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#### The plan undermines executive decision making

**Posner and Vermeule, 7** – \*Kirkland and Ellis Professor of Law at the University of Chicago Law School AND \*\*professor at Harvard Law School (Eric and Adrian,Terror in the Balance: Security, Liberty, and the Courts p. 30-31)

As a matter of fact, this baseline picture is almost certainly incorrect. Government does not always act rationally; sometimes government officials enjoy agency slack and use it to engage in self-dealing, opportunism, or other welfare-reducing actions; sometimes government officials act as tightly constrained agents for the majority and enact policies that oppress minorities. But the baseline picture helps us to clarify the position we will defend: government is not more likely to do these things during emergencies than during normal times, whereas courts are less able to police such behavior during emergencies than during normal times. This is an empirical and institutional claim, which we shall support in every succeeding chapter, not a conceptual claim. If courts were perfectly informed and well motivated, then they might weed out bad emergency policies chosen by irrational or ill-motivated governments. But we just do not have courts of that sort. In particular cases, judges may do better than government at assessing the relative likelihood of threats to security and liberty or the overall costs of particular policies. But this will be wholly fortuitous, and judges who think they have guessed better than government may guess worse instead. Judges are generalists, and the political insulation that protects them from current politics also deprives them of information,33 especially information about novel security threats and necessary responses to those threats. If government can make mistakes and adopt unjustified security measures, then judges can make mistakes as well, sometimes invalidating justified security measures.

On this comparative institutional view, there is no general reason to think that judges can do better than government at balancing security and liberty during emergencies. Constitutional rules do no good, and some harm, if they block government’s attempts to adjust the balance as threats wax and wane. When judges or academic commentators say that government has wrongly assessed the net benefits or costs of some security policy or other, they are amateurs playing at security policy, and there is no reason to expect that courts can improve upon government’s emergency policies in any systematic way.

#### Turns heg

**Blomquist, 10 -** Professor of Law, Valparaiso University School of Law (Robert, “THE JURISPRUDENCE OF AMERICAN NATIONAL SECURITY PRESIPRUDENCE “ Valparaiso University Law Review, Vol. 44, No. 3 [2010], Art. 6, google scholar)

Before the United States Supreme Court Justices form an opinion on the legality of national security decisions by the POTUS, they should immerse themselves in judicially-noticeable facts concerning what national security expert, Bruce Berkowitz, in the subtitle of his recent book, calls the “challengers, competitors, and threats to America’s future.”23 Not that the Justices need to become experts in national security affairs,24 but every Supreme Court Justice should be aware of the following five basic national security facts and conceptions before sitting in judgment on presiprudential national security determinations.

(1) “National security policy . . . is harder today because the issues that are involved are more numerous and varied. The problem of the day can change at a moment’s notice.”25 While “[y]esterday, it might have been proliferation; today, terrorism; tomorrow, hostile regional powers”26, the twenty-first century reality is that “[t]hreats are also more likely to be intertwined—proliferators use the same networks as narcotraffickers, narco-traffickers support terrorists, and terrorists align themselves with regional powers.”27

(2) “Yet, as worrisome as these immediate concerns may be, the long-term challenges are even harder to deal with, and the stakes are higher. Whereas the main Cold War threat—the Soviet Union—was brittle, most of the potential adversaries and challengers America now faces are resilient.”28

(3) “The most important task for U.S. national security today is simply to retain the strategic advantage. This term, from the world of military doctrine, refers to the overall ability of a nation to control, or at least influence, the course of events.”29 Importantly, “[w]hen you hold the strategic advantage, situations unfold in your favor, and each round ends so that you are in an advantageous position for the next. When you do not hold the strategic advantage, they do not.”30

(4) While “keeping the strategic advantage may not have the idealistic ring of making the world safe for democracy and does not sound as decisively macho as maintaining American hegemony,”31 maintaining the American “strategic advantage is critical, because it is essential for just about everything else America hopes to achieve— promoting freedom, protecting the homeland, defending its values, preserving peace, and so on.”32

(5) The United States requires national security “agility.”33 It not only needs “to refocus its resources repeatedly; it needs to do this faster than an adversary can focus its own resources.”34

As further serious preparation for engaging in the jurisprudence of American national security presiprudence in hotly contested cases and controversies that may end up on their docket, our Supreme Court Justices should understand that, as Walter Russell Mead pointed out in an important essay a few years ago,35 the average American can be understood as a Jacksonian pragmatist on national security issues.36 “Americans are determined to keep the world at a distance, while not isolating ourselves from it completely. If we need to take action abroad, we want to do it on our terms.”37 Thus, recent social science survey data paints “a picture of a country whose practical people take a practical approach to knowledge about national security. Americans do not bother with the details most of the time because, for most Americans, the details do not matter most the time.”38 Indeed, since the American people “do know the outlines of the big picture and what we need to worry about [in national security affairs] so we know when we need to pay greater attention and what is at stake. This is the kind of knowledge suited to a Jacksonian.”39

Turning to how the Supreme Court should view and interpret American presidential measures to oversee national security law and policy, our Justices should consider a number of important points. First, given the robust text, tradition, intellectual history, and evolution of the institution of the POTUS as the American national security sentinel,40 and the unprecedented dangers to the United States national security after 9/11,41 national security presiprudence should be accorded wide latitude by the Court in the adjustment (and tradeoffs) of trading liberty and security.42 Second, Justices should be aware that different presidents institute changes in national security presiprudence given their unique perspective and knowledge of threats to the Nation.43 Third, Justices should be restrained in second-guessing the POTUS and his subordinate national security experts concerning both the existence and duration of national security emergencies and necessary measures to rectify them. “During emergencies, the institutional advantages of the executive are enhanced”;44 moreover, “[b]ecause of the importance of secrecy, speed, and flexibility, courts, which are slow, open, and rigid, have less to contribute to the formulation of national policy than they do during normal times.”45 Fourth, Supreme Court Justices, of course, should not give the POTUS a blank check—even during times of claimed national emergency; but, how much deference to be accorded by the Court is “always a hard question” and should be a function of “the scale and type of the emergency.”46 Fifth, the Court should be extraordinarily deferential to the POTUS and his executive subordinates regarding questions of executive determinations of the international laws of war and military tactics. As cogently explained by Professors Eric Posner and Adrian Vermeule,47 “the United States should comply with the laws of war in its battle against Al Qaeda”—and I would argue, other lawless terrorist groups like the Taliban—“only to the extent these laws are beneficial to the United States, taking into account the likely response of other states and of al Qaeda and other terrorist organizations,”48 as determined by the POTUS and his national security executive subordinates.

#### And, independently causes extinction

**Li, 9** - J.D. candidate, Georgetown University Law Center, 2009; B.A., political science and history, Yale University, 2006 (Zheyao, “War Powers for the Fourth Generation: Constitutional Interpretation in the Age of Asymmetric Warfare” 7 Geo. J.L. & Pub. Pol'y 373, Winter, lexis)

Even as the quantity of nation-states in the world has increased dramatically since the end of World War II, the institution of the nation-state has been in decline over the past few decades. Much of this decline is the direct result of the waning of major interstate war, which primarily resulted from the introduction of nuclear weapons. n122 The proliferation of nuclear weapons, and their immense capacity for absolute destruction, has ensured that conventional wars remain limited in scope and duration. Hence, "both the size of the armed forces and the quantity of weapons at their disposal has declined quite sharply" since 1945. n123 At the same time, concurrent with the decline of the nation-state in the second half of the twentieth century, non-state actors have increasingly been willing and able to use force to advance their causes. In contrast to nation-states, who adhere to the Clausewitzian distinction between the ends of policy and the means of war to achieve those ends, non-state actors do not necessarily fight as a mere means of advancing any coherent policy. Rather, they see their fight as a life-and-death struggle, wherein the ordinary terminology of war as an instrument of policy breaks down because of this blending of means and ends. n124 It is the existential nature of this struggle and the disappearance of the Clausewitzian distinction between war and policy that has given rise to a new generation of warfare. The concept of fourth-generational warfare was first articulated in an influential article in the Marine Corps Gazette in 1989, which has proven highly prescient. In describing what they saw as the modern trend toward a new phase of warfighting, the authors argued that: [\*395] In broad terms, fourth generation warfare seems likely to be widely dispersed and largely undefined; the distinction between war and peace will be blurred to the vanishing point. It will be nonlinear, possibly to the point of having no definable battlefields or fronts. The distinction between "civilian" and "military" may disappear. Actions will occur concurrently throughout all participants' depth, including their society as a cultural, not just a physical, entity. Major military facilities, such as airfields, fixed communications sites, and large headquarters will become rarities because of their vulnerability; the same may be true of civilian equivalents, such as seats of government, power plants, and industrial sites (including knowledge as well as manufacturing industries). n125 It is precisely this blurring of peace and war and the demise of traditionally definable battlefields that provides the impetus for the formulation of a new theory of war powers. As evidenced by Part III, supra, the constitutional allocation of war powers, and the Framers' commitment of the war power to two co-equal branches, was **not designed to cope** with the current international system, one that is characterized by the persistent machinations of international terrorist organizations, the rise of multilateral alliances, the emergence of rogue states, and the potentially wide proliferation of easily deployable weapons of mass destruction, nuclear and otherwise. B. The Framers' World vs. Today's World The Framers crafted the Constitution, and the people ratified it, in a time when everyone understood that the state controlled both the raising of armies and their use. Today, however, the threat of terrorism is bringing an end to the era of the nation-state's legal monopoly on violence, and the kind of war that existed before--based on a clear division between government, armed forces, and the people--is on the decline. n126 As states are caught between their decreasing ability to fight each other due to the existence of nuclear weapons and the increasing threat from non-state actors, it is clear that the Westphalian system of nation-states that informed the Framers' allocation of war powers is no longer the order of the day. n127 As seen in Part III, supra, the rise of the modern nation-state occurred as a result of its military effectiveness and ability to defend its citizens. If nation-states such as the United States are unable to adapt [\*396] to the changing circumstances of **fourth-generational** warfare--that is, if they are unable to adequately defend against low-intensity conflict conducted by non-state actors--"then clearly [the modern state] does not have a future in front of it." n128 The challenge in formulating a new theory of war powers for fourth-generational warfare that remains legally justifiable lies in the difficulty of adapting to changed circumstances while remaining faithful to the constitutional text and the original meaning. n129 To that end, it is crucial to remember that the Framers crafted the Constitution in the context of the Westphalian system of nation-states. The three centuries following the Peace of Westphalia of 1648 witnessed an international system characterized by wars, which, "through the efforts of governments, assumed a more regular, interconnected character." n130 That period saw the rise of an independent military class and the stabilization of military institutions. Consequently, "warfare became more regular, better organized, and more attuned to the purpose of war--that is, to its political objective." n131 That era is now over. Today, the stability of the long-existing Westphalian international order has been greatly eroded in recent years with the advent of international terrorist organizations, which care nothing for the traditional norms of the laws of war. [\*397] This new global environment exposes the limitations inherent in the interpretational methods of originalism and textualism and necessitates the adoption of a new method of constitutional interpretation. While one must always be aware of the text of the Constitution and the original understanding of that text, that very awareness identifies the extent to which fourth-generational warfare epitomizes a phenomenon unforeseen by the Framers, a problem the constitutional resolution of which must rely on the good judgment of the present generation. n132 Now, to adapt the constitutional warmarking scheme to the new international order characterized by fourth-generational warfare, one must understand the threat it is being adapted to confront. C. The Jihadist Threat The erosion of the Westphalian and Clausewitzian model of warfare and the blurring of the distinction between the means of warfare and the ends of policy, which is one characteristic of fourth-generational warfare, apply to al-Qaeda and other adherents of jihadist ideology who view the United States as an enemy. An excellent analysis of jihadist ideology and its implications for the rest of the world are presented by Professor Mary Habeck. n133 Professor Habeck identifies the centrality of the Qur'an, specifically a particular reading of the Qur'an and hadith (traditions about the life of Muhammad), to the jihadist terrorists. n134 The jihadis believe that the scope of the Qur'an is universal, and "that their interpretation of Islam is also intended for the entire world, which must be brought to recognize this fact peacefully if possible and through violence if not." n135 Along these lines, the jihadis view the United States and her allies as among the greatest enemies of Islam: they believe "that every element of modern Western liberalism is flawed, wrong, and evil" because the basis of liberalism is secularism. n136 The jihadis emphasize the superiority of Islam to all other religions, and they believe that "God does not want differing belief systems to coexist." n137 For this reason, jihadist groups such as al-Qaeda "recognize that the West will not submit without a fight and believe in fact that the Christians, Jews, and liberals have united against Islam in a war that will end in the complete destruction of the unbelievers." n138 Thus, the adherents of this jihadist ideology, be it al-Qaeda or other groups, will continue to target the United States until she is destroyed. Their ideology demands it. n139 [\*398] To effectively combat terrorist groups such as al-Qaeda, it is necessary to understand not only how they think, but also how they operate. Al-Qaeda is a transnational organization capable of simultaneously managing multiple operations all over the world. n140 It is both centralized and decentralized: al-Qaeda is centralized in the sense that Osama bin Laden is the unquestioned leader, but it is decentralized in that its operations are carried out locally, by distinct cells. n141 Al-Qaeda benefits immensely from this arrangement because it can exercise direct control over high-probability operations, while maintaining a distance from low-probability attacks, only taking the credit for those that succeed. The local terrorist cells benefit by gaining access to al-Qaeda's "worldwide network of assets, people, and expertise." n142 Post-September 11 events have highlighted al-Qaeda's resilience. Even as the United States and her allies fought back, inflicting heavy casualties on al-Qaeda in Afghanistan and destroying dozens of cells worldwide, "al-Qaeda's networked nature allowed it to absorb the damage and remain a threat." n143 This is a far cry from earlier generations of warfare, where the decimation of the enemy's military forces would generally bring an end to the conflict. D. The Need for Rapid Reaction and Expanded Presidential War Power By now it should be clear just how different this conflict against the extremist terrorists is from the type of warfare that occupied the minds of the Framers at the time of the Founding. Rather than maintaining the geographical and political isolation desired by the Framers for the new country, today's United States is an international power targeted by individuals and groups that will not rest until seeing her demise. The Global War on Terrorism is not truly a war within the Framers' eighteenth-century conception of the term, and the normal constitutional provisions regulating the division of war powers between Congress and the President do not apply. Instead, this "war" is a struggle for survival and dominance against forces that threaten to destroy the United States and her allies, and the fourth-generational nature of the conflict, highlighted by an indiscernible distinction between wartime and peacetime, necessitates an evolution of America's traditional constitutional warmaking scheme. As first illustrated by the military strategist Colonel John Boyd, constitutional decision-making in the realm of war powers in the fourth generation should [\*399] consider the implications of the OODA Loop: Observe, Orient, Decide, and Act. n144 In the era of fourth-generational warfare, quick reactions, proceeding through the OODA Loop rapidly, and disrupting the enemy's OODA loop are the keys to victory. "In order to win," Colonel Boyd suggested, "we should operate at a faster tempo or rhythm than our adversaries." n145 In the words of Professor Creveld, "[b]oth organizationally and in terms of the equipment at their disposal, the armed forces of the world will have to adjust themselves to this situation by changing their doctrine, doing away with much of their heavy equipment and becoming more like police." n146 Unfortunately, the existing constitutional understanding, which diffuses war power between two branches of government, necessarily (by the Framers' design) slows down decision-making. [\*400] In circumstances where war is undesirable (which is, admittedly, most of the time, especially against other nation-states), the deliberativeness of the existing decision-making process is a positive attribute. In America's current situation, however, in the midst of the conflict with al-Qaeda and other international terrorist organizations, the existing process of constitutional decision-making in warfare may prove a fatal hindrance to achieving the initiative necessary for victory. As a slow-acting, deliberative body, Congress does not have the ability to adequately deal with fast-emerging situations in fourth-generational warfare. Thus, in order to combat transnational threats such as al-Qaeda, the executive branch must have the ability to operate by taking offensive military action even without congressional authorization, because only the executive branch is capable of the swift decision-making and action necessary to prevail in fourth-generational conflicts against fourth-generational opponents.

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#### Obama is using political capital to hammer the GOP on immigration – it will pass, but getting it to the floor is key

**Epstein, 10/17/13** (Reid, Politico, “Obama’s latest push features a familiar strategy” <http://www.politico.com/story/2013/10/barack-obama-latest-push-features-familiar-strategy-98512.html>)

President Barack Obama made his plans for his newly won political capital official — he’s going to hammer House Republicans on immigration.¶ And it’s evident from his public and private statements that Obama’s latest immigration push is, in at least one respect, similar to his fiscal showdown strategy: yet again, the goal is to boost public pressure on House Republican leadership to call a vote on a Senate-passed measure.¶ “The majority of Americans think this is the right thing to do,” Obama said Thursday at the White House. “And it’s sitting there waiting for the House to pass it. Now, if the House has ideas on how to improve the Senate bill, let’s hear them. Let’s start the negotiations. But let’s not leave this problem to keep festering for another year, or two years, or three years. This can and should get done by the end of this year.”¶ And yet Obama spent the bulk of his 20-minute address taking whack after whack at the same House Republicans he’ll need to pass that agenda, culminating in a jab at the GOP over the results of the 2012 election — and a dare to do better next time.¶ “You don’t like a particular policy or a particular president? Then argue for your position,” Obama said. “Go out there and win an election. Push to change it. But don’t break it. Don’t break what our predecessors spent over two centuries building. That’s not being faithful to what this country’s about.”¶ Before the shutdown, the White House had planned a major immigration push for the first week in October. But with the shutdown and looming debt default dominating the discussion during the last month, immigration reform received little attention on the Hill.¶ Immigration reform allies, including Obama’s political arm, Organizing for Action, conducted a series of events for the weekend of Oct. 5, most of which received little attention in Washington due to the the shutdown drama. But activists remained engaged, with Dream Act supporters staging a march up Constitution Avenue, past the Capitol to the Supreme Court Tuesday, to little notice of the Congress inside.¶ Obama first personally signaled his intention to re-emerge in the immigration debate during an interview Tuesday with the Los Angeles Univision affiliate, conducted four hours before his meeting that day with House Democrats.¶ Speaking of the week’s fiscal landmines, Obama said: “Once that’s done, you know, the day after, I’m going to be pushing to say, call a vote on immigration reform.”¶ When he met that afternoon in the Oval Office with the House Democratic leadership, Obama said that he planned to be personally engaged in selling the reform package he first introduced in a Las Vegas speech in January.¶ Still, during that meeting, Obama knew so little about immigration reform’s status in the House that he had to ask Rep. Xavier Becerra (D-Calif.) how many members of his own party would back a comprehensive reform bill, according to a senior Democrat who attended.¶ The White House doesn’t have plans yet for Obama to participate in any new immigration reform events or rallies — that sort of advance work has been hamstrung by the 16-day government shutdown.¶ But the president emerged on Thursday to tout a “broad coalition across America” that supports immigration reform. He also invited House Republicans to add their input specifically to the Senate bill — an approach diametrically different than the House GOP’s announced strategy of breaking the reform into several smaller bills.¶ White House press secretary Jay Carney echoed Obama’s remarks Thursday, again using for the same language on immigration the White House used to press Republicans on the budget during the shutdown standoff: the claim that there are enough votes in the House to pass the Senate’s bill now, if only it could come to a vote.¶ “When it comes to immigration reform … we’re confident that if that bill that passed the Senate were put on the floor of the House today, it would win a majority of the House,” Carney said. “And I think that it would win significant Republican votes.”

#### Consistent pressure and Dem unity are key to make Boehner allow a vote

**Sullivan, 10/24/13** (Sean, “John Boehner's next big test: Immigration” Washington Post Blogs, The Fix, lexis)

President Obama delivered remarks Thursday morning to renew his call for Congress to pass sweeping immigration reform. The prevailing sentiment in Washington is that it’s not going to happen this year, and may not even happen next year.

But because of the last few weeks, it just might get done by early next year. It’s all up to House Speaker John A. Boehner (R-Ohio), who by political necessity, must now at least consider leaning in more on immigration.

“Let’s see if we can get this done. And let’s see if we can get it done this year,” Obama said at the White House.

Fresh off a decisive defeat in the budget and debt ceiling showdown that cost the GOP big and won the party no major policy concessions from Democrats, Boehner was asked Wednesday about whether he plans to bring up immigration legislation during the limited time left on the 2013 legislative calendar. He didn’t rule it out.

“I still think immigration reform is an important subject that needs to be addressed. And I’m hopeful,” said Boehner.

The big question is whether the speaker’s hopefulness spurs him to press the matter legislatively or whether the cast-iron conservative members who oppose even limited reforms will dissuade him and extinguish his cautiously optimistic if noncommittal outlook.

