inferior Other, the perpetual foreigner.

The alternative is to vote negative to endorse political, rather than legal restrictions on Presidential war powers authority.

**Goldsmith ‘12**

Jack, Harvard Law School Professor, focus on national security law, presidential power, cybersecurity, and conflict of laws, Former Assistant Attorney General, Office of Legal Counsel, and Special Counsel to the Department of Defense, Hoover Institution Task Force on National Security and Law, March 2012, Power and Constraint, p. 205-209

DAVID BRIN is a science-fiction writer who in 1998 turned his imagination to a nonfiction book about privacy called The Transparent Society. Brin argued that individual privacy was on a path to extinction because government surveillance tools—tinier and tinier cameras and recorders, more robust electronic snooping, and bigger and bigger databases—were growing irreversibly more powerful. His solution to this attack on personal space was not to erect privacy walls, which he thought were futile, but rather to induce responsible government action by turning the surveillance devices on the government itself. A government that citizens can watch, Brin argued, is one subject to criticism and reprisals for its errors and abuses, and one that is more careful and responsible in the first place for fear of this backlash. A transparent government, in short, is an accountable one. "If neo-western civilization has one great trick in its repertoire, a technique more responsible than any other for its success, that trick is accountability," Brin argues, "[e]specially the knack—which no other culture ever mastered—of making accountability apply to the mighty."' Brin's notion of reciprocal transparency is in some ways the inverse of the penological design known as a "panopticon," made famous by the eighteenth-century English utilitarian philosopher Jeremy Bentham. Bentham's brother Samuel had designed a prison in Paris that allowed an "inspector" to monitor all of the inmates from a central location without the prisoners knowing whether or when they were being watched (and thus when they might be sanctioned for bad behavior). Bentham described the panopticon prison as a "new mode of obtaining power of mind over mind" because it allowed a single guard to control many prisoners merely by conveying that he might be watching.' The idea that a "watcher" could gain enormous social control over the "watched" through constant surveillance backed with threats of punishment has proved influential. Michel Foucault invoked Bentham's panopticon as a model for how modern societies and governments watch people in order to control them.' George Orwell invoked a similar idea three decades earlier with the panoptical telescreen in his novel 1984. More recently, Yale Law School professor Jack Balkin used the panopticon as a metaphor for what he calls the "National Surveillance State," in which governments "use surveillance, data collection, and data mining technologies not only to keep Americans safe from terrorist attacks but also to prevent ordinary crime and deliver social services." **The direction of the panopticon can be reversed, however, creating a "synopticon" in which many can watch one, including the government**.' The television is a synopticon that enables millions to watch the same governmental speech or hearing, though it is not a terribly robust one because the government can control the broadcast. Digital technology and the Internet combine to make a more powerful synopticon that allows many individuals to record and watch an official event or document in sometimes surprising ways. Video recorders placed in police stations and police cars, cell-phone video cameras, and similar tools increase citizens' ability to watch and record government activity. This new media content can be broadcast on the Internet and through other channels to give citizens synoptical power over the government—a power that some describe as "sousveillance" (watching from below)! These and related forms of watching can have a disciplining effect on government akin to Brin's reciprocal transparency. The various forms of watching and checking the presidency described in this book constitute a vibrant presidential synopticon. Empowered by legal reform and technological change, the "many"—in the form of courts, members of Congress and their staff, human rights activists, journalists and their collaborators, and lawyers and watchdogs inside and outside the executive branch—constantly gaze on the "one," the presidency. Acting alone and in mutually reinforcing networks that crossed organizational boundaries, these institutions extracted and revealed information about the executive branch's conduct in war—sometimes to adversarial actors inside the government, and sometimes to the public. The revelations, in turn, forced the executive branch to account for its actions and enabled many institutions to influence its operations. **The presidential synopticon** also **promoted responsible executive action merely through its broadening gaze.** One consequence of a panopticon, in Foucault's words, is "to induce in the inmate a state of conscious and permanent visibility that assures the automatic functioning of power."' The same thing has happened in reverse but to similar effect within the executive branch, where officials are much more careful merely by virtue of being watched. The presidential synopticon is in some respects not new. Victor Davis Hanson has argued that "war amid audit, scrutiny, and self-critique" has been a defining feature of the Western tradition for 2,500 years.' From the founding of the nation, American war presidents have been subject to intense scrutiny and criticism in the unusually open society that has characterized the United States. And many of the accountability mechanisms described in this book have been growing since the 1970s in step with the modern presidency. What is new, however, is the scope and depth of these modern mechanisms, their intense legalization, and their robust operation during wartime. In previous major wars the President determined when, how, and where to surveil, target, detain, transfer, and interrogate enemy soldiers, often without public knowledge, and almost entirely without unwanted legal interference from within the executive branch itself or from the other branches of government.' Today these **decisions are known inside and outside the government to an unprecedented degree** and are heavily regulated by laws and judicial decisions that are enforced daily by lawyers and critics inside and outside the presidency. Never before have Congress, the courts, and lawyers had such a say in day-to-day military activities; never before has the Commander in Chief been so influenced, and constrained, by law. This regime has many historical antecedents, but it came together and hit the Commander in Chief hard for the first time in the last decade. It did so because of extensive concerns about excessive presidential power in an indefinite and unusually secretive war fought among civilians, not just abroad but at home as well. These concerns were exacerbated and given credibility by the rhetoric and reality of the Bush administration's executive unilateralism—a strategy that was designed to free it from the web of military and intelligence laws but that instead galvanized forces of reaction to presidential power and deepened the laws' impact. Added to this mix were enormous changes in communication and collaboration technologies that grew to maturity in the decade after 9/11. These changes helped render executive branch secrets harder to keep, and had a flattening effect on the executive branch just as it had on other hierarchical institutions, making connections between (and thus accountability to) actors inside and outside the presidency **much more extensive**.

## 2

#### Immigration reform is up—Obama has leverage—that’s key to overcome GOP obstructionism

Jeff Mason, Reuters, 10/19/13, Analysis: Despite budget win, Obama has weak hand with Congress , health.yahoo.net/news/s/nm/analysis-despite-budget-win-obama-has-weak-hand-with-congress

Democrats believe, however, that Obama's bargaining hand may be strengthened by the thrashing Republicans took in opinion polls over their handling of the shutdown.

"This shutdown re-emphasized the overwhelming public demand for compromise and negotiation. And that may open up a window," said Ben LaBolt, Obama's 2012 campaign spokesman and a former White House aide.

"There's no doubt that some Republican members (of Congress) are going to oppose policies just because the president's for it. **But the hand of those members was** significantly weakened."

If he does have an upper hand, Obama is likely to apply it to immigration reform. The White House had hoped to have a bill concluded by the end of the summer. A Senate version passed with bipartisan support earlier this year but has languished in the Republican-controlled House.

"It will be hard to move anything forward, unless the Republicans find the political pain of obstructionism too much to bear," said Doug Hattaway, a Democratic strategist and an adviser to Hillary Clinton's 2008 presidential campaign.

"That may be the case with immigration - they'll face pressure from business and Latinos to advance immigration reform," he said.

#### The plan reverses these dynamics—sparks an inter-branch fight derailing the agenda

Epps 13

(Columnist-Atlantic, “Why a Secret Court Won't Solve the Drone-Strike Problem,” The Atlantic, Garrett, http://www.theatlantic.com/politics/archive/2013/02/why-a-secret-court-wont-solve-the-drone-strike-problem/273246/)

Professor Stephen I. Vladeck of American University has offered a remedy to this problem. He proposes a statute in which Congress assigns jurisdiction to a specific judicial district, probably the District Court for the District of Columbia. Congress in the statute would strip the executive of such defenses as "state secrets" and "political question." Survivors of someone killed in a drone attack could bring a wrongful-death suit. The secret evidence would be reviewed by the judge, government lawyers, and the lawyers for the plaintiff. Those lawyers would have to have security clearance; **the evidence would not be shown to the plaintiffs themselves, or to the public**. After review of the evidence, the court would rule. If the plaintiffs won, they would receive only symbolic damages--but they'd also get a judgment that the dead person had been killed illegally. It's an elegant plan, and the only one I've seen that would permit us to involve the Article III courts in adjudicating drone attacks. **Executive-power hawks** **would object that courts have no business** looking into the president's use of the war power. But Vladeck points out that such after-the-fact review has taken place since at least the Adams administration. "I don't think there's any case that says that how the president uses military force--especially against a U.S. citizen--is not subject to judicial review," he said in an interview. "He may be entitled to **some deference and discretion**, but not complete immunity." **The real problem with Vladeck's court might be political**. I expect that **any president would resist such a statute** as a dilution of his commander in chief power, and **enactment seems unlikely**. Without such a statute, then, systematic review of secret drone killings must come inside the executive branch.

#### Immigration key to ag

Abou-Diwan 1/28

(Antoine, “Bipartisan immigration proposal acknowledges agriculture's needs” January 28, 2013, Imperial Valley Press)

Bipartisan immigration proposal acknowledges agriculture's needs

The bipartisan proposal unveiled Monday paves the way to legalization of the nation’s 11 million undocumented immigrants with a program described as “tough but fair.”

It also addresses the concerns of the agricultural industry, whose labor pool by some estimates is composed of some 50 to 70 percent unauthorized workers.

“Agricultural workers who commit to the long-term stability of our nation’s agricultural industries will be treated differently than the rest of the undocumented population because of the role they play in ensuring that Americans have safe and secure agricultural products to sell and consume,” states the proposal.

Total farmworkers in Imperial County fluctuated between 8,000 and 11,000 in 2012, according to data from the Employment Development Department.

“There’s definitely recognition that agriculture will be taken care of,” said Steve Scaroni, a Heber farmer who has lobbied Washington extensively on immigration reform.

The proposal is based on four broad principles: a path to citizenship for unauthorized immigrants living in the United States, reform of the system to capitalize on characteristics that strengthen the economy, the creation of an effective employment verification system and improving the immigration process for future workers.

The principles are broad and many details need to be worked out.

“The principles acknowledge that the situation in agriculture is distinct and requires different treatment,” said Craig Regelbrugge, chairman of the Agricultural Coalition for Immigration Reform, a group that represents the landscape and nursery industry.

Access to a legal and stable work force is vital, Regelbrugge said, as is a workable program that eliminates or reduces hurdles for a future work force.

“We would like to see the agriculture legalization program attractive so there are incentives for them to work in the sector,” Regelbrugge noted.

The proposals also acknowledge that the United States immigration system is broken, and address criticism that not enough is being done to enforce existing immigration laws. To that end, Monday’s proposals are contingent on secure borders.

But, the acknowledgement of the agriculture sector’s needs allows for some optimism.

“As long as the labor supply solutions are there, we can support the enforcement solutions,” Regelbrugge said.

**Extinction**

**Lugar 2k**

(Richard, a US Senator from Indiana, is Chairman of the Senate Foreign Relations Committee, and a member and former chairman of the Senate Agriculture Committee. “calls for a new green revolution to combat global warming and reduce world instability,” pg online @ <http://www.unep.org/OurPlanet/imgversn/143/lugar.html>)

In a world confronted by global terrorism, turmoil in the Middle East, burgeoning nuclear threats and other crises, it is easy to lose sight of the long-range challenges. **But we do so at our peril.** One of the most daunting of them is meeting the world’s need for food and energy in this century. At stake is not only preventing starvation and saving the environment, but also world peace and security. History tells us that states may go to war over access to resources, and that poverty and famine have often bred fanaticism and terrorism. Working to feed the world will minimize factors that contribute to global instability and the proliferation of weapons of mass destruction. With the world population expected to grow from 6 billion people today to 9 billion by mid-century, the demand for affordable food will increase well beyond current international production levels. People in rapidly developing nations will have the means greatly to improve their standard of living and caloric intake. Inevitably, that means eating more meat. This will raise demand for feed grain at the same time that the growing world population will need vastly more basic food to eat. Complicating a solution to this problem is a dynamic that must be better understood in the West: developing countries often use limited arable land to expand cities to house their growing populations. As good land disappears, people destroy timber resources and even rainforests as they try to create more arable land to feed themselves. The long-term environmental consequences could be disastrous for the entire globe. Productivity revolution To meet the expected demand for food over the next 50 years, we in the United States will have to grow roughly three times more food on the land we have. That’s a tall order. My farm in Marion County, Indiana, for example, yields on average 8.3 to 8.6 tonnes of corn per hectare – typical for a farm in central Indiana. To triple our production by 2050, we will have to produce an annual average of 25 tonnes per hectare. Can we possibly boost output that much? Well, it’s been done before. Advances in the use of fertilizer and water, improved machinery and better tilling techniques combined to generate a threefold increase in yields since 1935 – on our farm back then, my dad produced 2.8 to 3 tonnes per hectare. Much US agriculture has seen similar increases. But of course there is no guarantee that we can achieve those results again. Given the urgency of expanding food production to meet world demand, we must invest much more in scientific research and target that money toward projects that promise to have significant national and global impact. For the United States, that will mean a major shift in the way we conduct and fund agricultural science. Fundamental research will generate the innovations that will be necessary to feed the world. The United States can take a leading position in a productivity revolution. And our success at increasing food production may **play a decisive** humanitarian **role in the survival of** billions of people and the health of **our planet.**

## 3

The judiciary adheres to political question deference now—but doctrinal repudiation would reverse that.

Franck ‘12

Thomas, Murray and Ida Becker Professor of Law, New York University School of Law Wolfgang Friedmann Memorial Award 1999, *Political Questions/Judicial Answers*

Sensitive to this historical perspective, many scholars, but few judges, have openly decried the judiciary’s tendency to suspend at the water’s edge their jealous defense of the power to say what the law is. Professor Richard Falk, for example, has criticized judges’ “ad hoc subordinations to executive policy”5 and urged that if the object of judicial deference is to ensure a single coherent American foreign po1icy, then that objective is far more likely to be secured if the policy is made in accordance with rules “that are themselves not subject to political manipulation.”6 Moreover, as a nation publicly proclaiming its adherence to the rule of law, Falk notes, it is unedifying for America to refuse to subject to that rule the very aspect of its governance that is most important and apparent to the rest of the world.7 Professor Michael Tigar too has argued that the deference courts show to the political organs, when it becomes abdication, defeats the basic scheme of the Constitution because when judges speak of “the people” as “the ultimate guardian of principle” in political-question cases, they overlook the fact that “the people” are the “same undifferentiated mass” that “historically, unmistakably and, at times, militantly insisted that when executive power immediately threatens personal liberty, a judicial remedy must be available.” Professor Louis Henkin, while acknowledging that certain foreign relations questions are assigned by the Constitution to the discretion of the political branches, also rejects the notion that the judiciary can evade responsibility for deciding the appropriate limits to that discretion, particularly when its exercise comes into conflict with other rights or powers rooted in the Constitution or laws enacted in accordance with its strictures.9 His views echo earlier ones espoused by Professor Louis Jaffe, who argued that while the courts should listen to advice tendered by the political branches on matters of foreign pol icy and national security, “[t]his should not mean that the court must follow such advice, but that without it the court should not prostrate itself before the fancied needs of diplomacy and foreign policy. The claim of policy should be made concrete in the particular instance. Only so may its weight, its content, and its value be appreciated. The claims of diplomacy are not absolute; to question their compulsion is not treason.”° There has been little outright support from the judiciary for such open calls to repudiate the practice of refusing to adjudicate foreign affairs cases on their merits. While some judges do refuse to apply the doctrine, holding it inapplicable in the specific situation or passing over it in silence, virtually none have hitherto felt able to repudiate it frontally. On the other side, some judges continue to argue vigorously for the continued validity of judicial abdication in cases implicating foreign policy or national security. These proponents still rely occasion ally on the early shards of dicta and more rarely on archaic British precedents that run counter to the American constitutional ethos. More frequently today, their arguments rely primarily on a theory of constitutionalism—separation of powers—and several prudential reasons.

Indefinite detention is a political question—the plan destroys the doctrine

Pennelle ‘6

Laura, California Western Law School, “THE GUANTANAMO GAP: CAN FOREIGN NATIONALS OBTAIN REDRESS FOR PROLONGED ARBITRARY DETENTION AND TORTURE SUFFERED OUTSIDE THE UNITED STATES?,” 36 Cal. W. Int'l L.J. 303

Assuming there was a judicially cognizable remedy available to foreign national detainees, issues of justiciability present an additional barrier to recovery. The political question doctrine reflects concerns about keeping the federal judiciary from inappropriate involvement in sensitive political issues that are best addressed by the political branches of government." 3 Under the political question doctrine, a federal court can decline to hear a case that presents such a nonjusticiable political question.214 The doctrine generally "excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the halls of Congress or the confines of the Executive Branch.'215 In addition, the political question doctrine may also exclude cases when there is an "impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government;.., or the potentiality of embarrassment from multifarious pronouncements by various departments on one question. 2 6 Certainly, the detention of alien prisoners at the GBNB is a sensitive political issue that is likely to have consequences for U.S. foreign relations. However, the Supreme Court has stated that, "it is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance. 21 7 Nevertheless, the D.C. Circuit has warned, "the special needs of foreign affairs must stay our hand in the creation of damage remedies against military and foreign policy officials for allegedly unconstitutional treatment of foreign subjects causing injury abroad. '218 This warning applies to the situation in Guantanamo Bay and reflects the policy that courts should defer to the political branches in addressing problems best resolved by those branches, since the political question doctrine is "primarily a function of the separation of powers. ' 219 Arguably, the decision to detain foreign nationals at the GBNB during the "war on terror" involves decisions made by the political and not judicial branches of government. Indeed, Congress's passage of the AUMF and the President's subsequent Detention Order initiated "war on terror" and brought foreign nationals to the GBNB. 22° Furthermore, Article III of the Constitution, which defines the scope of judicial power, "provides no authority for policymaking in the realm of foreign relations or provision of national security. '22' Finally, it would be difficult for a court to award damages for detainees' alleged claims without "expressing lack of the respect due coordinate branches of government. 2 2

PQD key to Sonar training

Gartland ‘12

Maj. Charles, B.A., University of Alaska - Anchorage; J.D., cum laude, Gonzaga University School of Law; LL.M., George Washington University Law School) is a United States Air Force judge advocate currently serving as the Environmental Liaison Officer for the Air Force Materiel Command, “ARTICLE: AT WAR AND PEACE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT: WHEN POLITICAL QUESTIONS AND THE ENVIRONMENT COLLIDE,” 68 A.F. L. Rev. 27

The public interest in conducting training exercises with active sonar under realistic conditions plainly outweighs the interests advanced by the plaintiffs" (emphasis added). n407 At least two Supreme Court Justices disagreed n408 with Chief Justice Roberts' characterization in Winter, and, arguably, four of them disagreed (depending on how the partial concurrence/dissent by Justice Breyer, partially joined by Justice Stevens, is construed). n409 Certainly the Ninth Circuit disagreed, n410 and that highlights a significant rub, namely, that the drastic remedy of an injunction appears to have no predictability whatsoever. In one nuclear detonation case, Committee for Nuclear Responsibility v. Schlesinger, the test goes forward; n411 another two years later, Enewetak, a different test is enjoined. n412 In one training case, Barcelo v. Brown, military training exercises are allowed to proceed, n413 whereas in others, Evans and Winter (until the Supreme Court phase) they are enjoined. n414 Such uncertainty is a natural outcome of the process unfolding in all these cases: a judicial decision to grant an injunction under NEPA against a national defense activity is--by the very nature of the four part injunction test--a policy decision; and people (and judges) disagree about what constitutes good public policy. Policy decisions lie with the legislative and executive branches, and in the case of national defense, the policy decision has already been settled by statute and the Constitution--both of which provide for a national defense establishment that, in protecting the Republic, allows statutes like NEPA to exist in the first place.

**That’s key to overall Naval power and anti-submarine warfare.**

Popeo et al ‘8

Daniel, Paul Kamenar, Washington Legal Foundation, Andrew McBride, Thomas McCarthy, Andrew Miller, William R. Dailey, Wiley Rein LLP, “Brief for Amici Curiae The Washington Legal Foundation, Rear Admiral James J. Carey, U.S. Navy (Ret.), National Defense Committee, and Allied Educational Foundation in Support of Petitioners,” http://www.wlf.org/upload/07-1239winter.pdf

Throughout our Nation's history, the Navy has played a vital role in major world events occurring during both times of war and peace. As a maritime Nation, the United States relies on the "Navy's ability to operate freely at sea to guarantee access, sustain trade and commerce, and partner with other nations to ensure not only regional security but defense of our own homeland." App. 314a (statement of Rear Admiral Ted N. Branch). For this reason, it has been recognized that this ability "to operate freely at sea is one of the most important enablers of national power- diplomatic, information, military and economic." App. 315a-316a (statement of Rear Admiral Ted N. Branch). The only way to ensure our Nation's ability to so operate at sea is through naval training. Indeed, it is a Navy maxim that "We train as we will fight so that we will fight as we have trained." J.A. 576 (statement of Captain Martin N. May). Antisubmarine warfare has long been a key component of naval warfare. Because submarine detection and antisubmarine warfare require the coordinated efforts of vast numbers of Navy personnel, repeated training in battle conditions is essential to naval readiness. And, in our modern era, advanced technologies enable our enemies to deploy submarines that are capable of carrying long-range weapons while operating in virtual silence, nearly wholly undetectable except through the use of MFA sonar. Thus, antisubmarine warfare training utilizing MFA sonar is an absolute necessity in preparing our Navy to detect and combat enemy submarines. It goes without saying that, in a time of armed conflict, naval training and readiness are indispensable. Indeed, with American troops currently deployed throughout the world and, specifically, engaged in war in Afghanistan and Iraq, the Navy's role in our national security has never been more important than at the present. Maintaining an effective and proficient Navy, therefore, is of the utmost importance to the United States' national defense and homeland security. It is for this reason that the President determined that "the COMPTUEX and JTFEX, including the use of mid-frequency active sonar in these exercises, are in the paramount interest of the United States." App. 232a. A. A Well-Trained Navy Has Always Been A Cornerstone Of Our National Defense. Naval training has undoubtedly been at the center of the U.S. Navy's prior wartime and peacetime successes. Only a well-trained navy could have successfully fought in both the Atlantic and Pacific oceans simultaneously, as the U.S. Navy demonstrated in World War II. During World War II, the U.S. Navy's antisubmarine training was largely responsible for defeating the German submarines that were dangerously close to securing victory in the Battle of the Atlantic. See THEODORE ROSCOE & RICHARD G. VOGE, UNITED STATES SUBMARINE OPERATIONS IN WORLD WAR II xviii (Naval Institute Press 1949). It was also the joint training exercises of Operation Tiger that prepared the U.S. Navy and Army for the Normandy Invasion. See Operational Archives, Naval Historical Center, Operation Tiger, available at http-//www.history. navy.mil/faqs/faq20-l.htm (last visited July 23, 2008). Without this preparation, one of the most important battles in world history, D-Day, may have resulted in devastating failure for the United States and its allies. The Cuban Missile Crisis presented another major world event in which the Navy's readiness was of critical importance to our national security. In 1962, naval forces under U.S. Atlantic Command maintained a month-long naval "quarantine" of the island of Cuba in order to prevent the Soviet Union's deployment of ballistic missiles there. Cuban Missile Crisis, 1962, available at http '//www. history, navy. mil/faqs/faq90-l.htm (last visited July 23, 2008). The immediate readiness of the U.S. Navy in these circumstances defused a situation that came as close as the United States and Soviet Union ever came to global nuclear war. Id. At a minimum, the Navy blockade was a demonstration of the United States' strength. Naturally, the beneficial effects of naval training did not end with World War II or even the Cold War. Naval training exercises have continued to adequately prepare the Navy for effective and safe military campaigns and have continued to symbolize a strong Nation at the ready to protect its interests at home and abroad. That a well-trained Navy indicates and symbolizes American strength is not a creation of fantasy. It is a theme well-recognized by our Nation's prior and current enemies. Indeed, the importance of the U.S. Navy was not overlooked by the Japanese in their bombing of Pearl Harbor, nor was the symbolism of a U.S. Navy destroyer lost in al-Qaeda's suicide bombing attack against the USS Cole. That the Navy has been a target of strategic and symbolic attacks from our Nation's enemies further demonstrates the need for proper training to ensure the safety and success of the Navy in its vital role of defending the homeland. Undoubtedly, thorough training is a requisite to an effective Navy. **On-the-job** **training in combat**, it follows, "is the worst possible way of training personnel" and can place the success of military missions "at significant risk." App. 278a (statement of Rear Admiral John M. Bird). Consequently, naval training should be performed prior to actual combat to ensure the preparedness and eventual success in our Navy's military missions. This seemingly obvious statement is, quite possibly, even more relevant to the Navy's mission of defending against enemy submarines. B. Training For Anti-Submarine Warfare Is A Critical Component Of Naval Readiness. The Navy is the only service—military or otherwise—that can address the threat from submarines, and any curtailment of its ability to train for this mission would decrease the Navy's ability to handle that threat. App. 315a (statement of Rear Admiral Ted N. Branch). For years, the Navy has employed SONAR to "identify and track submarines, determine water depth, locate mines, and provide for vessel safety." App. 266a (statement of Rear Admiral John M. Bird). The Navy started using SONAR after World War I, and every naval vessel engaged in antisubmarine activity was equipped with sonar systems by the start of World War II. App. 268a. Indeed, as indicated above, antisubmarine warfare was integral to the Navy's successful campaigns against German submarines in World War II. Antisubmarine warfare is a science in which considerable effort goes into making and maintaining contact with the submarine. App. 354a~356a; see also App. 278a ("ASW occurs over many hours or days. Unlike an aerial dogfight, over in minutes and even seconds, ASW is a cat and mouse game that requires large teams of personnel working in shifts around the clock to work through an ASW scenario.") This fact is even more applicable when quiet, diesel-electric submarines—submarines increasingly utilized by hostile nations—are involved; modern diesel-electric submarines are capable of defeating the best available passive sonar technology by "suppress[ing] emitted noise levels." App. 274a. In addition, the far-reaching range of weapons found on modern submarines make it possible for those submarines to avoid placing themselves within range of passive sonar. App. 274a. As a result, active sonar is necessary to detect the presence of diesel-electric submarines. App. 269a\_270a. The Nation's top naval officers agree that the Navy must be able to freely utilize MFAS during antisubmarine warfare training in order to properly defend against the threats posed by diesel-electric submarines. See, e.g., App. 311a-325a, 338a-347a, 350a-357a.. If the Navy were prevented from training with MFAS or other active sonar, and were limited to using passive sonar in certain situations, the survivability of the Navy's antisubmarine missions would ultimately be placed at "great risk." App. 269a (statement of Rear Admiral John M. Bird). "[Rlealistic and repetitive [antisubmarine warfare] training with active SONAR is necessary for our forces to be confident and knowledgeable in the Navy's plans, tactics, and procedures to perform and **survive** in situations leading up to hostilities as well as combat." App. 277a. Therefore, blanket mitigation measures on MFAS training "would dramatically reduce the realism of [antisubmarine warfare] training" and would be fraught with "severe national security consequences." App. 273a (statement of Rear Admiral John M. Bird). C. The Navy's Use Of MFA Sonar In The Challenged Military Exercises Is Indispensable To Our National Security In This Time Of Armed Hostilities Across the Globe. It is clear that the COMPTUEX and JTFEX training exercises are the only way the Navy's Pacific Fleet can gain the realistic training that is necessary, especially during a time of war. These exercises represent the singular opportunity for 6,000-plus Sailors and Marines to train together in a realistic environment prior to deployment and to gain proficiency in MFAS. App. 270a-271a; App. 343a. Anytime a strike group is prevented from becoming fully proficient in MFAS, and therefore cannot be certified as combat ready, national security is negatively affected. App. 271a (statement of Rear Admiral John M. Bird). And, considering the heightened sensibilities in a time of war, any interference creates a severe impact on training and certification of readiness to perform realistic antisubmarine warfare. Because the stakes of antisubmarine warfare are so high, contact with an enemy submarine is not surrendered unless there is an order to do so. App. 355a. Even a few minutes of MFAS shutdown "would be potentially fatal in combat." App. 355a-356a (statement of Vice Admiral Samuel J. Locklear, III). As a result, a single lost contact with the submarine "cripples certification for the units involved" in the exercises. App. 356a>\* see also id. ("It may take days to get to the pivotal attack in antisubmarine warfare, but only minutes to confound the results upon which certification is based."). For these reasons, the Chief of Naval Operations, who is specifically responsible for organizing, training, equipping, preparing and maintaining the readiness of Navy forces, described COMPTUEX and JTFEX as "indispensable" training exercises. App. 342a (statement of Admiral Gary Roughead). Unsuccessful naval training in the area of antisubmarine warfare can have far-reaching consequences. As Rear Admiral Ted N. Branch recognized Any restriction or disadvantage imposed on our [antisubmarine warfare] capability that impedes the U.S. Navy's ability to retain control of the sea or project naval forces may . . . result in nothing less than a breakdown of the global system, a significant change in our international standing, and an alteration in our established way of life.

That unleashes a laundry list of nuclear conflicts

Eaglen ‘11

(Mackenzie research fellow for national security – Heritage, and Bryan McGrath, former naval officer and director – Delex Consulting, Studies and Analysis, “Thinking About a Day Without Sea Power: Implications for U.S. Defense Policy,” Heritage Foundation

Global Implications. Under a scenario of dramatically reduced naval power, **the** **U**nited **S**tates **would cease to be active in any international alliances.** While it is reasonable to assume that land and air forces would be similarly reduced in this scenario, the lack of credible maritime capability to move their bulk and establish forward bases would render these forces irrelevant, even if the Army and Air Force were retained at today’s levels. In Iraq and Afghanistan today, 90 percent of material arrives by sea, although material bound for Afghanistan must then make a laborious journey by land into theater. China’s claims on the South China Sea, previously disputed by virtually all nations in the region and routinely contested by U.S. and partner naval forces, are accepted as a fait accompli, effectively **turning the region into a “Chinese lake.”** China establishes expansive oil and gas exploration with new deepwater drilling technology and secures its local sea lanes from intervention. Korea, unified in 2017 after the implosion of the North, signs a mutual defense treaty with China and solidifies their relationship. Japan is increasingly isolated and in 2020–2025 executes long-rumored plans to create an indigenous nuclear weapons capability.[11] By 2025, Japan has 25 mobile nuclear-armed missiles ostensibly targeting China, toward which Japan’s historical animus remains strong. China’s entente with Russia leaves the Eurasian landmass dominated by Russia looking west and China looking east and south. Each cedes a sphere of dominance to the other and remains largely unconcerned with the events in the other’s sphere. Worldwide, trade in foodstuffs collapses. Expanding populations in the Middle East increase pressure on their governments, which are already stressed as the breakdown in world trade disproportionately affects food importers. Piracy increases worldwide, driving food transportation costs even higher. In the Arctic, Russia aggressively asserts its dominance and effectively shoulders out other nations with legitimate claims to seabed resources. No naval power exists to counter Russia’s claims. India, recognizing that its previous role as a balancer to China has lost relevance with the retrenchment of the Americans, agrees to supplement Chinese naval power in the Indian Ocean and Persian Gulf to protect the flow of oil to Southeast Asia. In exchange, China agrees to exercise increased influence on its client state Pakistan. The great typhoon of 2023 strikes Bangladesh, killing 23,000 people initially, and 200,000 more die in the subsequent weeks and months as the international community provides little humanitarian relief. Cholera and malaria are epidemic. Iran dominates the Persian Gulf and is a nuclear power. Its navy aggressively patrols the Gulf while the Revolutionary Guard Navy harasses shipping and oil infrastructure to force Gulf Cooperation Council (GCC) countries into Tehran’s orbit. Russia supplies Iran with a steady flow of military technology and nuclear industry expertise. Lacking a regional threat, the Iranians happily control the flow of oil from the Gulf and benefit economically from the “protection” provided to other GCC nations. In Egypt, the decade-long experiment in participatory democracy ends with the ascendance of the Muslim Brotherhood in a violent seizure of power. The United States is identified closely with the previous coalition government, and riots break out at the U.S. embassy. Americans in Egypt are left to their own devices because the U.S. has no forces in the Mediterranean capable of performing a noncombatant evacuation when the government closes major airports. Led by Iran, a coalition of Egypt, Syria, Jordan, and Iraq attacks Israel. Over 300,000 die in six months of fighting that includes a limited nuclear exchange between Iran and Israel. Israel is defeated, and the State of Palestine is declared in its place. Massive “refugee” camps are created to house the internally displaced Israelis, but a humanitarian nightmare ensues from the inability of conquering forces to support them. The NATO alliance is shattered. The security of European nations depends increasingly on the lack of external threats and the nuclear capability of France, Britain, and Germany, which overcame its reticence to military capability in light of America’s retrenchment. Europe depends for its energy security on Russia and Iran, which control the main supply lines and sources of oil and gas to Europe. Major European nations stand down their militaries and instead make limited contributions to a new EU military constabulary force. No European nation maintains the ability to conduct significant out-of-area operations, and Europe as a whole maintains little airlift capacity. Implications for America’s Economy. If the United States slashed its Navy and ended its mission as a guarantor of the free flow of transoceanic goods and trade, globalized world trade would decrease substantially. As early as 1890, noted U.S. naval officer and historian Alfred Thayer Mahan described the world’s oceans as a “great highway…a wide common,” underscoring the long-running importance of the seas to trade.[12] Geographically organized trading blocs develop as the maritime highways suffer from insecurity and rising fuel prices. Asia prospers thanks to internal trade and Middle Eastern oil, Europe muddles along on the largesse of Russia and Iran, and the Western Hemisphere declines to a “new normal” with the exception of energy-independent Brazil. For America, Venezuelan oil grows in importance as other supplies decline. Mexico runs out of oil—as predicted—when it fails to take advantage of Western oil technology and investment. Nigerian output, which for five years had been secured through a partnership of the U.S. Navy and Nigerian maritime forces, is decimated by the bloody civil war of 2021. Canadian exports, which a decade earlier had been strong as a result of the oil shale industry, decline as a result of environmental concerns in Canada and elsewhere about the “fracking” (hydraulic fracturing) process used to free oil from shale. State and non-state actors increase the hazards to seaborne shipping, which are compounded by the necessity of traversing key chokepoints that are easily targeted by those who wish to restrict trade. These chokepoints include the Strait of Hormuz, which Iran could quickly close to trade if it wishes. **More than half of the world’s oil is transported by sea.** “From 1970 to 2006, the amount of goods transported via the oceans of the world…increased from 2.6 billion tons to 7.4 billion tons, an increase of over 284%.”[13] In 2010, “$40 billion dollars [sic] worth of oil passes through the world’s geographic ‘chokepoints’ on a daily basis…not to mention $3.2 trillion…annually in commerce that moves underwater on transoceanic cables.”[14] These quantities of goods simply cannot be moved by any other means. Thus, a reduction of sea trade reduces overall international trade. U.S. consumers face a greatly diminished selection of goods because domestic production largely disappeared in the decades before the global depression. As countries increasingly focus on regional rather than global trade, costs rise and Americans are forced to accept a much lower standard of living. Some domestic manufacturing improves, but at significant cost. In addition, shippers avoid U.S. ports due to the onerous container inspection regime implemented after investigators discover that the second dirty bomb was smuggled into the U.S. in a shipping container on an innocuous Panamanian-flagged freighter. As a result, American consumers bear higher shipping costs. The market also constrains the variety of goods available to the U.S. consumer and increases their cost. A Congressional Budget Office (CBO) report makes this abundantly clear. A one-week shutdown of the Los Angeles and Long Beach ports would lead to production losses of $65 million to $150 million (in 2006 dollars) per day. A three-year closure would cost $45 billion to $70 billion per year ($125 million to $200 million per day). Perhaps even more shocking, the simulation estimated that employment would shrink by approximately 1 million jobs.[15] These estimates demonstrate the effects of closing only the Los Angeles and Long Beach ports. On a national scale, such a shutdown would be catastrophic. The Government Accountability Office notes that: [O]ver 95 percent of U.S. international trade is transported by water[;] thus, the safety and economic security of the United States depends in large part on the secure use of the world’s seaports and waterways. A successful attack on a major seaport could potentially result in a dramatic slowdown in the international supply chain with impacts in the billions of dollars.[16]

## 4

#### Expanding precedent against detention collapses military operations

Ford, 10

(Colonel, U.S. Army Judge Advocate General's Corps, currently serving as the Staff Judge Advocate, Multi-National Security Transition Command-Iraq, Baghdad, Iraq, “Keeping Boumediene off the Battlefield: Examining Potential Implications of the Boumediene v. Bush Decision to the Conduct of United States Military Operations,” 30 Pace L. Rev. 396, Winter, Lexis)

Boumediene, and the potential extension of its holding, impacts U.S. detention operations not only at Guantanamo Bay but also at Bagram and other current or future detention facilities. As a preliminary matter, the natural question in light of Boumediene is how necessary or beneficial is Guantanamo Bay? If the DoD initially established Guantanamo Bay for its foreign location - more convenient for U.S.-based intelligence and interrogation personnel - then, in light of Boumediene, the base is no longer "foreign." The purported freedom from domestic legal requirements initially presumed at Guantanamo no longer exists. As the current administration seeks to close Guantanamo n48 - whether due to legal, political, or policy reasons - it is clear that Boumediene has done away with at least one benefit of housing detainees at Guantanamo. Could Boumediene impact current detention activities in Bagram? If Boumediene reaches that facility, the Eisentrager Court's worst fears would be realized. n49 Military interrogations [\*412] might require court approval, or worse, the presence of a detainee's counsel. Moving a detainee may likewise require approval from the court. Conditions of confinement might be reviewable by a court. Military prison guards may be liable to their enemy captives in constitutional tort. The implications, again, are vast. In addition to detention operations in a theater of war, Boumediene may **directly impact actual day-to-day combat operations**. Justice Scalia warned that Boumediene could "cause more Americans to be killed." n50 Practically speaking, he was referring to a situation where a court releases a terrorist who returns to fight against Americans. Additionally, battlefield impact and risk to service members for other reasons is not improbable. As a preliminary matter, the issue arises in determining when habeas rights attach. Habeas would attach on the battlefield only if the United States exercises functional control over a combatant - that is, if it exercises the functional equivalent of legal sovereignty over the detainee. In a country like Afghanistan, or even Iraq, there is no question that functioning governments active in inter-and intra-state affairs are operating, and the nations maintain their sovereignty. But does (or would) the United States operate in a pocket or umbrella of sovereignty in either nation for purposes of Boumediene? Liberal stationing agreements, UNSCRs, or other documents authorizing or defining the scope and breadth of authority for U.S. forces in a country could be read to grant Boumediene-like autonomy. During the heightened occupation of Iraq, and the initial invasion of Afghanistan, a stronger argument could have been made that habeas in fact attached to [\*413] in-country detentions. And, in a certain area of occupation, such as post-war Germany, or immediately following invasive hostilities, the case is again much closer. If a U.S. soldier operates in a pocket of sovereignty, habeas rights may attach to any enemy he seizes or captures on the battlefield. Those rights would remain during temporary detention, transfer, and long-term detention. In this (hopefully unlikely) situation, U.S. combat troops would have to be trained in the latest version of habeas law for the battlefield. They would need to know not only the operational requirements and details of the military operation - for example, seizing terrain or raiding a compound - but also the legal niceties associated with capturing an enemy who has constitutional rights and seizing the evidence that might be necessary to keep that enemy in detention and off of future battlefields. At the very least, these new requirements would be a distraction to an undertaking where focus and attention to detail are vital, a distraction that could be deadly. Essentially, troops on patrol would be carrying the full panoply of rights and privileges afforded under the U.S. Constitution in their assault packs. Every enemy encountered would be entitled to rummage through the pack to choose the U.S. domestic law - the legal weapon n51 - to use against the soldier. In effect, the military operation would be converted into a pseudo-law enforcement search and seizure operation. U.S. combat troops would be no different than police officers on patrol in any town or city in the United States. **The military would cease to exist as we know it** and would become nothing more than a deployable F.B.I. As indicated above, evidence experts and/or law enforcement experts may be integrated into the operation. These individuals are likely not familiar with military operations and have not trained with the unit to which they would be assigned. The potential for confusion, hesitation, mistaken identity, and uncertainty is great. Each creates a **recipe for fratricide, enemy advantage**, or worse - **mission failure and defeat.**

#### Nuclear war

Frederick Kagan and Michael O’Hanlon 7, Fred’s a resident scholar at AEI, Michael is a senior fellow in foreign policy at Brookings, “The Case for Larger Ground Forces”, April, <http://www.aei.org/files/2007/04/24/20070424_Kagan20070424.pdf>

We live at a time when wars not only rage in nearly every region but threaten to erupt in many places where the current relative calm is tenuous. To view this as a strategic military challenge for the United States is not to espouse a specific theory of America’s role in the world or a certain political philosophy. Such an assessment flows directly from the basic bipartisan view of American foreign policy makers since World War II that overseas threats must be countered before they can directly threaten this country’s shores, that the basic stability of the international system is essential to American peace and prosperity, and that no country besides the United States is in a position to lead the way in countering major challenges to the global order. Let us highlight the threats and their consequences with a few concrete examples, emphasizing those that involve key strategic regions of the world such as the Persian Gulf and East Asia, or key potential threats to American security, such as the spread of nuclear weapons and the strengthening of the global Al Qaeda/jihadist movement. The Iranian government has rejected a series of international demands to halt its efforts at enriching uranium and submit to international inspections. What will happen if the US—or Israeli—government becomes convinced that Tehran is on the verge of fielding a nuclear weapon? North Korea, of course, has already done so, and the ripple effects are beginning to spread. Japan’s recent election to supreme power of a leader who has promised to rewrite that country’s constitution to support increased armed forces—and, possibly, even nuclear weapons— may well alter the delicate balance of fear in Northeast Asia fundamentally and rapidly. Also, in the background, at least for now, SinoTaiwanese tensions continue to flare, as do tensions between India and Pakistan, Pakistan and Afghanistan, Venezuela and the United States, and so on. Meanwhile, the world’s nonintervention in Darfur troubles consciences from Europe to America’s Bible Belt to its bastions of liberalism, yet with no serious international forces on offer, the bloodletting will probably, tragically, continue unabated. And as bad as things are in Iraq today, they could get worse. What would happen if the key Shiite figure, Ali al Sistani, were to die? If another major attack on the scale of the Golden Mosque bombing hit either side (or, perhaps, both sides at the same time)? Such deterioration might convince many Americans that the war there truly was lost—but the costs of reaching such a conclusion would be enormous. Afghanistan is somewhat more stable for the moment, although a major Taliban offensive appears to be in the offing. Sound US grand strategy must proceed from the recognition that, over the next few years and decades, the world is going to be a very unsettled and quite dangerous place, with Al Qaeda and its associated groups as a subset of a much larger set of worries. The only serious response to this international environment is to develop armed forces capable of protecting America’s vital interests throughout this dangerous time. Doing so requires a military capable of a wide range of missions—including not only deterrence of great power conflict in dealing with potential hotspots in Korea, the Taiwan Strait, and the Persian Gulf but also associated with a variety of Special Forces activities and stabilization operations. For today’s US military, which already excels at high technology and is increasingly focused on re-learning the lost art of counterinsurgency, this is first and foremost a question of finding the resources to field a large-enough standing Army and Marine Corps to handle personnel intensive missions such as the ones now under way in Iraq and Afghanistan. Let us hope there will be no such large-scale missions for a while. But preparing for the possibility, while doing whatever we can at this late hour to relieve the pressure on our soldiers and Marines in ongoing operations, is prudent. At worst, the only potential downside to a major program to strengthen the military is the possibility of spending a bit too much money. Recent history shows no link between having a larger military and its overuse; indeed, Ronald Reagan’s time in office was characterized by higher defense budgets and yet much less use of the military, an outcome for which we can hope in the coming years, but hardly guarantee. While the authors disagree between ourselves about proper increases in the size and cost of the military (with O’Hanlon preferring to hold defense to roughly 4 percent of GDP and seeing ground forces increase by a total of perhaps 100,000, and Kagan willing to devote at least 5 percent of GDP to defense as in the Reagan years and increase the Army by at least 250,000), we agree on the need to start expanding ground force capabilities by at least 25,000 a year immediately. Such a measure is not only prudent, it is also badly overdue.