Months ago, as House Republicans were slow-walking immigration after the Senate passed a broad bill, the latter possibility appeared the likelier bet. But times have changed. The position House Republicans adopted in the fiscal standoff badly damaged the party's brand. The GOP is reeling, searching desperately for a way to turn things around. That means Boehner, too, must look for ways to repair the damage.

And **that's where immigration comes in**. Even before the government shutdown showdown, a vocal part of the GOP (think Sen. John McCain) had been talking up the urgent need to do immigration reform or risk further alienating Hispanic voters. Now, amid hard times for the party driven by deeper skepticism from Democrats, independents and even some Republicans following the fiscal standoff, the political imperative is arguably even stronger.

The policy imperative already exists for some House Republicans -- perhaps enough of them that if Boehner allowed a vote, reform of some type could pass with a majority of House Democrats and a minority of House Republicans, as did last week's deal to end the government shutdown and raise the debt ceiling. (What specifically could pass and whether Obama could accept it is another question.)

What's not clear is whether Boehner would be willing to chart a path with less than majority GOP support again so soon after the last time and without his back against the wall as it was in the fiscal standoff.

This much we know: The White House and Senate Democrats will keep applying pressure on Boehner to act on immigration. Obama's planned remarks are the latest example of his plan. The speaker will be feeling external and internal pressure to move ahead on immigration.

But he will also feel pressure from conservatives to oppose it. Here's the thing, though: Boehner listened to the right flank of his conference in the fiscal fight, and that path was politically destructive for his party. That's enough to believe he will at least entertain the possibility of tuning the hard-liners out a bit more this time around.

#### **The saps capital and causes defections**

Loomis 7 Dr. Andrew J. Loomis is a Visiting Fellow at the Center for a New American Security, and Department of Government at Georgetown University, “Leveraging legitimacy in the crafting of U.S. foreign policy”, March 2, 2007, pg 36-37, http://citation.allacademic.com//meta/p\_mla\_apa\_research\_citation/1/7/9/4/8/pages179487/p179487-36.php

Declining political authority encourages defection. American political analyst Norman Ornstein writes of the domestic context, In a system where a President has limited formal power, perception matters. The reputation for success—the belief by other political actors that even when he looks down, a president will find a way to pull out a victory—is the most valuable resource a chief executive can have. Conversely, the widespread belief that the Oval Office occupant is on the defensive, on the wane or without the ability to win under adversity can lead to disaster, as individual lawmakers calculate who will be on the winning side and negotiate accordingly. In simple terms, winners win and losers lose more often than not. Failure begets failure. In short, a president experiencing declining amounts of political capital has diminished capacity to advance his goals. As a result, political allies perceive a decreasing benefit in publicly tying themselves to the president, and an increasing benefit in allying with rising centers of authority. A president’s incapacity and his record of success are interlocked and reinforce each other. Incapacity leads to political failure, which reinforces perceptions of incapacity. This feedback loop accelerates decay both in leadership capacity and defection by key allies. The central point of this review of the presidential literature is that the sources of presidential influence—and thus their prospects for enjoying success in pursuing preferred foreign policies—go beyond the structural factors imbued by the Constitution. Presidential authority is affected by ideational resources in the form of public perceptions of legitimacy. The public offers and rescinds its support in accordance with normative trends and historical patterns, non-material sources of power that affects the character of U.S. policy, foreign and domestic.

#### That wrecks Obama’s strategy

**Milbank, 10/18/13** – Washington Post Opinion Writer (Dana, “Now, lead from the front” Washington Post, <http://www.washingtonpost.com/opinions/dana-milbank-now-lead-from-the-front/2013/10/18/56c1fd42-37fe-11e3-8a0e-4e2cf80831fc_story.html>)

Obama got out in front of the shutdown and debt-ceiling standoff. He took a firm position — no negotiating — and he made his case to the country vigorously and repeatedly. Republicans miscalculated, assuming he would again give in. The result was the sort of decisive victory rarely seen in Washington skirmishes.¶ On Wednesday, Republicans surrendered. They opened the government and extended the debt limit with virtually no conditions. On Thursday, Obama rubbed their noses in it.¶ “You don’t like a particular policy or a particular president? Then argue for your position. Go out there and win an election,” Obama taunted from the State Dining Room. “Push to change it, but don’t break it. Don’t break what our predecessors spent over two centuries building.”¶ Obama said “there are no winners” after the two-week standoff, but his opponents, particularly his tea party foes, clearly lost the most; seven in 10 Americans thought Republicans put party ahead of country. These “extremes” who “don’t like the word ‘compromise’ ” were the obvious target of Obama’s demand that we all “stop focusing on the lobbyists and the bloggers and the talking heads on radio and the professional activists who profit from conflict.” (He did not mention newspaper columnists, so you are free to continue reading.)¶ The gloating was a bit unseemly, but the president is entitled to savor a victory lap. The more important thing is that Obama now maintain the forceful leadership that won him the budget and debt fights. In that sense, the rest of Obama’s speech had some worrisome indications that he was returning to his familiar position in the rear.¶ The agreement ending the shutdown requires Congress to come up with a budget by Dec. 13 . It’s a chance — perhaps Obama’s last chance — to tackle big issues such as tax reform and restructuring Medicare. The relative strength he gained over congressional Republicans during the shutdown left him in a dominant negotiating position. If he doesn’t use his power now to push through more of his agenda, he’ll lose his advantage. George W. Bush adviser Karl Rove called it the “perishability” of political capital.¶ But instead of being forceful, Obama was vague. He spoke abstractly about “the long-term obligations that we have around things like Medicare and Social Security.” He was similarly elliptical in saying he wants “a budget that cuts out the things that we don’t need, closes corporate tax loopholes that don’t help create jobs, and frees up resources for the things that do help us grow, like education and infrastructure and research.”¶ Laudable ideas all — but timidity and ambiguity in the past have not worked for Obama. The way to break down a wall of Republican opposition is to do what he did the past two weeks: stake out a clear position and stick to it. A plan for a tax-code overhaul? A Democratic solution to Medicare’s woes? As in the budget and debt fights, the policy is less important than the president’s ability to frame a simple message and repeat it with mind-numbing regularity.¶ If there’s going to be a big budget deal, the president eventually will have to compromise, perhaps even allowing some changes to his beloved Obamacare, which he didn’t mention while on his victory lap Thursday. Even then, forceful leadership may not be enough to prevail.¶ But he has a much better chance if he remains out in front. Otherwise, he’ll soon be knocked back on his behind.

#### It’s key to the economy and US leadership

Javier Palomarez, Forbes, 3/6/13, The Pent Up Entrepreneurship That Immigration Reform Would Unleash, www.forbes.com/sites/realspin/2013/03/06/the-pent-up-entrepreneurship-that-immigration-reform-would-unleash/print/

The main difference between now and 2007 is that today the role of immigrants and their many contributions to the American economy have been central in the country’s national conversation on the issue. Never before have Latinos been so central to the election of a U.S. President as in 2012. New evidence about the economic importance of immigration reform, coupled with the new political realities presented by the election, have given reform a higher likelihood of passing. As the President & CEO of the country’s largest Hispanic business association, the U.S. Hispanic Chamber of Commerce (USHCC), which advocates for the interests of over 3 million Hispanic owned businesses, I have noticed that nearly every meeting I hold with corporate leaders now involves a discussion of how and when immigration reform will pass. The USHCC has long seen comprehensive immigration reform as an economic imperative, and now the wider business community seems to be sharing our approach. It is no longer a question of whether it will pass. Out of countless conversations with business leaders in virtually every sector and every state, a consensus has emerged: our broken and outdated immigration system hinders our economy’s growth and puts America’s global leadership in jeopardy. Innovation drives the American economy, and without good ideas and skilled workers, our country won’t be able to transform industries or to lead world markets as effectively as it has done for decades. Consider some figures: Immigrant-owned firms generate an estimated $775 billion in annual revenue, $125 billion in payroll and about $100 billion in income. A study conducted by the New American Economy found that over 40 percent of Fortune 500 companies were started by immigrants or children of immigrants. Leading brands, like Google, Kohls, eBay, Pfizer, and AT&T, were founded by immigrants. Researchers at the Kauffman Foundation released a study late last year showing that from 2006 to 2012, one in four engineering and technology companies started in the U.S. had at least one foreign-born founder — in Silicon Valley it was almost half of new companies. There are an estimated 11 million undocumented workers currently in the U.S. Imagine what small business growth in the U.S. would look like if they were provided legal status, if they had an opportunity for citizenship. Without fear of deportation or prosecution, imagine the pent up entrepreneurship that could be unleashed. After all, these are people who are clearly entrepreneurial in spirit to have come here and risk all in the first place. Immigrants are twice as likely to start businesses as native-born Americans, and statistics show that most job growth comes from small businesses. While immigrants are both critically-important consumers and producers, they boost the economic well-being of native-born Americans as well. Scholars at the Brookings Institution recently described the relationship of these two groups of workers as complementary. This is because lower-skilled immigrants largely take farming and other manual, low-paid jobs that native-born workers don’t usually want. For example, when Alabama passed HB 56, an immigration law in 2012 aimed at forcing self-deportation, the state lost roughly $11 billion in economic productivity as crops were left to wither and jobs were lost. Immigration reform would also address another important angle in the debate – the need to entice high-skilled immigrants. Higher-skilled immigrants provide talent that high-tech companies often cannot locate domestically. High-tech leaders recently organized a nationwide “virtual march for immigration reform” to pressure policymakers to remove barriers that prevent them from recruiting the workers they need. Finally, and perhaps most importantly, fixing immigration makes sound fiscal sense. Economist Raul Hinojosa-Ojeda calculated in 2010 that comprehensive immigration reform would add $1.5 trillion to the country’s GDP over 10 years and add $66 billion in tax revenue – enough to fully fund the Small Business Administration and the Departments of the Treasury and Commerce for over two years. As Congress continues to wring its hands and debate the issue, lawmakers must understand what both businesses and workers already know: The American economy needs comprehensive immigration reform.

**Extinction**

**Auslin 9**

(Michael, Resident Scholar – American Enterprise Institute, and Desmond Lachman – Resident Fellow – American Enterprise Institute, “The Global Economy Unravels”, Forbes, 3-6, http://www.aei.org/article/100187)

What do these trends mean in the short and medium term? The Great Depression showed how social and **global chaos** followed hard on economic collapse. The mere fact that parliaments across the globe, from America to Japan, are unable to make responsible, economically sound recovery plans suggests that they do not know what to do and are simply hoping for the least disruption. Equally worrisome is the adoption of more statist economic programs around the globe, and the concurrent decline of trust in free-market systems. The threat of instability is a pressing concern. China, until last year the world's fastest growing economy, just reported that 20 million migrant laborers lost their jobs. Even in the flush times of recent years, China faced upward of 70,000 labor uprisings a year. A sustained downturn poses grave and possibly immediate threats to Chinese internal stability. The regime in Beijing may be faced with a choice of repressing its own people or diverting their energies outward, leading to conflict with China's neighbors. Russia, an oil state completely dependent on energy sales, has had to put down riots in its Far East as well as in downtown Moscow. Vladimir Putin's rule has been predicated on squeezing civil liberties while providing economic largesse. If that devil's bargain falls apart, then wide-scale repression inside Russia, along with a continuing threatening posture toward Russia's neighbors, is likely. Even apparently stable societies face increasing risk and the threat of internal or possibly external conflict. As Japan's exports have plummeted by nearly 50%, one-third of the country's prefectures have passed emergency economic stabilization plans. Hundreds of thousands of temporary employees hired during the first part of this decade are being laid off. Spain's unemployment rate is expected to climb to nearly 20% by the end of 2010; Spanish unions are already protesting the lack of jobs, and the specter of violence, as occurred in the 1980s, is haunting the country. Meanwhile, in Greece, workers have already taken to the streets. Europe as a whole will face dangerously increasing tensions between native citizens and immigrants, largely from poorer Muslim nations, who have increased the labor pool in the past several decades. Spain has absorbed five million immigrants since 1999, while nearly 9% of Germany's residents have foreign citizenship, including almost 2 million Turks. The xenophobic labor strikes in the U.K. do not bode well for the rest of Europe. A prolonged global downturn, let alone a collapse, would **dramatically raise tensions** inside these countries. Couple that with possible protectionist legislation in the United States, unresolved ethnic and territorial disputes in **all regions of the globe** and a loss of confidence that world leaders actually know what they are doing. The result may be a series of small explosions that coalesce **into a big bang**.

### 1nc k

#### The AFF papers over structural flaws in the legal system – the impact is global war – the ballot should side with a revolutionary countermovement

Gulli 13. Bruno Gulli, professor of history, philosophy, and political science at Kingsborough College in New York, “For the critique of sovereignty and violence,” <http://academia.edu/2527260/For_the_Critique_of_Sovereignty_and_Violence>, pg. 1

We live in an unprecedented time of crisis. The violence that characterized the twentieth century, and virtually all known human history before that, seems to have entered the twenty-first century with exceptional force and singularity. True, this century opened with the terrible events of September 11. However, September 11 is not the beginning of history. Nor are the histories of more forgotten places and people, the events that shape those histories, less terrible and violent – though they may often be less spectacular. The singularity of this violence, this paradigm of terror, does not even simply lie in its globality, for that is something that our century shares with the whole history of capitalism and empire, of which it is a part. Rather, it must be seen in the fact that terror as a global phenomenon has now become self-conscious. Today, the struggle is for global dominance in a singularly new way, and war –regardless of where it happens—is also always global. Moreover, in its self-awareness, terror has become, more than it has ever been, an instrument of racism. Indeed, what is new in the singularity of this violent struggle, this racist and terrifying war, is that in the usual attempt to neutralize the enemy, there is a cleansing of immense proportion going on. To use a word which has become popular since Michel Foucault, it is a biopolitical cleansing. This is not the traditional ethnic cleansing, where one ethnic group is targeted by a state power – though that is also part of the general paradigm of racism and violence. It is rather a global cleansing, where the sovereign elites, the global sovereigns in the political and financial arenas (capital and the political institutions), in all kinds of ways target those who do not belong with them on account of their race, class, gender, and so on, but above all, on account of their way of life and way of thinking. These are the multitudes of people who, for one reason or the other, are liable for scrutiny and surveillance, extortion (typically, in the form of over- taxation and fines) and arrest, brutality, torture, and violent death. The sovereigns target anyone who, as Giorgio Agamben (1998) shows with the figure of homo sacer, can be killed without being sacrificed – anyone who can be reduced to the paradoxical and ultimately impossible condition of bare life, whose only horizon is death itself. In this sense, the biopolitical cleansing is also immediately a thanatopolitical instrument.

The biopolitical struggle for dominance is a fight to the death. Those who wage the struggle to begin with, those who want to dominate, will not rest until they have prevailed. Their fanatical and self-serving drive is also very much the source of the crisis investing all others. The point of this essay is to show that the present crisis, which is systemic and permanent and thus something more than a mere crisis, cannot be solved unless the struggle for dominance is eliminated. The elimination of such struggle implies the demise of the global sovereigns, the global elites – and this will not happen without a global revolution, a “restructuring of the world” (Fanon 1967: 82). This must be a revolution against the paradigm of violence and terror typical of the global sovereigns. It is not a movement that uses violence and terror, but rather one that counters the primordial terror and violence of the sovereign elites by living up to the vision of a new world already worked out and cherished by multitudes of people. This is the nature of counter-violence: not to use violence in one’s own turn, but to deactivate and destroy its mechanism. At the beginning of the modern era, Niccolò Machiavelli saw the main distinction is society in terms of dominance, the will to dominate, or the lack thereof. Freedom, Machiavelli says, is obviously on the side of those who reject the paradigm of domination:

[A]nd doubtless, if we consider the objects of the nobles and of the people, we must see that the first have a great desire to dominate, whilst the latter have only the wish not to be dominated, and consequently a greater desire to live in the enjoyment of liberty (Discourses, I, V).

Who can resist applying this amazing insight to the many situations of resistance and revolt that have been happening in the world for the last two years? From Tahrir Square to Bahrain, from Syntagma Square and Plaza Mayor to the streets of New York and Oakland, ‘the people’ speak with one voice against ‘the nobles;’ the 99% all face the same enemy: the same 1%; courage and freedom face the same police and military machine of cowardice and deceit, brutality and repression. Those who do not want to be dominated, and do not need to be governed, are ontologically on the terrain of freedom, always-already turned toward a poetic desire for the common good, the ethics of a just world. The point here is not to distinguish between good and evil, but rather to understand the twofold nature of power – as domination or as care.

The biopolitical (and thanatopolitical) struggle for dominance is unilateral, for there is only one side that wants to dominate. The other side –ontologically, if not circumstantially, free and certainly wiser—does not want to dominate; rather, it wants not to be dominated. This means that it rejects domination as such. The rejection of domination also implies the rejection of violence, and I have already spoken above of the meaning of counter-violence in this sense. To put it another way, with Melville’s (2012) Bartleby, this other side “would prefer not to” be dominated, and it “would prefer not to” be forced into the paradigm of violence. Yet, for this preference, this desire, to pass from potentiality into actuality, action must be taken – an action which is a return and a going under, an uprising and a hurricane. Revolution is to turn oneself away from the terror and violence of the sovereign elites toward the horizon of freedom and care, which is the pre- existing ontological ground of the difference mentioned by Machiavelli between the nobles and the people, the 1% (to use a terminology different from Machiavelli’s) and the 99%. What is important is that the sovereign elite and its war machine, its police apparatuses, its false sense of the law, be done with. It is important that the sovereigns be shown, as Agamben says, in “their original proximity to the criminal” (2000: 107) and that they be dealt with accordingly. For this to happen, a true sense of the law must be recuperated, one whereby the law is also immediately ethics. The sovereigns will be brought to justice. The process is long, but it is in many ways already underway. The recent news that a human rights lawyer will lead a UN investigation into the question of drone strikes and other forms of targeted killing (The New York Times, January 24, 2013) is an indication of the fact that the movement of those who do not want to be dominated is not without effect. An initiative such as this is perhaps necessarily timid at the outset and it may be sidetracked in many ways by powerful interests in its course. Yet, even positing, at that institutional level, the possibility that drone strikes be a form of unlawful killing and war crime is a clear indication of what common reason (one is tempted to say, the General Intellect) already understands and knows. The hope of those who “would prefer not to” be involved in a violent practice such as this, is that those responsible for it be held accountable and that the horizon of terror be canceled and overcome. Indeed, the earth needs care. And when instead of caring for it, resources are dangerously wasted and abused, it is imperative that those who know and understand revolt –and what they must revolt against is the squandering and irresponsible elites, the sovereign discourse, whose authority, beyond all nice rhetoric, ultimately rests on the threat of military violence and police brutality

#### The impact is extinction and inevitable structural violence

Lawrence 9 (Grant, “Military Industrial "War" Consciousness Responsible for Economic and Social Collapse,” OEN—OpEdNews, March 27)

As a presidential candidate, [Barack Obama](http://obama.senate.gov/) called [Afghanistan](http://en.wikipedia.org/wiki/War_in_Afghanistan_%282001%E2%80%93present%29) ''the war we must win.'' He was absolutely right. Now it is time to win it... Senators [John McCain](http://www.imdb.com/name/nm0564587/) and Joseph Lieberman [calling](http://www.miamiherald.com/opinion/inbox/story/960269.html) for an expanded war in Afghanistan "How true it is that war can destroy everything of value." Pope Benedict XVI [decrying](http://www.google.com/hostednews/afp/article/ALeqM5iuue8kE-e0lYZVFpt4RlbX4M_IEw) the suffering of Africa Where troops have been quartered, brambles and thorns spring up. In the track of great armies there must follow lean years. Lao Tzu on [War](http://www.sacred-texts.com/tao/salt/salt09.htm) As Americans we are raised on the utility of war to conquer every problem. We have a drug problem so we wage war on it. We have a cancer problem so we wage war on it. We have a crime problem so we wage war on it. Poverty cannot be dealt with but it has to be warred against. Terror is another problem that must be warred against. In the [United States](http://maps.google.com/maps?ll=38.8833333333,-77.0166666667&spn=10.0,10.0&q=38.8833333333,-77.0166666667%20%28United%20States%29&t=h), solutions can only be found in terms of wars. In a society that functions to support a massive military industrial war machine and empire, it is important that the terms promoted support the conditioning of its citizens. We are conditioned to see war as the solution to major social ills and major political disagreements. That way when we see so much of our resources devoted to war then we don't question the utility of it. The term "war" excites mind and body and creates a fear mentality that looks at life in terms of attack. In war, there has to be an attack and a must win attitude to carry us to victory. But is this war mentality working for us? In an age when nearly half of our tax money goes to support the war machine and a good deal of the rest is going to support the elite that control the war machine, we can see that our present war mentality is not working. Our values have been so perverted by our war mentality that we see sex as sinful but killing as entertainment. Our society is dripping violence. The violence is fed by poverty, social injustice, the break down of family and community that also arises from economic injustice, and by the managed media. The cycle of violence that exists in our society exists because it is useful to those that control society. It is easier to sell the war machine when your population is conditioned to violence. Our military industrial consciousness may not be working for nearly all of the life of the planet but it does work for the very few that are the master manipulators of our values and our consciousness. Rupert Murdoch, the media monopoly man that runs the "Fair and Balanced" [Fox Network](http://www.fox.com/), Sky Television, and [News Corp](http://www.newscorp.com/) just to name a few, [had](http://en.wikipedia.org/wiki/Rupert_Murdoch) all of his 175 newspapers editorialize in favor of the [Iraq war](http://en.wikipedia.org/wiki/Iraq_War). Murdoch snickers when [he says](http://www.newscorpse.com/ncWP/?p=341) "we tried" to manipulate public opinion." The Iraq war was a good war to Murdoch [because,](http://www.americanprogress.org/issues/2004/07/b122948.html) "The death toll, certainly of Americans there, by the terms of any previous war are quite minute." But, to the media manipulators, the phony politicos, the military industrial elite, a million dead Iraqis are not to be considered. War is big business and it is supported by a war consciousness that allows it to prosper. That is why more war in Afghanistan, the war on Palestinians, and the other wars around the planet in which the [military industrial complex](http://en.wikipedia.org/wiki/Military-industrial_complex) builds massive wealth and power will continue. The military industrial war mentality is not only killing, maiming, and destroying but it is also contributing to the present social and economic collapse. As mentioned previously, the massive wealth transfer that occurs when the American people give half of their money to support death and destruction is money that could have gone to support a just society. It is no accident that after years of war and preparing for war, our society is crumbling. Science and technological resources along with economic and natural resources have been squandered in the never-ending pursuit of enemies. All of that energy could have been utilized for the good of humanity, instead of maintaining the power positions of the very few super wealthy. So the suffering that we give is ultimately the suffering we get. Humans want to believe that they can escape the consciousness that they live in. But that consciousness determines what we experience and how we live. As long as we choose to live in "War" in our minds then we will continue to get "War" in our lives. When humanity chooses to wage peace on the world then there will be a flowering of life. But until then we will be forced to live the life our present war consciousness is creating.