## 5

#### The United States federal judiciary should rule that detainees that have won habeas suits must be released because their indefinite detention violates the Suspension Clause and apply a clear statement principle to the power of the President to indefinitely detain individuals captured in US territory. The United States federal government should eliminate arms sales.

#### Requring release through Kiyemba solve—it’s the key source of the model and still provides a judicial check

Scharf, 13

(Law Prof-Case Western, “BRIEF OF THE PUBLIC INTL LAW & POLICY GROUP AS AMICUS CURIAE IN SUPPORT OF PETITIONERS,” www.americanbar.org/content/dam/aba/publishing/preview/publiced\_preview\_briefs\_pdfs\_09\_10\_08\_1234\_PetitionerAmCuPILPG.authcheckdam.pdf)

The precedent of this Court has a significant impact on rule of law in foreign states. Foreign governments, in particular foreign judiciaries, notice and follow the example set by the U.S. in upholding the rule of law. As foreign governments and judiciaries grapple with new and challenging issues associated with upholding the rule of law during times of conflict, U.S. leadership on the primacy of law during the war on terror is particularly important. Recent decisions of this Court have reaffirmed the primacy of rule of law in the U.S. during the war on terror. As relates to the present case, a number of this Court’s decisions, most notably Boumediene v. Bush, 128 S.Ct. 2229 (2008), have established clear precedent that Guantanamo detainees have a right to petition for habeas corpus relief. Despite a clear holding from this Court in Boumediene, the Court of Appeals sought in Kiyemba v. Obama to narrow Boumediene to such a degree as to render this Court’s ruling hollow. 555 F.3d 1022 (D.C. Cir. 2009). The present case is thus **a test of both the substance of the right granted in Boumediene and the role of this Court in ensuring faithful implementation of its prior decisions**. Although this Court’s rulings only have the force of law in the U.S., **foreign governments will take note of the decision in the present case and use the precedent** set by this Court to guide their actions in times of conflict. PILPG has advised over two dozen foreign states on peace negotiations and post-conflict constitution drafting, as well as all of the international war crimes tribunals. Through providing pro bono legal assistance to foreign governments and judiciaries, PILPG has observed the important role this Court and U.S. precedent serve in promoting rule of law in foreign states. In Uganda, for example, the precedent established by this Court in Hamdan v. Rumsfeld, 548 U.S. 557 (2006), and Boumediene, influenced judges and legislators to incorporate the principles of judicial review and enforceability in their domestic war crimes bill. In Nepal, this Court has served as a model for the nascent judiciary. In Somaliland, the government relied heavily on U.S. terrorism legislation when drafting terrorism legislation for the region. And in the South Sudan peace process, the Sudan People’s Liberation Movement/Army (SPLM/A), the leading political party in the Government of Southern Sudan, relied on U.S. precedent to argue for the primacy of law and the importance of enforceability of previous adjudicative decisions in the5 Abyei Arbitration, one of the most important and contentious issues in the ongoing implementation of the peace agreement. Foreign judges also follow the work of this Court closely. In a number of the judicial training programs PILPG has conducted, foreign judges have asked PILPG detailed questions about the role of this Court in upholding rule of law during the war on terror. A review of foreign precedent confirms how closely foreign judges follow this Court. In numerous foreign states, and in the international war crimes tribunals, judges regularly cite the precedent of this Court to establish their own legitimacy, to shore up judicial authority against overreaching by powerful executives, and to develop a strong rule of law within their own legal systems. Given the significant influence of this Court on foreign governments and judiciaries, **a decision in Kiyemba implementing Boumediene will reaffirm this Court’s leadership in upholding the rule of law and promote respect for rule of law in foreign states** during times of conflict.6 ARGUMENT I. **KIYEMBA v. OBAMA IS A TEST OF SUPREME COURT LEADERSHIP IN UPHOLDING RULE OF LAW IN TIMES OF CONFLICT**. The precedent set by the Supreme Court in the present case will have a significant impact on the development of rule of law in foreign states. Foreign judicial, executive, and parliamentary bodies closely follow the work of this Court, and this Court’s previous decisions related to the war on terror have shaped how foreign states uphold the rule of law in times of conflict. Foreign governments and judiciaries will review this Court’s decision in the present case in light of those previous decisions. A decision in the present case implementing previous decisions of this Court **granting habeas rights to Guantanamo detainees is an opportunity for this Court to reaffirm to foreign governments that the U.S. is a leader and role model in upholding the rule of law** during times of conflict. Recent Supreme Court precedent established a clear role for the primacy of law in the U.S. war on terror. In particular, this Court’s landmark decision in Boumediene highlighted the critical role of the judiciary in a system dedicated to the rule of law, as well as the “indispensable” role of habeas corpus as a “time tested” safeguard of liberty. Boumediene v. Bush, 128 S.Ct. 2229, 2247, 2259 (2008). Around the globe, courts and governments took note of this Court’s stirring words: “Security subsists, too, in fidelity to freedom’s first principles. Chief among these are freedom from arbitrary and unlawful restraint and the personal liberty7 that is secured by adherence to the separation of powers. It is from these principles that the judicial authority to consider petitions for habeas corpus relief derives.” Id. at 2277. In contrast to the maxim silent enim leges inter arma (in times of conflict the law must be silent), this Court affirmed in Boumediene that “[t]he laws and Constitution are designed to survive, and remain in force, in extraordinary times. Liberty and security can be reconciled, and in our system they are reconciled within the framework of the law.” Id. Boumediene held that the detainees in the military prison at Guantanamo Bay are “entitled to the privilege of habeas corpus to challenge the legality of their detentions.” Id. at 2262. Inherent in that privilege is the right to a remedy if the detention is found to be unlawful. In the present case, the Petitioners, who had been found not to be enemy combatants, sought to exercise their privilege of habeas corpus. The Executive Branch conceded that there was no legal basis to continue to detain the Petitioners, that years of diligent effort to resettle them elsewhere had failed, and that there was no foreseeable path of release. The District Court implemented Boumediene, ordering that the Petitioners be brought to the courtroom to impose conditions of release. In re Guantanamo Bay Detainee Litigation, 581 F. Supp. 2d 33, 42-43 (D.C. Cir. 2008). The Court of Appeals reversed, with the majority concluding that the judiciary had no “power to require anything more” than the Executive’s representations that it was continuing efforts to find a foreign country willing to admit Petitioners. Kiyemba v. Obama, 555 F.3d 1022, 1029 (D.C. Cir. 2009). The Court of Appeals’ decision effectively narrowed Boumediene to such a degree that it rendered the ruling hollow. Circuit Judge Rogers recognized this in her dissent, opining that the majority’s analysis “was not faithful to Boumediene.” Id. at 1032 (Roberts, J., dissenting). Given the Court of Appeals’ attempt to narrow Boumediene, Kiyemba v. Obama is a test of this Court’s role in upholding the primacy of law in times of conflict. A decision in favor of the Petitioners in Kiyemba will reaffirm this Court’s leadership in upholding the rule of law and promote respect for rule of law in foreign states during times of conflict. II. PILPG’S EXPERIENCE ADVISING FOREIGN GOVERNMENTS AND JUDICIARIES ILLUSTRATES THE IMPORTANCE OF SUPREME COURT PRECEDENT IN PROMOTING RULE OF LAW IN FOREIGN STATES DURING TIMES OF CONFLICT. During PILPG’s work providing pro bono legal assistance to foreign governments and judiciaries on the rule of law in conflict and post-conflict settings, clients frequently request guidance on U.S. laws and the role of the judiciary in the U.S. system of governance. In recent years, as states have watched the U.S. tackle the legal issues surrounding the war on terror, foreign governments and judiciaries have expressed keen interest in, and have demonstrated reliance on, the legal mechanisms the U.S. has adopted to address the challenges presented in this new form of conflict. The U.S. Government, under the guidance of this Court, has set a strong example for upholding the rule of law during times of conflict, and foreign governments have followed this lead.

The plan destroys the war on terror—undermines intel gathering and crisis response

Carafano, 7

(PhD & Assistant Director of the Kathryn and Shelby Cullom Davis Institute for International Studies, “The War on Terrorism: Habeas Corpus On and Off the Battlefield,” 7/5, http://www.heritage.org/research/reports/2007/07/the-war-on-terrorism-habeas-corpus-on-and-off-the-battlefield)

Impeding the Effectiveness of Military Operations

Soldiers have a number of equally compelling responsibilities in war: accomplishing the mission, safeguarding innocents, and protecting their fellow soldiers. These tasks are difficult enough. Soldiers should not be required to provide to unlawful combatants, in the same manner and to the same extent as would be expected of a civil court, the full array of civil protections afforded to U.S. citizens by the Constitution and created by judges since the 1960s. For example, it is highly unrealistic to expect soldiers during active operations to collect evidence and insure the integrity of the chain of custody for that evidence. American soldiers would effectively face a Hobson's choice: on one hand, win the war, bring fellow soldiers home, and safeguard innocents; or, on the other hand, meet novel legal standards that might result in prematurely releasing war criminals who will go back to the battlefield. Crippling Intelligence Gathering **Gaining timely, actionable information is the most powerful weapon in uncovering and thwarting terrorist plots. Requiring the armed forces to place detainees under a civilian legal process will severely restrict their access to detainees and, in turn, cripple their capacity to obtain intelligence through legitimate, lawful interrogation**. Military authorities are giving Gitmo detainees treatment that is as good as or better than that typically afforded to U.S.-held POWs. The only real difference is that Gitmo detainees may be interrogated for more than name, rank, and serial number. Unnecessary Burdens Changing the legal framework governing unlawful combatants is simply unnecessary. The military is already meeting its obligations to deal justly with individuals in its custody. Since the inception of the Geneva Conventions, no country has ever given automatic habeas corpus rights to POWs. Furthermore, such action is not required by the U.S. Constitution. The Supreme Court ruled in 2004 that, at most, some detainees were covered by a statutory privilege to habeas corpus. The Court concluded, in other words, that Congress had implicitly conferred habeas corpus rights to certain individuals. However, the Military Commissions Act of 2006 repealed that privilege and, so far, Congress has not acted to restore it. The Department of Defense already operates two tribunals that safeguard the legal rights of detainees. The Combatant Status Review Tribunal (CSRT) uses a formal process to determine whether detainees meet the criteria to be designated as enemy combatants. Tribunals known as Administrative Review Boards (ARB) ensure that enemy combatants are not held any longer than necessary. Both processes operate within the confines of traditional law-of-war tribunals and are also subject to the appeals process and judicial review. In addition, Congress has established a process under the Military Commissions Act to allow the military to try any non-U.S. detainees for war crimes they are alleged to have committed. Conclusion Imposing U.S. civil procedures over the conduct of armed conflict **will damage national security and make combat more dangerous for soldiers and civilians alike.** The drive to do so is based on erroneous views about the Constitution, the United States' image abroad, and the realities of war. U.S. military legal processes are on par with or exceed the best legal practices in the world. While meeting the needs of national security, the system respects individuals' rights and offers unlawful enemy combatants a fundamentally fair process that is based on that afforded to America's own military men and women. Having proven itself in past conflicts, **the current legal framework can continue to do so in a prolonged war against terrorism.**

Causes nuclear terror—extinction

Hellman 8 (Martin E. Hellman, emeritus prof of engineering @ Stanford, “Risk Analysis of Nuclear Deterrence” SPRING 2008 THE BENT OF TAU BETA PI, <http://www.nuclearrisk.org/paper.pdf>)

The threat of nuclear terrorism looms much larger in the public’s mind than the threat of a full-scale nuclear war, yet this article focuses primarily on the latter. An explanation is therefore in order before proceeding. A terrorist attack involving a nuclear weapon would be a catastrophe of immense proportions: “A 10-kiloton bomb detonated at Grand Central Station on a typical work day would likely kill some half a million people, and inflict over a trillion dollars in direct economic damage. America and its way of life would be changed forever.” [Bunn 2003, pages viii-ix]. The likelihood of such an attack is also significant. Former Secretary of Defense William Perry has estimated the chance of a nuclear terrorist incident within the next decade to be roughly 50 percent [Bunn 2007, page 15]. David Albright, a former weapons inspector in Iraq, estimates those odds at less than one percent, but notes, “We would never accept a situation where the chance of a major nuclear accident like Chernobyl would be anywhere near 1% .... A nuclear terrorism attack is a low-probability event, but we can’t live in a world where it’s anything but extremely low-probability.” [Hegland 2005]. In a survey of 85 national security experts, Senator Richard Lugar found a median estimate of 20 percent for the “probability of an attack involving a nuclear explosion occurring somewhere in the world in the next 10 years,” with 79 percent of the respondents believing “it more likely to be carried out by terrorists” than by a government [Lugar 2005, pp. 14-15]. I support increased efforts to reduce the threat of nuclear terrorism, but that is not inconsistent with the approach of this article. Because terrorism is one of the potential trigger mechanisms for a full-scale nuclear war, the risk analyses proposed herein will include estimating the risk of nuclear terrorism as one component of the overall risk. If that risk, the overall risk, or both are found to be unacceptable, then the proposed remedies would be directed to reduce which- ever risk(s) warrant attention. Similar remarks apply to a number of other threats (e.g., nuclear war between the U.S. and China over Taiwan). his article would be incomplete if it only dealt with the threat of nuclear terrorism and neglected the threat of full- scale nuclear war. If both risks are unacceptable, an effort to reduce only the terrorist component would leave humanity in great peril. In fact, society’s almost total neglect of the threat of full-scale nuclear war makes studying that risk all the more important. The cosT of World War iii The danger associated with nuclear deterrence depends on both the cost of a failure and the failure rate.3 This section explores the cost of a failure of nuclear deterrence, and the next section is concerned with the failure rate. While other definitions are possible, this article defines a failure of deterrence to mean a full-scale exchange of all nuclear weapons available to the U.S. and Russia, an event that will be termed World War III. Approximately 20 million people died as a result of the first World War. World War II’s fatalities were double or triple that number—chaos prevented a more precise deter- mination. In both cases humanity recovered, and the world today bears few scars that attest to the horror of those two wars. Many people therefore implicitly believe that a third World War would be horrible but survivable, an extrapola- tion of the effects of the first two global wars. In that view, World War III, while horrible, is something that humanity may just have to face and from which it will then have to recover. In contrast, some of those most qualified to assess the situation hold a very different view. In a 1961 speech to a joint session of the Philippine Con- gress, General Douglas MacArthur, stated, “Global war has become a Frankenstein to destroy both sides. … If you lose, you are annihilated. If you win, you stand only to lose. No longer does it possess even the chance of the winner of a duel. It contains now only the germs of double suicide.” Former Secretary of Defense Robert McNamara ex- pressed a similar view: “If deterrence fails and conflict develops, the present U.S. and NATO strategy carries with it a high risk that Western civilization will be destroyed” [McNamara 1986, page 6]. More recently, George Shultz, William Perry, Henry Kissinger, and Sam Nunn4 echoed those concerns when they quoted President Reagan’s belief that nuclear weapons were “totally irrational, totally inhu- mane, good for nothing but killing, possibly destructive of life on earth and civilization.” [Shultz 2007] Official studies, while couched in less emotional terms, still convey the horrendous toll that World War III would exact: “The resulting deaths would be far beyond any precedent. Executive branch calculations show a range of U.S. deaths from 35 to 77 percent (i.e., 79-160 million dead) … a change in targeting could kill somewhere between 20 million and 30 million additional people on each side .... These calculations reflect only deaths during the first 30 days. Additional millions would be injured, and many would eventually die from lack of adequate medical care … millions of people might starve or freeze during the follow- ing winter, but it is not possible to estimate how many. … further millions … might eventually die of latent radiation effects.” [OTA 1979, page 8] This OTA report also noted the possibility of serious ecological damage [OTA 1979, page 9], a concern that as- sumed a new potentiality when the TTAPS report [TTAPS 1983] proposed that the ash and dust from so many nearly simultaneous nuclear explosions and their resultant fire- storms could usher in a nuclear winter that might erase homo sapiens from the face of the earth, much as many scientists now believe the K-T Extinction that wiped out the dinosaurs resulted from an impact winter caused by ash and dust from a large asteroid or comet striking Earth. The TTAPS report produced a heated debate, and there is still no scientific consensus on whether a nuclear winter would follow a full-scale nuclear war. Recent work [Robock 2007, Toon 2007] suggests that even a limited nuclear exchange or one between newer nuclear-weapon states, such as India and Pakistan, could have devastating long-lasting climatic consequences due to the large volumes of smoke that would be generated by fires in modern megacities. While it is uncertain how destructive World War III would be, prudence dictates that we apply the same engi- neering conservatism that saved the Golden Gate Bridge from collapsing on its 50th anniversary and assume that preventing World War III is a necessity—not an option.

## Afghanistan

They don’t solve—ICG evidence says multiple structural barriers to effective Afghan courts like judge training

#### 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.

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.

No indo-pak war

Ganguly, 8

[Sumit Ganguly is a professor of political science and holds the Rabindranath Tagore Chair at Indiana University, Bloomington. “Nuclear Stability in South Asia,” International Security, Vol. 33, No. 2 (Fall 2008), pp. 45–70]

As the outcomes of the 1999 and 2001–02 crises show, nuclear deterrence is robust in South Asia. Both crises were contained at levels considerably short of full-scale war. That said, as Paul Kapur has argued, Pakistan’s acquisition of a nuclear weapons capability may well have emboldened its leadership, secure in the belief that India had no good options to respond. India, in turn, has been grappling with an effort to forge a new military doctrine and strategy to enable it to respond to Pakistani needling while containing the possibilities of conflict escalation, especially to the nuclear level.78 Whether Indian military planners can fashion such a calibrated strategy to cope with Pakistani probes remains an open question. This article’s analysis of the 1999 and 2001–02 crises does suggest, however, that nuclear deterrence in South Asia is far from parlous, contrary to what the critics have suggested. Three specific forms of evidence can be adduced to argue the case for the strength of nuclear deterrence. First, there is a serious problem of conflation in the arguments of both Hoyt and Kapur. Undeniably, Pakistan’s willingness to provoke India has increased commensurate with its steady acquisition of a nuclear arsenal. This period from the late 1980s to the late 1990s, however, also coincided with two parallel developments that equipped Pakistan with the motives, opportunities, and means to meddle in India’s internal affairs—particularly in Jammu and Kashmir. The most important change that occurred was the end of the conflict with the Soviet Union, which freed up military resources for use in a new jihad in Kashmir. This jihad, in turn, was made possible by the emergence of an indigenous uprising within the state as a result of Indian political malfeasance.79 Once the jihadis were organized, trained, armed, and unleashed, it is far from clear whether Pakistan could control the behavior and actions of every resulting jihadist organization.80 Consequently, although the number of attacks on India did multiply during the 1990s, it is difficult to establish a firm causal connection between the growth of Pakistani boldness and its gradual acquisition of a full-fledged nuclear weapons capability.

Second, India did respond with considerable force once its military planners realized the full scope and extent of the intrusions across the Line of Control. Despite the vigor of this response, India did exhibit restraint. For example, Indian pilots were under strict instructions not to cross the Line of Control in pursuit of their bombing objectives.81 They adhered to these guidelines even though they left them more vulnerable to Pakistani ground ªre.82 The Indian military exercised such restraint to avoid provoking Pakistani fears of a wider attack into Pakistan-controlled Kashmir and then into Pakistan itself. Indian restraint was also evident at another level. During the last war in Kashmir in 1965, within a week of its onset, the Indian Army horizontally escalated with an attack into Pakistani Punjab. In fact, in the Punjab, Indian forces successfully breached the international border and reached the outskirts of the regional capital, Lahore. The Indian military resorted to this strategy under conditions that were not especially propitious for the country. Prime Minister Jawaharlal Nehru, India’s first prime minister, had died in late 1964. His successor, Lal Bahadur Shastri, was a relatively unknown politician of uncertain stature and standing, and the Indian military was still recovering from the trauma of the 1962 border war with the People’s Republic of China.83 Finally, because of its role in the Cold War, the Pakistani military was armed with more sophisticated, U.S.-supplied weaponry, including the F-86 Sabre and the F-104 Starfighter aircraft. India, on the other hand, had few supersonic aircraft in its inventory, barring a small number of Soviet-supplied MiG-21s and the indigenously built HF-24.84 Furthermore, the Indian military remained concerned that China might open a second front along the Himalayan border. Such concerns were not entirely chimerical, because a Sino-Pakistani entente was under way. Despite these limitations, the Indian political leadership responded to Pakistani aggression with vigor and granted the Indian military the necessary authority to expand the scope of the war. In marked contrast to the politico-military context of 1965, in 1999 India had a self-confident (if belligerent) political leadership and a substantially more powerful military apparatus. Moreover, the country had overcome most of its Nehruvian inhibitions about the use of force to resolve disputes.85 Furthermore, unlike in 1965, India had at least two reserve strike corps in the Punjab in a state of military readiness and poised to attack across the border if given the political nod.86 Despite these significant differences and advantages, the Indian political leadership chose to scrupulously limit the scope of the conflict to the Kargil region. As K. Subrahmanyam, a prominent Indian defense analyst and political commentator, wrote in 1993:.

The awareness on both sides of a nuclear capability that can enable either country to assemble nuclear weapons at short notice induces mutual caution. This caution is already evident on the part of India. In 1965, when Pakistan carried out its “Operation Gibraltar” and sent in infiltrators, India sent its army across the cease-fire line to destroy the assembly points of the infiltrators. That escalated into a full-scale war. In 1990, when Pakistan once again carried out a massive infiltration of terrorists trained in Pakistan, India tried to deal with the problem on Indian territory and did not send its army into Pakistan-occupied Kashmir.87

#### 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**.

## Abstention

Arm sales inevitable—their author

Klare 13 (Michael Klare is a professor of peace and world security studies at Hampshire College The Booming Global Arms Trade Is Creating a New Cold War http://www.motherjones.com/politics/2013/05/global-arms-trade-new-cold-war)

International weapons sales have proved to be a thriving global business in economically tough times. According to the Congressional Research Service (CRS), such sales reached an impressive $85 billion in 2011, nearly double the figure for 2010. This surge in military spending reflected efforts by major Middle Eastern powers to bolster their armories with modern jets, tanks, and missiles—a process constantly encouraged by the leading arms manufacturing countries (especially the US and Russia) as it helps keep domestic production lines humming. However, this familiar if always troubling pattern may soon be overshadowed by a more ominous development in the global arms trade: the revival of far more targeted Cold War-style weapons sales aimed at undermining rivals and destabilizing regional power balances. The result, inevitably, will be a more precarious world. Arms sales have always served multiple functions. Valuable trade commodities, **weapons can prove immensely lucrative for companies that specialize in making such products.** Between 2008 and 2011, for example, US firms sold $146 billion worth of military hardware to foreign countries, according to the latest CRS figures. Crucially, such sales help ensure that domestic production lines remain profitable even when government acquisitions slow down at home. But arms sales have also served as valuable tools of foreign policy—as enticements for the formation of alliances, expressions of ongoing support, and a way to lure new allies over to one's side. Powerful nations, seeking additional allies, use such sales to win the allegiance of weaker states; weaker states, seeking to bolster their defenses, look to arms deals as a way to build ties with stronger countries, or even to play one suitor off another in pursuit of the most sophisticated arms available.

No adventurism – We won’t start wars just because we can

Brooks 12, Stephen, Associate Professor of Government at Dartmouth College, John Ikenberry is the Albert G. Milbank Professor of Politics and International Affairs at Princeton University in the Department of Politics and the Woodrow Wilson School of Public and International Affairs, William C. Wohlforth is the Daniel Webster Professor in the Department of Government at Dartmouth College “Don’t Come Home America: The Case Against Retrenchment,” International Security, Vol. 37, No. 3 (Winter 2012/13), pp. 7–51

temptation. For many advocates of retrenchment, the mere possession of peerless, globe-girdling military capabilities leads inexorably to a dangerous expansion of U.S. definitions of national interest that then drag the country into expensive wars. 64 For example, sustaining ramified, long-standing alliances such as NATO leads to mission creep: the search for new roles to keep the alliance alive. Hence, critics allege that NATO’s need to “go out of area or out of business” led to reckless expansion that alienated Russia and then to a heedless broadening of interests to encompass interventions such as those in Bosnia, Kosovo, and Libya. In addition, peerless military power creates the temptation to seek total, non-Clausewitzian solutions to security problems, as allegedly occurred in Iraq and Afghanistan. 65 Only a country in possession of such awesome military power and facing no serious geopolitical rival would fail to be satisfied with partial solutions such as containment and instead embark on wild schemes of democracy building in such unlikely places. In addition, critics contend, the United States’ outsized military creates a sense of obligation to use it if it might do good, even in cases where no U.S. interests are engaged. As Madeleine Albright famously asked Colin Powell, “What’s the point of having this superb military you’re always talking about, if we can’t use it?” Undoubtedly, possessing global military intervention capacity expands opportunities to use force. If it were truly to “come home,” the United States would be tying itself to the mast like Ulysses, rendering itself incapable of succumbing to temptation. Any defense of deep engagement must acknowledge that it increases the opportunity and thus the logical probability of U.S. use of force compared to a grand strategy of true strategic disengagement. Of course, if the alternative to deep engagement is an over-the-horizon intervention stance, then the temptation risk would persist after retrenchment. The main problem with the interest expansion argument, however, is that it essentially boils down to one case: Iraq. Sixty-seven percent of all the casualties and 64 percent of all the budget costs of all the wars the United States has fought since 1990 were caused by that war. Twenty-seven percent of the causalities and 26 percent of the costs were related to Operation Enduring Freedom in Afghanistan. All the other interventions—the 1990–91 Persian Gulf War, the subsequent airstrike campaigns in Iraq, Somalia, Bosnia, Haiti, Kosovo, Libya, and so on—account for 3 percent of the casualties and 10 percent of the costs. 66 Iraq is the outlier not only in terms of its human and material cost, but also in terms of the degree to which the overall burden was shouldered by the United States alone. As Beckley has shown, in the other interventions allies either spent more than the United States, suffered greater relative casualties, or both. In the 1990–91 Persian Gulf War, for example, the United States ranked fourth in overall casualties (measured relative to population size) and fourth in total expenditures (relative to GDP). In Bosnia, European Union (EU) budget outlays and personnel deployments ultimately swamped those of the United States as the Europeans took over postconflict peacebuilding operations. In Kosovo, the United States suffered one combat fatality, the sole loss in the whole operation, and it ranked sixth in relative monetary contribution. In Afghanistan, the United States is the number one financial contributor (it achieved that status only after the 2010 surge), but its relative combat losses rank fifth. 67 In short, the interest expansion argument would look much different without Iraq in the picture. There would be no evidence for the United States shouldering a disproportionate share of the burden, and the overall pattern of intervention would look “unrestrained” only in terms of frequency, not cost, with the debate hinging on whether the surge in Afghanistan was recklessly unrestrained. 68 How emblematic of the deep engagement strategy is the U.S. experience in Iraq? The strategy’s supporters insist that Iraq was a Bush/neoconservative aberration; certainly, there are many supporters of deep engagement who strongly opposed the war, most notably Barack Obama. Against this view, opponents claim that it or something close to it was inevitable given the grand strategy. Regardless, the more important question is whether continuing the current grand strategy condemns the United States to more such wars. The Cold War experience suggests a negative answer. After the United States suffered a major disaster in Indochina (to be sure, dwarfing Iraq in its human toll), it responded by waging the rest of the Cold War using proxies and highly limited interventions. Nothing changed in the basic structure of the international system, and U.S. military power recovered by the 1980s, yet the United States never again undertook a large expeditionary operation until after the Cold War had ended. All indications are that Iraq has generated a similar effect for the post–Cold War era. If there is an Obama doctrine, Dominic Tierney argues, it can be reduced to “No More Iraqs.” 69 Moreover, the president’s thinking is reflected in the Defense Department’s current strategic guidance, which asserts that “U.S. forces will no longer be sized to conduct large-scale, prolonged stability operations.” 70 Those developments in Washington are also part of a wider rejection of the Iraq experience across the American body politic, which political scientist John Mueller dubbed the “Iraq Syndrome.” 71 Retrenchment advocates would need to present much more argumentation and evidence to support their pessimism on this subject.

No escalation – disagreements remain limited

Weitz 11 (Richard, senior fellow at the Hudson Institute and a World Politics Review senior editor 9/27/2011, “Global Insights: Putin not a Game-Changer for U.S.-Russia Ties,” <http://www.scribd.com/doc/66579517/Global-Insights-Putin-not-a-Game-Changer-for-U-S-Russia-Ties>)

Fifth, there will inevitably be areas of conflict between Russia and the United States regardless of who is in the Kremlin. Putin and his entourage can never be happy with having NATO be Europe's most powerful security institution, since Moscow is not a member and cannot become one. Similarly, the Russians will always object to NATO's missile defense efforts since they can neither match them nor join them in any meaningful way. In the case of Iran, Russian officials genuinely perceive less of a threat from Tehran than do most Americans, and Russia has more to lose from a cessation of economic ties with Iran -- as well as from an Iranian-Western reconciliation. On the other hand, these conflicts can be managed, since they will likely **remain limited and compartmentalized**. Russia and the West **do not have fundamentally conflicting vital interests of the kind countries would go to war over**. And as the Cold War demonstrated, nuclear weapons are a great pacifier under such conditions. Another novel development is that Russia is much more integrated into the international economy and global society than the Soviet Union was, and Putin's popularity depends heavily on his economic track record. Beyond that, there are objective criteria, such as the smaller size of the Russian population and economy as well as the difficulty of controlling modern means of social communication, that will constrain whoever is in charge of Russia.

#### No impact

Fettweis, Asst Prof Poli Sci – Tulane, Asst Prof National Security Affairs – US Naval War College, ‘7

(Christopher, “On the Consequences of Failure in Iraq,” *Survival*, Vol. 49, Iss. 4, December, p. 83 – 98)

Without the US presence, a second argument goes, nothing would prevent Sunni-Shia violence from sweeping into every country where the religious divide exists. A Sunni bloc with centres in Riyadh and Cairo might face a Shia bloc headquartered in Tehran, both of which would face enormous pressure from their own people to fight proxy wars across the region. In addition to intra-Muslim civil war, cross-border warfare could not be ruled out. Jordan might be the first to send troops into Iraq to secure its own border; once the dam breaks, Iran, Turkey, Syria and Saudi Arabia might follow suit. The Middle East has no shortage of rivalries, any of which might descend into direct conflict after a destabilising US withdrawal. In the worst case, Iran might emerge as the regional hegemon, able to bully and blackmail its neighbours with its new nuclear arsenal. Saudi Arabia and Egypt would soon demand suitable deterrents of their own, and a nuclear arms race would envelop the region. Once again, however, none of these outcomes is particularly likely.

Wider war

No matter what the outcome in Iraq, the region is not likely to devolve into chaos. Although it might seem counter-intuitive, by most traditional measures the Middle East is very stable. Continuous, uninterrupted governance is the norm, not the exception; most Middle East regimes have been in power for decades. Its monarchies, from Morocco to Jordan to every Gulf state, have generally been in power since these countries gained independence. In Egypt Hosni Mubarak has ruled for almost three decades, and Muammar Gadhafi in Libya for almost four. The region's autocrats have been more likely to die quiet, natural deaths than meet the hangman or post-coup firing squads. Saddam's rather unpredictable regime, which attacked its neighbours twice, was one of the few exceptions to this pattern of stability, and he met an end unusual for the modern Middle East. Its regimes have survived potentially destabilising shocks before, and they would be likely to do so again.

The region actually experiences very little cross-border warfare, and even less since the end of the Cold War. Saddam again provided an exception, as did the Israelis, with their adventures in Lebanon. Israel fought four wars with neighbouring states in the first 25 years of its existence, but none in the 34 years since. Vicious civil wars that once engulfed Lebanon and Algeria have gone quiet, and its ethnic conflicts do not make the region particularly unique.

The biggest risk of an American withdrawal is intensified civil war in Iraq rather than regional conflagration. Iraq's neighbours will likely not prove eager to fight each other to determine who gets to be the next country to spend itself into penury propping up an unpopular puppet regime next door. As much as the Saudis and Iranians may threaten to intervene on behalf of their co-religionists, they have shown no eagerness to replace the counter-insurgency role that American troops play today. If the United States, with its remarkable military and unlimited resources, could not bring about its desired solutions in Iraq, why would any other country think it could do so?17

Common interest, not the presence of the US military, provides the ultimate foundation for stability. All ruling regimes in the Middle East share a common (and understandable) fear of instability. It is the interest of every actor - the Iraqis, their neighbours and the rest of the world - to see a stable, functioning government emerge in Iraq. If the United States were to withdraw, increased regional cooperation to address that common interest is far more likely than outright warfare.

#### Empirics go neg

Kevin Drum, Staff Writer for the Washington Monthly, 9/9/’7

(<http://www.washingtonmonthly.com/archives/individual/2007_09/012029.php>)

Having admitted, however, that the odds of a military success in Iraq are almost impossibly long, Chaos Hawks nonetheless insist that the U.S. military needs to stay in Iraq for the foreseeable future. Why? Because if we leave the entire Middle East will become a bloodbath. Sunni and Shiite will engage in mutual genocide, oil fields will go up in flames, fundamentalist parties will take over, and al-Qaeda will have a safe haven bigger than the entire continent of Europe. Needless to say, this is nonsense. Israel has fought war after war in the Middle East. Result: no regional conflagration. Iran and Iraq fought one of the bloodiest wars of the second half the 20th century. Result: no regional conflagration. The Soviets fought in Afghanistan and then withdrew. No regional conflagration. The U.S. fought the Gulf War and then left. No regional conflagration. Algeria fought an internal civil war for a decade. No regional conflagration.

#### No escalation—assumes their warrants

Xudong ‘12

Han, professor at the PLA University of National Defense, “Risk of armed Asian conflict on the rise, but trade links rule out war,” <http://www.globaltimes.cn/content/735653.shtml>

Island sovereignty and maritime interest disputes in the Asia-Pacific region have attracted an increasing amount of global attention recently. With external powers ready to intervene, conflicts among the relevant parties have intensified and the unrest has gotten worse. If the trend cannot be curbed, armed conflicts are more likely. With the US pivot to the Asia-Pacific region and the global economic focus moving toward the region, the region has gradually entered into a troubled period. The US has set the region as the focus of its overseas military deployment and is taking advantage of the unrest in the region so as to adjust the power structure. Moreover, the US has carried out military exercises with relevant countries to create unrest and instigated them to confront neighboring countries. For example, over the Huangyan Island dispute, the US backs the Philippines through holding joint military exercises on island defense, as it has done with Japan over the Diaoyu Islands dispute. This is the usual tactic by the US to back relevant countries' confront actions with China. As the territorial disputes among relevant countries are closely related to core national interests, no involved parties will compromise easily. Relevant countries usually use comprehensive national strength, especially military strength, as a lever to adjust their interests. Take the dispute over the South Kuril Islands between Russia and Japan. Russia has increased its military presence on the islands and used military power to deal with Japanese provocations. Similarly, South Korea has begun to deploy its forces on Dokdo Islands, where it has disputes with Japan. At present, while China has repeatedly advocated a peaceful settlement of the Diaoyu Islands dispute, the nation has sufficient confidence and courage to face up to the challenges and safeguard its sovereignty and interests. All those conflicts mentioned above have the potential to further deteriorate. After all, international politics is the continuation and manifestation of domestic politics. Since the beginning of this year, key players in hot issues of the Asia-Pacific region all have been confronted with the sensitivity of domestic power transition. Russia had its presidential election in March. And South Korea, Japan, the US and China will soon see elections or leadership change. At such a critical moment, attitudes on safeguarding the core interests of the nation had been used as a stake to gain support, as particularly seen in Japan. Currently, the right-wing forces in Japan are promoting the campaigners to form a consistent approach over the Diaoyu Islands dispute, that is, to take an increasingly tough stance and policy. Japan hasn't made a full reflection on its war crimes. The right-wing frequently blusters about the use of force to solve the territorial disputes. This adds to the uncertainty of the security situation in the Asia-Pacific region. But one certain thing is that a war is unlikely in the Asia-Pacific. Even if the parties in a dispute had a collision of forces, it wouldn't develop into full-blown war. The use of force is the highest means but the last resort to maintain core interests of nations. The current situation is totally different from other periods in history. With global economic integration, the expanding of armed conflicts will be no good to any country involved. Therefore, the relevant countries all hope the scale of conflicts could be restrained. Besides, the US is not willing to see a regional war in the Asia-Pacific. A turbulent situation without war is in its best interests. From this perspective, the Asia-Pacific region does face the potential danger of low intensity conflicts and operations. The possibility of an armed collision is on the rise, but the scale will be limited

# 2NC

### 2nc ov

Outweighs sequester. Key to every facet of naval power

Popeo et al ‘8

Daniel, Paul Kamenar, Washington Legal Foundation, Andrew McBride, Thomas McCarthy, Andrew Miller, William R. Dailey, Wiley Rein LLP, “Brief for Amici Curiae The Washington Legal Foundation, Rear Admiral James J. Carey, U.S. Navy (Ret.), National Defense Committee, and Allied Educational Foundation in Support of Petitioners,” http://www.wlf.org/upload/07-1239winter.pdf

App. 324a. The Navy's Carrier Strike Groups and Expeditionary Strike Groups, the survivability of which is dependent on **active sonar**, are instruments of national policy "through participation in combat operations . . . , through bilateral exercise participation with partner nations around the world, engagement with officials and civilians of other nations through port visits, and crisis response or humanitarian relief assistance." App. 321a-322a. Furthermore, it is only through maintaining effective antisubmarine warfare capability that the United States can convince its potential adversaries that they cannot prevail. App. 315a. Potential adversaries in the Asia-Pacific region and the Middle East operate submarines in their navies, App. 270a, and the Arabian Gulf, Strait of Malacca, Sea of Japan, and the Yellow Sea, consistent areas of deployment for Navy strike groups, all contain water less than 200 meters deep. App. 331a. These shallow waters are optimal operating areas for the diesel-electric submarines that "pose the primary threat to the U.S. Navy's ability to perform a number of critically necessary missions essential to both peacetime and wartime operations." App. 271a (statement of Rear Admiral John M. Bird). As a result, a[a]nything short of full [antisubmarine warfare] competency" by the U.S. Navy threatens our national security, by "convey [ing] the message that we may be vulnerable, and may embolden our adversaries." App. 315a (statement of Rear Admiral Ted N. Branch). Antisubmarine warfare training in Southern California is an absolute necessity for the competency of Navy's Pacific Fleet, as antisubmarine warfare is the Fleet's number one war-fighting priority. App. 270a (statement of Rear Admiral John M. Bird). If the Pacific Fleet were prevented from properly training in Southern California, a deterioration of our Nation's naval and military readiness would surely result. Forty percent of the Navy's active aircraft carriers are homeported on the West coast, see App. 317a-318a, and there is no suitable alternative training location available to ships based on that coast. App. 322a. "Sending extra ships to the east coast would place an unacceptable burden on the port infrastructure that would be required to support them." App. 322a (statement of Rear Admiral Ted N. Branch). If the Navy were forced to make the impractical decision to train West coast ships on the East coast, "[m]aintenance facilities would be over capacity, slowing repairs and dramatically increasing costs." App. 323a. As a result, it is not feasible for West-coast based ships to use the training facilities and ranges on the East coast to achieve MFAS certification. App. 322a. Over 40 years of naval training in Southern California testify to this fact. App. 272a.

### PQD/War Powers Turns Case

#### PQD facilitates political branch deliberation that solves unconstrained executive

Broughton, 7

(Law Prof-UDM Mercy, “Judicializing Federative Power,” http://law.bepress.com/expresso/eps/2010/)