#### Alt: Refuse attempts at reformism and doom the system to its own nihilistic destruction – don’t accept the 1ac as a legitimate form of debate

Prozorov 10. Sergei Prozorov, professor of political and economic studies at the University of Helsinki, “Why Giorgio Agamben is an optimist,” Philosophy Social Criticism 2010 36: pg. 1065

In a later work, Agamben generalizes this logic and transforms it into a basic ethical imperative of his work: ‘[There] is often nothing reprehensible about the individual behavior in itself, and it can, indeed, express a liberatory intent. What is disgraceful – both politically and morally – are the apparatuses which have diverted it from their possible use. We must always wrest from the apparatuses – from all apparatuses – the possibility of use that they have captured.’32 As we shall discuss in the following section, this is to be achieved by a subtraction of ourselves from these apparatuses, which leaves them in a jammed, inoperative state. What is crucial at this point is that the apparatuses of nihilism themselves prepare their demise by emptying out all positive content of the forms-of-life they govern and increasingly running on ‘empty’, capable only of (inflict- ing) Death or (doing) Nothing.

On the other hand, this degradation of the apparatuses illuminates the ‘inoperosity’ (worklessness) of the human condition, whose originary status Agamben has affirmed from his earliest works onwards.33 By rendering void all historical forms-of-life, nihi- lism brings to light the absence of work that characterizes human existence, which, as irreducibly potential, logically presupposes the lack of any destiny, vocation, or task that it must be subjected to: ‘Politics is that which corresponds to the essential inoperability of humankind, to the radical being-without-work of human communities. There is pol- itics because human beings are argos-beings that cannot be defined by any proper oper- ation, that is, beings of pure potentiality that no identity or vocation can possibly exhaust.’34

Having been concealed for centuries by religion or ideology, this originary inoperos- ity is fully unveiled in the contemporary crisis, in which it is manifest in the inoperative character of the biopolitical apparatuses themselves, which succeed only in capturing the sheer existence of their subjects without being capable of transforming it into a positive form-of-life:

[T]oday, it is clear for anyone who is not in absolutely bad faith that there are no longer historical tasks that can be taken on by, or even simply assigned to, men. It was evident start- ing with the end of the First World War that the European nation-states were no longer capa- ble of taking on historical tasks and that peoples themselves were bound to disappear.35

Agamben’s metaphor for this condition is bankruptcy: ‘One of the few things that can be

declared with certainty is that all the peoples of Europe (and, perhaps, all the peoples of the Earth) have gone bankrupt’.36 Thus, the destructive nihilistic drive of the biopolitical machine and the capitalist spectacle has itself done all the work of emptying out positive forms-of-life, identities and vocations, leaving humanity in the state of destitution that Agamben famously terms ‘bare life’. Yet, this bare life, whose essence is entirely con- tained in its existence, is precisely what conditions the emergence of the subject of the coming politics: ‘this biopolitical body that is bare life must itself be transformed into the site for the constitution and installation of a form-of-life that is wholly exhausted in bare life and a bios that is only its own zoe.’37

The ‘happy’ form-of-life, a ‘life that cannot be segregated from its form’, is nothing but bare life that has reappropriated itself as its own form and for this reason is no longer separated between the (degraded) bios of the apparatuses and the (endangered) zoe that functions as their foundation.38 Thus, what the nihilistic self-destruction of the appara- tuses of biopolitics leaves as its residue turns out to be the entire content of a new form-of-life. Bare life, which is, as we recall, ‘nothing reprehensible’ aside from its con- finement within the apparatuses, is reappropriated as a ‘whatever singularity’, a being that is only its manner of being, its own ‘thus’.39 It is the dwelling of humanity in this irreducibly potential ‘whatever being’ that makes possible the emergence of a generic non-exclusive community without presuppositions, in which Agamben finds the possi- bility of a happy life.

[If] instead of continuing to search for a proper identity in the already improper and sense- less form of individuality, humans were to succeed in belonging to this impropriety as such, in making of the proper being-thus not an identity and individual property but a singularity without identity, a common and absolutely exposed singularity, then they would for the first time enter into a community without presuppositions and without subjects.40

Thus, rather than seek to reform the apparatuses, we should simply leave them to their self-destruction and only try to reclaim the bare life that they feed on. This is to be achieved by the practice of subtraction that we address in the following section.

### 1nc doj cp

#### COUNTERPLAN: The President of the United States should issue an Executive Order committing the executive branch to Solicitor General representation and advance consultation with the Office of Legal Counsel over decisions regarding indefinite detention policy. The Department of Justice officials involved should counsel against the exercise of 2001 AUMF authority and call for granting Article III courts exclusive jurisdiction. The Office of Legal Counsel should publish the written opinion.

#### DOJ pre-commitment solves the aff

**Pillard 2005** – JD from Harvard, Faculty Director of Supreme Court Institute at Georgetown University Law Center, former Deputy Assistant Attorney General in the DOJ (February, Cornelia T., Michigan Law Review, 103.4, “The Unfulfilled Promise of the Constitution in Executive Hands”, 103 Mich. L. Rev. 676-758, http://scholarship.law.georgetown.edu/facpub/189/)

V. ENABLING EXECUTIVE CONSTITUTIONALISM

The courts indisputably do not and cannot fully assure our enjoyment of our constitutional rights, and it is equally clear that the federal executive has an independent constitutional duty to fulfill the Constitution's promise. Executive constitutionalism seems ripe with promise. Yet, it is striking how limited and court-centered the executive's normative and institutional approaches to constitutional questions remain.

One conceivable way to avoid the pitfalls of court-centric executive lawyering on one hand and constitutional decisions warped by political expedience on the other would be to make the Solicitor General and Office of Legal Counsel - or perhaps the entire Department of Justice - as structurally independent as an independent counsel or independent agency.207 Making the SG and OLC independent in order to insulate them from politics presumably would alleviate the "majoritarian difficulty" resulting from their service to elected clients. Promoting fuller independence in that sense does not, however, appear to be clearly normatively attractive, constitutionally permissible, nor particularly feasible. In all the criticism of our current constitutionalism, there is little call for an SG or OLC that would act, in effect, as a fully insulated and jurisprudentially autonomous constitutional court within the executive branch, operating with even less transparency and accountability than the Supreme Court. Moreover, as a practical matter it would be complex and problematic to increase the independence of the SG and OLC. The federal government faces Article II obstacles to formally insulating executive lawyers from politics and institutional pressures, and the president and his administration likely would be less amenable to guidance from such unaccountable lawyers.208

The challenge, rather, is to draw forth from the executive a constitutional consciousness and practice that helps the government actively to seek to fulfill the commitments of the Constitution and its Bill of Rights, interpreted by the executive as guiding principles for government. Adjustments to executive branch constitutional process and culture should be favored if they encourage the executive to use its experience and capacities to fulfill its distinctive role in effectuating constitutional guarantees. There is transformative potential in measures that break ingrained executive branch habits of looking to the Constitution only as it is mediated through the courts, and of reflexively seeking, where there is no clear doctrinal answer, to minimize constitutional constraint. It is difficult fully to imagine what kinds of changes would best prompt executive lawyers and officials to pick up constitutional analysis where the courts leave off, and to rely on the Constitution as an affirmative, guiding mandate for government action; what follows are not worked-out proposals, but are meant to be merely suggestive.

A. Correcting the Bias Against Constitutional Constraint

As we have seen, the SG's and OLC's default interpretive approach to individual rights and other forms of constitutional constraints on government is to follow what clear judicial precedents there are and, where precedents are not squarely to the contrary, to favor interpretations that minimize constitutional rights or other constitutional obligations on federal actors. Those court-centered and narrowly self-serving executive traditions produce a systematic skew against individual rights.

1. Encourage Express Presidential Articulation of Commitment to Constitutional Rights

To the extent that a president articulates his own rights-protective constitutional vision with any specificity, he ameliorates the tension his constitutional lawyers otherwise face between advancing individual rights and serving their boss's presumed interest in maximum governing flexibility. Case or controversy requirements and restrictions against courts issuing advisory opinions do not, of course, apply to the executive's internal constitutional decisionmaking, and presidents can better serve individual rights to the extent that they expressly stake out their constitutional commitments in general and in advance of any concrete controversy."° When the president takes a stand for advancing abortion rights, property rights, disability rights, "charitable choice," a right to bear arms, or full remediation of race and sex discrimination, he signals to his lawyers that they should, in those areas, set aside their default bias in favor of preserving executive prerogative, even if it requires extra executive effort or restraint to do so.

If presented in a concrete setting with a choice between interpreting and applying the Constitution in fully rights-protective ways or sparing themselves the effort where Supreme Court precedent can be read not to require it, government officials typically default to the latter course without considering whether they might thereby be giving short shrift to a constitutional duty. A president's stated commitment to protection of particular rights, however, flips the default position with respect to those rights, acting as a spur to executive-branch lawyers and other personnel to work to give effect to constitutional rights even where, for a range of institutional reasons, the courts would not. A president is thus uniquely situated to facilitate full executive-branch constitutional compliance by precommitting himself to a rights-protective constitutional vision, and thereby making clear that respect for constitutional rights is part of the executive's interest, not counter to it.

### 1nc legitimacy

#### Obama’s not Bush—no impact

Aziz 13 (Omer, graduate student at Cambridge University, is a researcher at the Center for International and Defense Policy at Queen’s University, “The Obama Doctrine's Second Term,” Project Syndicate, 2-5, <http://www.project-syndicate.org/blog/the-obama-doctrine-s-second-term--by-omer-aziz>)

The Obama Doctrine’s first term has been a remarkable success. After the $3 trillion boondoggle in Iraq, a failed nation-building mission in Afghanistan, and the incessant saber-rattling of the **previous Administration**, President Obama was able to reorient U.S. foreign policy in a more restrained and realistic direction.

He did this in a number of ways. First, an end to large ground wars. As Defense Secretary Robert Gates put it in February 2011, anyone who advised future presidents to conduct massive ground operations ought “to have [their] head examined.” Second, a reliance on Secret Operations and drones to go after both members of al Qaeda and other terrorist outfits in Pakistan as well as East Africa. Third, a rebalancing of U.S. foreign policy towards the Asia-Pacific — a region neglected during George W. Bush's terms but one that possesses a majority of the world’s nuclear powers, half the world’s GDP, and tomorrow’s potential threats. Finally, under Obama's leadership, the United States has finally begun to ask allies to pick up the tab on some of their security costs. With the U.S. fiscal situation necessitating retrenchment, coupled with a lack of appetite on the part of the American public for foreign policy adventurism, Obama has begun the arduous process of burden-sharing necessary to maintain American strength at home and abroad.

What this amounted to over the past four years was a vigorous and unilateral pursuit of narrow national interests and a multilateral pursuit of interests only indirectly affecting the United States.

Turkey, a Western ally, is now leading the campaign against Bashar al-Assad’s regime in Syria. Japan, Korea, India, the Philippines, Myanmar, and Australia all now act as de facto balancers of an increasingly assertive China. With the withdrawal of two troop brigades from the continent, Europe is being asked to start looking after its own security. In other words, the days of free security and therefore, free riding, are now over.

The results of a more restrained foreign policy are plentiful. Obama was able to assemble a diverse coalition of states to execute regime-change in Libya where there is now a moderate democratic government in place. Libya remains a democracy in transition, but the possibilities of self-government are ripe. What’s more, the United States was able to do it on the cheap. Iran’s enrichment program has been hampered by the clandestine cyber program codenamed Olympic Games. While Mullah Omar remains at large, al Qaeda’s leadership in Afghanistan and Pakistan has been virtually decimated. With China, the United States has maintained a policy of engagement and explicitly rejected a containment strategy, though there is now something resembling a cool war — not yet a cold war — as Noah Feldman of Harvard Law School puts it, between the two economic giants.

The phrase that best describes the Obama Doctrine is one that was used by an anonymous Administration official during the Libya campaign and then picked up by Republicans as a talking point: Leading From Behind. The origin of the term dates not to weak-kneed Democratic orthodoxy but to Nelson Mandela, who wrote in his autobiography that true leadership often required navigating and dictating aims ‘from behind.’ The term, when applied to U.S. foreign policy, has a degree of metaphorical verity to it: Obama has led from behind the scenes in pursuing terrorists and militants, is shifting some of the prodigious expenses of international security to others, and has begun the U.S. pivot to the Asia-Pacific region. The Iraq War may seem to be a distant memory to many in North America, but its after-effects in the Middle East and Asia tarnished the United States' image abroad and rendered claims to moral superiority risible. Leading From Behind is the final nail in the coffin of the neoconservatives' failed imperial policies.

#### Legitimacy not key to leadership

Jervis, 9 (Robert, PhD, professor of IR at Columbia, “Unipolarity: A Structural Perspective,” World Politics, Jan)

It is even more difficult to measure and generalize about other forms of capability, often summarized under the heading “soft power.”5 It [End Page 191] seems likely, however, that the distribution of most forms of soft power will roughly correlate with the distribution of economic and military resources. Soft power matters but by itself cannot establish or alter the international hierarchy. Some small countries are widely admired (for example, Canada), but it is unclear whether this redounds to their benefit in some way or helps spread their values. Although states that lose economic and military strength often like to think that they can have a disproportionate role by virtue of their culture, traditions, and ideas, this rarely is the case. Intellectual and cultural strength can feed economic growth and perhaps bolster the confidence required for a state to play a leading role on the world stage, but material capabilities also tend to make the state’s ideas and culture attractive. This is not automatic, however. As I will discuss further below, economic and military power are not sufficient to reach some objectives, and a unipole whose values or behavior are unappealing will find its influence reduced.

#### Multiple other steps key

**Nossel, 08** – Suzanne, former Deputy Assistant Secretary of State for International Organization Affairs (“Closing Guantanamo Is Just the Beginning,” The Guardian, 11/20/08, http://www.truth-out.org/archive/item/81134-closing-guantanamo-is-just-the-beginning //Red)

Building US credibility on human rights **will be a long-term project** - and closing Guantánamo might just be the easy bit. During his first television interview after winning the White House, president-elect Barack Obama reiterated his long-standing promise to shut Guantánamo Bay. Since the historic vote, legal and policy circles, journalists and human rights activists have hummed about when and how the notorious prison's doors will slam shut once and for all, and what will happen to some 250 detainees still held there. While the incoming president and his team are right to put Guantánamo at the top of their priority list, when it comes to restoring American leadership on human rights, closing the prison is only a first step. Guantánamo has become an emblem of the erosion of US legitimacy on human rights issues over the last eight years. Because it is under direct US control, is near US shores and has been the site of abusive interrogations and years of indefinite detention without charge, the prison has been a focal point for public outrage both at home and abroad. While the incoming administration's commitment is unquestionable, closing Guantánamo may not be as simple as it looks. While human rights and legal groups have argued convincingly that US federal courts are well equipped to try the remaining detainees who have been implicated in criminal offences, some experts continue to argue for a new brand of preventative detention that could continue to deprive Guantánamo prisoners of basic due process rights, effectively moving the prison to the continental US. Realistically it could be months - many months - before the legal disposition of every last detainee is resolved, and the facility shuttered. In the meantime, it is essential that the new administration look **well beyond Guantánamo and begin to confront an array of other issues** that are essential to restoring a leadership role for the US on human rights. The most basic involve ensuring that the abuses with which Guantánamo has become synonymous do not outlast the prison itself. There have been wide calls for an executive order that would apply rules on interrogations set forth in the US army's field manual to all US personnel, including the CIA. The new president should also end renditions - forced transfers - of detainees to countries where they face risk of torture, and close permanently the shadowy network of secret prisons where detainees are effectively "disappeared". Bagram air base in Afghanistan holds some 600 detainees. While many were captured on battlefields in Afghanistan, others were picked up from their homes, far from the main areas of the insurgency, and at least a handful were apparently brought there from elsewhere to be held indefinitely without charge. The prisoners lack access to legal counsel, and because the facility is on Afghan territory, the US justice department has argued that US habeas rights do not apply. Devising a fair process to adjudicate the status of these detainees will be essential to ensuring that Bagram is not the next Guantánamo. While abuses carried out as part of the fight against terrorism cost the US its position of leadership on human rights issues globally, **regaining that status will require more than just bringing counter-terrorism tactics in line with international norms.** While the Bush administration hailed democracy and freedom as centrepieces of its foreign policy, in practice it tended to sideline human rights considerations within its important bilateral relationships. To cite just a few examples, disregard for human rights has contributed to a culture of lawlessness in Pakistan's tribal areas. Despite $10-12bn in mostly military US aid to Pakistan since 2001, civilians affected by the current conflict are left defenceless in squalid, disease-infested camps - some of which the UN refugee agency cannot reach - where their frustration with the US-led war effort only grows. As part of its effort to stabilise this strategically vital region, the US must invest in building institutions that support the rule of law and ensuring that approaches to security uphold human rights. In neighbouring Afghanistan, the US needs to take immediate steps to reduce civilian casualties in military operations, and to press for an end to corruption, which is both fuelling the conflict and undermining popular faith in democratic governance. In contemplating political agreements to end the conflict the US must avoid strengthening the hands of the region's most brutal warlords. While human rights will not be the sole consideration governing multi-faceted relationships with foreign governments, the new administration needs to affirm their place on the agenda and work with like-minded voices to press for progress. The US also has work to do in terms of strengthening the international human rights infrastructure. The Bush administration distanced itself from the international human rights community by failing to ratify key treaties and **absenting itself from new institutions of human rights enforcement.** **The next administration must demonstrate in tangible ways that the US is prepared to cooperate with others in building and strengthening mechanisms to protect and advance human rights** in the 21st century. Its absence from key forums and debates has created space for spoilers who seek to vitiate existing human rights norms and prevent new ones from taking hold. In 2005 the UN adopted a new norm, the "responsibility to protect", affirming the duty of states to protect their own populations, and the obligation of the international community to step in when they won't do so. But the new norm has flunked its first test in Darfur, where the government has suborned rampant human rights abuses and the international community has failed to intervene effectively. Working with allies to build broad-based support for rigorous human rights enforcement is a long-term project that needs to start right away. Necessary steps also include **re-engaging with the international criminal court**, a body that has begun to prove itself as a vital instrument of international accountability for war crimes. Building US credibility on human rights will be a long-term project requiring a steady hand against the buffeting forces of foreign policy reality. Done right, **the wider human rights agenda could make closing Guantánamo look like the easy part.**

#### Plan targets the wrong groups

**Barone, 10** ­– Michael, Political Analyst and Journalist (“Obama Impresses the "Educated Class" but Not Terrorists,” Washington Examiner, 1/31/10, http://www.aei.org/article/politics-and-public-opinion/obama-impresses-the-educated-class-but-not-terrorists/ //Red)

It is a matter of simple fact that the announcement that we would close Guantanamo and other implement policy changes did not prevent Abdulhakim Muhammad from killing U.S. soldiers at the Little Rock recruiting station last June. It did not prevent Nidal Hasan from killing U.S. soldiers at Fort Hood in November. It did not prevent Abdulmutallab from attempting to blow up Northwest Flight 253 over U.S. or Canadian airspace on Christmas day. Public opinion polls in the Arab and Muslim world have shown only slight upticks in opinion about America in the months after Barack Obama's speeches in Cairo and Turkey and after these administration policy changes. Terrorists did not say, "Gosh, now that Obama is closing Guantanamo and terrorists are being given Miranda rights, I've got to change my mind and decide that the United States is a really nifty country and that freedom and democracy are good things after all." But perhaps our goal was to convince not terrorists but "world opinion." Are the government and billion people of India going to think better of the United States if we treat terrorists more gently? **Not likely; they're the targets of terrorists themselves.** How about the government and billion people of **China**? My guess is that they **see this as weakness** that they would never indulge. The governments and peoples of Europe? Well, certainly some governments would be pleased, as would the readers of left-wing newspapers and those who attend international conferences. **But polling shows that European peoples tend to take a tougher stand on these matters than the elites who dominate the international dialogue.** So whom are we trying to impress? The answer seems to be left-wing intellectuals, academics, voters--"the educated class," in David Brooks's term--who decried George W. Bush's policies as reeking of fascism and dictatorship. We are making policies to please those who hang out in law school faculty lounges.