My contention is not simply that courts should be more deferential-or in some instances entirely uninvolved-in many of these cases, although I adhere to these notions. Scholars like Rachel Barkow15 and Jide Nzelibe, 116 have persuasively advocated a robust **political question doctrine** and doctrines of deference that ensure the courts will only exercise their ability to act in cases where they are specially empowered or otherwise competent to do so. And in response to those who contend that these cases are within the judicial ken because "this is what judges do" (consider Judge Tatel's concurring opinion in Campbell), those like Justice Thomas respond with a compelling assertion grounded in sensible notions of institutional competence: unlike many cases involving domestic affairs, **judges lack sufficient competence, expertise, and facilities** to delve too deeply into war powers problems."8 In fact, the notion espoused by critics of the doctrine, notably Professor Franck, who argue that the political question approach undermines the rule of law which demands a role for judges in addressing constitutional questions related to the allocation of war and foreign affairs powers, must face "insuperable obstacles," as Professor Nzelibe has explained;"9 notably, its incompatibility with constitutional text, structure, and history. Courts are not the exclusive interpreters of the Constitution; indeed, as Hamilton, Madison, and Marshall explained in the early years of the Republic after ratification, 120 the political branches play an important role in constitutional deliberation and interpretation, 12' and there are multiple provisions of the Constitution that are not amenable to constitutional adjudication in the courts (for example, a congressional determination as to what constitutes "high Crimes or Misdemeanors"1 22 or whether the President has properly exercised his veto powers1 23). Moreover, in addition to the historical constitutional practice of judicial non-intervention in war powers controversies and the Constitution's structural design for **allow**ing **the Congress and President to engage in their own constitutional deliberation** on the scope and nature of their respective war powers, we can point to the Constitutional Convention, at which Madison argued that the judicial power should extend only to cases of a 'Judiciary Nature," 24 and at which the Framers explicitly rejected a proposed Council of Revision that would have given the Judiciary a joint role in exercising veto power with the Executive. 2 Also, as a textual and structural matter, we know that the Framers approved the placement of certain categories of power belonging to one branch in another branch (for example, the Senate enjoys a judicial power to try impeachments126 and the President enjoys legislative power to return a bill and to recommend legislation to Congress 27). Yet nowhere in Article III or elsewhere do the Framers give any legislative or executive power to the Judiciary (a structural choice further reflected in the Convention's rejection of the Council of Revision). An approach grounded in **a robust political question doctrine is** also sensible especially when we think about the nature of federative power theory. Locke based the federative power upon the kind of authority man had in the state of nature; whereas law could direct the exercise of executive power, federative power was not amenable to such directives, but rather relied upon the exercise of prudence and discretion 128 (a notion reaffirmed by Publius and Pacificus). As the Hamdan decision foreshadows, judicial efforts to police such prudence and discretion will invariably involve the courts' own independent judgments about the normative propriety or acceptability of political action. This is not a judgment for politically independent courts. But beyond these doctrinal constraints-and the problem of competence that I, too, find persuasive as a reason for robust doctrines that **keep judicial review from doing mischief**-I advocate normative limitations on judicial review grounded in a constitutionalist conception of institutional structure and responsibility. My contention is that the judicialization of federative power-by which I mean a model of **judicial review that strictly** and aggressively **scrutinizes the constitutional allocation of** federative power or a particular exercise of federative power-**undermines the constitutional scheme for making, enforcing, and restraining American foreign policy**. These arrangements are preferable to judicial review because they respect the forms of the Constitution and are more consistent with the institutional structures that the Constitution envisions for the exercise of federative power. In this sense, it is disconcerting that Justice Thomas has so often spoken only for himself on this matter. Unfortunately, Americans have grown accustomed to resolving essentially political disputes in the courts, and the courts have only encouraged this phenomenon, so much so that today the Supreme Court is viewed as yet another political body, existing to satisfy the immediate appetites of a demanding public. 29 As The Deconstitutionalization of America explains, "the conviction that judicial actors are also political actors can have undesirable effects on the behavior of citizens.' ' 30 Thus, what emerges is a litigation culture that perpetually seeks out the Judiciary for relief from disagreeable policies, bypassing the complexity that accompanies coalitional politics and day-to-day policymaking. 13 War **and foreign affairs cases for most of our history have proven to be the exception**; no areas of law and public policy have provoked such ready employment of the doctrines of justiciability, or other moments of judicial deference, as war and foreign affairs. Thoughtful scholars like Professor Franck and Dean Koh have disparagingly described this history as "judicial abdication" or "judicial tolerance."'132 I prefer to think of it as prudent circumspection, a virtuous trait for a limited and independent Judiciary. But perhaps the war on terror cases foreshadow a change. I am reluctant to overstate the case; it is important to understand that none of these [the war on terror] cases were cases about the separation of powers in any direct sense, and their holdings did not concern directly the constitutional allocation of federative power. They are, admittedly, imperfect symbols of a shifting approach. Still, the aggressiveness of the Court's review, and of its rebuke of the President's asserted constitutional role, presents an ominous sign. The contemporary Supreme Court is all about courts. Far from prudently circumspect, this Court possesses an imperial understanding of its own role in the constitutional scheme (provoked by a citizenry that has been asking more and more of the federal government for some sixty years now). It assumes its competence (indeed, its superior judgment) in virtually all areas of political life, in ways that, as I have argued in a recent article concerning the Court's death penalty jurisprudence, signify a kind of judicial omnipotence and omniscience. 133 This is evident in the Court's death penalty cases, like Atkins v. Virginia134 and Raper v. Simmons, 3 5 where the Court constitutionalized the superiority of its moral and political views on capital punishment by holding that the Eighth Amendment contemplated that "in the end, our own judgment will be brought to bear on the question of the acceptability of the death penalty.... It is also evident in the Court's recent political gerrymandering cases. Although four justices have clearly articulated a sound basis for applying the political question doctrine to claims of political gerrymandering, a majority of the Court simply is not prepared to relinquish its power to supervise perceived political inequities in the drawing of legislative districts.137 Modesty, as Judge Posner notes, is not the order of the day in this Supreme Court. 13 The war on terror cases, and the Hamdan case in particular, also suggest that judicial modesty will not prevail in cases involving war-time political decisionmaking either. The difficulty, however, goes beyond the mere unseemliness of the Court's arrogance. **Aggressive judicial review** of cases that implicate the allocation and exercise of federative power **undermines not just the institutional role of the Court, but of our political institutions**, as well. As I have previously argued, in this emerging regime, courts, rather than political institutions, become primary mediating institutions for filtering out and moderating public passions and factious spirit.139 This kind of regime minimizes essential distance between governing institutions and the people. This distance, which the Constitution contemplates and makes real in its description of our institutions, provides the **space that institutions need to fulfill their responsibilities** (especially their most grave ones), space between the chaotic, often undisciplined cries of public opinion and the measured refinement of popular will through reason, rational deliberation, and sober judgment.'4° Leaders of the founding generation, like Hamilton, Madison, and Marshall, believed that courts should be cognizant of the demands of practical governance in a republic, allowing the political departments to function free of an imprudent Judiciary.' 4' Thus, the distance the Constitution provides for the executive is substantial (though modern practice has intolerably diminished it, too); the distance provided, indeed, mandated, for the Judiciary is even greater, and is **necessary to preserve not just the independence of the courts, but their circumspection**, as well. Montesquieu and Publius both remind us that **political liberty** requires that judicial power be separate from the politicalpowers vested in the legislature and executive. 4' By the same token, a regime of omnipotent judicial review also makes **practical governance** and the object of controlling the governed even more **burdensome**. Judicializing federative power diminishes the significance of the Constitution's commitment of competing foreign affairs powers to the political branches, the allocation of which Professor Yoo persuasively demonstrates in his recent scholarship.14 3 As I have argued elsewhere, **constitutional deliberation should be encouraged in the political branches**, each of which possesses an independent obligation to determine the Constitution's meaning.44 The political branches will be less likely to deliberate seriously about their respective constitutional roles when there exists the prospect of judicial relief and guidance from the courts. And particularly in circumstances where (as is usually the case) it is the President whose assertion of power is challenged, aggressive judicial review will also undermine the significance of the Constitution's provision for **political self-help**. Congress possesses three important checks on presidential overreaching: its power to fund foreign relations projects,145 its power to legislate (which includes investigative and oversight powers) ,46 and, often forgotten, its impeachment power.' 47 It can employ those checks **without a permission slip from the courts**.

#### Absentition is the vital internal link to deliberation—solves their impacts

Broughton 1

(Law Prof-UDM Mercy, “What Is It Good For--War Power, Judicial Review, and Constitutional Deliberation,” 54 Okla. L. Rev. 685, Winter)

**Judicial abstention from war powers disputes** can mitigate the effects of the judicial overhang by encouraging Congress and the President to think more seriously about constitutional structure."' In the Vietnam era, for example, Congress enacted the War Powers Resolution to assert its own constitutional prerogatives only after the courts had consistently refused to intervene. Perhaps this was no accident. Without resort to the judiciary, Congress was forced to take responsibility for using its Article I powers in its own defense. Whatever the other flaws of the War Powers Resolution, it at least represents Congress's assertiveness in attempting to define the boundaries of constitutional war power, as the Constitution provides. (Wther Congress got it right is a separate matter, beyond the scope of this article.) Similarly, rather than resort to the courts to challenge the constitutionality of the Resolution, presidents since Nixon have simply deployed troops at their discretion, forcing Congress to either authorize the action, reject such authorization, withdraw funding, or, perhaps as a last resort, impeach the President. Thus, the modem trend of cases leaving war powers controversies to the political branches has produced somewhat more **responsible political institutions**, though much work must still be done to truly effectuate the Constitution's vision of prudent and reasoned constitutional discourse among the Congress and the White House.' In keeping therefore with constitutional history and design, political actors best serve republican government when they give careful attention to constitutional boundaries and constitutional weapons in the course of adopting military and foreign policy. **Political actors will be more likely to do so if they have only themselves, and not the courts, to do the work.** IV. Conclusion There is much we can learn from Madison and Marshall, statesmen who understood the value of prudent constitutional reasoning to the practical governance of a large republic. Importantly, not all such reasoning occurs in the courts, nor should it. Those matters not "of a judiciary nature," in Madison's words, must find resolution in other fora. Controversies between Congress and the President regarding the Constitution's allocation of war powers are among this class of disputes. This is not to say that courts must leave all cases involving foreign affairs to the vicissitudes of political institutions; the Constitution explicitly vests the judiciary with authority over admiralty and maritime cases, as well as cases affecting ambassadors, public ministers, and consuls, all of which may invariably touch upon foreign relations. **War powers disputes are constitutionally unique**, however, because the Constitution itself commits the resolution of those disputes to legislators and the chief executive. The courts have, for the most part, appropriately left these disputes where they belong, in the hands of the political branches. Through the doctrine of **justiciability**, courts have helped to preserve the **separation of powers** by recognizing both the limits on their Article In authority and the broa prerogatives that the Constitution grants to political actors who are charged with making and effecting American military and foreign policy. By continuing this trend, as the District of Columbia Circuit did in Campbell, the judiciary can **encourage deliberation** about constitutional structure in the political branches, as Madison and Marshall envisioned. Pg. 724-725

### Solvency 1NC

#### Detention restrictions increases rendition and drone strikes—comparatively worse and turns cred

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.

### -Turns Due Process

#### Drones turn due process

Cole ’12 [David Cole, American law professor at the Georgetown University Law Center, Interview by Andrea Jones, 12/3/12, Guernica, “Due Process, Imminent Threat,” <http://www.guernicamag.com/interviews/due-process-imminent-threat/>, accessed 8/30/13, JTF]

David Cole: The drone issue is a complicated one. When you’re engaged in a war, killing is an available option and targeted killing is better than untargeted killing. Drones are not like torture where it’s possible to say, “this has no legitimate role in armed conflict.” That said, I think the biggest problems are threefold. The first is the secrecy that surrounds the program. What we do with drones sets a precedent for what other countries will do with drones when they develop them, and they’re madly seeking to develop these tools. It’s in our interest to make very clear that whatever we’re doing is fully consistent with the laws of war, but we the people and the world at large cannot know that as long as the program and its contours remain secret. The Obama administration, to its credit, has made rough outlines of the program public through a variety of speeches by high-level administration officials, but that’s not enough. We need to know what the actual criteria for strikes are. What is the process by which people are found to fit those criteria? We need to know in order to judge whether the program is consistent with the laws of war, with due process, and with fundamental fairness.

Secondly, the administration appears to be using a very broad definition of “imminent threat.” One of the justifications advanced in speeches is that we can use drones in self-defense against individuals who pose an imminent threat of attacking the U.S. International law does recognize that a nation can use military force to respond to an imminent threat by another state or party, but it appears the administration has redefined “imminent” so that it no longer means “immediate” or “impending.” Instead, it includes any individual who says that he wants to attack us, has the capability of attacking us, and will do so secretly when he does. Anwar al-Awlaki, the American whose death the president ordered, was said by the administration to pose an imminent threat. But there was no evidence that he was engaged any plotted attack at the time he was killed—rather, they concluded he posed an “imminent” threat because of this broader conception of imminence where we’ve essentially defined away the requirement for the threat to be immediate. If a threat is not truly impending, because otherwise there may be other ways to neutralize short of death such as arresting the person and bringing him to justice.

The third problem is that they say drones are used only when arrest is not feasible. What does that mean? We knew where al-Awlaki was—he was in Yemen. The Yemeni authorities made one attempt to arrest him, but were unsuccessful. But does that mean arrest isn’t feasible? If we make one attempt to arrest a suspect in the U.S. and fail, we don’t conclude that means fair game to kill him. Surely we have a lot of resources at our disposal that we can use to capture people rather than to simply kill them by pushing a button. **Capture entails due process, a trial, and the like; pushing a button does not**.

### nuclear impact

#### Destroying the PQD ends nuclear deterrence.

Damrosch ‘86

Lori, Assistant Professor of Law, Columbia, “BANNING THE BOMB: LAW AND ITS LIMITS.,” 86 Colum. L. Rev. 653

Professor Miller's assessment of the dim prospects for judicial action against nuclear arms is correct, but he does not do justice to the reasons for judicial self-restraint. His vision is of a judiciary that would move boldly to dismantle a military structure based on nuclear arms, just as Brown v. Board of Education n12 required the dismantling of segregated school systems. Brown did not change the world overnight, but it was a spur to action, a rallying cry for revitalizing the political struggle, and ultimately a symbol of our society's commitment to human dignity. Unfortunately for Professor Miller's thesis, the hypothetical case of Brown v. The Pentagon could not fill the same bill. It is not just that the law suit would inevitably founder for threshold reasons such as standing, ripeness, or the political question doctrine, as noted in the brief [\*657] comments following Professor Miller's piece. n13 Nor is it that judges are temperamentally resistant to becoming involved in controversial issues or breaking new ground, as some of Professor Miller's characterizations imply. More basically, the problem is that in the unlikely event of a judicial hearing on what to do to preserve the human race from nuclear disaster, judges would have to find a principled basis for endorsing some solution in place of the policies developed by executive and congressional officials, who presumably are committed to that very effort. Professor Miller asserts that he makes no plea for unilateral disarmament (p. 238), but that would seem to be the only relief that a court persuaded by his argument could order. Surely the Supreme Court could not supervise the conduct of negotiations for mutual reductions, or even decide whether space-based defenses are likely to render nuclear weapons impotent. The constitutional responsibility to prevent the horror of nuclear war must lie where the constitutional power is n14 -- with Congress and the President.

#### The impact is nuclear war

John P. Caves 10, Senior Research Fellow in the Center for the Study of Weapons of Mass Destruction at the National Defense University, “Avoiding a Crisis of Confidence in the U.S. Nuclear Deterrent”, <http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ada514285>

Perceptions of a compromised U.S. nuclear deterrent as described above would have profound policy implications, particularly if they emerge at a time when a nucleararmed great power is pursuing a more aggressive strategy toward U.S. allies and partners in its region in a bid to enhance its regional and global clout. ■ A dangerous period of vulnerability would open for the United States and those nations that depend on U.S. protection while the United States attempted to rectify the problems with its nuclear forces. As it would take more than a decade for the United States to produce new nuclear weapons, ensuing events could preclude a return to anything like the status quo ante. ■ The assertive, nuclear-armed great power, and other major adversaries, could be willing to challenge U.S. interests more directly in the expectation that the United States would be less prepared to threaten or deliver a military response that could lead to direct conflict. They will want to keep the United States from reclaiming its earlier power position. ■ Allies and partners who have relied upon explicit or implicit assurances of U.S. nuclear protection as a foundation of their security could lose faith in those assurances. They could compensate by accommodating U.S. rivals, especially in the short term, or acquiring their own nuclear deterrents, which in most cases could be accomplished only over the mid- to long term. A more nuclear world would likely ensue over a period of years. ■ Important U.S. interests could be compromised or abandoned, or a major war could occur as adversaries and/or the United States miscalculate new boundaries of deterrence and provocation. At worst, war could lead to state-on-state employment of weapons of mass destruction (WMD) on a scale far more catastrophic than what nuclear-armed terrorists alone could inflict. Continuing Salience of Nuclear Weapons Nuclear weapons, like all instruments of national security, are a means to an end— national security—rather than an end in themselves. Because of the catastrophic destruction they can inflict, resort to nuclear weapons should be contemplated only when necessary to defend the Nation’s vital interests, to include the security of our allies, and/or in response to comparable destruction inflicted upon the Nation or our allies, almost certainly by WMD. The retention, reduction, or elimination of nuclear weapons must be evaluated in terms of their contribution to national security, and in particular the extent to which they contribute to the avoidance of circumstances that would lead to their employment. Avoiding the circumstances that could lead to the employment of nuclear weapons involves many efforts across a broad front, many outside the military arena. Among such efforts are reducing the number of nuclear weapons to the level needed for national security; maintaining a nuclear weapons posture that minimizes the likelihood of inadvertent, unauthorized, or illconsidered use; improving the security of existing nuclear weapons and related capabilities; reducing incentives and closing off avenues for the proliferation of nuclear and other WMD to state and nonstate actors, including with regard to fissile material production and nuclear testing; enhancing the means to detect and interdict the transfer of nuclear and other WMD and related materials and capabilities; and strength ening our capacity to defend against nuclear and other WMD use. For as long as the United States will depend upon nuclear weapons for its national security, those forces will need to be reliable, adequate, and credible. Today, the United States fields the most capable strategic nuclear forces in the world and possesses globally recognized superiority in any conventional military battlespace. No state, even a nuclear-armed near peer, rationally would directly challenge vital U.S. interests today for fear of inviting decisive defeat of its conventional forces and risking nuclear escalation from which it could not hope to claim anything resembling victory. But power relationships are never static, and current realities and trends make the scenario described above conceivable unless corrective steps are taken by the current administration and Congress. Consider the challenge posed by China. It is transforming its conventional military forces to be able to project power and compete militarily with the United States in East Asia, 1 and is the only recognized nuclear weapons state today that is both modernizing and expanding its nuclear forces. 2 It weathered the 2008 financial crisis relatively well, avoiding a recession and already resuming robust economic growth. 3 Most economists expect that factors such as openness to foreign investment, high savings rates, infrastructure investments, rising productivity, and the ability to leverage access to a large and growing market in commercial diplomacy are likely to sustain robust economic growth for many years to come, affording China increasing resources to devote to a continued, broadbased modernization and expansion of its military capabilities. In contrast, the 2008 financial crisis was the most severe for the United States since the Great Depression, 4 and it led in 2009 to the largest Federal budget deficit—by far—since the Second World War 5 (much of which is financed by borrowing from China). Continuing U.S. military operations in Iraq and Afghanistan are expensive, as will be the necessary refurbishment of U.S. forces when those con flicts end. Those military expenses, however, are expected to be eclipsed by the burgeoning entitlement costs of the aging U.S. “baby boomer” generation. 6 As The Economist recently observed: China’s military build-up in the past decade has been as spectacular as its economic growth. . . . There are growing worries in Washington, DC, that China’s military power could challenge America’s wider military dominance in the region. China insists there is nothing to worry about. But even if its leadership has no plans to displace American power in Asia . . . America is right to fret this could change. 7 As an emerging nuclear-armed near peer like China narrows the wide military power gap that currently separates it from the United States, Washington could find itself more, rather than less, reliant upon its nuclear forces to deter and contain potential challenges from great power competitors. The resulting security dynamics may resemble the Cold War more than the U.S. “unipolar moment” of the 1990s and early 2000s. Concerns about Longterm Reliability With continuing U.S. dependence upon nuclear forces to deter conflict and contain challenges from (re-)emerging great power(s), perceptions of the reliability, adequacy, and credibility of those forces will determine how well they serve those purposes. Perception is all important when it comes to nuclear weapons, which have not been operationally employed since 1945 and not tested (by the United States) since 1992, and, hopefully, will never have to be employed or tested again. If U.S. nuclear forces are to deter other nuclear-armed great powers, the individual weapons must be perceived to work as intended (reliability), the overall forces must be perceived as adequate to deny the adversary the achievement of his goals regardless of his actions (adequacy), and U.S. leadership must be perceived as prepared to employ the forces under conditions that it has communicated via its declaratory policy (credibility) These perceptions must be, of course, those of the leadership of adversaries that we seek to deter (as well as of the allies that we seek to assure), but they also need to be those of the U.S. leadership lest our leaders fail to convey the confidence and resolve necessary to shape adversaries’ perceptions to achieve deterrence. Weapons reliability is the essential foundation for deterrence since there can be no adequacy or credibility without it.

### link—indefinite detention

#### Court intervention on detention decimates war powers authority—undermines alliances and compromises military operations

McCarthy, 9

(Director-Center for Law & Counterterrorism at the Foundation for the Defense of Democracies, 8/20, “Outsourcing American Law,” 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.

PQD adherence for foreign affairs cases is intact—but a contrary ruling destroys it

Franck ‘12

Thomas, Murray and Ida Becker Professor of Law, New York University School of Law Wolfgang Friedmann Memorial Award 1999, *Political Questions/Judicial Answers*

We may be on the verge of a new era in which avoidance or abdication is no longer the Supreme Court’s response when government thaumaturgically invokes the “national-security” or “foreign-policy” talisman. Except in Goldwater, the Court has lately avoided invoking the political-question doctrine, yet it achieved this truce largely by turning away petitions for review of foreign-affairs cases. Mean while, in the lower courts, as we have seen, “the political question doctrine has had a busy life.”35 However, when the Supreme Court occasionally does grant certiorari in such matters now, it seems increasingly willing to review the allegation of aces de pouvoir, and as we have seen in chapter 5, even if the case has evident national-security and foreign-policy elements, judges currently appear somewhat more willing to review the legality and constitutionality of the act. This subtle shift, if it is one, deserves clearer doctrinal enunciation by the Court. Thus, the debate ought soon to move on: from whether review is permissible (justiciability) to what the proper standard of review should be—a matter of onus and evidentiary weight. That too raises questions quite as controversial, but different and manageable, as those presented by adherence to the doctrine of abstention. In Fiullo, for example, Marshall and Brennan, concluded in dissent that despite its protestations, Congress’s discrimination be tween male and female parents was void because based on “reasons unrelated to foreign policy concerns or threats to national security” and that whatever the ends sought, any gender-based classification must “serve important governmental objectives and ... be substan tially related to achievement of those objectives” and must not be “il logical and unjust.”” “Logical and just” is a tougher standard for ju dicial review of an exercise of political discretion than the “devoid of conceivable rational purpose” test adopted by the majority. But majority and dissent agreed that their difference was precisely that: disagreement over the applicable standard of judicial review where a coordinate political branch of government seeks to defend the consti tutionality of its choice among policy options. Moreover, the justices evinced understandable disagreement over whether the distinction between genders served a genuine national-security purpose. They did not disagree, however, about where the final word on that issue properly resides—in the Court. Constitutionality, majority and dissent agreed, is for courts to de termine. Increasingly, such a view of the judiciary’s role seems to be shared by almost all the justices in the cases they have recently accepted. When it grants certiorari, the Court now seems invariably disinclined to treat as beyond challenge the story told by a political branch about the circumstances in which it made its policy choice. But since most cases with foreign-policy or national-security implica tions do not reach the highest tribunal, the Court has a hortatory obligation it must soon discharge. In the lower courts, the nonjusticiability of foreign-relations cases is still prevalent doctrine, rooted in older Supreme Court cases, prodigious obiter dicta, and prevailing juris prudential myth. Sooner or later this chaotic condition will have to be set right, if necessary with the help of Congress, by a comprehensive new theoretical pronouncement from the highest tribunal.

### 1nc legitimacy frontline

Can't solve legitimacy

Fettweis 10

Christopher J. Fettweis is an assistant professor of political science at Tulane University, August 2010, Paper prepared for the 2010 meeting of the American Political Science Association, Washington, DC, September 1-4, "The Remnants of Honor: Pathology, Credibility and U.S. Foreign Policy", http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1657460

Both theoretical logic and empirical evidence suggest that actions taken in the present will likely not have a predictable effect on the crises of the future, for better or for worse. The almost overwhelming tendency to try to send messages through national actions increases the odds of policy mishaps and outright folly, for at least two reasons. First, and most basically, an eye toward the future prevents complete focus on the present. During a crisis, the national interest cannot be correctly ascertained unless policymakers de-link present concerns from future expectations. Second, as unsettling as it may be, the future is not subject to our control. There is much that can and will occur between the current crisis and the next, and the international environment will change in quite unpredictable ways. Target actors – whether they be superpowers or terrorist groups or vaguely-defined “threats” – are not likely to believe that the actions of a state give clues to its future actions. In other words, they believe that our actions are independent, and there is little that can be done to change that.81 Generally speaking, therefore, policymakers are wise to fight the natural temptation to look beyond the current crisis when deciding on action.