#### Flexible detention power now

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

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

#### Restrictions on detention kill exec flex—key to prevent terrorism

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

#### Extinction

Owen B. Toon 7, chair of the Department of Atmospheric and Oceanic Sciences at CU-Boulder, et al., April 19, 2007, “Atmospheric effects and societal consequences of regional scale nuclear conflicts and acts of individual nuclear terrorism,” online: http://climate.envsci.rutgers.edu/pdf/acp-7-1973-2007.pdf

To an increasing extent, people are congregating in the world’s great urban centers, creating megacities with populations exceeding 10 million individuals. At the same time, advanced technology has designed nuclear explosives of such small size they can be easily transported in a car, small plane or boat to the heart of a city. We demonstrate here that a single detonation in the 15 kiloton range can produce urban fatalities approaching one million in some cases, and casualties exceeding one million. Thousands of small weapons still exist in the arsenals of the U.S. and Russia, and there are at least six other countries with substantial nuclear weapons inventories. In all, thirty-three countries control sufficient amounts of highly enriched uranium or plutonium to assemble nuclear explosives. A conflict between any of these countries involving 50-100 weapons with yields of 15 kt has the potential to create fatalities rivaling those of the Second World War. Moreover, even a single surface nuclear explosion, or an air burst in rainy conditions, in a city center is likely to cause the entire metropolitan area to be abandoned at least for decades owing to infrastructure damage and radioactive contamination. As the aftermath of hurricane Katrina in Louisiana suggests, the economic consequences of even a localized nuclear catastrophe would most likely have severe national and international economic consequences. Striking effects result even from relatively small nuclear attacks because low yield detonations are most effective against city centers where business and social activity as well as population are concentrated. Rogue nations and terrorists would be most likely to strike there. Accordingly, an organized attack on the U.S. by a small nuclear state, or terrorists supported by such a state, could generate casualties comparable to those once predicted for a full-scale nuclear “counterforce” exchange in a superpower conflict. Remarkably, the estimated quantities of smoke generated by attacks totaling about one megaton of nuclear explosives could lead to significant global climate perturbations (Robock et al., 2007). While we did not extend our casualty and damage predictions to include potential medical, social or economic impacts following the initial explosions, such analyses have been performed in the past for large-scale nuclear war scenarios (Harwell and Hutchinson, 1985). Such a study should be carried out as well for the present scenarios and physical outcomes.

#### History and genetics are conclusive—outweighs proximity

**Posner 5** (Richard A., Judge U.S. Court of Appeals 7th Circuit, Professor Chicago School of Law, January 1, 2005, Skeptic, Altadena, CA, Catastrophe: Risk and Response, http://goliath.ecnext.com/coms2/gi\_0199-4150331/Catastrophe-the-dozen-most-significant.html#abstract)

Yet the fact that Homo sapiens has managed to survive every disease to assail it in the 200,000 years or so of its existence is a source of genuine comfort, at least if the focus is on extinction events. There have been enormously destructive plagues, such as the Black Death, smallpox, and now AIDS, but **none has come close** to destroying the entire human race. There is a biological reason. Natural selection favors germs of **limited lethality**; they are fitter in an evolutionary sense because their genes are more likely to be spread if the germs do not kill their hosts too quickly. The AIDS virus is an example of a lethal virus, wholly natural, that by lying dormant yet infectious in its host for years maximizes its spread. Yet there is no danger that AIDS will destroy the entire human race. The likelihood of a natural pandemic that would cause the extinction of the human race is probably even less today than in the past (except in prehistoric times, when people lived in small, scattered bands, which would have limited the spread of disease), despite wider human contacts that make it more difficult to localize an infectious disease. The reason is improvements in medical science. But the comfort is a small one. Pandemics can still impose enormous losses and resist prevention and cure: the lesson of the AIDS pandemic. And there is always a lust time. That the human race has not yet been destroyed by germs created or made more lethal by modern science, as distinct from completely natural disease agents such as the flu and AIDS viruses, is even less reassuring. We haven't had these products long enough to be able to infer survivability from our experience with them. A recent study suggests that as immunity to smallpox declines because people am no longer being vaccinated against it, monkeypox may evolve into "a successful human pathogen," (9) yet one that vaccination against smallpox would provide at least some protection against; and even before the discovery of the smallpox vaccine, smallpox did not wipe out the human race. What is new is the possibility that science, bypassing evolution, will enable monkeypox to be "juiced up" through gene splicing into a far more lethal pathogen than smallpox ever was.

#### No extinction—reject 1% hyperbole

Robert O. **Mendelsohn 9**, the Edwin Weyerhaeuser Davis Professor, Yale School of Forestry and Environmental Studies, Yale University, June 2009, “Climate Change and Economic Growth,” online: <http://www.growthcommission.org/storage/cgdev/documents/gcwp060web.pdf>

The heart of the debate about climate change comes from a number of warnings from scientists and others that give the impression that human-induced climate change is an immediate threat to society (IPCC 2007a,b; Stern 2006). Millions of people might be vulnerable to health effects (IPCC 2007b), crop production might fall in the low latitudes (IPCC 2007b), water supplies might dwindle (IPCC 2007b), precipitation might fall in arid regions (IPCC 2007b), extreme events will grow exponentially (Stern 2006), and between 20–30 percent of species will risk extinction (IPCC 2007b). Even worse, there may be catastrophic events such as the melting of Greenland or Antarctic ice sheets causing severe sea level rise, which would inundate hundreds of millions of people (Dasgupta et al. 2009). Proponents argue there is no time to waste. Unless greenhouse gases are cut dramatically today, economic growth and well‐being may be at risk (Stern 2006).

These statements are largely alarmist and misleading. Although climate change is a serious problem that deserves attention, society’s immediate behavior has an extremely low probability of leading to catastrophic consequences. The science and economics of climate change is quite clear that emissions over the next few decades will lead to only mild consequences. The severe impacts predicted by alarmists require a century (or two in the case of Stern 2006) of no mitigation. Many of the predicted impacts assume there will be no or little adaptation. The net economic impacts from climate change over the next 50 years will be small regardless. Most of the more severe impacts will take more than a century or even a millennium to unfold and many of these “potential” impacts will never occur because people will adapt. It is not at all apparent that immediate and dramatic policies need to be developed to thwart long‐range climate risks. What is needed are long‐run balanced responses.

### 1nc democracy

#### Their impact is bogus

Azar **Gat**, July/August **2009**, is a researcher and author on military history, he was the Chair of the Department of Political Science at Tel Aviv University, Foreign Affairs, “Which Way Is History Marching?,”<http://www.foreignaffairs.com/articles/65162/azar-gat-daniel-deudney-and-g-john-ikenberry-and-ronald-inglehar/which-way-is-history-marching?page=show>

UNDILUTED OPTIMISM to the sweeping, blind forces of globalization. A message need not be formulated in universalistic terms to have a broader appea When it comes to the question of how to deal with a nondemocratic superpower China in the international arena, Deudney and Ikenberry, as well as Inglehart and Welzel, exhibit undiluted liberal internationalist optimism. China's free access to the global economy is fueling its massive growth, thereby strengthening the country as a potential rival to the United States -- a problem for the United States not unlike that encountered by the free-trading British Empire when it faced other industrializing great powers in the late nineteenth century. According to Inglehart and Welzel, there is little to worry about, because rapid development will only quicken China's democratization. But it was the United Kingdom's great fortune -- and liberal democracy's -- that its hegemonic status fell into the hands of another liberal democracy, the United States, rather than into those of nondemocratic Germany and Japan, whose future trajectories remained uncertain at best. The liberal democratic countries could have made China's access to the global economy conditional on democratization, but it is doubtful that such a linkage would have been feasible or desirable. After all, China's economic growth has benefited other nations and has made the developed countries -- and the United States in particular -- as dependent on China as China is dependent on them. Furthermore, economic development and interdependence in themselves -- in addition to democracy -- are a major force for peace. Democracies' ability to promote internal democratization in countries much smaller and weaker than China has been very limited, and putting pressure on China could backfire, souring relations with China and diverting its development to a more militant and hostile path. Deudney and Ikenberry suggest that China's admission into the institutions of the liberal international order established after World War II and the Cold War will oblige the country to transform and conform to that order. But large players are unlikely to accept the existing order as it is, and their entrance into the system is as likely to change it as to change them. The Universal Declaration of Human Rights provides a case in point. It was adopted by the United Nations in 1948, in the aftermath of the Nazi horrors and at the high point of liberal hegemony. Yet the UN Commission on Human Rights, and the Human Rights Council that replaced it, has long been dominated by China, Cuba, and Saudi Arabia and has a clear illiberal majority and record. Today, more countries vote with China than with the United States and Europe on human rights issues in the General Assembly of the United Nations. Critics argue that unlike liberalism, nondemocratic capitalist systems have no universal message to offer the world, nothing attractive to sell that people can aspire to, and hence no "soft power" for winning over hearts and minds. But there is a flip side to the universalist coin: many find liberal universalism dogmatic, intrusive, and even oppressive. Resistance to the unipolar world is a reaction not just to the power of the United States but also to the dominance of human rights liberalism. There is a deep and widespread resentment in non-Western societies of being lectured to by the West and of the need to justify themselves according to the standards of a hegemonic liberal morality that preaches individualism to societies that value community as a greater good. Compared to other historical regimes, the global liberal order is in many ways benign, welcoming, and based on mutual prosperity.

#### Judicial modeling is bogus (especially for countries like China, which are autocratic and would clearly target the Uighurs regardless)

**Abebe and Posner, 11** - Assistant Professor and Kirkland & Ellis Professor, University of Chicago Law School (Daniel and Eric, “The Flaws of Foreign Affairs Legalism” VIRGINIA JOURNAL OF INTERNATIONAL LAW Vol. 51:507, <http://www.ericposner.com/THE%20FLAWS%20OF%20FOREIGN%20AFFAIRS%20LEGALISM.pdf>)

Slaughter never clearly explains the mechanism of influence. “Transjudicial dialogue,” as she puts it,41 is a lofty way of referring to conversations that judges have with each other when they meet at international conferences. It is possible that these conversations cause judges to adopt the legal views of their counterparts, but it is just as possible that the conversations have no effect on their judicial activities or even lead to greater disagreement rather than convergence. Even if judges are influenced in a positive way by foreign counterparts, judges in most countries have very limited authority to make policy — much less so than in the United States.42 It seems doubtful that they could have more than a marginal effect on the foreign affairs of their countries. Moreover, judges in many countries have little or no independence. Thus, any attempt on their part to constrain their national governments and executives would fail.

#### Even if they want to model, they can't

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

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

#### Turn: drone shift

**Roberts, 13** – Dan, the Guardian's Washington Bureau chief, covering politics and US national affairs (“US Drone Strikes Being Used As Alternative to Guantánamo, Lawyer Says,” The Guardian, 5/2/13, http://www.informationclearinghouse.info/article34800.htm //Red)

The lawyer who first drew up White House policy on lethal drone strikes has accused the Obama administration of overusing them because of its **reluctance to capture prisoners that would otherwise have to be sent to Guantánamo** Bay. John Bellinger, who was responsible for drafting the legal framework for targeted drone killings while working for George W Bush after 9/11, said he believed their use had increased since because President Obama was unwilling to deal with the consequences of jailing suspected al-Qaida members. "This government has decided **that instead of detaining members** of al-Qaida [at Guantánamo] **they are going to kill them**," he told a conference at the Bipartisan Policy Center. Obama this week pledged to renew efforts to shut down the jail but has previously struggled to overcome congressional opposition, in part due to US disagreements over how to handle suspected terrorists and insurgents captured abroad. An estimated 4,700 people have now been killed by some 300 US drone attacks in four countries, and the question of the programme's status under international and domestic law remains highly controversial. Bellinger, a former legal adviser to the State Department and the National Security Council, insisted that the current administration was justified under international law in pursuing its targeted killing strategy in countries such as Pakistan and Yemen because the US remained at war. "We are about the only country in the world that thinks we are in a conflict with al-Qaida, but countries under attack are the ones that get to decide whether they are at war or not," he said. "**These drone strikes are causing us great damage in the world**, but on the other hand if you are the president and you do nothing to stop another 9/11 then you also have a problem." Nevertheless, the legal justification for drone strikes has become so stretched that critics fear it could now encourage other countries to claim they were acting within international law if they deployed similar technology. A senior lawyer now advising Barack Obama on the use of drone strikes conceded that the administration's definition of legality could even apply in the hypothetical case of an al-Qaida drone attack against military targets on US soil. Philip Zelikow, a member of the White House Intelligence Advisory Board, said the government was relying on two arguments to justify its drone policy under international law: that the US remained in a state of war with al-Qaida and its affiliates, or that those individuals targeted in countries such as Pakistan were planning imminent attacks against US interests. When asked by the Guardian whether such arguments would apply in reverse in the unlikely event that al-Qaida deployed drone technology against military targets in the US, Zelikow accepted they would. "Yes. But it would be an act of war, and they would suffer the consequences," he said during the debate at the Bipartisan Policy Center in Washington. Hina Shamsi, a director at the American Civil Liberties Union, warned that the issue of legal reciprocity was not just a hypothetical concern: "The use of this technology is spreading and we have to think about what we would say if other countries used drones for targeted killing programmes." "Few thing are more likely to undermine our legitimacy than the perception that we are not abiding by the rule of law or are indifferent to civilian casualties," she added. Zelikow, a former diplomat who also works as a professor of history at the University of Virginia, said he believed the US was in a stronger position when it focused on using drones only against those directly in the process of planning or carrying out attacks.

**Causes war and turns case**

**Cronin, 13** – Audrey Kurth, Professor of Public Policy at George Mason University (“Why Drones Fail,” Foreign Affairs, July/August 2013, http://www.foreignaffairs.com/articles/139454/audrey-kurth-cronin/why-drones-fail?page=show //Red)

Finally, the drone campaign presents a fundamental challenge to U.S. national security law, as evidenced by the controversial killing of four American citizens in attacks in Yemen and Pakistan. The president’s authority to protect the United States does not supersede an individual’s constitutional protections. All American citizens have a right to due process, and it is particularly worrisome that a secret review of evidence by the U.S. Department of Justice has been deemed adequate to the purpose. The president has gotten personally involved in putting together kill lists that can include Americans -- a situation that is not only legally dubious but also strategically unwise. PASS THE REMOTE The sometimes contradictory demands of the American people -- perfect security at home without burdensome military engagements abroad -- have fueled the technology-driven, tactical approach of drone warfare. But it is never wise to let either gadgets or fear determine strategy. There is nothing inherently wrong with replacing human pilots with remote-control operators or substituting highly selective aircraft for standoff missiles (which are launched from a great distance) and unguided bombs. Fewer innocent civilians may be killed as a result. The problem is that the guidelines for how Washington uses drones have fallen well behind the ease with which the United States relies on them, allowing short-term advantages to overshadow long-term risks. **Drone strikes must be legally justified, transparent, and rare.** Washington needs to better establish and follow a publicly explained legal and moral framework for the use of drones, making sure that they are part of a long-term political strategy that undermines the enemies of the United States. With the boundaries for drone strikes in Pakistan, Somalia, and Yemen still unclear, the United States risks encouraging competitors such as China, Iran, and Russia to label their own enemies as terrorists and go after them across borders. If that happens -- if counterterrorism by drone strikes ends up **leading to globally destabilizing interstate wars** -- then al Qaeda will be the least of the United States’ worries.

#### Global democracy inevitable

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

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

#### No impact to democracy, just happens to coincide with other measure of progress

Robert Kaplan, influential journalist and author, 1998, At the End of the American Century, p. 95

What does democracy do? It does not create middle classes. The record of history suggests that middle classes, which are in fact the pre­requisite for stability in modern and postmodern societies, tend to emerge more easily under various kinds of authoritarian regimes— whether in East Asia or elsewhere. The values brought to America were often middle-class values or petty bourgeois values that were generated in Europe under some form of authoritarian regime. **Democracy emerges best when it emerges last—after all the other prerequisites of order are in place**. In other words, it is difficult for ethnically or region­ally based parties to debate issues like budgets and gun control until they have settled more explosive topics. The situation in Central and Eastern Europe bodes well for democ­racy because of a sufficient prewar tradition of bourgeois values and other strong indicators of social stability—including literacy rates of 99 percent and low birthrates. Yet in places such as Pakistan and sub­Saharan Africa, democracy will not be enough to guarantee a stable gov­ernment: literacy is relatively low; parties, when they are formed, are often just masks for various regions or ethnic groups; and there is often no significant middle class and very little industrialization. One there­fore should not place too much hope in the mere fact that elections are being held in many parts of the Third World.

#### Democracy makes Uighurs worse (finished in 2nc)

**Andrew, 05** (Martin, MA in Asian Studies and completing Ph.D. on the PLA, “BEIJING'S GROWING SECURITY DILEMMA IN XINJIANG”, Jamestown Foundation China Brief, 6/7,

<http://www.jamestown.org/publications_details.php?volume_id=408&issue_id=3358&article_id=2369849>)

Many Uighurs view the Chinese as colonizers, and this is bound to lead to further armed insurgency. Central Asia is awash in infantry weapons including rocket-propelled grenades, explosives and mortars courtesy of the many wars that occurred in the region in the 1990s. Chinese constructed infrastructure designed to exploit Xinjiang’s mineral wealth offers soft targets for these groups and the ability to deal a major blow to China’s economy. As democracy expands in Central Asia, there will be calls for more Uighur representation and rights to the wealth from oil and natural gas exports from the region. A change in government by one of the eight nations that border Xinjiang could see a government sympathetic to the Uighurs’ plight. As any insurgent force requires secure base areas to train and regroup from, a sympathetic Central Asian government could provide these covertly. If this occurred, the Uighurs could adopt a more aggressive posture regarding the Chinese security forces. To counter an increased insurgency, the Chinese security forces have invested heavily in updating their command and control to ensure a rapid response to any outbreaks of violence. The volatile mix of ethnic and religious repression can only lead to a resumption of insurgency and instability in Xinjiang with consequences for the Chinese economy as well as the Uighur’s themselves.

## 2nc

### flexibility da

#### The plan sets a precedent for judicial micromanagement – it hinders executive flexibility and undermines the war on terror

**Bork and Rivkin, 5** - Robert H. Bork, a senior fellow at the Hudson Institute, was solicitor general of the United States from 1973 to 1977 and later a judge on the U.S. Court of Appeals for the District of Columbia. David B. Rivkin Jr. is a Washington lawyer who served in the Justice Department in the Reagan and George H.W. Bush administrations (“A War the Courts Shouldn't Manage” Washington Post, 1/21, <http://www.washingtonpost.com/wp-dyn/articles/A25275-2005Jan20.html>)

As speculation mounts about President Bush's nominees to the federal judiciary, and particularly to the Supreme Court, one factor that should be of paramount importance is too often overlooked. Curbing or reversing the Supreme Court's usurpation of so many domestic issues is crucial. But perhaps even more important is avoiding judicial micromanagement of America's war against radical Islamic terrorists. Already there are disturbing signs of judicial overreaching that is constitutionally illegitimate and, in practical terms, potentially debilitating. The vast majority of war opponents and attorneys for captured terrorists are pressing for a full-fledged criminal law model never before applied to enemy combatants. Realizing that Congress and the president will not adopt their position, these litigants are resorting to the federal courts. Real abuses that inevitably occur in war, as well as in peacetime prisons, are being punished by our military, but that does not assuage critics who have an agenda other than justice. They allege that the abuses stem from the administration's legal analysis and that the analysis is contrary to the Constitution and to international norms. That is wrong on both counts. A pair of confusing Supreme Court decisions handed down June 28 plowed the ground for astounding lower-court activism. Hamdi v. Rumsfeld, involving a petition for habeas corpus on behalf of a U.S. citizen held by the military as an enemy combatant fighting in Afghanistan, was a qualified victory for the government. The court approved the use of military tribunals but held that Yaser Esam Hamdi must have an opportunity to contest his status as an enemy combatant. It left unclear how that opportunity could be exercised, and it is difficult to see how it could be without calling witnesses from the combat zone, a procedure that would divert American soldiers from waging war. Rasul v. Bush, on the other hand, was a disaster for the war effort. Aliens held at Guantanamo Bay, not a part of the United States or within the jurisdiction of any federal court, were held to have a right to a habeas petition. The result would seem to be that captured alien combatants held by the U.S. military anywhere in the world can henceforth litigate their status in federal courts. Some lower federal courts have not resisted the temptation to insert themselves further into the conduct of the war. In doing so, they have interfered with the war effort while fostering the false impression that the executive branch is trampling on constitutional liberties. The district court's decision in Hamdan v. Rumsfeld (2004) is a prime example. The judge applied the Geneva Conventions in contradiction of the legal framework laid down in Hamdi, misread the conventions and severely encroached upon the president's war powers. In Omar Abu Ali v. Ashcroft (2004), another district court outdid the Supreme Court by finding that it had, at least potentially, authority to determine the legality of a foreign government's detention of an accused dual-nationality terrorist because of an allegation that the United States had prompted the detention. Nearly 70 years ago, the court held in a famous decision (Curtiss-Wright Export Corp. v. United States) that the executive branch's extensive prerogatives in foreign affairs are grounded in its unique expertise, information and unitary nature. Courts have neither the constitutional authority nor the expertise and information to override the president's determinations on issues such as whether we are in armed conflict or what kind of anti-terrorist cooperation we should engage in with foreign governments. For obvious reasons, the executive cannot share all the relevant information with judges. Nor has the judiciary the necessary unitary nature, unless every case is decided by the Supreme Court. Thus, in addition to fighting legal battles in court, the administration would be well-advised to make a far stronger public case for its detention policies, which are designed not only to prevent enemy combatants from returning to fight against us but also to obtain intelligence that might save the lives of American soldiers and civilians as well as shorten the war. Although current detention and interrogation procedures can surely be improved, and additional safeguards against abuses should be adopted, these ought to be matters for the political branches. Freezing policies through constitutional rulings should be a last resort. The executive and Congress, as circumstances change and experience accumulates, can debate and resolve in a flexible manner the policy imperatives of individual liberty and America's reputation overseas, on one hand, vs. the demands of collective safety. But in doing so they must avoid trampling on the president's constitutional prerogatives. Congress should not lay down detailed prescriptions on what interrogation techniques are appropriate. And it should resist the temptation to grandstand; passing exhortations against torture is not the way to proceed. Sensitivity to these matters and the crucial but limited role of the judiciary should be taken into account in the choice of nominees to the courts and in the confirmation process. Too much is riding on the outcome of this war -- ultimately, perhaps, the survival of Western societies -- to choose judges who are unaware of the complexities of what is at stake.

#### They downplay the uniqueness of terrorism—they assume a routine problem

Posner 12 ERIC A. POSNER ( Kirkland and Ellis Professor of Law at the University of Chicago Law School. An editor of The Journal of Legal Studies, he has also published numerous articles and books on issues in international law) “DEFERENCE TO THE EXECUTIVE IN THE UNITED STATES AFTER SEPTEMBER 11: CONGRESS, THE COURTS, AND THE OFFICE OF LEGAL COUNSEL” Harvard Journal of Law & Public Policy. 2012. <http://ericposner.com/DEFERENCE%20TO%20THE%20EXECUTIVE.pdf>

I now turn to the bulk of Professor Holmes's argument. Professor Holmes is right to identify confusion about the nature of emergency, and it is useful to distinguish a rule-development stage—which often but not always takes place before the emergency—and a rule-application stage—which takes place during the emergency. Holmes argues that during the emergency, rule application should be controlled by protocol, so the executive does not need (much) discretion; while pre-emergency, rule development does not need to be rushed and secret, so the executive can collaborate with Congress. The first problem with this argument is that during the emergency one can follow protocols rather than exercise discretion only if the emergency is the same as earlier emergencies. This was not the case for September 11, though it may be the case for other security threats. The second problem is that the rule-development stage cannot always take place during normal times. For example, September 11 required not only an immediate response to the newly discovered threat but also the development of new rules under the shadow of that threat. Those rules needed to be developed quickly and (for the most part) secretly, and these exigencies limited the ability of Congress to contribute. A final point is that Holmes ignores an important dimension of the problem: the difference between agents, who in theory can merely follow rules and protocols, and principals, who cannot. The Bush Administration did in fact recognize the value of protocols and used them frequently; it just did not apply them to itself.

#### Security threats are too variable

Posner 12 ERIC A. POSNER ( Kirkland and Ellis Professor of Law at the University of Chicago Law School. An editor of The Journal of Legal Studies, he has also published numerous articles and books on issues in international law) “DEFERENCE TO THE EXECUTIVE IN THE UNITED STATES AFTER SEPTEMBER 11: CONGRESS, THE COURTS, AND THE OFFICE OF LEGAL COUNSEL” Harvard Journal of Law & Public Policy. 2012. <http://ericposner.com/DEFERENCE%20TO%20THE%20EXECUTIVE.pdf>

Let us consider the stages in reverse order. We already have addressed some of the problems with Professor Holmes's argument from protocols. Rules are seldom as bright-line as they first appear. They often turn out to be presumptions which are themselves subject to standards (drive under the speed limit unless there is an emergency). It is true that security threats, like medical emergencies, often fall into patterns and can be addressed in partially rule-governed fashion. Thus, when a gunman takes a hostage, the police follow certain rules: first clearing the area, then making contact with the gunman, and so on. Some officers will be given very simple rule-governed tasks ("don't let anyone cross this line"). But the rules quickly give out. Every hostage-taker is different, and the most highly trained police officers will be given a great deal of discretion to deal with him and to make the crucial decision to use force. But even these types of threats are simple compared with the scenario that opened up on September 11. The government knew virtually nothing about the nature of the threat. It did not know how many more members of al Qaeda were in the United States, what their plans were, what resources were at their disposal, what their motives were, or how much support they had among American Muslims.^\* Protocols were worthless because nothing like the attack had ever happened before. (The closest analogy seemed to be the absurdly irrelevant example of Pearl Harbor.) The government could not follow rules; it had to improvise subject to a vague standard—protect the public while maintaining civil liberties to the extent possible. Improvise it did—instituting detentions, sweeps, profiling, surveillance, and many other policies on an unprecedented (in peacetime, if that was what it was) scale.^«

For the rule-application stage, the deference thesis counsels Congress and the judiciary to (presumptively) defer. Congress simply cannot set about holding hearings, debating policy, and voting on laws in the midst of emergency. Either the problem will not be addressed, or Congress will end up voting on a bill that it has not written, debated, or even read.3° For courts, too, the alternatives are unrealistic. If courts enforce rules developed for normal times, then they will interfere with the proper response to the terrorist threat, just as they would if they required the U.S. military to comply with the Fourth Amendment on the battlefield. Alternatively, the courts could insist on applying a standard and halt executive actions that, in the courts' view, violated the standard described above—protect the nation while maintaining civil liberties to the extent possible. But here the courts are at a significant disadvantage. They do not have information about the nature of the threat.^\* Courts can demand this information from the government, but the government will not give it to them because the government fears leaks (to say nothing of recalcitrance caused by rivalries among intelligence agencies). Moreover, judges are inexperienced in national security unlike the specialists in the executive branch.

### drones uniqueness

#### Restrained drone policy being implemented now – solves the worst parts of drone over-reliance

**Bellinger, 13** – John B., Adjunct Senior Fellow for International and National Security Law at CFR (“Obama's Mixed Counterterror Message,” 5/28/13, CFR, http://www.cfr.org/counterterrorism/obamas-mixed-counterterror-message/p30786 //Red)

The part of the speech that broke the most new ground was the announcement that President Obama had signed new Presidential Policy Guidance for use of force against terrorists. The guidance is classified but has been shared with Congress. In conjunction with the speech, the White House released a Fact Sheet that provides more detail on targeting standards. And the day before the speech, Attorney General Eric Holder sent a letter to Congress acknowledging the killing of Anwar al-Awlaki and three other Americans and specifying new legal standards for targeted killings. Together, these documents reflect laudable efforts by administration national security lawyers and counterterrorism officials to **achieve more transparency and clearer standards** for the use of drones, although these efforts have been overshadowed by the more political statements of the speech. **Substantively, the new standards appear to set a higher bar for the use of drones**, especially "outside areas of active hostilities." For example, the same standard would be applied for strikes against Americans and non-Americans, i.e., that the individual must pose a "continuing and imminent threat" of violence to U.S. persons. And the threat must be to U.S. persons, not U.S. allies or other U.S. interests. Moreover, **drone strikes will not be used where it would be feasible to capture the target**, and there must be a near certainty that a drone strike must not cause death or injury to non-civilians. Together, these public and stricter standards should address some of the concerns of both domestic and international critics of drone strikes. Indeed, some Republican members of Congress have criticized the Obama administration for placing too many restrictions on drone strikes. The standards will also help to close the Pandora's Box the Obama administration has opened by its heavy reliance on drones; the new standards **set a high bar** for other countries to meet if they want to cite U.S. standards as a precedent.

#### Shift to drone restraint now – detention power is key

**Corn, 13** (David, “Obama's Counterterrorism Speech: A Pivot Point on Drones and More?” Mother Jones, 5/23/13, http://www.motherjones.com/mojo/2013/05/obama-speech-drones-civil-liberties //Red)

So Obama's speech Thursday on counterterrorism policies—which follows his administration's acknowledgment yesterday that it had killed four Americans (including Anwar al-Awlaki, an Al Qaeda leader in Yemen)—is a big deal, for with this address, Obama is **self-restricting his use of drones** and shifting control of them from the CIA to the military. And the president has approved making public the rules governing drone strikes. The New York Times received the customary pre-speech leak and reported: A new classified policy guidance signed by Mr. Obama **will sharply curtail the instances when unmanned aircraft can be used** to attack in places that are not overt war zones, countries like Pakistan, Yemen and Somalia. The rules will impose the same standard for strikes on foreign enemies now used only for American citizens deemed to be terrorists. Lethal force will be used **only against targets who** pose "a continuing, imminent threat to Americans" and **cannot feasibly be captured**, Attorney General Eric H. Holder Jr. said in a letter to Congress, suggesting that threats to a partner like Afghanistan or Yemen alone would not be enough to justify being targeted. These moves may not satisfy civil-liberties-minded critics on the right and the left. Obama is not declaring an end to indefinite detention or announcing the closing of Gitmo—though he is echoing his State of the Union vow to revive efforts to shut down that prison. Still, these moves would be unimaginable in the Bush years. Bush and Cheney essentially believed the commander in chief had unchallenged power during wartime, and the United States, as they saw it, remained at war against terrorism. Yet here is Obama subjecting the drone program to a more restrictive set of rules—and doing so publicly. This is very un-Cheney-like. (How soon before the ex-veep arises from his undisclosed location to accuse Obama of placing the nation at risk yet again?) Despite Obama's embrace of certain Bush-Cheney practices and his robust use of drones, the president has tried since taking office to shift US foreign policy from a fixation on terrorism. During his first days in office, he shied away from using the "war on terrorism" phrase. And his national security advisers have long talked of Obama's desire to reorient US foreign policy toward challenges in the Pacific region. By handing responsibility for drone strikes to the military, Obama is helping CIA chief John Brennan, who would like to see his agency move out of the paramilitary business and devote more resources to its traditional tasks of intelligence gathering and analysis. With this speech, Obama is not renouncing his administration's claim that it possesses the authority to kill an American overseas without full due process. The target, as Holder noted in that letter to Congress, must be a senior operational leader of Al Qaeda or an associated group who poses an "imminent threat of violent attack against the United States" and who cannot be captured, and Holder stated that foreign suspects now can only be targeted if they pose "a continuing, imminent threat to Americans." (Certainly, there will be debates over the meaning of "imminent," especially given that the Obama administration has previously used an elastic definition of imminence.) And **Obama is not declaring an end to the dicey practice of indefinite detention or a conclusion to the fight against terrorism.** But the speech may well mark a pivot point. Not shockingly, Obama is **attempting to find middle ground**, where there is more oversight and more restraint regarding activities that pose serious civil liberties and policy challenges. The McCainiacs of the world are likely to howl about any effort to place the effort to counter terrorism into a more balanced perspective. The civil libertarians will scoff at half measures. But Obama, at the least, is showing that he does ponder these difficult issues in a deliberative manner and is still attempting to steer the nation into a post-9/11 period. That journey, though, may be a long one.

#### Drone strikes slowing – but the brink of future decisions is now

**Crowley 13** [“So, Who Can We Kill?,” April 1, 2013, Michael Crowley, Time Magazine, http://www.time.com/time/printout/0,8816,2139176,00.html]

It may also be notable--and surprising--that **the pace of drone strikes has slowed.** The 48 strikes in Pakistan last year were less than half the 2010 total, which, according to the New America Foundation, was 122. There have been no strikes in Yemen since Feb. 1 of this year. Whether that's a breather or a strategic shift remains to be seen. It probably also depends on how successful African forces are at fighting al-Qaeda when French troops withdraw from Mali in April. Northern Africa could be an inflection point for Obama to choose between a renewed killing campaign--one that might require new legal authority--or a less kinetic effort that relies on a combination of indigenous forces, foreign aid and **arrests instead of guided missiles.**

#### Obama is pragmatic – he’ll expand detention

**Thiessen, 11** – Marc, spent six years as senior policy adviser to Senate Foreign Relations Committee chairman Jesse Helms (“Start Bringing Terrorists to Gitmo Again,” Washington Post, 2/21/11, http://www.aei.org/article/foreign-and-defense-policy/defense/start-bringing-terrorists-to-gitmo-again/ //Red)

Does it seem far-fetched that Obama would resume bringing captured terrorists to Guantanamo for interrogations? Perhaps. But recall that when Obama first took office, it also seemed far-fetched that two years later Guantanamo would remain open, the administration would be affirming its right to indefinitely hold captured terrorists, and Obama would be ordering new military commission trials on the island. **The president has reversed course on each of these matters.** And now **his CIA director has testified that if a high-value terrorist came into our possession he would probably be sent to Guantanamo** Bay. Perhaps Panetta was speaking out of school. Or perhaps he simply said publicly what administration officials have been discussing privately. Stranger things have happened.

### drones link

#### Think of it as an offensive circumvention DA

**Goldsmith, 09** – Jack, professor at Harvard Law School (“The Shell Game on Detainees and Interrogation,” Washington Post, 5/31/09, http://www.washingtonpost.com/wp-dyn/content/article/2009/05/29/AR2009052902989.html //Red)

The revelation last weekend that the United States is increasingly using foreign intelligence services to capture, interrogate and detain terrorist suspects points up an uncomfortable truth about the war against Islamist terrorists. **Demands to raise legal standards for terrorist suspects in one arena often lead to compensating tactics in another arena** that leave suspects (and, sometimes, innocent civilians) worse off. The U.S. rendition program -- which involves capturing suspected terrorists and whisking them to another country, outside judicial process -- began in the 1990s. The government was under pressure to take terrorists off the streets and learn what they knew. But it could not bring them to the United States because U.S. law made it too hard to effectively interrogate and incapacitate them here. So instead it shipped them to Egypt and other places to achieve the same end. A similar phenomenon has occurred with the U.S. detention of terrorist suspects at Guantanamo Bay. The Gitmo facility was established after the Sept. 11, 2001, attacks because the Bush administration believed it needed to apply a different detention and interrogation regime than would be allowed at home. Over the past eight years, courts have exported U.S. legal standards to the island, and now President Obama has promised to close the detention facility. But **closing Guantanamo or bringing American justice there does not end the problem** of terrorist detention. It simply causes the government to address the problem in different ways. A little-noticed consequence of elevating standards at Guantanamo is that the government has sent very few terrorist suspects there in recent years. Instead, it holds more terrorists -- without charge or trial, without habeas rights, and with less public scrutiny -- at Bagram Air Base in Afghanistan. Or it renders them to countries where interrogation and incarceration standards are often even lower. The cat-and-mouse game does not end there. **As detentions** at Bagram and traditional renditions have **come under increasing legal and political scrutiny**, the Bush and Obama administrations **have relied more on other tactics**. They have secured foreign intelligence services to do all the work -- capture, incarceration and interrogation -- for all but the highest-level detainees. And **they have increasingly employed targeted killings**, a tactic that eliminates the need to interrogate or incarcerate terrorists but at the cost of killing or maiming suspected terrorists and innocent civilians alike without notice or due process. There are at least two problems with this general approach to incapacitating terrorists. First, it is not ideal for security. Sometimes it would be **more useful** for the United States **to capture and interrogate a terrorist** (if possible) than to kill him with a Predator drone. Often the United States could get better information if it, rather than another country, detained and interrogated a terrorist suspect. Detentions at Guantanamo are more secure than detentions in Bagram or in third countries. The second problem is that terrorist suspects often end up in less favorable places. Detainees in Bagram have fewer rights than prisoners at Guantanamo, and many in Middle East and South Asian prisons have fewer yet. Likewise, most detainees would rather be in one of these detention facilities than be killed by a Predator drone. We congratulate ourselves when we raise legal standards for detainees, but in many respects all we are really doing is driving the terrorist incapacitation problem out of sight, to a place where terrorist suspects are treated worse. It is tempting to say that we should end this pattern and raise standards everywhere. Perhaps we should extend habeas corpus globally, eliminate targeted killing and cease cooperating with intelligence services from countries that have poor human rights records. This sentiment, however, is unrealistic. **The imperative to stop the terrorists is not going away. The government will find and exploit legal loopholes to ensure it can keep up our defenses.** This approach to detention policy reflects a sharp disjunction between the public's view of the terrorist threat and the government's. After nearly eight years without a follow-up attack, the public (or at least an influential sliver) is growing doubtful about the threat of terrorism and skeptical about using the lower-than-normal standards of wartime justice. The government, however, sees the terrorist threat every day and is under enormous pressure to keep the country safe. When one of its approaches to terrorist incapacitation becomes too costly legally or politically, **it shifts to others** that raise fewer legal and political problems. This doesn't increase our safety or help the terrorists. But it does make us feel better about ourselves.