Honor is a socially determined good, in the sense that the community is the ultimate arbiter of whether any individual possesses it. Likewise, the status of its credibility is beyond the control of the United States. Neither people nor states own their reputation, which can be affected by the actions to some extent but ultimately exist primarily in the minds of others. “Credibility exists,” noted the recent U.S. politician perhaps most obsessed with its maintenance, “only in the eye of the beholder.”82 Try as they might, states cannot exert complete control over their reputations or level of credibility; target adversaries and allies will ultimately form their own perceptions, ones that will be affected by their needs and goals. Even if states were to take what appeared to be the logical actions to protect their credibility, it is possible (perhaps likely) that others will not receive the messages in the way they were intended.83 Sending messages for their consideration in future crises, therefore, is all but futile.

Legitimacy inevitable and irrelevant - not key to cooperation

Brooks and Wohlforth 09

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THE LEGITIMACY TO LEAD?

For analysts such as Zbigniew Brzezinski and Henry Kissinger, the key reason for skepticism about the United States’ ability to spearhead global institutional change is not a lack of power but a lack of legitimacy. Other states may simply refuse to follow a leader whose legitimacy has been squandered under the Bush administration; in this view, the legitimacy to lead is a ﬁxed resource that can be obtained only under special circumstances. The political scientist G. John Ikenberry argues in After Victory that states have been well positioned to reshape the institutional order only after emerging victorious from some titanic struggle, such as the French Revolution, the Napoleonic Wars, or World War I or II. For the neoconservative Robert Kagan, the legitimacy to lead came naturally to the United States during the Cold War, when it was providing the signal service of balancing the Soviet Union. The implication is that today, in the absence of such salient sources of legitimacy, the wellsprings of support for U.S. leadership have dried up for good.

But this view is mistaken. For one thing, it overstates how accepted U.S. leadership was during the Cold War: anyone who recalls the Euromissile crisis of the 1980s, for example, will recognize that mass opposition to U.S. policy (in that case, over stationing intermediaterange nuclear missiles in Europe) is not a recent phenomenon. For another, it understates how dynamic and malleable legitimacy is. Legitimacy is based on the belief that an action, an actor, or a political order is proper, acceptable, or natural. An action—such as the Vietnam War or the invasion of Iraq—may come to be seen as illegitimate without sparking an irreversible crisis of legitimacy for the actor or the order. When the actor concerned has disproportionately more material resources than other states, the sources of its legitimacy can be refreshed repeatedly. After all, this is hardly the ﬁrst time Americans have worried about a crisis of legitimacy. Tides of skepticism concerning U.S. leadership arguably rose as high or higher after the fall of Saigon in 1975 and during Ronald Reagan’s ﬁrst term, when he called the Soviet Union an “evil empire.” Even George W. Bush, a globally unpopular U.S. president with deeply controversial policies, oversaw a marked improvement in relations with France, Germany, and India in recent years—even before the elections of Chancellor Angela Merkel in Germany and President Nicolas Sarkozy in France.

Of course, the ability of the United States to weather such crises of legitimacy in the past hardly guarantees that it can lead the system in the future. But there are reasons for optimism. Some of the apparent damage to U.S. legitimacy might merely be the result of the Bush administration’s approach to diplomacy and international institutions. Key underlying conditions remain particularly favorable for sustaining and even enhancing U.S. legitimacy in the years ahead. The United States continues to have a far larger share of the human and material resources for shaping global perceptions than any other state, as well as the unrivaled

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wherewithal to produce public goods that reinforce the beneﬁts of its global role. No other state has any claim to leadership commensurate with Washington’s. And largely because of the power position the United States still occupies, there is no prospect of a counterbalancing coalition emerging anytime soon to challenge it. In the end, the legitimacy of a system’s leader hinges on whether the system’s members see the leader as acceptable or at least preferable to realistic alternatives. Legitimacy is not necessarily about normative approval: one may dislike the United States but think its leadership is natural under the circumstances or the best that can be expected.

Moreover, history provides abundant evidence that past leading states—such as Spain, France, and the United Kingdom—were able to revise the international institutions of their day without the special circumstances Ikenberry and Kagan cite. Spain fashioned both normative and positive laws to legitimize its conquest of indigenous Americans in the early seventeenth century; France instituted modern concepts of state borders to meet its needs as Europe’s preeminent land power in the eighteenth century; and the United Kingdom fostered rules on piracy, neutral shipping, and colonialism to suit its interests as a developing maritime empire in the nineteenth century. As Wilhelm Grewe documents in his magisterial The Epochs of International Law, these states accomplished such feats partly through the unsubtle use of power: bribes, coercion, and the allure of lucrative long-term cooperation. Less obvious but often more important, the bargaining hands of the leading states were often strengthened by the general perception that they could pursue their interests in even less palatable ways—notably, through the naked use of force. Invariably, too, leading states have had the power to set the international agenda, indirectly aªecting the development of new rules by deﬁning the problems they were developed to address. Given its naval primacy and global trading interests, the United Kingdom was able to propel the slave trade to the forefront of the world’s agenda for several decades after it had itself abolished slavery at home, in 1833. The bottom line is that the United States today has the necessary legitimacy to shepherd reform of the international system.

### No solve

Their Rodgers card says Afghanistan should do a laundry list of reforms—they don’t solve. He says we should explicitly limit the changes to Bagram which the plan text does not do

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

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

ICG is calling for internal Aghan transparency and alterations to the way to US classifies detainees status under I-law – they do neither

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

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

This isn’t a little alt cause – here’s the conclusion of the report – they solve nothing

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)

**V II. CONCLUSION**

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 increas-

ingly 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 edu-

cation and experience to efficiently execute their duties to

uphold and enforce the law. Endemic problems with com-

munications, transport, infrastructure and lack of electric-

ity 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. Pro-

tecting that capacity, and providing real security forjudges,

prosecutors and other judicial staff is crucial to sustaining

the system as a whole.

Their Etziar card is a press release announcing her longer report – here’s the conclusion of that report, not about the aff

**Recommendations**

Human Rights First makes the following recommendations

to the United States government for how to improve the

DRB process and support a successful transition of

detention operations to Afghan control.

To the Department of Defense

Improve the Quality of Detainee

Representation

■ Provide detainees with legal representation.

■ If legal representation is not possible at this time,

improve the training provided to P.R.s to ensure

that they understand the importance of demanding

and challenging the evidence upon which the

government's charges against the detainees are

based.

■ If legal representation for each detainee is not

possible, make defense lawyers available at the

DRP who can advise P.R.s on how to investigate

cases and defend detainees.

■ increase the number of P.R.s so that each one can

spend more time investigating each case and

preparing each detainee's defense. As of February

2011, there were only 15 P.Rs available to repre-

sent about 1700 detainees. This is insufficient to

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■ Provide access and funding for Afghan defense

lawyers to work with P.R.s at the DFIP. Afghan

lawyers can help explain to detainees the charges

against them, the role of the P.R.s and the pur-

pose of and opportunities presented by the

detainee's upcoming DRB. involving Afghan law-

yers in this way will also bolster U.S. efforts to

improve the handling of national security cases by

the Afghan justice system.

■ Provide basic language and cultural training to

P.R.s to improve their ability to relate to the de-

tainee, to win his confidence, and to investigate

his case.

■ As part of their cultural training. P.R.s should be

trained specifically to question detainees about

personal, family or tribal feuds that may be going

on in the detainee's village or province and might

have led someone to provide false information

against him to U.S. forces.

Increase Transparency of the DRB Process

■ Declassify as much evidence as possible, by using

carefully limited redaction and providing summa-

ries of classified evidence when the evidence itself

cannot be produced. This should be done before

the evidence is used in the DRBs, not only for

Afghan trials. The Classified Information Proce-

dures Act, which has allowed prosecutors to

successfully prosecute cases involving classified

evidence in U.S. federal courts, provides useful

guidance on how the DRBs can use classified

evidence while minimizing any compromise of due

process.

■ Inform the detainee of his future DRB hearing

within 14 days of his transfer to the DFIP. Current

policies require detainees to be told of the basis

for their internment at that time, but do not require

informing detainees that they will have a hearing

where they may contest the charges against them.

■ Ensure that interrogators share with P.R.s any

statements or evidence they have obtained, both '

inculpatory and exculpatory.

■ End the practice of subjecting detainees

recommended for release by one DRB to a second

DRB,

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in the absence of substantial new evidence

that is likely to alter the outcome.

■ Ensure that all detainees recommended for release

are actually released expeditiously. For those, such

as third-country nationals, who are not released

despite a release recommendation, explain the

reasons to the detainee. In all cases, make every

effort possible not to hold the detainee for more

than a month after a DRB has recommended his

release.

■ Report publicly on how many detainees are being

held after a recommendation for release or trans-

fer from a DRB. the length of detention following

that recommendation, and the reason for anyone

held longer than one month after a DRB's recom-

mendation for release or transfer.

■ Make public the criteria used by the DRBs for

continued detention of detainees, including the

criteria used to determine who is an "Enduring

Security Threat"

■ Make public the criteria used by the JTF 435

Commander and by the Deputy Secretary of De-

fenseto determine whether or not to follow the

recommendation of the DRB.

■ Make public the report prepared by Major General

Douglas Stone in 2009 analyzing U.S. detention

operations in Afghanistan and recommending

reforms.

To the Department of Defense and the

Department of State

Continue to Support Improvements to the

Afghan Justice System

■ Focus national security case training and

mentoring of Afghan judges, prosecutors and

defense attorneys on the need to thoroughly

investigate and gather substantive evidence.

■ Train Afghan judges and lawyers about the

importance of presenting evidence in open court

and challenging the evidence presented as a

critical part of the fact-finding process.

■ Begin to transition the U.S. military-led training

and mentoring effort on national security cases to

a civilian-led training effort, so that such training

and mentoring continues regardless of the pres-

ence of the U.S. military in Afghanistan.

### 2NC No Impact

Regional cooperation deescalates conflict

Innocent, foreign policy – Cato, ‘9

(Malou, <http://www.cato.org/pubs/wtpapers/escaping-graveyard-empires-strategy-exit-afghanistan.pdf>)

Additionally, regional stakeholders, especially Russia and Iran, have an interest in a stable Afghanistan. Both countries possess the capacity to facilitate development in the country and may even be willing to assist Western forces. In July, leaders in Moscow allowed the United States to use Russian airspace to transport troops and lethal military equipment into Afghanistan. Yet another relevant regional player is the Collective Security Treaty Organization, made up of Russia, Kazakhstan, Tajikistan, Kyrgyzstan, Uzbekistan, Armenia, and Belarus. At the moment, CSTO appears amenable to forging a security partnership with NATO. CSTO secretary general Nikolai Bordyuzha told journalists in March 2009 of his bloc’s intention to cooperate. “The united position of the CSTO is that we should give every kind of aid to the anti-terror coalition operating in Afghanistan. . . . The interests of NATO and the CSTO countries regarding Afghanistan conform unequivocally.”83

Mutual interests between Western forces and Afghanistan’s surrounding neighbors can converge on issues of transnational terrorism, the Caspian and Central Asia region’s abundant energy resources, cross-border organized crime, and weapons smuggling. Enhanced cooperation alone will not stabilize Afghanistan, but engaging stakeholders may lead to tighter regional security.

Afghanistan will never fully collapse

Kaplan 10—snr fellow, Center for New American Security. Frmr distinguished prof in nat. sec., US Naval Academy (Robert, Man Versus Afghanistan, 11 March 2010, http://www.cnas.org/node/4214)

Yet another reality points to an entirely different conclusion. The dispersal of Afghanistan’s larger population over greater territory than Iraq’s is basically meaningless, British Army Major General Colin Boag told me: because 65 percent of the population lives within 35 miles of the main road system, which approximates the old medieval caravan routes, only 80 out of 342 districts are really key to military success. Afghanistan is not some barbaric back-of-beyond, but the heart of a cultural continuum connecting the cosmopolitan centers of Persia and India. In fact, Afghanistan has been governed from the center since the 18th century: Kabul, if not always a point of authority, has been at least a point of arbitration. Especially between the early 1930s and the early 1970s, Afghanistan experienced moderate and constructive government under the constitutional monarchy of Zahir Shah. A highway system on which it was safe to travel united the major cities, while estimable health and development programs were on the verge of eradicating malaria. Toward the end of this period, I hitchhiked and rode buses across Afghanistan. I never felt threatened, and I was able to send books and clothes back home through functioning post offices. There was, too, a strong Afghan national identity distinct from that of Iran or Pakistan or the Soviet Union. Pashtunistan might be a real enough geographic construct, but so, very definitely, is Afghanistan. As Ismail Akbar, a writer and analyst in Kabul, told me: “Thirty years of war and Pakistani interference have weakened Afghan national identity from the heights of the Zahir Shah period. But even the mujahideen civil war of the early 1990s, in which the groups were split along ethnic lines, could not break up Afghanistan. And if that couldn’t, nothing will.” Afghans were so desperate for a reunited country after the internecine fighting of the mujahideen era that they welcomed the Taliban in Kandahar in 1994 and in Kabul in 1996, as a bulwark against anarchy and dissolution. Afghanistan, frail and battered over the years, is nevertheless surprisingly sturdy as a concept and as a cynosure of identity.

### Alt causes

#### Independent judiciary not key to Afghanistan

Huq, 2004

Aziz Huq, Postgraduate Fellow, Columbia Law School, 2004,

http://www.cic.nyu.edu/pdf/E23SummaryConstitutional%20Court%20Judicial%20ReviewAHaq.pdf

Courts with judicial review authority can nullify the preferences of democratically elected legislatures. There is a risk in concentrating power in courts’ hands, especially when it is not clear that Afghan judges are sufficiently professional, and when some judges have been willing to impose their ideology regardless of provisions of the constitution, statutory law, or popular beliefs.

• Courts’ authority rests largely on public support. In its early days, however, an Afghan constitutional court is unlikely to have much public support, so other government institutions may reject or ignore its rulings, undermining its long-term credibility. Thus, judicial review might either be irrelevant or undermine democracy.

#### Corruption is key—their evidence

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

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

### 2nc arm sales

They can’t solve global arms sales which are sufficient to cause miscalc

Klare 13 (Michael Klare is a professor of peace and world security studies at Hampshire College The Booming Global Arms Trade Is Creating a New Cold War http://www.motherjones.com/politics/2013/05/global-arms-trade-new-cold-war)

In those years, the Americans and the Soviets also used arms transfers to bolster key allies in areas of strategic confrontation like the Middle East. Washington armed Israel, Saudi Arabia, and Iran when it was still ruled by the Shah; Russia armed Iraq and Syria. These transfers played a critical role in Cold War diplomacy and sometimes helped tilt the scales in favor of decisions to go to war. In the Yom Kippur War of 1973, for example, Egypt, emboldened by an expanded arsenal of Soviet antitank missiles, attacked Israeli forces in the Negev desert. In the wake of the Cold War and the collapse of the Soviet Union, however, the commercial aspect of arms sales came to the fore. Both Washington and Moscow were, by then, far more interested in keeping their military production lines running than in jousting for advantage abroad, so emphasis was placed on scoring contracts from those with the means to pay—mainly the major oil producers of the Middle East and Latin America and the economically expansive "tigers" of Asia. Between 2008 and 2011, the CRS ranked the leading purchasers of conventional arms in the developing world this way: Saudi Arabia, India, the United Arab Emirates, Brazil, Egypt, and Venezuela. Together, these six countries ordered $117 billion in new weaponry. Arms Sales Take a New Path Only recently has some version of great power dueling and competition started up again, and in the early months of 2013 it seems to be gaining momentum. Several recent developments highlight this trend: \* In early May, Western intelligence sources revealed that Russia had supplied several batteries of advanced anti-ship cruise missiles to the embattled Syrian regime of President Bashar al-Assad. Moscow had previously provided the Syrians with a version of the missile known as the Yakhont, but those delivered recently are said to be equipped with a more advanced radar that increases their effectiveness. With those missiles, the Syrians should be in a better position to deter or counter any effort by international forces, including the United States, to aid anti-Assad rebels by sea or mount a naval blockade of Syria. They are also said to be negotiating with the Russians for the purchase of advanced S-300 ground-to-air missiles, a weapons system that would greatly complicate air attacks on the country or the imposition of a no-fly zone. Aside from its military significance, the Yakhont transfer suggests a new inclination on Moscow's part to engage in **provocative arms sales** to advance its strategic goals—in this case, the survival of the Assad regime, Russia's sole remaining ally in the region—even in the face of concerted Western opposition. Employing tough language, Secretary of State John F. Kerry warned the Russians against such action. "We've made it crystal clear that we prefer that Russia would not supply them assistance," he declared. "That is on record." Despite such admonitions, Russian officials insist that they have no intention of halting arms deliveries to Assad. "Russia enjoys good and strong military technical cooperation with Syria, and we see no reason today to reconsider it," Deputy Defense Minister Anatoly Antonov told reporters. \* In April, during a visit to Jerusalem, Secretary of Defense Chuck Hagel announced a multibillion-dollar arms package for Israel. Although its final details are still being worked out, it is expected to include V-22 "Osprey" tilt-rotor transport planes, KC-135 aerial refueling aircraft, and advanced radars and anti-radiation missiles for Israel's strike aircraft. "We are committed to providing Israel with whatever support is necessary for Israel to maintain military superiority over any state or coalition of states and non-state actors [in the region]," Hagel told reporters when announcing the package. The US has, of course, **long been committed to Israel's military superiority**, so there was something ritualistic about much of Hagel's performance in Jerusalem. No less predictable were the complaints from Israeli military and intelligence sources that the package didn't include enough new arms to satisfy Israel's needs, or were of the wrong kind. The V-22 Osprey, for example, was proclaimed by some to be of marginal military value. Far more surprising was that no red flags went up in the media over what was included. At least two of the items—the KC-135 refueling planes and the anti-radiation missiles (crucial weaponry for disabling an enemy's air-defense radar system)—could only be intended for one purpose: bolstering Israel's capacity to conduct a sustained air campaign against Iranian nuclear facilities, should it decide to do so. At present, the biggest military obstacles to such an attack are that country's inability to completely cripple Iranian anti-aircraft defense systems and mount sustained long-range air strikes. The missiles and the mid-air refueling capability will go a long way toward eliminating such impediments. Although it may take up to a year for all this new hardware to be delivered and come online, the package can only be read as a green light from Washington for Israel to undertake preparations for an attack on Iran, which has long been shielded from tougher U.N. sanctions by China and Russia. \* In March, Russia agreed to sell 24 Sukhoi Su-35 multi-role combat jets and four Lada-class diesel submarines to China on the eve of newly installed President Xi Jinping's first official visit to Moscow. Although details of the sale have yet to be worked out, observers say that it will represent the most significant transfer of Russian weaponry to China in a decade. The Su-35, a fourth-generation stealth fighter, is superior to any plane now in China's arsenal, while the Lada is a more advanced, quieter version of the Kilo-class sub it already possesses. Together, the two systems will provide the Chinese with a substantial boost in combat quality. For anyone who has followed Asian security affairs over the past few years, it is hard to view this deal as anything but a reaction to the Obama administration's new Asian strategy, its "pivot" to the Pacific. As announced by President Obama in a speech before the Australian Parliament in November 2011, it involves beefing-up the already strong US air and naval presence in the western Pacific—in, that is, waters off of China—along with increased US arms aid to American allies like Indonesia, Japan, the Philippines, and South Korea. Not surprisingly, China has responded by bolstering its own naval capabilities, announcing plans for the acquisition of a second aircraft carrier (its first began operational testing in late 2012) and the procurement of advanced arms from Russia to fill gaps in its defense structure. This, in turn, is bound to increase the pressure on Washington from Japan, Taiwan, and other allies to provide yet more weaponry, triggering a classic Cold-War-style arms race in the region. \* On the eve of Secretary of State John Kerry's June 24th visit to India, that country's press was full of reports and rumors about upcoming US military sales. Andrew Shapiro, assistant secretary of state for political-military affairs, was widely quoted as saying that, **in addition to sales already in the pipeline**, "**we think there's going to be billions of dollars more in the next couple of years.**" In his comments, Shapiro referred to Deputy Secretary of Defense Ashton Carter, who, he said, was heading up an arms sales initiative, "which we think is making some good progress and will, hopefully, lead to an even greater pace of additional defense trade with India." To some degree, of course, this can be viewed as a continuation of weapons sales as a domestic economic motor, since US weapons companies have long sought access to India's vast arms market. But such sales now clearly play another role as well: to lubricate the US drive to incorporate India into the arc of powers encircling China as part of the Obama administration's new Asia-Pacific strategy. Toward this end, as Deputy Secretary of State William Burns explained back in 2011, "Our two countries launched a strategic dialogue on the Asia-Pacific to ensure that the world's two largest democracies pursue strategies that reinforce one another." Arms transfers are seen by the leaders of both countries as a vital tool in the "containment" of China (though all parties are careful to avoid that old Cold War term). So watch for Kerry to pursue new arms agreements while in New Delhi.