#### The perceived link is huge—creates take-no-prisoners mindset

**Ford, 10** – Fred K., U.S. Army Judge Advocate General Corps (“Keeping Boumediene off the Battlefield: Examining Potential Implications of the Boumediene v. Bush Decision to the Conduct of United States Military Operations,” Pace Law Review, vol 30, is 2, Winter 2010, http://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1037&context=plr //Red)

The scope of the problem the DoD may face is a bit daunting. What could happen—and, in the case of the Guantanamo detainees, what is happening—is that foreign detainees held by U.S. forces in locations deemed to be the functional equivalent of United States territory could be entitled not just to Geneva protections (for prisoners of war) or Detainee Treatment Act34 protections (in the case of enemy combatants at Guantanamo Bay not declared prisoners of war), but also to habeas review by a federal district court. If the functional analysis test of Boumediene is extended, or is interpreted by the DoD to extend to physical locations other than Guantanamo, then foreign fighters will be afforded additional protections under the U.S. Constitution and U.S. laws—protections normally reserved for U.S. citizens or other persons in the country.35 **These** new rights **could include** a right to counsel, Miranda warnings, heightened due process, and **countless** other **rights and privileges normally associated with citizenship or presence in the U**nited **S**tates. Imagine a military commander needing probable cause to detain—or worse, some higher level of proof to attack—an enemy!36 The implications are mind-boggling to a military professional. Our military force would essentially be converted into a de facto **law enforcement organization** or would have such an organization as its adjunct. Such extension would completely change the face of combat.37 Perhaps some of these examples are far-fetched; the issue, though, is how far toward this end will the courts go? They should go no further than Boumediene. If, however, courts continue the trend and extend this holding, how would the DoD meet these new requirements? 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.38 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 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.”39 Practically speaking, this is already happening in the U.S. District Court for the District of Columbia as the Guantanamo detainees’ habeas cases progress.40 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.41 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, 42 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 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.43 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.44 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 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.45 In addition to programmatic and organizational challenges, the DoD may be forced to consider Boumediene in the planning and execution of military strategy in particular theaters or on specified operations. The DoD would likely take necessary steps, perhaps in consultation with the Department of State, to ensure that functional control does not attach as war plans are drafted and executed. The DoD may desire, for example, to be invited into a theater of operation, as opposed to conducting a forced entry; to have time-specific “stationing” agreements in place with the legitimate or proxy authority, trumpeting the sovereign authority of the host nation (or, at a minimum, a similar unilateral proclamation from the host nation); to have a United Nations Security Council Resolution (“UNSCR”) or similar pronouncement from an international organization, containing language disavowing United States functional control; or to avoid declaring, or taking cumulative actions amounting to, United States functional control. Consider detention operations themselves and the prisoner of war/corrections conundrum that would ensue. A new paradigm for battlefield detention, temporary holding, and transfer to permanent internment facilities may be necessary. Detaining enemy fighters **may become a risky endeavor**, from the perspective of ensuring compliance with new yet uncertain legal norms or in seeking to mitigate litigation risk. The DoD would need to formalize specific guidelines, perhaps a set of Standing Rules of Detention Operations. Military corrections facilities and guards currently exist, but not in the scope or breadth that would be required with an extension of the Boumediene holding. More practically, will military guards be required to provide these detainees with televisions, a law library, and other privileges determined by our courts to be constitutional rights of inmates in U.S. prisons? Clearly, facilities and leases similar to Guantanamo Bay would be avoided. The DoD may, however, be cautiously inclined to establish detention agreements with a host nation. For an Army of Occupation, where the risk of a functional control determination is greater, the United States may desire—whether through Congressional action, treaty or international agreement, or simple memoranda of understanding—to effectively cede functional control of detention facilities to the occupied nation, a third nation, or an international body. In some scenarios, it may not be operationally wise or safe to transfer prisoners in a war zone to a third party, particularly one less capable of operating and defending the facility. And, for the same reason the United States may pursue this agreement, third parties may seek to avoid it, or else risk a political backlash or a wave of detainee counsel seeking to meet with clients and file countless habeas actions on their behalf. Our coalition partners certainly are not interested in conducting—much less managing—battlefield detentions of enemy fighters. Further, the “**take-no-prisoners**” **mantra is unacceptable**, whether viewed from a national, organizational, or individual perspective. Unfortunately, some commentators and pundits who have decried Boumediene have either endorsed a take-noprisoners policy or at least **predicted that one will eventually come into being.** A policy of taking no prisoners, either express or implied, can never be an option for a civilized nation or its citizens and service members. The DoD must emphasize that such an approach, whether created intentionally or through benign neglect, is unacceptable. To achieve this goal, the DoD will need to establish procedures, a training program, and an evaluation mechanism to avoid a “take-no-prisoners” organizational tone from taking hold.

### drones impact

#### Turns cred and terror

**Boyle, 13** – Michael J., Assistant Professor of Political Science at La Salle University in Philadelphia (“The costs and consequences of drone warfare,” International Affairs, vol 89, no. 1, 2013, http://www.chathamhouse.org/sites/default/files/public/International%20Affairs/2013/89\_1/89\_1Boyle.pdf //Red)

If the US fails to take these steps, its unchecked pursuit of drone technology will have serious consequences for its **image and global position.** Much of American counterterrorism policy is premised on the notion that the narrative that sustains Al-Qaeda must be challenged and eventually broken if the terrorist threat is to subside over the long term. The use of **drones does not break this narrative, but rather confirms it.** It is ironic that Al-Qaeda’s image of the United States—as an all-seeing, irreconcilably hostile enemy who rains down bombs and death on innocent Muslims without a second thought—is inadvertently reinforced by a drones policy that does not bother to ask the names of its victims. Even the casual anti-Americanism common in many parts of Europe, the Middle East and Asia, much of which portrays the US as cruel, domineering and indifferent to the suffering of others, is reinforced by a drones policy which involves killing foreign citizens on an almost daily basis. A choice must be made: **the US cannot rely on drones** as it does now while attempting to convince others that these depictions are gross caricatures. Over time, an excessive reliance on drones will deepen the reservoirs of anti-US sentiment, embolden America’s enemies and provide other governments with a **compelling public rationale to resist a US-led international order** which is underwritten by sudden, blinding strikes from the sky. For the United States, preventing these outcomes is a matter of urgent importance in a world of rising powers and changing geopolitical alignments. No matter how it justifies its own use of drones as exceptional, the US is establishing precedents which others in the international system—friends and enemies, states and non-state actors—may choose to follow. Far from being a world where violence is used more carefully and discriminately, a drones-dominated world may be one where human life is cheapened because it can so easily, and so indifferently, be **obliterated with the press of a button**. Whether this is a world that the United States wants to create—or even live in—is an issue that demands attention from those who find it easy to shrug off the loss of life that drones inflict on others today.

### uiqhurs

#### Expanding democracy spurs Uighur secession

**Andrew, 05** (Martin, MA in Asian Studies and completing Ph.D. on the PLA, “BEIJING'S GROWING SECURITY DILEMMA IN XINJIANG”, Jamestown Foundation China Brief, 6/7,

<http://www.jamestown.org/publications_details.php?volume_id=408&issue_id=3358&article_id=2369849>)

The Shanghai Cooperation Organization (SCO) has been one means of suppressing Muslim fundamentalism in its member states, and China sees it as a useful tool for influencing Central Asian affairs. In the future, this organization could become a double-edged sword for China since the spread of democracy and the increasing desire for transparent governments in Central Asia could have a threatening spill over effect in Xinjiang. Democratically-influenced governments could change their foreign policies when dealing with China, giving tacit support for Uighur independence, or demanding more rights for their Muslim brothers. Such a shift could precipitate another mass migration of Han Chinese into Xinjiang, further marginalizing the Uighur population in the region. This in turn would tend to radicalize Uighur separatists. The Chinese and Kazakh government cannot secure the entire border, so insurgents could establish bases in these remote mountainous areas in much the same way that the Red Army used mountainous areas to create its Soviets in the 1930s. But on the other hand, the Chinese government fears that granting independence to Xinjiang could lead to the break up of the country, similar to the late Soviet Union.

#### Impact empirically false – China has been killing Uighurs since the 1980s- also disproves their asinine modeling claim

**Sakeenah, 8 –** Maryam, “Xinjiang: “China’s Other Tibet”\* And the “Devastaing Blows”\*\*of Chinese State Policy” <http://www.academia.edu/1825182/Xinjiang_Chinas_Other_Tibet_>)

Amnesty International reports on March 17, 2005:

“Since the late 1980s, the Chinese government’s policies and other factors have generated growing ethnic discontent in the Xinjiang Uighur Autonomous Region. Thousands of people there have been victims of gross human rights violations, including arbitrary detention, unfair political trials, torture and summary executions. These violations are suffered primarily by members of the Uighur community and occur amidst growing ethnic unrest fuelled by unemployment, discrimination and restrictions on religious and cultural freedoms. The situation has led some people living in the Xingiang Uighur Autonomous Region to favour independence from China. Crackdowns in the region have intensified since 9/11, with authorities designating supporters of independence as ‘separatists’ and ‘terrorists’. Muslim Uighurshave been the main targets of Chinese authorities. Authorities have closed down mosques,detained Islamic clergy and severely curtailed freedom of expression and association.”

### legitimacy theory

**States don’t have feelings – soft power doesn’t work**

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

The whole concept of soft power — power of attraction — is based on the assumption that there is a link between attractiveness and the ability to influence others in international relations, that is, such a power of attraction does have the ability to shape the preferences of others. This may be the case at the personal or individual level. It is questionable whether attraction power works at the nation level. Wang (2006) identifies two problems. First, a country has many different actors. Some of them like the attraction and others do not. Whether the attraction will lead to the ability to influence the policy of the target country depends on which groups in that country find it attractive (eg the political elite, the general public or a marginal group), and how much control they have on policymaking. For example, soft power by Country A may have positive influence on the political elite but negative influence on the general public in Country B, or vice versa.

Secondly, policy making at the state level is far more complicated than at the personal level; and has different dynamics that emphasise the rational considerations. This leaves little room for emotional elements, thus significantly reducing the effect of soft power. Even Nye (2004a) has to admit, what soft power can influence is not the policy making itself but only the ‘environment for policy’. Soft power may be counterproductive because societies react differently to American culture, the working of which is extremely complex, not least because of the diversity, as Fehrenbach and Poiger point out, in the ‘ processes by which societies adopt, adapt, and reject American culture’ ( Opelz, 2004 ).

**Legitimacy is inevitable and isn’t key to cooperation anyway**

**Wohlforth 9** — Daniel Webster Professor of Government,  Dartmouth.  BA in IR, MA in IR and MPhil and PhD in  pol sci, Yale (William and Stephen Brooks, Reshaping the World Order, March / April 2009, Foreign Affairs Vol. 88, Iss. 2; pg. 49, 15 pgs)

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

### legitimacy solvency

#### Due process doomed—this card means you vote neg on presumption

Alford, 11 [Copyright (c) 2011 Utah Law Review Society Utah Law Review 2011 Utah Law Review 2011 Utah L. Rev. 1203 LENGTH: 41771 words ARTICLE: The Rule of Law at the Crossroads: Consequences of Targeted Killing of Citizens NAME: Ryan Patrick Alford\* BIO: \* © 2011 Ryan Patrick Alford, Assistant Professor, Ave Maria School of Law, p. lexis]

From 2001 to 2004, the constitutional order of the United States was severely tested. In Hamdi v. Rumsfeld, n408 the Supreme Court held that the writ of habeas corpus extended to a United States citizen held at Guantanamo Bay. n409 Eight of the nine Justices agreed that the executive branch did not have the power to hold a citizen indefinitely, without access to basic due process protections enforceable in open court. n410 This case was properly seen as a watershed, a rejection of theories of executive detention that were incompatible with the basic tenets of our common law tradition. n411 However, the clear right to habeas corpus is only slightly over three hundred years old - the right not to be killed without due process of law is twice as old and considerably more fundamental. As Blackstone made clear, habeas corpus was originally necessary because it was a prophylactic protection for Magna Carta's right not to be killed. n412 To turn a blind eye to executive death warrants would be to trample upon numerous principles the Framers believed so important as to put into a document that outlines the parameters of the state itself. It would also trample upon principles that predate the Bill of Rights: the balance of powers, the constraints on arbitrary executive action, and the specific requirements of additional due process for those accused of crimes amounting to treason. It would also make a mockery of their [\*1271] comprehensive view of due process, which precluded the use of military justice against civilians. It would allow a return to the very features of royalist justice that they and their forbearers detested, such as allowing the executive the power of judgment and denying the courts the power to intervene - this was the hallmark of the detested Star Chamber, which was abolished on these grounds in 1641. n413 What is perhaps most perplexing about this current crossroads is that there seems to be very little discussion of the importance of this case within the legal profession in general, and in particular among the scholars and lawyers who had opposed the legal framework for the indefinite detention of the detainees at Guantanamo Bay. It is difficult to understand why so much determined opposition should emerge to the withholding of the rights of habeas corpus from American citizens (which led to the decision in Hamdi), n414 while the administration's decision to issue executive death warrants has led to so little. Apart from the decision of the ACLU and the CCR to litigate the case on behalf of Nasser Al-Aulaqi, there has been very little action taken within the legal community to publicize the Obama Administration's decision to use the targeted killing program to assassinate an American citizen. n415 As the discussion of the targeted killing program after Al-Awlaki's extrajudicial execution reveals, American militants like Anwar al-Awlaki are placed on a kill or capture list by a secretive panel of senior government officials, which then informs the president of its decisions ... . There is no public record of the operations or decisions of the panel, which is a subset of the White House's National Security Council ... . Neither is there any law establishing its existence or setting out the rules by which it is supposed to operate. n416 [\*1272] Not only is there no law addressing the due process rights of Americans with respect to targeted killing, but no law on this subject can be made. The executive branch has prevented the judiciary from addressing the killing of citizens by asserting that the courts do not have jurisdiction over these cases because they present political questions. Since the judiciary may not adjudicate the claims of those about to be killed, the prevailing law of the land now comes in the form of secret memoranda created by the executive's Office of Legal Counsel ("OLC"). n417 The executive branch now has the final say on the constitutionality of its decision to kill an American citizen, since it asserts that no court has jurisdiction to review its opinion. This is executive privilege beyond James I's wildest dreams. While the administration insists that the OLC memorandum did not formulate general criteria for deciding whether Americans accused (impliedly, but not formally) of treason may be tortured or killed, n418 its version of events is actually worse than the alternative. The administration advances the position that a citizen suspected of treason may be killed after a singular determination within the executive branch that this would not violate the citizen's due process rights. "If that's true, then the Obama Administration is **playing legal Calvinball**, making decisions based on individual cases, rather than consistent legal criteria." n419 Unfortunately, this has been confirmed to be true: the recommendations for targeted killings are reportedly made on a case-by-case basis by "a grim debating society" of "more than 100 members of the government's sprawling national security apparatus," who provide no indication of using legal principles when determining such issues as which sort of "facilitators" of terrorism should be marked for death. n420 This sort of Star Chamber is precisely what the rule of law was designed to protect us against. After months of silence, Attorney General of the United States Eric Holder traced out the rationale for the targeted killing of an American citizen. n421 Rebutting this article's thesis, he argued: Some have argued that the president is required to get permission from a federal court before taking action against a United States citizen who is a senior operational leader of Al Qaeda or associated forces... . [\*1273] This is simply not accurate. "Due process" and "judicial process" are not one and the same, particularly when it comes to national security. The Constitution guarantees due process, not judicial process. n422 Given the Obama Administration's decision not to release the OLC memorandum or even acknowledge that they did in fact kill Al-Awlaki, n423 this will likely be the most comprehensive description of the legal case for targeted killings the American people ever receive. Its arrogance is stunning. Attorney General Holder appears to rely implicitly on a Court decision holding that those having their social security benefits terminated are not entitled to a hearing in advance in support of another proposition. Namely, that some unspecified degree of procedural fairness apportioned in secret within the executive branch is all that is required before an American citizen can be killed. The Constitution, and a tradition of resistance to arbitrary executive power that it reaffirmed that extends back to the Magna Carta, is being held for naught - on the basis of a holding from an administrative law case wrenched forcibly out of context. With this flimsy justification, the administration rationalizes the creation of a new Star Chamber, newly empowered to administer capital punishment in secret and unchallengeable proceedings. Should this pass unchallenged, this may herald the end of the rule of law in America.

#### It’s too late—we lifted the veil—no longer good faith actor

**Hilde, 09** – Thomas, professor at the University of Maryland School of Public Policy where he teaches seminars in ethics and policy and international environmental and development law and politics (“Beyond Guantánamo,” http://www.lb.boell.org/downloads/Beyond\_Guantanamo.pdf //Red)

Concluding Remarks on Post-Guantánamo Human Rights human rights are meaningful if they entail a genuine commitment by each state to refrain from or extensively modify some actions even when those actions may be otherwise perceived to be in a state’s own interests. As Kant said, “all politics must bend its knee before human rights.”48 A human rights culture declares that there are some things that states cannot do to individual human beings, no matter whom the individual, especially within their own boundaries. unless we wish to shelve the idea of a “right” altogether, metaphysical or ethical justifications for civil rights apply also to human rights. the main difference is a practical one: the existence or absence of an effective enforcement mechanism. Within states, penal and regulatory systems function as means of coercive enforcement and the protection of certain sets of rights. in the international sphere, of course, **there is no** analogous **enforcement mechanism for human rights**, as is also ultimately the case with international treaties and other agreements among states. in this situation, **it will remain a temptation for powerful states to violate international human rights standards** when those states have compelling reasons to believe that doing so is, on the whole, in their interests. One might object by raising the example of the international criminal court. but some notable powerful countries and rogues have not yet signed onto the rome statute. Moreover, the underlying incentive structure of the icc may lead it to investigate and prosecute weaker, less politically risky cases.49 the icc system may be important, but it needs to mature before it can lay claim to being a fair and effective enforcement mechanism for human rights. the german philosopher Jürgen habermas writes that, “human rights are not pregiven moral truths to be discovered but rather are constructions… .”50 in the absence of an effective enforcement mechanism, the normative force of human rights is vital in this construction project. in the international sphere, genuine agreements are built upon shared norms, mutual interests, and good faith efforts to cooperate. Peremptory norms and customary law can be powerful influences, but because their normative bases are widely accepted by definition (similar to Jefferson’s claim in the Declaration that “all men are created equal” and “endowed with certain unalienable rights” are “self-evident” truths). if we understand human rights to involve an ongoing struggle to articulate their normative and practical meaning, constantly fitting and refitting local concerns and issues with the universal claims of human rights, then guantánamo leaves us with very difficult work to do in securing their future in international society. enforcement, in the end, comes through international participation in the ongoing formulation and construction of human rights values, and requires ever-growing empathy with those who suffer. it is a reasonable expectation in the international sphere that a liberal democracy, by definition, does not torture. guantánamo has **lifted the veil on that illusion.** restoring credibility, post-guantánamo, requires resolving the issue of detention policy and effecting accountability. it is no longer enough simply to resort to the faulty assumption that liberal democracies do not intentionally violate human rights. Outlined above are some of the proposed detention policies as well as a discussion of their inherent difficulties. the above discussion of accountability comprises several different aspects, legal, moral, public, and pragmatic. it is vital to restore the rule of law through clear legal policies. Justice Department investigations are thus critical. **but it is also vital to cultivate empathy in the public and international sphere.** there should thus be a more expansive congressional investigation providing the public with the information necessary to understand what is at stake and to make intelligent democratic decisions. grave errors have occurred. the ability to understand and express one’s own fallibility, however, is one of the great secrets of democratic leadership, whether by individuals or by nations. Public deliberation, in all its imperfections and in its full diversity of views, is essential to restoring credibility on human rights. it is also the democratic means by which to articulate a further empathetic understanding of human rights. Accountability can thus simultaneously serve both the goal of reconstructing credibility and the goal of extending a human rights culture.

## 1nr

### at: multilat

#### Multilat fails – structural changes key

**Langenhove, 11** – Luk Van, Director of the Comparative Regional Integration Studies Institute of the United Nations University (“Multilateralism 2.0: The transformation of international relations,” UN University, 5/31/11, [http://unu.edu/publications/articles/multilateralism-2-0-the-transformation-of-international-relations.html)**Red**](http://unu.edu/publications/articles/multilateralism-2-0-the-transformation-of-international-relations.html)Red)

Two major developments are currently transforming the multilateral system. The first is the trend towards multi-polarity as expressed by the rising number of states that act as key players. There have been times when only a few or even one player dominated the geopolitical game. But today it seems that several states are becoming dominant players as global or regional actors. The (voting) behavior of the BRICS countries (Brazil, Russia, India, China and South Africa) in the UN and their presence in the G20 illustrates this trend. The second development, meanwhile, is that new types of actors are changing the nature of the playing multilateral field. Regions with statehood properties are increasingly present in the area of international relations. Since 1974, the European Union (EU) for instance has been an observer in the United Nations General Assembly (UNGA). But on 3 May 2011, UNGA upgraded the EU’s status by giving it speaking rights. And that same resolution opens the door for other regional organizations to request the same speaking rights. Undoubtedly, this is what is what will happen in the near future. But as stated by some UN members in discussions on this resolution, this could unbalance the ‘one state, one vote’ rule within the UN. On the other hand, this opening towards regional organizations brings with it new opportunities. Together these two developments illustrate that multilateralism is no longer only a play between states: various regions as well as other actors are present and are profoundly changing the multilateral game. **But thinking about multilateralism is still very much based upon the centrality of states**: they are regarded as the constitutive elements of the multilateral system and it is their interrelations that determine the form and content of multilateralism. This implies that international politics is regarded as a closed system in at least two ways: firstly, it spans the whole world; and, secondly, there are huge barriers to enter the system. Many authors have pointed to all kinds of dys-functions such as the complexity of the UN system with its decentralized and overlapping array of councils and agencies, or to the divides between developed and developing countries. The emergence of truly global problems such as climate change, proliferation of weapons of mass destruction and many others have indeed **led to an increasing paradox** of governance. As Thakur and Van Langenhove put it in Global Governance (2006, 12:3) “[t]he policy authority for tackling global problems still belong to the states, while the sources of the problems and potential solutions are situated at transnational, regional or global level”. As such the building blocks of multilateralism, the states, seem to be **less and less capable of dealing with the challenges** of globalization. But because the multilateral world order is so dependent on the input of states, **multilateralism itself is not functioning well.** From an open to a closed system One way to capture the above-mentioned developments is to use the metaphor of ‘multilateralism 2.0’ in order to stress how the playing field and the players in multilateralism are changing. The essence of the Web 2.0 metaphor is that it stresses the emergence of network thinking and practices in international relations, as well as the transformation of multilateralism from a closed to an open system. In multilateralism 1.0 the principle actors in the inter-state space of international relations are states. National governments are the ‘star players’. Intergovernmental organizations are only dependent agents whose degrees of freedom only go as far as the states allow them to go. The primacy of sovereignty is the ultimate principle of international relations. In contrast, in multilateralism 2.0, there are players other than sovereign states that play a role and some of these players challenge the notion of sovereignty. Regions are one such type of actor. Conceived by states, other players can have statehood properties and as such aim to be actors in the multilateral system. Regional organizations especially are willing and able to play such a role. But sub-national regions as well increasingly have multilateral ambitions as demonstrated by their efforts towards para-diplomacy. As a result ‘international relations’ is becoming much more than just inter-state relations. Regions are claiming their place as well. This has major consequences for how international relations develop and become institutionalized, as well as for how international relations ought to be studied. What was once an exclusive playing ground for states has now become a space that states have to share with others. It is a fascinating phenomenon: both supra- and sub-national governance entities are largely built by states and can therefore be regarded as ‘dependent agencies’ of those states. However, once created, these entities start to have a life of their own and are not always totally controllable by their founding fathers. These new sub- and supra-entities are knocking on the door of the multilateral system because the have a tendency to behave ‘as if’ they were states. This actorness gives them, at least in principle, the possibility to position themselves against other actors, including their founding fathers! All of this has weakened the Westphalian relation between state and sovereignty. ‘One state, one vote’ Organizing multilateralism in a state-centric would only be possible if all states are treated as equal. This means that irrespective of the differences in territorial size, population size, military power or economic strength, all states have the same legal personality. Or in other words, the Westphalian principle of sovereign equality means working with the principle of ‘one state, one vote’, although it is universally acknowledged that this principle does not correspond to the reality. In multilateralism 2.0 this could be balanced through a more flexible system that compares actors in terms of certain dimensions (such as economic power) regardless of the type of actors they are. In other words, one can for instance compare big states with regions or small states with sub-national regions. This allows not only a more flexible form of multilateralism. It could perhaps also lead to a more just system with a more equal balance of power and representation. Within the present multilateral system, the UN occupies a major position. But, in order to adapt to the emerging ‘mode 2.0’ of multilateralism, it needs to open up to regions. This is a problem, as the UN is a global organization with sovereign states as members. Indeed, the way the UN is organized, only sovereign states, the star players, can be full members (see Article four of the UN Charter). Even though the EU was granted speaking rights, it was not granted voting rights. Chapter VIII of the Charter also mentions the possibility of cooperation with regional organizations and right from its conception there have been attempts to go beyond a state-centric approach. However, for many years now, the UN has struggled with the question of what place supra-national regional organizations should and could take in achieving UN goals. On one end of the spectrum is the position that regionalism blocks the necessary global and universal approach needed to solve the problems of today. At the other end there is the position that regionalism can serve the overall goals of the UN. Obviously, the question is not only a philosophical one. Rather, it is also about power of institutions. Are regional organizations weakening the UN or can they be considered as allies of the UN in dealing with supra-national problems? Further recognition required The key issue in relation to any institutional reform aimed at reinforcing multilateralism is how to create a balance of power among UN members and a balance of responsibilities and representation for the people of our planet. **Such a complex set of balances cannot be found if reform propositions continue to be based upon states as the sole building blocks of multilateralism. A radical rethinking is needed**, which recognizes that, next to states, world regions based upon integration processes between states have to play a role in establishing an effective multilateralism. Today’s reality is that, next to states, world regions are becoming increasingly important tools of global governance. There needs to be, however, a lot of creative and innovative thinking based upon careful analysis of the regional dimensions of ongoing conflicts and of existing cooperation between the UN and regional organizations. The upgrading of the EU’s status in the UN is an important step forward. But it is not enough. Other regional organizations such as the African Union, ASEAN or the League of Arab States should follow. And next to speaking rights, collaboration between the UN and regional organizations needs to be further developed. This is the only way to increase regional ownership of what the UN and its Security Council decide. As a matter of fact, this recently happened with the UNSC resolution 1973 regarding Libya: explicit reference is made to the African Union, the League of Arab States and the Organization of Islamic Conference. Moreover, the League of Arab States’ members are requested to act in the spirit of Chapter VIII of the UN Charter in implementing the resolution. Reviving Chapter VIII seems to be a promising way to combine global concerns with local (regional) legitimacy and capacity to act. The challenge is that in line with the complexity of the emerging new world order, any proposal to rethink multilateralism in such a way that it incorporates regionalism needs to be flexible. A simplistic system of regional representations that replace the national representations will not work. And not only the UN, but also the regional organizations themselves need to adjust to the reality of multilateralism 2.0. In this respect it remains to be seen to what extent the EU Member States will allow the EU to speak with one vision. And above all, in order to become politically feasible, the idea of a multi-regional world order needs to be supported and promoted by civil society. As long as this is not the case, **old habits and organizational structures will not change, and the world will not become a more secure place to live in.**

### impact

#### Turns legitimacy and the plans signal

O’Hanlon 12 — Kenneth G. Lieberthal, Director of the John L. Thornton China Center and Senior Fellow in Foreign Policy and Global Economy and Development at the Brookings Institution, former Professor at the University of Michigan, served as special assistant to the president for national security affairs and senior director for Asia on the National Security Council, holds a Ph.D. from Columbia University, and Michael E. O'Hanlon, Director of Research and Senior Fellow in Foreign Policy at the Brookings Institution, Visiting Lecturer at Princeton University, Adjunct Professor at Johns Hopkins University, holds a Ph.D. from Princeton University, 2012 (“The Real National Security Threat: America's Debt,” *Los Angeles Times*, July 10th, Available Online at http://www.brookings.edu/research/opinions/2012/07/10-economy-foreign-policy-lieberthal-ohanlon, Accessed 07-12-2012)

Lastly, American economic weakness undercuts U.S. leadership abroad. Other countries **sense our weakness** and wonder about our purported decline. If this perception becomes more widespread, and the case that we are in decline becomes more persuasive, countries will begin to **take actions that reflect their skepticism about America's future**. Allies and friends will **doubt our commitment** and may **pursue** nuclear weapons for their own security, for example; adversaries will **sense opportunity** and be **less restrained in throwing around their weight** in their own neighborhoods. The crucial Persian Gulf and Western Pacific regions will likely become **less stable**. Major war will become more likely. When running for president last time, Obama eloquently articulated big foreign policy visions: healing America's breach with the Muslim world, controlling global **climate change**, dramatically curbing **global poverty** through development aid, moving toward a world free of **nuclear weapons**. These were, and remain, worthy if elusive goals. However, for Obama or his successor, there is now **a much more urgent big-picture issue: restoring U.S.** economic strength**. Nothing else is really possible if that fundamental prerequisite to effective foreign policy is not reestablished**.

#### And. turns democracy

Tilford 8 — Earl Tilford, military historian and fellow for the Middle East and terrorism with The Center for Vision & Values at Grove City College, served as a military officer and analyst for the Air Force and Army for thirty-two years, served as Director of Research at the U.S. Army’s Strategic Studies Institute, former Professor of History at Grove City College, holds a Ph.D. in History from George Washington University, 2008 (“Critical Mass: Economic Leadership or Dictatorship,” Published by The Center for Vision & Values, October 6th, Available Online at http://www.visionandvalues.org/2008/10/critical-mass-economic-leadership-or-dictatorship/, Accessed 08-23-2011)

Nevertheless, al-Qaeda failed to seriously destabilize the American economic and political systems. The current economic crisis, however, could foster critical mass not only in the American and world economies but also put the world democracies in jeopardy.

Some experts maintain that a U.S. government economic relief package might lead to socialism. I am not an economist, so I will let that issue sit. However, as a historian I know what happened when the European and American economies collapsed in the late 1920s and early 1930s. The role of government expanded exponentially in Europe and the United States. The Soviet system, already well entrenched in socialist totalitarianism, saw Stalin tighten his grip with the doctrine of "socialism in one country," which allowed him to dispense with political opposition real and imagined. German economic collapse contributed to the Nazi rise to power in 1933. The alternatives in the Spanish civil war were between a fascist dictatorship and a communist dictatorship. Dictatorships also proliferated across Eastern Europe.

In the United States, the Franklin Roosevelt administration vastly expanded the role and power of government. In Asia, Japanese militarists gained control of the political process and then fed Japan's burgeoning industrial age economy with imperialist lunges into China and Korea; the first steps toward the greatest conflagration in the history of mankind ... so far ... World War II ultimately resulted. That's what happened the last time the world came to a situation resembling critical mass. Scores upon scores of millions of people died.

Could it happen again? Bourgeois democracy requires a vibrant capitalist system. Without it, the role of the individual shrinks as government expands. At the very least, the dimensions of the U.S. government economic intervention will foster a growth in bureaucracy to administer the multi-faceted programs necessary for implementation. Bureaucracies, once established, inevitably become self-serving and self-perpetuating. Will this lead to "socialism" as some conservative economic prognosticators suggest? Perhaps. But so is the possibility of dictatorship. If the American economy collapses, especially in wartime, there remains that possibility. And if that happens the American democratic era may be over. If the world economies collapse, totalitarianism will almost certainly return to Russia, which already is well along that path in any event. Fragile democracies in South America and Eastern Europe could crumble.

A global economic collapse will also increase the chance of global conflict. As economic systems shut down, so will the distribution systems for resources like petroleum and food. It is certainly within the realm of possibility that nations perceiving themselves in peril will, if they have the military capability, use force, just as Japan and Nazi Germany did in the mid-to-late 1930s. Every nation in the world needs access to food and water. Industrial nations -- the world powers of North America, Europe, and Asia -- need access to energy. When the world economy runs smoothly, reciprocal trade meets these needs. If the world economy collapses, the use of military force becomes a more likely alternative. And given the increasingly rapid rate at which world affairs move; the world could devolve to that point very quickly.

### uniqueness block

#### 2ac Miller ev assumes that Obama won’t push – our evidenced begs to differ and says continued push is vital – doesn’t assume the overwhelming superiority of 1nc sullvian

#### Three warrants:

#### The shutdown damaged the GOP brand; Boehner is vulnerable to pressure that the GOP is obstructionist – and he’ll allow a vote to restore the party’s image, which is crucial before midterm elections.

#### Consistent Obama pressure is vital to pushing Boehner – it showcases GOP obstructionism and means he’ll have no choice but to compromise

#### Boehner has more flexibility on the Hastert rule than he did before the shutdown – the fact he held out so long increased his political breathing space in his caucus

#### Star this evidence – Boehner will compromise because of Obama’s political strength – even if this means a series of piecemeal bills, the final package will be similar enough to CIR

**MacGillis, 10/24/13** - New Republic senior editor (Alec, “Seven Reasons To Stop Being Fatalistic About Immigration Reform” The New Republic, <http://www.newrepublic.com/article/115341/immigration-reform-may-actually-pass>)

But the natural optimist in me thinks that the odds for some sort of serious immigration reform happening in the months ahead are better than many realize. A few reasons why, in no particular order:

Boehner has space. To the extent that there was any logic to the Speaker’s letting the government shutdown and debt-ceiling brinkmanship drag out as long as he did, it was that he had strengthened his position with his caucus’s hard-right flank and thereby created some room to maneuver on other fronts. “Boehner’s hold is a little stronger than it was” a few months ago, his near-predecessor as speaker, the lobbyist supreme Bob Livingston, told me when I ran into him at a function Wednesday night.

Well, there is no better opportunity for Boehner to show that this is the case – to retroactively justify a gambit that cost the country billions of dollars – than to press forward with immigration reform. To do that will require more than just casual comments like the one he tossed off Wednesday – it will require making clear that the leadership is serious about this and setting aside time on the calendar for it.

But wouldn’t pushing the issue forward mean once again breaking the not-so-hallowed Hastert Rule, which requires leadership to bring up for a vote only measures supported a majority of the caucus? Well, yes and no. There is increasing talk of taking a piecemeal route in the House – with, among others, one Dream Act-style measure to legalize those who came into the country as minors, one to stiffen border enforcement, one to expand visas for skilled foreign workers, and, yes, one to provide some sort of eventual path to citizenship for illegal immigrants beyond the Dreamers. The latter would not get a majority of House GOP support, but perhaps if brought through in a stream of other measures would not set off the Hastert Rule alarms as loudly. There would remain the question of how to reconcile whatever passed with the comprehensive reform bill already passed by the Senate – House conservatives say they are wary of a conference committee. But the fact remains that there is a conceivable path forward – if Boehner wants to pursue it. “He’s in a much stronger place for himself job-security-wise all around,” says one House Democratic aide.

It’s in the Republicans’ interest. Why would the cautious, conflict-averse Boehner want to put himself through the hassle, even if he does have a path forward? Because, of course, he and so many other leaders of his party and the conservative movement – Paul Ryan, Karl Rove, Grover Norquist – grasp that the party cannot continue be seen as obstructing immigration reform by the country’s growing legions of Hispanic and Asian-American voters. Yes, many of the same leaders were warning the hard-liners in the House and Senate off of the defund-Obamacare government-shutdown path to no avail, but those warnings were highly ambivalent, a matter of tactical disagreement after years in which the leaders had been banging the same anti-Obamacare drum. Whereas in this case the leaders are truly in favor of immigration reform, even if just for reasons of self-preservation.

It’s not Obamacare. This is the other reason why Boehner might be able to push forward on this front: as incendiary an issue as immigration reform has been for many Republican voters in recent years, it’s actually less threatening than the two-headed beast of Obamacare and government spending. For one thing, it predates Obama as an issue – it was fellow Republicans George W. Bush and John McCain who were most identified with the 2007 push. For another, some of the most ardent anti-Obamacare soldiers are in favor of immigration reform to varying degrees, from Idaho Rep. Raul Labrador to border congressmen like New Mexico's Steve Pearce to the evangelical groups that have come out for reform. “In the grand scheme of Republican issues, it just doesn’t match up to Obamacare – that’s health care and Obama. That’s partly because they haven’t yet made it about Obama,” said the House Democratic aide.

Follow the money. Put simply: the pro-reform side has lots of it, the opponents not so much. Again, this is a crucial contrast with the battles over Obamacare, where the Club for Growth, Koch Brothers and the like are spending heavily to thwart the reformers, even to the point of punishing Republican state legislators who dare to contemplate embracing federal funds for Medicaid expansion. In the immigration realm, the big bucks are coming from these guys.

The pro-reform side isn’t giving up. This is the element too often discounted in drawn-out legislative battles: the energy and resolve of the footsoldiers. And it has not abated as much on the pro-reform side as much as the pessimistic Beltway take on the issue would have one think. There are millions of people in this country with a huge stake in this fight, and plenty others who have taken up arms in their support, and not just in the usual places: I was amazed to see several dozen people agitating for reform at the annual Fancy Farm political picnic in far western Kentucky, in August. Advocates have gotten further than ever before – they’ve gotten a bipartisan vote in their favor in the Senate, and they’ve gotten key agreements between the AFL-CIO and Chamber of Commerce and growers and farmworkers in California, among others. They’re not about to give up now. “This is the absolute best opportunity we have to pass reform,” says Angelica Salas, executive director of the Coalition for Humane Immigrant Rights of Los Angeles. “If we were going to leave it to the national pundits, this issue would have died a long time ago, but the reality is that it’s in the hands of the immigration rights movement and people are not going to end the fight until there’s a fix to this cruel situation that we’re living in.”

Obama wants to make it happen. One might think this would be the biggest obstacle for reform, in that Republicans would be unwilling to grant the president a legislative triumph. In fact, Democrats are having to contend with the reverse, a suspicion among many House Republicans that Obama and the Democrats secretly want reform to fail, so that they can keep bludgeoning Republicans with the issue among Hispanic voters. This is hogwash, as far as Obama is concerned: he desperately wants a major achievement in his second term, not least given the troubles that have arisen in implementing his main first-term one. As for the Republicans’ suspicion, there’s an easy way to keep Democrats from using immigration as a wedge issue: voting for a reform package. “It’s a self-fulfilling prophecy,” says the Democratic House aide.

#### And here’s a crucial framing argument for uniqueness – only moderate GOP members matter. Conservatives won’t vote for immigration no matter what and affirmative evidence quoting them is irrelevant. The only evidence that matters is how moderates react – and Obama can work with them now, and capital is key

**Balz, 10/17/13** (Dan, Washington Post, “Can Obama seize the moment and make Washington work?” <http://www.washingtonpost.com/politics/can-obama-seize-the-moment-to-make-washington-work/2013/10/17/d84c1934-3753-11e3-80c6-7e6dd8d22d8f_story_1.html>)

Obama will continue to face unyielding opposition from the tea party Republicans in the House and the Senate. Sen. Ted Cruz (R-Tex.) made that clear Wednesday when he denounced the Senate compromise and praised those in the House whose opposition to the health-care law triggered the crisis.

The key now is whether the president has a strategy to govern around them by winning support from what he called the responsible Republicans.

Obama’s agenda

On Thursday, Obama called on Congress to focus on three priorities. But he offered few specifics about what he will ask and what he will give. Nor is it clear whether he has a strategy to win the support of some Republicans.

The first priority he talked about was the economy and the budget. Budget negotiations will resume with the goal of reaching an agreement by mid-December, lest the country face a repeat of what just happened.

Obama wants to replace the across-the-board spending reductions that have cut indiscriminately with more sensible spending priorities. He also says he is willing to negotiate over entitlements programs. He wants any agreement to include more revenue, although Republicans say he got his revenue package at the end of 2012. Republicans who opposed the shutdown (but quietly went along with it) are skeptical that Obama is truly willing to make concessions to get a satisfactory deal.

The two other legislative priorities the president cited were immigration reform and passage of the farm bill. No one can say what the prospects are for passage of an immigration bill. Much of that still depends on how House GOP leaders decide whether it is in the party’s long-term interest to pass it. Obama did not mention what should be his other major priority, the health-care law, whose implementation has gotten off to a stumbling start, to put it mildly.

All of that is on the table. Meanwhile, there is a question of how engaged Obama will be in the grinding work of trying to produce compromise with potentially willing Republicans.

### thumpers/piecemeal

#### Becker is about the budget:

#### Obama won’t spend capital on that

**Munro, 10/17/13** – White House Correspondent (Neil, “Obama WALKS AWAY from new budget talks, setting stage for next shutdown showdown” Read more: <http://dailycaller.com/2013/10/17/obama-walks-away-from-new-budget-talks-setting-stage-for-next-shutdown-showdown-video/#ixzz2i6o3otL3>)

President Barack Obama is minimizing his role in the high-stakes bipartisan budget negotiations that he helped schedule.

“The president will be as involved as he and members of the Congress believe to be useful,” White House spokesman Jay Carney said on Thursday.

However, Carney strongly hinted the president will remain absent from negotiations.

“The president has already demonstrated a level of seriousness through the budget he put forward [in April]… which includes tough choices for Democrats and Republicans,” Carney said. The White House’s view is that budgets are developed by the House and Senate, and they can run their own joint conference, he said.

#### Berman assumes the budget – immigration first

**Lerer, 10/24/13** (Lisa, “Republicans After Shutdown Seen Losing Again on Immigration (1)” Business Week, <http://www.businessweek.com/news/2013-10-24/republicans-after-shutdown-seen-losing-again-defying-immigration>)

Immigration First

In remarks after the partial government shutdown ended last week, Obama listed immigration first among three legislative priorities, along with action on the budget and passage of a farm bill.

He then scolded the same Republican lawmakers whose votes he’ll need for the House to approve Senate-passed legislation.

“There are folks on the other side who think that my policies are misguided,” he said. “We shouldn’t fail to act on areas that we do agree or could agree just because we don’t think it’s good politics, just because the extremes in our party don’t like the word ‘compromise.’”