### AT: Russia Accidental Launch

**No accidental launch**

**Williscroft 10** (Six patrols on the *John Marshall* as a Sonar Technician, and four on the *Von Steuben* as an officer – a total of twenty-two submerged months. Navigator and Ops Officer on *Ortolan* & *Pigeon* – Submarine Rescue & Saturation Diving ships. Watch and Diving Officer on *Oceanographer* and *Surveyor*. “Accidental Nuclear War” http://www.argee.net/Thrawn%20Rickle/Thrawn%20Rickle%2032.htm)

Is there a realistic chance that we could have a nuclear war by accident? Could a ballistic submarine commander launch his missiles without specific presidential authorization? Could a few men conspire and successfully bypass built-in safety systems to launch nuclear weapons? The key word here is “realistic.” In the strictest sense, yes, these things are possible. But are they realistically possible? This question can best be answered by examining two interrelated questions. Is there a way to launch a nuclear weapon by accident? Can a specific accidental series of events take place—no matter how remote—that will result in the inevitable launch or detonation of a nuclear weapon? Can one individual working by himself or several individuals working in collusion bring about the deliberate launch or detonation of a nuclear weapon? We are protected from accidental launching of nuclear weapons by mechanical safeguards, and by carefully structured and controlled mandatory procedures that are always employed when working around nuclear weapons. Launching a nuclear weapon takes the specific simultaneous action of several designated individuals. System designers ensured that conditions necessary for a launch could not happen accidentally. For example, to launch a missile from a ballistic missile submarine, two individuals must insert keys into separate slots on separate decks within a few seconds of each other. Barring this, the system cannot physically launch a missile. There are additional safeguards built into the system that control computer hardware and software, and personnel controls that we will discuss later, but—in the final analysis—without the keys inserted as described, there can be no launch—it’s not physically possible. Because the time window for key insertion is less than that required for one individual to accomplish, it is physically impossible for a missile to be launched accidentally by one individual. Any launch must be deliberate. One can postulate a scenario wherein a technician bypasses these safeguards in order to effect a launch by himself. Technically, this is possible, but such a launch would be deliberate, not accidental. We will examine measures designed to prevent this in a later column. Maintenance procedures on nuclear weapons are very tightly controlled. In effect always is the “two-man rule.” This rule prohibits any individual from accessing nuclear weapons or their launch vehicles alone. Aside from obvious qualification requirements, two individuals must be present. No matter how familiar the two technicians may be with a specific system, each step in a maintenance procedure is first read by one technician, repeated by the second, acknowledged by the first (or corrected, if necessary), performed by the second, examined by the first, checked off by the first, and acknowledged by the second. This makes maintenance slow, but absolutely assures that no errors happen. Exactly the same procedure is followed every time an access cover is removed, a screw is turned, a weapon is moved, or a controlling publication is updated. Nothing, absolutely nothing is done without following the written guides exactly, always under two-man control. This even applies to guards. Where nuclear weapons are concerned, a minimum of two guards—always fully in sight of each other—stand duty. There is no realistic scenario wherein a nuclear missile can be accidentally launched...ever...under any circumstances...period!

No nuclear strike

Graham 7 (Thomas Graham, senior advisor on Russia in the US National Security Council staff 2002-2007, 2007, "Russia in Global Affairs” The Dialectics of Strength and Weakness http://eng.globalaffairs.ru/numbers/20/1129.html)

An astute historian of Russia, Martin Malia, wrote several years ago that “Russia has at different times been demonized or divinized by Western opinion less because of her real role in Europe than because of the fears and frustrations, or hopes and aspirations, generated within European society by its own domestic problems.” Such is the case today. To be sure, mounting Western concerns about Russia are a consequence of Russian policies that appear to undermine Western interests, but they are also a reflection of declining confidence in our own abilities and the efficacy of our own policies. Ironically, this growing fear and distrust of Russia come at a time when Russia is arguably less threatening to the West, and the United States in particular, than it has been at any time since the end of the Second World War. Russia does not champion a totalitarian ideology intent on our destruction, its military poses no threat to sweep across Europe, its economic growth depends on constructive commercial relations with Europe, and its strategic arsenal – while still capable of annihilating the United States – is under more reliable control than it has been in the past fifteen years and the threat of a strategic strike approaches zero probability. Political gridlock in key Western countries, however, precludes the creativity, risk-taking, and subtlety needed to advance our interests on issues over which we are at odds with Russia while laying the basis for more constructive long-term relations with Russia.

### 2nc mid east

#### a) Best prediction model

Fettweis, Asst Prof Poli Sci – Tulane, Asst Prof National Security Affairs – US Naval War College, ‘7

(Christopher, “On the Consequences of Failure in Iraq,” *Survival*, Vol. 49, Iss. 4, December, p. 83 – 98)

Firstly, and perhaps most obviously, policymakers should keep in mind that *the unprecedented is also unlikely* . Outliers in international behaviour do exist, but in general the past is the best guide to the future. Since the geopolitical catastrophes that pessimists expect will follow US withdrawal are all virtually without precedent, common sense should tell policymakers they are probably also unlikely to occur. Five years ago, US leaders should have realised that their implicit prediction for the aftermath of invasion - positive, creative instability in the Middle East that would set off a string of democratic dominoes - was without precedent. The policy was based more on the president's unshakeable faith in the redemptive power of democracy than on a coherent understanding of international relations. Like all faith-based policies, success would have required a miracle; in international politics, miracles are unfortunately rare. Faith is once again driving predictions of post-withdrawal Iraq, but this time it is faith in chaos and worst-case scenarios.

Secondly, imagined consequences are usually worse than what reality delivers . Human beings tend to focus on the most frightening scenarios at the expense of the most likely, and anticipate outcomes far worse than those that usually occur. This is especially true in the United States, which for a variety of reasons has consistently overestimated the dangers lurking in the international system.3 Pre-war Iraq was no exception; post-war Iraq is not likely to be either.

#### b) Best Middle East methodology

Luttwak, senior associate – CSIS, professor – Georgetown and Berkeley, 5/26/’7

(Edward, “The middle of nowhere,” Prospect Magazine)

Why are middle east experts so unfailingly wrong? The lesson of history is that men never learn from history, but middle east experts, like the rest of us, should at least learn from their past mistakes. Instead, they just keep repeating them.

The first mistake is “five minutes to midnight” catastrophism. The late King Hussein of Jordan was the undisputed master of this genre. Wearing his gravest aspect, he would warn us that with patience finally exhausted the Arab-Israeli conflict was about to explode, that all past conflicts would be dwarfed by what was about to happen unless, unless… And then came the remedy—usually something rather tame when compared with the immense catastrophe predicted, such as resuming this or that stalled negotiation, or getting an American envoy to the scene to make the usual promises to the Palestinians and apply the usual pressures on Israel. We read versions of the standard King Hussein speech in countless newspaper columns, hear identical invocations in the grindingly repetitive radio and television appearances of the usual middle east experts, and are now faced with Hussein’s son Abdullah periodically repeating his father’s speech almost verbatim.

What actually happens at each of these “moments of truth”—and we may be approaching another one—is nothing much; only the same old cyclical conflict which always restarts when peace is about to break out, and always dampens down when the violence becomes intense enough. The ease of filming and reporting out of safe and comfortable Israeli hotels inflates the media coverage of every minor affray. But humanitarians should note that the dead from Jewish-Palestinian fighting since 1921 amount to fewer than 100,000—about as many as are killed in a season of conflict in Darfur.

# 1NR

## cp s abstention

#### Solves judicial abstention—the right of a remedy is the key issue

Milko 12

(“Separation of Powers and Guantanamo Detainees: Defining the Proper Roles of the Executive and Judiciary in Habeas Cases and the Need for Supreme Guidance”, 50 Duq. L. Rev. 173, Lexis)

Additionally, Petitioners have argued that the use of Munaf has impermissibly limited Boumediene by preventing courts from fashioning equitable relief for habeas petitions. n121 There has been concern that the ability to use the writ of habeas will be essentially eliminated if there is no chance for a petitioner to challenge the Executive Branch's determinations regarding safe transfers. The Boumediene Court spent considerable time discussing the history of the writ n122 and noted that the tribunals implemented in that case to determine enemy combatant status were not a sufficient replacement for the writ of habeas because they lacked, in part, the authority to issue an order of release. n123 Here, the D.C. Circuit Court of Appeals has effectively prevented the other courts from determining if there is a right not to be transferred, which has been argued to be an inadequate statement of the right of habeas. n124 Similarly, it has been argued that by accepting the Executive Branch's assurances of its efforts to release the detainees, the courts are not properly using the power of habeas corpus that has been granted to them by the Constitution. n125 By refusing to question these assertions, the courts would be unable to offer a remedy to the petitioners who have the privilege of habeas corpus. n126 The Petitioners also argued a due process right to challenge transfers as the detainees have a right to a meaningful hearing to at least have the opportunity to challenge the Government's conclusions regarding safety. n127 By refusing to second-guess the Executive, the judiciary may be losing an important check on the former's power because there is no guarantee that the Executive is ensuring safety or making the best effort to protect the unlawfully kept detainees. Without allowing courts to have the power to enjoin a transfer in order to examine these concerns, there is the potential that the detainee could be harmed at the hands of foreign terrorists. Without the ability to challenge the Executive Branch through the judicial tool of habeas corpus, there has been genuine concern that the courts are losing too much power and that their authority [\*191] is being improperly limited, as they are not utilizing their constitutional power properly.

#### Their Vaughns evidence is about Kiyemba---we’ll read select parts of their card to prove the CP solves all of the aff

Vaughns, 13

(B.A. (Political Science), J.D., University of California, Berkeley, School of Law. Professor of Law, University of Maryland Francis King Carey School of Law, Of Civil Wrongs and Rights: Kiyemba v. Obama and the Meaning of Freedom, Separation of Powers, and the Rule of Law Ten Years After 9/11 ASIAN AMERICAN LAW JOURNAL [Volume 20:7])

*\*\*\*(Paragraph before Wake’s Card)\*\*\**

*\*\*\*(All non-highligthed, but underline parts are Wake’s 1AC card)\*\*\*\**

**When it denied cert**iorari in **Kiyemba** III, the Supreme **Court missed the opportunity to reassert its primary role under the separation of powers doctrine**. In so doing, it allowed the D.C. Circuit’s reinstated, and misguided, decision to stand—allowing **the Executive’s sovereign prerogative to trump constitutional mandates.**

\*\*\*(Wake’s Card Starts)\*\*\*

After being reversed three times in a row in Rasul, Hamdan, and then Boumediene, the D.C. Circuit finally managed in Kiyemba to reassert, and have effectively sanctioned, its highly deferential stance towards the Executive in cases involving national security. In particular, the D.C. Circuit concluded that an order mandating the Uighurs’ release into the continental United States would impermissibly interfere with the political branches’ exclusive authority over immigration matters. But this reasoning is legal ground that the Supreme Court has already implicitly—and another three-judge panel of the D.C. Circuit more explicitly—covered earlier. As such, the Bush administration’s strategy in employing the “war” paradigm at all costs and without any judicial intervention, while unsuccessful in the Supreme Court, has finally paid off in troubling, and binding, fashion in the D.C. Court of Appeals, where, national security fundamentalism reigns supreme and the Executive’s powers as “Commander-in-Chief” can be exercised with little, if any, real check; arguably leading to judicial abstention in cases involving national security. **The consequences of the Kiyemba decision** potentially continue today, for example, with passage of the National Defense Authorization Act of 2012,246 which President Obama signed, with reservations, into law on December 31, 2011.247 This defense authorization bill contains detainee provisions that civil liberties groups and human rights advocates have strongly opposed.248 The bill’s supporters strenuously objected to the assertion that these provisions authorize the indefinite detention of U.S. citizens.249 In signing the bill, President Obama later issued a statement to the effect that although he had reservations about some of the provisions, he “vowed to use discretion when applying” them.250 Of course, that does not mean another administration would do the same, especially if courts abstain from their role as protectors of individual rights. In the years after 9/11, the Supreme Court asserted its role incrementally, slowly entering into the debate about the rights of enemy combatant detainees. This was a “somewhat novel role” for the Court.251 Unsurprisingly, in so doing, the Court’s intervention “strengthened detainee rights, enlarged the role of the judiciary, and rebuked broad assertions of executive power.”252 Also unsurprisingly, the Court’s decisions in this arena “prompted strong reactions from the other two branches.”253 This may be so because, as Chief Justice Rehnquist noted, the Court had, in the past, recognized the primacy of liberty interests only in quieter times, after national emergencies had terminated or perhaps before they ever began.254 However, since the twentieth century, wartime has been the “normal state of affairs.”255 If perpetual war is the new “normal,” the political branches likely will be in a permanent state of alert. Thus, it remains for the courts to exercise vigilance and courage about protecting individual rights, even if these assertions of judicial authority come as a surprise to the political branches of government.256 But courts, like any other institution, are susceptible to being swayed by influences external to the law. Joseph Margulies and Hope Metcalf make this very point in a 2011 article, noting that much of the post-9/11 scholarship mirrors this country’s early wartime cases and “envisions a country that veers off course at the onset of a military emergency but gradually steers back to a peacetime norm once the threat recedes, via primarily legal interventions.”257 This model, they state, “cannot explain a sudden return to the repressive wilderness just at the moment when it seemed the country had recovered its moral bearings.”258 **Kiyemba is very much a return to the repressive wilderness**. In thinking about the practical and political considerations that inevitably play a role in judicial decisionmaking (or non-decisionmaking, as the case may be), I note that the Court tends to be reluctant to decide constitutional cases if it can avoid doing so, as it did **in Kiyemba**. Arguably, this doctrine of judicial abstention is tied to concerns of institutional viability, in the form of public perception, and to concerns about respecting the separation of powers.259 But, as Justice Douglas once famously noted, when considering the separation of powers, the Court should be mindful of Chief Justice Marshall’s admonition that “it is a constitution we are expounding.”260 Consequently, “[i]t is far more important [for the Court] to be respectful to the Constitution than to a coordinate branch of government.”261 And while brave jurists have made such assertions throughout the Court’s history, the Court is not without some pessimism about its ability to effectively protect civil liberties in wartimes or national emergencies. For example, in Korematsu—one of the worst examples of judicial deference in times of crisis—Justice Jackson dissented, but he did so “with explicit resignation about judicial powerlessness,” and concern that it was widely believed that “civilian courts, up to and including his own Supreme Court, perhaps should abstain from attempting to hold military commanders to constitutional limits in wartime.”262 Significantly, even when faced with the belief that the effort may be futile, Justice Jackson dissented. As I describe in the following section, that dissent serves a valuable purpose. But, for the moment, I must consider the external influences on the court that resulted in that feeling of judicial futility.

#### Their Garrett evidence is all about reinvigorating the Suspension Clause more broadly – that’s the controversy in Kiyemba which only we resolve

Jamal Kiyemba et al. 9, petition for cert to SCOTUS, “brief of petitioners”, No. 08-1234, <http://ccrjustice.org/files/2009-12-04%20kiyemba_FINAL%20merits%20brief_0.pdf>

b. Construing an immigration law to authorize detention in this circumstance would violate the Suspension Clause.

The government’s theory is that it may capture civilians abroad, transport them to our threshold against their will, and then detain them indefinitely in order to “exclude” them from an entry they never sought in the first place. Interpreting exclusion power to immunize this kind of detention when the prisoners are, as here, within the jurisdiction of the habeas court, see Boumediene, 128 S. Ct. at 2241; Rasul, 542 U.S. at 484, would be barred under the Suspension Clause.

Boumediene voided a statute—section 7 of the MCA—that deprived petitioners of the habeas remedy. 128 S. Ct. at 2274-75. Interpreting an exclusion power in immigration law to bar release from Executive imprisonment where no statute positively authorizes detention would effect the same suspension of the writ that this Court found unconstitutional in Boumediene. See also St. Cyr, 533 U.S. at 300-05; INS v. Chadha, 462 U.S. 919, 943 (1983); Jonathan L. Hafetz, Note: The Untold Story of Noncriminal Habeas Corpus and the 1996 Immigration Acts, 107 YALE L. J. 2509, 2520 (1998) (“If, as the Court has maintained, constitutional habeas must be defined by referring to the writ at common law, Congress, however plenary its power over immigration, cannot gut the writ of its common law core without violating the Suspension Clause.”).

#### Not solving Kiyemba means the aff is insufficient – it spillsover to render all Suspension meaningless

ACLU 9, “brief amicus curiae of the american civil liberties union in support of petitioners”, December 11, <http://www.aclu.org/files/assets/08-1234_tsac_American_Civil_Liberties_Union.pdf>

1. The D.C. Circuit’s decision strips the writ of habeas corpus of its central purpose: providing a judicial remedy for unlawful executive detention. Habeas corpus “protects the rights of the detained by affirming the duty and authority of the Judiciary to call the jailer to account.” Boumediene, 128 S. Ct. at 2247 (citation omitted); see also, e.g., Hamdi v. Rumsfeld, 542 U.S. 507, 536 (2004) (plurality opinion) (“[T]he Great Writ of habeas corpus allows the Judicial Branch to play a necessary role in maintaining th[e] delicate balance of governance, serving as an important judicial check on the Executive’s discretion in the realm of detentions.”); St. Cyr, 533 U.S. at 301 (“At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest.”). The Suspension Clause would be rendered meaningless, and the very purpose of the writ negated, if in a context where the writ inarguably applies and is available, the executive remains free to render the judiciary powerless to grant relief from unlawful incarceration.

In Boumediene, this Court held, as a constitutional matter, that non-citizens detained at Guantanamo as enemy combatants “are entitled to the privilege of habeas corpus to challenge the legality of their detention.” 128 S. Ct. at 2262. As the Court explained, under the Supremacy Clause, a “habeas court must have the power to order the conditional release of an individual unlawfully detained[.]” Id. at 2266 (emphasis added). That recognition flows directly from the purpose and protections of the Great Writ; the court of appeals’ decision, in contrast, can be reconciled neither with the Suspension Clause nor with this Court’s decision in Boumediene.

## cp s afghanistan

#### We solve modeling – the existence or non-existence of Gitmo is what it is, but it has become the key test of our procedures vis a vis detainees

Chaffee, 9

(Advocacy Counsel at Human Rights First, Dismantling Guantanamo: Facing the Challenges of Continued Detention and Repatriation: The Cost of Indefinitely Kicking the Can: Why Continued "Prolonged" Detention Is No Solution To Guantanamo, 42 Case W. Res. J. Int'l L. 187)

The Guantanamo detentions have shown that assessments of dangerousness based not on overt acts, as in a criminal trial, but on association are unreliable and will inevitably lead to costly mistakes. This is precisely why national security preventive detention schemes have proven a dismal failure in other countries. The potential gains from such schemes are simply not great enough to warrant departure from hundreds of years of western criminal justice traditions. n15

The military leaders recognize the disagreeable company that the U.S. keeps when engaging in indefinite detention without trial. U.S. allies in Europe have implemented no comparable long term detention scheme in armed conflict or administrative preventive detention outside of the deportation context. n16 The governments of countries in Egypt, Malaysia, Zimbabwe, and Kenya have authorized indefinite or successive detention schemes in the name of fighting threats from terrorists or insurgents and all those schemes have resulted in violations of fundamental due process norms.n17 In response to this criticism, **such governments have cited Guantanamo Bay detention policies to justify repressive schemes** of prolonged [\*191] detention without trial-schemes that the U.S. criticizes as authorized arbitrary detention. n18

Indefinite detention regimes aimed at preventing security risks are known to foster human rights abuses and to create perverse incentives against bringing criminal charges against prisoners. That is why the U.S. has been consistently critical of governments that detain indefinitely without charge, including regimes that involve successive review or unrestrained renewable time limits. n19 If the Obama administration continues to pursue a detention regime for former Guantanamo detainees that permits indefinite detention without charge, it will impact detention policies of governments throughout the world and will likely embolden other governments to circumvent the protections guaranteed in criminal trials by citing security concerns.

## eu

EU intelligence sharing is resilient and isolated from other issues

Aldrich 09

Richard J. Aldrich is a Professor of International Security at the University of Warwick, British Journal of Politics and International Relations, February 2009, "US–European Intelligence Co-operation on Counter-Terrorism: Low Politics and Compulsion", Vol. 11, Issue 1, pgs. 122-139

Since 9/11, intelligence has been viewed as an integral part of a controversial ‘war on terror’. The acrimonious public arguments over subjects such as Iraqi WMD assessments, secret prisons and the interrogation of detainees suggest intense transatlantic discord. Yet improbably, some of those countries that have expressed strident disagreement in public are privately the closest intelligence partners. It is argued here that we can explain this seeming paradox by viewing intelligence co-operation as a rather specialist kind of ‘low politics’ that is focused on practical arrangements. Intelligence is also a fissiparous activity, allowing countries to work together in one area even while they disagree about something else. Meanwhile, the pressing need to deal with a range of increasingly elusive transnational opponents—including organised crime—compels intelligence agencies to work more closely together, despite their instinctive dislike of multilateral sharing. Therefore, transatlantic intelligence co-operation will continue to deepen, despite the complex problems that it entails.

They don't solve tensions over CT - cites Dworkin

Laurence 10

Jonathan Laurence is assistant professor of political science at Boston College and Nonresident Senior Fellow in the Foreign Policy program at Brookings, Brookings Institute, February 24, 2010, "The US-EU Counter-Terrorism Conversation: Acknowledging a Two-Way Threat ", http://www.brookings.edu/~/media/research/files/papers/2010/2/24%20us%20eu%20counterterrorism%20laurence/0224\_us\_eu\_counterterrorism\_laurence.pdf

In light of the full menu of counter-terrorism topics currently under review in the United States – from extraordinary renditions to detention, secret detention, torture, fair trials, and targeted killing – it is likely that the EU and US will continue to disagree on “some aspects of the fight against terrorism.”16 Although President Obama will oversee the end of Guantanamo, harsh interrogation measures and secret prisons, the US still detains terrorism suspects without trial and has not renounced the use of military commissions.17 In a recent European Council on Foreign Relations policy memo, Anthony Dworkin advocated a “forward-looking policy setting up principles that accord with US-EU values,” one that avoids the “lowest common denominator.” The open questions now are whether Europe will become more engaged in Pakistan, and how long the transatlantic consensus that a military presence in Afghanistan helps to protect European and American streets will last. This will depend in part on whether the ISAF forces are perceived as a benevolent presence, which underscores how counter-terrorism policy is intertwined with foreign policy. EU and US policymakers are no doubt mindful of research showing that 95% of suicide terrorism has been committed against military occupying forces.18

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.

## DA

#### Strong U.S. military contains conflicts—prevents nuclear escalation

Brooks, Ikenberry and Wohlforth ‘13

Stephen Brooks, Associate Professor of Government at Dartmouth College, John Ikenberry, Albert G. Milbank Professor of Politics and International Affairs at Princeton University and Global Eminence Scholar at Kyung Hee University in Seoul, John Wohlforth, Daniel Webster Professor of Government at Dartmouth College, Jan/Feb 2013, Foreign Affairs, Lean Forward, EBSCO

Of course, even if it is true that the costs of deep engagement fall far below what advocates of retrenchment claim, they would not be worth bearing unless they yielded greater benefits. In fact, they do. The most obvious benefit of the current strategy is that it reduces the risk of a dangerous conflict. The United States' security commitments deter states with aspirations to regional hegemony from contemplating expansion and dissuade U.S. partners from trying to solve security problems on their own in ways that would end up threatening other states. Skeptics discount this benefit by arguing that U.S. security guarantees aren't necessary to prevent dangerous rivalries from erupting. They maintain that the high costs of territorial conquest and the many tools countries can use to signal their benign intentions are enough to prevent conflict. In other words, major powers could peacefully manage regional multipolarity without the American pacifier. But that outlook is too sanguine. If Washington got out of East Asia, Japan and South Korea would likely expand their military capabilities and go nuclear, which could provoke a destabilizing reaction from China. It's worth noting that during the Cold War, both South Korea and Taiwan tried to obtain nuclear weapons; the only thing that stopped them was the United States, which used its security commitments to restrain their nuclear temptations. Similarly, were the United States to leave the Middle East, the countries currently backed by Washington--notably, Israel, Egypt, and Saudi Arabia--might act in ways that would intensify the region's security dilemmas. There would even be reason to worry about Europe. Although it's hard to imagine the return of great-power military competition in a post-American Europe, it's not difficult to foresee governments there refusing to pay the budgetary costs of higher military outlays and the political costs of increasing EU defense cooperation. The result might be a continent incapable of securing itself from threats on its periphery, unable to join foreign interventions on which U.S. leaders might want European help, and vulnerable to the influence of outside rising powers. Given how easily a U.S. withdrawal from key regions could lead to dangerous competition, advocates of retrenchment tend to put forth another argument: that such rivalries wouldn't actually hurt the United States. To be sure, few doubt that the United States could survive the return of conflict among powers in Asia or the Middle East--but at what cost? Were states in one or both of these regions to start competing against one another, they would likely boost their military budgets, arm client states, and perhaps even start regional proxy wars, all of which should concern the United States, in part because its lead in military capabilities would narrow. Greater regional insecurity could also produce cascades of nuclear proliferation as powers such as Egypt, Saudi Arabia, Japan, South Korea, and Taiwan built nuclear forces of their own. Those countries' regional competitors might then also seek nuclear arsenals. Although nuclear deterrence can promote stability between two states with the kinds of nuclear forces that the Soviet Union and the United States possessed, things get shakier when there are multiple nuclear rivals with less robust arsenals. As the number of nuclear powers increases, the probability of illicit transfers, irrational decisions, accidents, and unforeseen crises goes up. The case for abandoning the United States' global role misses the underlying security logic of the current approach. By reassuring allies and actively managing regional relations, Washington dampens competition in the world s key areas, thereby preventing the emergence of a hothouse in which countries would grow new military capabilities. For proof that this strategy is working, one need look no further than the defense budgets of the current great powers: on average, since 1991 they have kept their military expenditures as A percentage of GDP to historic lows, and they have not attempted to match the United States' top-end military capabilities. Moreover, all of the world's most modern militaries are U.S. allies, and the United States' military lead over its potential rivals .is by many measures growing. On top of all this, the current grand strategy acts as a hedge against the emergence regional hegemons. Some supporters of retrenchment argue that the U.S. military should keep its forces over the horizon and pass the buck to local powers to do the dangerous work of counterbalancing rising regional powers. Washington, they contend, should deploy forces abroad only when a truly credible contender for regional hegemony arises, as in the cases of Germany and Japan during World War II and the Soviet Union during the Cold War. Yet there is already a potential contender for regional hegemony--China--and to balance it, the United States will need to maintain its key alliances in Asia and the military capacity to intervene there. The implication is that the United States should get out of Afghanistan and Iraq, reduce its military presence in Europe, and pivot to Asia. Yet that is exactly what the Obama administration is doing. MILITARY DOMINANCE, ECONOMIC PREEMINENCE Preoccupied with security issues, critics of the current grand strategy miss one of its most important benefits: sustaining an open global economy and a favorable place for the United States within it. To be sure, the sheer size of its output would guarantee the United States a major role in the global economy whatever grand strategy it adopted. Yet the country's military dominance undergirds its economic leadership. In addition to protecting the world economy from instability, its military commitments and naval superiority help secure the sea-lanes and other shipping corridors that allow trade to flow freely and cheaply. Were the United States to pull back from the world, the task of securing the global commons would get much harder. Washington would have less leverage with which it could convince countries to cooperate on economic matters and less access to the military bases throughout the world needed to keep the seas open. A global role also lets the United States structure the world economy in ways that serve its particular economic interests. During the Cold War, Washington used its overseas security commitments to get allies to embrace the economic policies it preferred--convincing West Germany in the 1960s, for example, to take costly steps to support the U.S. dollar as a reserve currency. U.S. defense agreements work the same way today. For example, when negotiating the 2011 free-trade agreement with South Korea, U.S. officials took advantage of Seoul's desire to use the agreement as a means of tightening its security relations with Washington. As one diplomat explained to us privately, "We asked for changes in labor and environment clauses, in auto clauses, and the Koreans took it all." Why? Because they feared a failed agreement would be "a setback to the political and security relationship." More broadly, the United States wields its security leverage to shape the overall structure of the global economy. Much of what the United States wants from the economic order is more of the same: for instance, it likes the current structure of the World Trade Organization and the International Monetary Fund and prefers that free trade continue. Washington wins when U.S. allies favor this status quo, and one reason they are inclined to support the existing system is because they value their military alliances. Japan, to name one example, has shown interest in the Trans-Pacific Partnership, the Obama administration's most important free-trade initiative in the region, less because its economic interests compel it to do so than because Prime Minister Yoshihiko Noda believes that his support will strengthen Japan's security ties with the United States. The United States' geopolitical dominance also helps keep the U.S. dollar in place as the world's reserve currency, which confers enormous benefits on the country, such as a greater ability to borrow money. This is perhaps clearest with Europe: the EU'S dependence on the United States for its security precludes the EU from having the kind of political leverage to support the euro that the United States has with the dollar. As with other aspects of the global economy, the United States does not provide its leadership for free: it extracts disproportionate gains. Shirking that responsibility would place those benefits at risk. CREATING COOPERATION What goes for the global economy goes for other forms of international cooperation. Here, too, American leadership benefits many countries but disproportionately helps the United States. In order to counter transnational threats, such as terrorism, piracy, organized crime, climate change, and pandemics, states have to work together and take collective action. But cooperation does not come about effortlessly, especially when national interests diverge. The United States' military efforts to promote stability and its broader leadership make it easier for Washington to launch joint initiatives and shape them in ways that reflect U.S. interests. After all, cooperation is hard to come by in regions where chaos reigns, and it flourishes where leaders can anticipate lasting stability. U.S. alliances are about security first, but they also provide the political framework and channels of communication for cooperation on nonmilitary issues. NATO, for example, has spawned new institutions, such as the Atlantic Council, a think tank, that make it easier for Americans and Europeans to talk to one another and do business. Likewise, consultations with allies in East Asia spill over into other policy issues; for example, when American diplomats travel to Seoul to manage the military alliance, they also end up discussing the Trans-Pacific Partnership. Thanks to conduits such as this, the United States can use bargaining chips in one issue area to make progress in others. The benefits of these communication channels are especially pronounced when it comes to fighting the kinds of threats that require new forms of cooperation, such as terrorism and pandemics. With its alliance system in place, the United States is in a stronger position than it would otherwise be to advance cooperation and share burdens. For example, the intelligence-sharing network within NATO, which was originally designed to gather information on the Soviet Union, has been adapted to deal with terrorism. Similarly, after a tsunami in the Indian Ocean devastated surrounding countries in 2004, Washington had a much easier time orchestrating a fast humanitarian response with Australia, India, and Japan, since their militaries were already comfortable working with one another. The operation did wonders for the United States' image in the region. The United States' global role also has the more direct effect of facilitating the bargains among governments that get cooperation going in the first place. As the scholar Joseph Nye has written, "The American military role in deterring threats to allies, or of assuring access to a crucial resource such as oil in the Persian Gulf, means that the provision of protective force can be used in bargaining situations. Sometimes the linkage may be direct; more often it is a factor not mentioned openly but present in the back of statesmen's minds." THE DEVIL WE KNOW Should America come home? For many prominent scholars of international relations, the answer is yes--a view that seems even wiser in the wake of the disaster in Iraq and the Great Recession. Yet their arguments simply don't hold up. There is little evidence that the United States would save much money switching to a smaller global posture. Nor is the current strategy self-defeating: it has not provoked the formation of counterbalancing coalitions or caused the country to spend itself into economic decline. Nor will it condemn the United States to foolhardy wars in the future. What the strategy does do is help prevent the outbreak of conflict in the world's most important regions, keep the global economy humming, and make international cooperation easier. Charting a different course would threaten all these benefits. This is not to say that the United States' current foreign policy can't be adapted to new circumstances and challenges. Washington does not need to retain every commitment at all costs, and there is nothing wrong with rejiggering its strategy in response to new opportunities or setbacks. That is what the Nixon administration did by winding down the Vietnam War and increasing the United States' reliance on regional partners to contain Soviet power, and it is what the Obama administration has been doing after the Iraq war by pivoting to Asia. These episodes of rebalancing belie the argument that a powerful and internationally engaged America cannot tailor its policies to a changing world. A grand strategy of actively managing global security and promoting the liberal economic order has served the United States exceptionally well for the past six decades, and there is no reason to give it up now. The country's globe-spanning posture is the devil we know, and a world with a disengaged America is the devil we don't know. Were American leaders to choose retrenchment, they would in essence be running a massive experiment to test how the world would work without an engaged and liberal leading power. The results could well be disastrous.

#### Regulations on detention require huge military investments that trade-off with effective war-fighting—causes failure in Afghanistan faster than the aff

Ford, 10

(Colonel, U.S. Army Judge Advocate General's Corps, currently serving as the Staff Judge Advocate, Multi-National Security Transition Command-Iraq, Baghdad, Iraq, “Keeping Boumediene off the Battlefield: Examining Potential Implications of the Boumediene v. Bush Decision to the Conduct of United States Military Operations,” 30 Pace L. Rev. 396, Winter, Lexis)

Programmatically and institutionally, extension would require a re-evaluation of the DoD's policies, regulations, training, and organization. Currently, all military personnel are trained to the Geneva standard under the DoD Law of War Program. n38 This program ensures that service members are trained in and abide by the international legal norms of warfare. Would the DoD implement a similar program to ensure compliance with domestic laws during combat operations, including detention operations? And, if so, should it be separate from the Law of War Program or integrated into it? A progressive extension of Boumediene may require service members in combat to abide by constitutional provisions normally applicable to domestic law enforcement personnel. Such an extension would require a massive training and education program to be implemented department-wide. This training might include instruction on the court-directed domestic laws that might now be applicable, essentially a shifting body of criminal law for the battlefield. In [\*405] implementing this new standard, both the DoD and the military might be required to implement several new procedures, including: training packages for new entrants at basic training installations, annual refresher training, formalized procedures for integration into major military training exercises and actual military operations, a reporting procedure for violations, and benchmarks for methods of effectiveness. The International Committee of the Red Cross ("ICRC") might choose to monitor U.S. forces not only for compliance with international law but also for compliance with our applicable domestic laws. The DoD would be interested in the ICRC's new focus area and would need to implement procedures to address these new areas of international scrutiny. As the DoD attempts to operationalize Boumediene, it must consider the new concept of how to support a federal case while concomitantly conducting military operations. Justice Scalia, in his dissent, noted that the Boumediene holding "sets our military commanders the impossible task of proving to a civilian court, under whatever standards this Court devises in the future, that evidence supports the confinement of each and every enemy prisoner." n39 Practically speaking, this is already happening in the U.S. District Court for the District of Columbia as the Guantanamo detainees' habeas cases progress. n40 The Supreme Court is not, as Justice Scalia noted, establishing the rules under which these cases will proceed. That task has fallen on the district court judges, specifically Senior Judge Thomas F. Hogan, who has been charged with establishing general rules for the administration and management of most of these cases. n41 [\*406] These rules and procedures will be vitally important not only for the process, but also for the DoD and combat soldiers whose actions they will dictate. Courts will create, and lawyers argue endlessly about, such important matters as the definition of "enemy combatant," the standard of proof for this yet-to-be defined term, the admissibility of evidence, the scope and breadth of exclusionary rules, presumptions afforded to government evidence, whether the presence of the detainee is required, access to government witnesses, the extent of government disclosures of exculpatory evidence pursuant to Brady v. Maryland, n42 and a host of other procedural and substantive issues. Every issue that may arise in a federal criminal case will have to be addressed, interpreted, decided, and applied to the current and future unique enemy prisoner habeas actions. These procedures create daunting tasks. Enter CSI: Kandahar. Extending the Boumediene holding would require detailed procedures for the collection, preservation, and maintenance of "evidence." Normally, the military treats information regarding enemy captives as battlefield information or intelligence. Military personnel process this information, important to the conduct of military operations, through intelligence channels. Intelligence analysts and commanders use the information to determine enemy strengths, weaknesses, vulnerabilities, and locations important to the commander on the ground. Treating captured enemy information as evidence in a federal case would require an entirely new method of collecting and processing intelligence. More likely, the DoD and the intelligence agencies would choose to establish an entirely separate but parallel system to process and sanitize battlefield intelligence information for transmittal to federal courts because of the significant risk to intelligence sources and methods. The DoD may be forced to address these federal evidence requirements. Standards may have to be established, beginning with procedures to determine what constitutes the [\*407] equivalent of probable cause to detain, and including procedures for, inter alia, the seizure and collection of evidence, chain of custody, evidence storage and maintenance, evidence authentication, and witness availability. n43 This may, in turn, require procedures to formalize investigations, including a requirement of a pseudo-criminal case file for every detained enemy. Certainly, service members do not have the training to make and prove a federal case. Service members on the ground are now familiar with basic evidence collection requirements, and great strides have been taken in Iraq and Afghanistan to formalize information collection resulting from raids. n44 Site exploitation teams and specially trained personnel have assisted in gathering and maintaining site intelligence information, which may later be used as evidence, normally in an Iraqi or Afghani court. But imagine if every military operation required a police-like crime scene analysis, with the [\*408] collection of evidence to be used in a federal court. Soldiers simply cannot conduct such an undertaking, nor should they be required to. Military law enforcement personnel are a limited asset on the battlefield, busily investigating alleged misconduct by military personnel, contract fraud, and the deaths of service members. The DoD would be hard pressed to meet new stringent investigative and evidentiary requirements. The DoD may have to adjust its force structure and dramatically increase the capacity of the services' law enforcement investigative agencies, a precarious undertaking for a military already stretched thin. Or, perhaps the DoD would create a new habeas investigative agency, uniformed and/or civilian, to accompany forces on the battlefield. One solution is to use another federal law enforcement agency, such as the Federal Bureau of Investigation ("F.B.I."), to augment military forces, similar to the manner in which the U.S. Coast Guard augments U.S. Navy operations during law enforcement actions at sea. n45

Alexander is uq for us – it says there’s no court interference now, and is about habeas protections which the CP clearly solves so they can’t win a uq turn

Janet Cooper Alexander 13, professor of law at Stanford University, March 21st, 2013, "The Law-Free Zone and Back Again," Illinois Law Review, [illinoislawreview.org/wp-content/ilr-content/articles/2013/2/Alexander.pdf](http://illinoislawreview.org/wp-content/ilr-content/articles/2013/2/Alexander.pdf)

Congressalsopassed legislation requiringsuspectedmembers of al- Qaeda or “associated forces” to be held in military custody,again making it difficult to prosecute them in federal court.The bill as passed contained some moderating elements, including the possibility of presidential waiver of the military custody requirement, 7 recognition of the FBI’s ability to interrogate suspects, 8 and a disclaimer stating that the statute was not intended to change existing law regarding the authority of the President, the scope of the Authorization for Use of Military Force, 9 or the detention of U.S. citizens, lawful residents, or persons captured in the United States. 10 All the while, Republican presidential hopefuls were vying to see who could be the most vigorous proponent of indefinite detention, barring trials in civilian courts, and reinstating a national policy of interrogation by torture.¶11¶During the same period, the D.C. Circuit issued a series of decisions that effectively reversed the Supreme Court’s habeas decisions of 2004 and 2008. 12The Supreme Court’s failure to review these decisions has left detainees with essentially no meaningful opportunity to challenge their custody.¶Thus,a decade that began with the executive branch’s assertion of sole and exclusive power to act unconstrained by law or the other branches ended, ironically, with Congress asserting its power to countermand the executive branch’s decisions, regardless of detainee claims of legal rights, in order to maintain those law-free policies. And although the Supreme Court had blocked the Bush administration’s law-free zone strategy by upholding detainees’ habeas rights, the D.C. Circuit has since rendered those protections toothless

#### Global due process is a huge resource drain

Bellinger, 11

(Sr. Fellow-National Security Law-CFR & Law Prof-Cardozo, April, Detention Operations in Contemporary Conflicts: Four Challenges for the Geneva Conventions and Other Existing Law, http://www.lawfareblog.com/wp-content/uploads/2013/08/BellingerPadmanabhan\_Detentions\_April\_20111.pdf)

A second difficulty concerning judicial review is whether it is feasible in conflicts having larger numbers of detainees.143 For example, the demands that the U.S. federal courts have imposed on the government in justifying detention at Guantanamo could not practically be applied if many more detainees were involved. In 2007, the D.C. Circuit in Bismullah v. Gates interpreted the Detainee Treatment Act as granting the court the authority to review all reasonably available information in the government’s possession bearing on the issue of whether the detainee was an enemy combatant.144 In seeking en banc and later Supreme Court review of the decision, the United States explained that meeting such demands required “hundreds of man-hours” per case, **diverting valuable intelligence and military resources from the ongoing war effort**.145 While these demands may be met relatively easily with small numbers of detainees, such as the population at Guantanamo, **they would be impractical if** imposed in conflicts with nonstate actors resulting in thousands of detainees.146 In those cases, administrative review may be more realistic.

#### It makes mission effectiveness impossible

Jacob, 12

(Partner-O’Melveny & Myers, 10/1 “Detention Policies: What Role for Judicial Review?” http://www.abajournal.com/magazine/article/detention\_policies\_what\_role\_for\_judicial\_review/)

More than a decade into the war on terror, no federal court has seriously called into question the government’s potentially unending authority to detain captured combatants until the conflict “ends.” Whether there are or should be any temporal limitations to that authority is a question that future judges and political leaders may well address. Boumediene, however, demonstrates the judiciary’s concern that as the war on terror drags on, and with it the length of ongoing detentions (at the time of the Boumediene decision, some of the detainees had been held for more than six years), we need to at least be increasingly sure that the individuals we are detaining are in fact enemy combatants. Boumediene expressly declined to state how greater certainty concerning the validity of military detentions should be achieved, noting that “our opinion does not address the content of the law that governs [enemy combatant] detention” and directing the lower courts to establish a framework capable of reconciling “liberty and security … within the framework of the law.” This is what the D.C. Circuit has attempted to do. Probably the most important war on terror decision handed down by the D.C. Circuit since Boumediene was decided is Maqaleh, in which the court declined to extend the writ of habeas corpus to aliens captured abroad, designated enemy combatants and held at Bagram Air Force Base in Afghanistan. From the military’s perspective, the nightmare scenario has always been the prospect that the judiciary would **assert the right to engage in a searching inquiry into the basis for every capture and detention of an alien abroad**, even while active combat operations are ongoing. In World War II, such a rule could have required the government to **litigate hundreds of thousands of habeas claims, costing the government significant expense and causing substantial disruption to military operations**. Maqaleh puts such fears to rest.

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## Impact 2NR

#### American decline risks extinction

Bradley A. **Thayer 7** (Associate Professor in the Dept. of Defense and Strategic Studies at Missouri State University) 2007 American Empire: A Debate, “Reply to Christopher Layne” p 118

To abandon its leadership role would be a fundamental mistake of American grand strategy. Indeed, in the great history of the United States, there is no parallel, no previous case, where the United States has made such a titanic grand strategic blunder. It would surpass by far its great mistake of 1812, when the young and ambitious country gambled and declared war against a mighty empire, the British, believing London was too distracted by the tremendous events on the Continent—the formidable military genius of Napoleon and the prodigious threat from the French empire and its allies--to notice while it conquered Canada. The citizens of the United States cannot pretend that, by weakening ourselves, other countries will be nice and respect its security and interests. To suggest this implies a naiveté and innocence about international politics that would be charming, if only the consequences of such an opinion were not so serious. Throughout its history, the United States has never refrained from acting boldly to secure its interests. It should not be timid now. Many times in the great history of the United States, the country faced difficult decisions—decisions of confrontation or appeasement--and significant threats--the British, French, Spanish, Germans, Italians, Japanese, and Soviets. It always has recognized those threats and faced them down, to emerge victorious. The United States should have the confidence to do so now against China not simply because to do so maximizes its power and security or ensures it is the dominant vice in the world's affairs, but because it is the last, best hope of humanity.