Democrats say Republicans will suffer politically if they fail to move a bill forward. “We are going to hold Republicans accountable for everything: the bad things they do and the good things that they don’t do,” said Representative Steve Israel of New York, chairman of the House Democratic campaign committee.

Should Republicans block legislation, that would create an opening for Democrats to paint them as obstructionists, say some lawmakers, who argue that Republican opposition to a bill could be paired with the party’s role in the government shutdown.

“The same people who caused the government shutdown and stopped us from opening the government for two and a half weeks are the people who are blocking immigration reform,” said Representative Joaquin Castro, a Texas Democrat.

While House Republican leaders have expressed interest in moving forward with legislation, many party lawmakers say Obama’s decision not to negotiate over the shutdown and debt ceiling has soured relations.

Speaking on “Fox News Sunday,” Senator Marco Rubio, a Florida Republican, said the president’s tactics undermined his efforts to build a consensus.

“Now, this notion that they’re going to get in a room and negotiate a deal with the president on immigration is much more difficult to do,” Rubio said in the Oct. 20 interview, “because of the way that president has behaved towards his opponents over the last few weeks.”

Limited Window

Advocates for an immigration overhaul, including Jacoby, see a limited congressional window for movement on comprehensive legislation, possibly limited to the next several weeks before new fiscal deadlines hit in the coming months.

#### And, health care:

#### Immigration changed the conversation

**Pareene, 10/24/13** (Alex, Salon, “Immigration reform still incredibly unlikely to happen this year”

<http://www.salon.com/2013/10/24/immigration_reform_still_incredibly_unlikely_to_happen_this_year/singleton/>

President Obama has every reason to bring up immigration reform all the time. It’s true that he sincerely wants the Senate bill to pass, because he believes it would help millions of people. It’s necessary to point this out because it is commonly accepted on the right that Obama wants reform to fail so that he can use it as a cudgel against Republicans. That isn’t actually true, but it is true that as long as Republicans keep failing on this issue Democrats will point that fact out to people. It’s also true that bringing up immigration now serves to distract from bad things that are going on — the embarrassing failure of the health insurance exchange site, the still-crappy economy, etc. — because while pundits and Republicans recognize it as an attempt to change the national subject, it still reliably leads to a lot of Sunday show talk and political columns (like this one!) about whether Congress can accomplish this thing.

#### The gop won’t get any mileage

**Beutler, 10/24/13 –** Salon’s political writer (Brian, “Republicans’ embarrassing Obamacare overreach backfires” <http://www.salon.com/2013/10/24/republicans_embarrassing_obamacare_overreach_backfires/>

Republicans see this as their big chance to pour some sugar into the vat of lemon juice they’ve squeezed for themselves over the past few weeks. And it might have worked, but for the GOP’s four-year-long fire hose of bad faith with respect to all matters of healthcare reform. Their efforts to sabotage the law have been so unconcealed that support for Obamacare actually increased during the shutdown — tepid liberals came home despite the website’s troubles. And now that Democrats are grappling with what to do if the federally facilitated marketplaces in 34 states don’t become functional soon, Republicans want to retroactively reassign blame for the shutdown to them.

Here’s a spoiler: Nobody’s going to buy it.

This isn’t a Boy Who Cried Wolf problem for the GOP, though. In that charming fable, the very thing the unsuspecting child protagonist had been lying about actually materialized and ate him to death. Republicans deserve no such sympathy. They’re still lying.

The claim, depicted above, is that Democrats now support the exact same individual mandate delay Republicans were demanding in exchange for funding the government a month ago. If they thought it might be necessary, why’d they let the government shut down?!

Well, for starters, kind of a lot’s happened since then! On top of that, Democrats weren’t just opposed to the mandate delay on the merits, but also on the grounds that they weren’t going to concede anything unreciprocated to GOP hostage takers.

#### And: piecemeal disagreements:

#### Piecemeal reform will be bundled in the conference committee to pass CIR

**Nowicki, 10/20/13** (Dan, The Arizona Republic, “Time running out for immigration reform”

<http://www.usatoday.com/story/news/nation/2013/10/20/hopes-dim-for-immigration-reform/3062199/>)

'Could see floor action'

Boehner this year frustrated some immigration activists by declaring the Senate's comprehensive bill dead on arrival in the House and by signaling that any of the other smaller bills must be supported by a majority of his GOP conference. The piecemeal approach also likely would include bills focusing on border security, visas for foreign workers and immigration enforcement. Five measures already have cleared committees, so Boehner could easily set aside a week this fall to hold a series of immigration votes. He has said doing nothing on immigration is not an option.

"We're still committed to moving forward on step-by-step, common-sense reforms," Boehner spokesman Michael Steel told The Arizona Republic in an email. "The Judiciary Committee has already passed several bills that could see floor action."

Rep. Ed Pastor, D-Ariz., said he believes House Republican leaders are sincere and sees a potential opening for immigration reform in the next several weeks. If five or so immigration bills are passed, the legislation could be bundled and provide the basis for a joint House-Senate conference committee that would hammer out a final version based on the legislation that each chamber passed.

#### The leadership could allow piecemeal efforts to turn into CIR in conference – pressure means Boehner is likely to allow a vote

**Sargent, 10/24/13** (Greg, The Plum Line blog, Washington Post, “Obama: House Republicans must prove they can govern again” http://www.washingtonpost.com/blogs/plum-line/wp/2013/10/24/obama-house-republicans-must-prove-they-can-govern-again/)

Now, there’s no chance House Republicans will pass either the Senate bill or the measure championed by House Democrats. But there are still various ways House Republicans can act constructively in a way that makes reform genuinely possible. GOP Rep. Mario Diaz-Balart and Darrell Issa are working on proposals to do something about the 11 million, and House GOP leaders plainly want to find a way to pass something. But what remains to be seen is whether all this is about checking boxes, or whether we’ll see a genuine willingness to enter into conference negotiations. Conservatives will strenuously resist this because it carries the unacceptable risk of resulting in a compromise solution to a pressing national problem that they won’t be able to accept under any circumstances.

Indeed, we’re not getting immigration reform if GOP leaders are not willing to make conservatives angry at some point in the process. If they are, there are ways — outlined here and here — that could get us to comprehensive reform, via conference negotiations, even without House Republicans having to hold an initial vote on a path to citizenship. Then, of course, House GOP leaders would have to allow a vote on it.

At bottom all of this turns on whether House GOP leaders and mainstream House conservatives decide that the party’s dismal overall standing — with Latinos and the American people at large — actually matters, and that embracing reform is a way to begin fixing these problems. This week’s Post/ABC poll found that only one in five Americans — including 14 percent of independents and 18 percent of moderates — believe Republicans are “interested in doing what’s best for the country.” Maybe that doesn’t matter, because the House GOP majority is supposedly invulnerable. Or maybe the cost of alienating the base with reform is too great.

Will John Boehner let the right set the agenda yet again? Maybe, but as Sean Sullivan points out:

Boehner listened to the right flank of his conference in the fiscal fight, and that path was politically destructive for his party. That’s enough to believe he will at least entertain the possibility of tuning the hard-liners out a bit more this time around.

Indeed, if it does matter to GOP leaders that large majorities don’t appear to think Republicans want to do what’s best for the country, immigration reform is one of a few remaining ways to demonstrate otherwise. Dems have let it be known they will continue to frame the choice in these terms.

### pc key

#### The plan averts delay into 2014 by pressure – it is a different tactic of negotiating than the debt ceiling – our evidence says that Obama won on that and maintaining further pressure will be effective

#### And capital is key to that effort – capital’s not just about bargaining – it’s about focus – the plan’s expenditure of capital prevents Obama from maintaining a consistent message on immigration and it means he’ll lose the ability to ask for favors

**Moore, 9/10/13 -** Guardian's US finance and economics editor.(Heidi, “Syria: the great distraction” The Guardian, <http://www.theguardian.com/commentisfree/2013/sep/10/obama-syria-what-about-sequester>)

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

#### Consistent Obama focus and pressure is vital to getting Boehner to allow a floor vote on immigration – the plan’s a distraction that derails the agenda

**Sanders, 10/22/13** - columnist for the Fort Worth Star-Telegram (Bob, “There's no better time for Obama to push for immigration reform” <http://www.mcclatchydc.com/2013/10/22/206078/bob-ray-sanders-theres-no-better.html>)

Obama got re-elected partly on his promise to pursue the issue aggressively, receiving 71 percent of the Latino vote. He has not been as aggressive as many would like, even though they're willing to cut him a little slack because of all the uncontrollable international crises and manufactured domestic distractions (like the shutdown of the government) he has had to deal with.¶ But he shouldn't let anything get in his way this time, even though Republicans in the House are vowing not to negotiate with him because the president stood his ground and refused to negotiate on his healthcare law in connection with raising the debt ceiling and ending the government shutdown.¶ House Speaker John Boehner, who has refused to bring the Senate bill to a vote, has said he won't bring any immigration legislation to the floor until a majority of his Republican caucus agrees.¶ That, in effect, means never. Or, if there is a bill that the majority of his party would support, you can almost bet it will be terribly inadequate, one that would not pass the Senate and one that the president wouldn't sign if it did.¶ Boehner, who has been on the losing end a lot lately, ought to be pressured into bringing the Senate bill to a vote. It's clear that on many of the important matters facing this country, the majority of his party in the House will reject just about anything the president supports.¶ Therefore, it will be left up to the House Democrats and the moderate Republicans who are not afraid of the "tea party" to get an immigration bill passed.¶ Since the government shutdown fiasco, in which the GOP unmistakably was the loser, the president has the upper hand, and he should take the opportunity to press forward with his agenda.¶ By no means am I suggesting that Obama become a bully or deliberately attempt to undermine Boehner's leadership, but he shouldn't back away from this fight again.

### pc key

#### Restricting detention consumes capital

CCR 11 Center for Constitutional Rights [Detained Man Describes Peaceful Protests Against Indefinite Detention at Guantánamo, http://yubanet.com/usa/Detained-Man-Describes-Peaceful-Protests-Against-Indefinite-Detention-at-Guant-namo.php#.Ujn\_vMbYuYQ]

Upon the anniversary of President Obama's broken promise to close Guantánamo, the Center for Constitutional Rights (CCR) reported that a man detained at the prison, who prefers to remain anonymous, told his attorney during an unclassified call of a spontaneous peaceful protest that has swept through Camp 6, where most of the remaining detainees are currently being held. He described signs the men have posted demanding justice and humane treatment. The protest began because the government has been transferring—sometimes by force—detainees from the communal facility that had previously held most of the men, Camp 4, to the solitary-celled, Supermax-style facility of Camp 6. The detained man said the protest was inspired by news of the recent revolution in Tunisia. The detainees object to the move because of worse conditions in Camp 6, and because of their accurate perception that the move is a signal that the Obama administration has no plans to send them home anytime soon. See below for more information on the protest, language from the protest signs and excerpts from the unclassified attorney call with the detained man who reported the protest. CCR also released the following statement:

In the last presidential election, both candidates campaigned on a promise to close Guantánamo—an international symbol of injustice that both men acknowledged was damaging U.S. foreign policy and national security interests. Today, on the eve of the first anniversary of President Obama's failed deadline to close Guantánamo, it is clear that all three branches of government have effectively abandoned that goal.

The President continues to make hollow assertions that closing Guantánamo is the right thing to do and will make the U.S. safer. Yet, he has shown no willingness to use political capital to pursue that goal against strident opposition from demagogues in Congress and the media. In the absence of presidential leadership, both parties in Congress continue to block transfers out of Guantánamo, even for men who have successfully challenged the legality of their detention or who have been cleared for release by the administration's own thorough review process. With the Supreme Court now largely removed from the picture, thanks to the likely recusal of Justice Elena Kagan from cases involving detainee affairs because of her previous role as Solicitor General, the Court of Appeals for D.C.—the most deferential in the country to executive claims of authority—has raised the burden on detained men seeking relief through the courts to levels even higher than the government has requested.

#### No Congressional support for the plan – they love detention

Greenwald, 11– Glenn, former Constitutional and civil rights litigator (“Congress endorsing military detention, a new AUMF,” Salon, 12/1/11, http://www.salon.com/2011/12/01/congress\_endorsing\_military\_detention\_a\_new\_aumf/ //Red)

A bill co-sponsored by Democratic Sen. Carl Levin and GOP Sen. John McCain (S. 1867) — included in the pending defense authorization bill — is predictably on its way to passage. It is triggering substantial alarm in many circles, including from the ACLU – and rightly so. But there are also many misconceptions about it that have been circulating that should be clarified, including a possible White House veto. Here are the bill’s three most important provisions:

(1) mandates that all accused Terrorists be indefinitely imprisoned by the military rather than in the civilian court system; it also unquestionably permits (but does not mandate) that even U.S. citizens on U.S. soil accused of Terrorism be held by the military rather than charged in the civilian court system (Sec. 1032);

(2) renews the 2001 Authorization to Use Military Force (AUMF) with more expansive language: to allow force (and military detention) against not only those who perpetrated the 9/11 attacks and countries which harbored them, but also anyone who “substantially supports” Al Qaeda, the Taliban or “associated forces” (Sec. 1031); and,

(3) imposes new restrictions on the U.S. Government’s ability to transfer detainees out of Guantanamo (Secs. 1033-35).

There are several very revealing aspects to all of this. First, the 9/11 attack happened more than a decade ago; Osama bin Laden is dead; the U.S. Government claims it has killed virtually all of Al Qaeda’s leadership and the group is “operationally ineffective” in the Afghan-Pakistan region; and many commentators insisted that these developments would mean that the War on Terror would finally begin to recede. And yet here we have the Congress, on a fully bipartisan basis, acting not only to re-affirm the war but to expand it even further: by formally declaring that the entire world (including the U.S.) is a battlefield and the war will essentially go on forever.

Indeed, it seems clear that they are doing this precisely out of fear that the justifications they have long given for the War no longer exist and there is therefore a risk Americans will clamor for its end. This is Congress declaring: the War is more vibrant than ever and must be expanded further. For our political class and the private-sector that owns it, the War on Terror — Endless War — is an addiction: it is not a means to an end but the end itself (indeed, 2/3 of these war addicts in the Senate just rejected Rand Paul’s bill to repeal the 2003 Iraq AUMF even as they insist that the Iraq War has ended). This is the war-hungry U.S. Congress acting preemptively to ensure that there is no sense in the citizenry that the War on Terror — and especially all of the vast new powers it spawned — can start to wind down, let alone be reversed.

Second, consider how typically bipartisan this all is. The Senate just voted 37-61 against an amendment, sponsored by Democratic Sen. Mark Udall, that would have stripped the Levin/McCain section from the bill: in other words, Levin/McCain garnered one more vote than the 60 needed to stave off a filibuster. Every GOP Senator (except Rand Paul and Mark Kirk) voted against the Udall amendment, while just enough Democrats – 16 in total — joined the GOP to ensure passage of Levin/McCain. That includes such progressive stalwarts as Debbie Stabenow, Sheldon Whitehouse, Jeanne Shaheen and its lead sponsor, Carl Levin.

I’ve described this little scam before as “Villain Rotation”: “They always have a handful of Democratic Senators announce that they will be the ones to deviate this time from the ostensible party position and impede success, but the designated Villain constantly shifts, so the Party itself can claim it supports these measures while an always-changing handful of their members invariably prevent it.” This has happened with countless votes that are supposed manifestations of right-wing radicalism but that pass because an always-changing roster of Democrats ensure they have the support needed. So here is the Democratic Party — led by its senior progressive National Security expert, Carl Levin, and joined by just enough of its members — joining the GOP to ensure that this bill passes, and that the U.S. Government remains vested with War on Terror powers and even expands that war in some critical respects.

Third, I haven’t written about this bill until now for one reason: as odious and definitively radical as the powers are which this bill endorses, it doesn’t actually change the status quo all that much. That’s because the Bush and Obama administrations have already successfully claimed most of the powers in the bill, and courts have largely acquiesced. To be sure, there are dangers to having Congress formally codify these powers. But a powerful sign of how degraded our political culture has become is that this bill — which in any other time would be shockingly extremist — actually fits right in with who we are as a nation and what our political institutions are already doing. To be perfectly honest, I just couldn’t get myself worked up over a bill that, with some exceptions, does little more than formally recognize and codify what our Government is already doing.

### key to econ

#### Key to solve the economy

Klein 1/29 Ezra is a columnist for The Washington Post. “To Fix the U.S. Economy, Fix Immigration,” 2013, http://www.bloomberg.com/news/2013-01-29/to-fix-the-u-s-economy-fix-immigration.html

Washington tends to have a narrow view of what counts as “economic policy.” Anything we do to the tax code is in. So is any stimulus we pass, or any deficit reduction we try. Most of this mistakes the federal budget for the economy.¶ The truth is, the most important piece of economic policy we pass -- or don’t pass -- in 2013 may be something we don’t think of as economic policy at all: immigration reform.¶ Congress certainly doesn’t consider it economic policy, at least not officially. Immigration laws go through the House and Senate judiciary committees. But consider a few facts about immigrants in the American economy: About a tenth of the U.S. population is foreign-born. More than a quarter of U.S. technology and engineering businesses started from 1995 to 2005 had a foreign-born owner. In Silicon Valley, half of all tech startups had a foreign-born founder.¶ Immigrants begin businesses and file patents at a much higher rate than their native-born counterparts, and while there are disputes about the effect immigrants have on the wages of low-income Americans, there’s little dispute about their effect on wages overall: They lift them.¶ The economic case for immigration is best made by way of analogy. Everyone agrees that aging economies with low birth rates are in trouble; this, for example, is a thoroughly conventional view of Japan. It’s even conventional wisdom about the U.S. The retirement of the baby boomers is correctly understood as an economic challenge. The ratio of working Americans to retirees will fall from 5-to-1 today to 3-to-1 in 2050. Fewer workers and more retirees is tough on any economy.¶ Importing Workers¶ There’s nothing controversial about that analysis. But if that’s not controversial, then immigration shouldn’t be, either. Immigration is essentially the importation of new workers. It’s akin to raising the birth rate, only easier, because most of the newcomers are old enough to work. And because living in the U.S. is considered such a blessing that even very skilled, very industrious workers are willing to leave their home countries and come to ours, the U.S. has an unusual amount to gain from immigration. When it comes to the global draft for talent, we almost always get the first-round picks -- at least, if we want them, and if we make it relatively easy for them to come here.¶ From the vantage of naked self-interest, the wonder isn’t that we might fix our broken immigration system in 2013. It’s that we might not.¶ Few economic problems wouldn’t be improved by more immigration. If you’re worried about deficits, more young, healthy workers paying into Social Security and Medicare are an obvious boon. If you’re concerned about the slowdown in new company formation and its attendant effects on economic growth, more immigrant entrepreneurs should cheer you. If you’re worried about the dearth of science and engineering majors in our universities, an influx of foreign-born students is the most obvious solution you’ll find.

## 2nr

### uniqueness

**Prefer our evidence – empirically GOP behavior in prior shutdowns meant moderates drove the party and it allowed compromise**

**Talev, 10/17/13** (Margaret, “Obama’s Fiscal Fight Win Won’t Secure Success for Agenda” Bloomberg,

<http://www.bloomberg.com/news/2013-10-17/obama-s-fiscal-fight-win-won-t-secure-success-for-agenda.html>

‘No Winners’

While Obama pressed this morning for Congress to take up his agenda and criticized Republicans who he blamed for creating “manufactured crises,” he refused to claim victory.

“Let’s be clear, there are no winners here,” he said.

David Plouffe, a former senior adviser to Obama, said the president is likely to emerge with a stronger hand in any case. The Tea Party faction in the House overplayed its hand, he said, and that probably enhances the position of the Senate, where Democrats have a majority, and of House Republicans who are willing to compromise with the administration.

The outcome of this standoff makes future confrontations over the debt limit less likely, Plouffe said.

“Hopefully, we have broken forever using the debt ceiling as a political weapon,” Plouffe said. “I’m not naïve but I think it’s unlikely the Republicans in Congress want to go through this anytime again soon.”

Next Round

The biggest victory for the president was in cutting off the Republican attempt to scuttle the health-care law, Plouffe said. By the time the next round of fiscal negotiations occurs in January, coverage will have begun for Americans who signed up through the health-insurance exchanges. That means Republicans who attack the law in the next budget fight would have to try to take away existing coverage from constituents.

Whether Obama gets from Congress a new immigration law or changes he’s seeking in taxes and entitlement programs depends on how Republicans read the outcome of this fight, Plouffe said.

He recalled that following their political loss in the 1996 shutdown, House Republicans under Gingrich reached deals with Clinton on welfare reform and the minimum wage.

“There was a strategic necessity for them post-shutdown to show they could govern,” Plouffe said. *Immigration law “would be the natural place” for Republicans to act*, he said.