# Round 2

# 1AC

## Plan

#### The United States Congress should establish a national security court with exclusive jurisdiction over indefinite detention authority

## 1AC – Legitimacy Advantage

#### Indefinite Detention is crushing US credibility

David Welsh 11, J.D. from the University of Utah, “Procedural Justice Post-9/11: The Effects of Procedurally Unfair Treatment of Detainees on Perceptions of Global Legitimacy”, http://law.unh.edu/assets/images/uploads/publications/unh-law-review-vol-09-no2-welsh.pdf

The Global War on Terror 1 has been ideologically framed as a struggle between the principles of freedom and democracy on the one hand and tyranny and extremism on the other. 2 Although this war has arguably led to a short-term disruption of terrorist threats such as al-Qaeda, it has also damaged America’s image both at home and abroad. 3 Throughout the world, there is a growing consensus that America has “a lack of credibility as a fair and just world leader.” 4 The perceived legitimacy of the United States in the War on Terror is critical because terrorism is not a conventional threat that can surrender or can be defeated in the traditional sense. Instead, this battle can only be won through legitimizing the rule of law and undermining the use of terror as a means of political influence. 5 ¶ Although a variety of political, economic, and security policies have negatively impacted the perceived legitimacy of the United States, one of the most damaging has been the detention, treatment, and trial (or in many cases the lack thereof) of suspected terrorists. While many scholars have raised constitutional questions about the legality of U.S. detention procedures, 6 this article offers a psychological perspective of legitimacy in the context of detention.

#### Also undermines international coop and alliances

Martin Scheinin 12 is Professor of International Law and Former UN Special Rapporteur on Human Rights and Counter-Terrorism, "Should Human Rights Take a Back Seat in Wartime?" 1-11-12, www.realclearworld.com/articles/2012/01/11/national\_defense\_authorization\_act\_scheinin\_interview-full.html, DOA: 7-23-13, Y2K  
CLC: As a world leader and active promoter of universal human rights, the practice of indefinite detention without charge would seem to clash with U.S. ideals. Could you comment on this contradiction? MS: One of the main lessons learned in the international fight against terrorism is that counter-terrorism professionals have gradually come to learn and admit that human rights violations are not an acceptable shortcut in an effective fight against terrorism. Such measures tend to backfire in multiple ways. They result in legal problems by hampering prosecution, trial and punishment. The use of torture is a clear example here. They also tend to alienate the communities with which authorities should be working in order to detect and prevent terrorism. And they add to causes of terrorism, both by perpetuating "root causes" that involve the alienation of communities and by providing "triggering causes" through which bitter individuals make the morally inexcusable decision to turn to methods of terrorism. The NDAA is just one more step in the wrong direction, by aggravating the counterproductive effects of human rights violating measures put in place in the name of countering terrorism. CLC: Does the NDAA afford the U.S. a practical advantage in the fight against terrorism? Or might the law undermine its global credibility? MS: It is hard to see any practical advantage gained through the NDAA. It is just another form of what I call symbolic legislation, enacted because the legislators want to be seen as being "tough" or as "doing something." The law is written as just affirming existing powers and practices and hence not providing any meaningful new tools in the combat of terrorism. By constraining the choices by the executive, it nevertheless hampers effective counter-terrorism work, including criminal investigation and prosecution, as well as international counter-terrorism cooperation, markedly in the issue of closing the Guantanamo Bay detention facility. Hence, it carries the risk of distancing the United States from its closest allies and the international community generally. And of course these kinds of legal provisions are always open for bad faith copying by repressive governments that will use them for their own political purposes. CLC: Do you think the U.S. adoption of the indefinite detention provisions sets a precedent for other countries to do so? MS: Of course, these kinds of legal provisions are always open for bad faith copying by repressive governments that will use them for their own political purposes. Nevertheless, one of the conclusions I drew at the end of my six-year tenure as United Nations Special Rapporteur on human rights and counter-terrorism was that such copying of bad laws is less frequent than expected. It is much more common that countries are willing to learn from each other about what really works in the fight against terrorism, and for my part I did my best to identify and promote such best practice. There are a lot of good models showing how laws can at the same time comply with human rights and produce real results in the fight against terrorism. I don't think countries genuinely concerned about terrorism will be tempted to follow the NDAA approach. But repressive governments may do so for their own political purposes.

#### **National Security Court solves alliance bailing based on detention policy**

[STUART TAYLOR JR](http://www.theatlantic.com/stuart-taylor-jr/) FEB 27 2007  
The Case for a National Security Court

For the good of the war on terrorism, the United States needs to create a National Security Court to try enemy combatants. <http://www.theatlantic.com/magazine/archive/2007/02/the-case-for-a-national-security-court/305717/>  
McCarthy, who once prosecuted big terrorism cases and is now director of the Center for Law and Counterterrorism at the Foundation for Defense of Democracies, adds this: "If other nations, unwilling to prosecute and sufficiently punish terrorists themselves, become similarly unwilling to extradite them to the United States due to what they regard as a lack of fundamental fairness and independence in the prospective trial proceedings, it will be cold comfort indeed that those proceedings are perfectly adequate (even exemplary) under our Constitution and laws." He thinks the best solution is for Congress to create a new National Security Court independent of the executive branch. Other leading experts agree. They include moderate Democrat Neal Katyal, the Georgetown law professor who (much to McCarthy's regret) won the Supreme Court ruling last June that President Bush's military commissions were illegal. These and other experts disagree on the difficult details. But most agree that the new court should be staffed by already serving federal judges from around the country, to be chosen by the chief justice based on their fitness for the assignment. The judges would take time from their regular duties to review military detentions, plus any war-crimes convictions by the congressionally reconstituted military commissions. Some see the 29-year-old Foreign Intelligence Surveillance Court as a model. It hears (in secret) requests for warrants to intercept communications from or to search through the possessions of suspected international terrorists and spies. National Security Court judges would become expert in assessing the security costs of requiring various procedural protections for detainees. "Right now, these cases are heard by different courts, with different defense lawyers and different prosecuting attorneys," Katyal says. "None of them are really repeat players; none of them have the incentive to moderate their claims in order to build credibility. Creating a National Security Court, with repeat-player lawyers and judges, will change the entire dynamic, and help avoid the excessive rhetoric that has characterized both sides in the war on terror. It would also send a signal to the world that we have a serious process in place, one that we would feel comfortable applying to our own citizens." Many libertarians and human-rights activists, on the other hand, would settle for nothing less than the full panoply of protections afforded to ordinary criminal defendants. They should be careful what they wish for. As McCarthy points out: "Enemy combatants are often in a position to be killed or captured. Capturing them is the more merciful option, and making it more difficult or costly would almost certainly effect an increase in the number killed."

#### The plan’s external oversight on detention maintains heg---legitimacy is the vital internal link to global stability

Robert Knowles 9, Acting Assistant Professor, New York University School of Law, Spring, “Article: American Hegemony and the Foreign Affairs Constitution”, 41 Ariz. St. L.J. 87, Lexis

The hegemonic model also reduces the need for executive branch flexibility, and the institutional competence terrain shifts toward the courts. The stability of the current U.S.-led international system depends on the ability of the U.S. to govern effectively. Effective governance depends on, among other things, predictability. n422 G. John Ikenberry analogizes America's hegemonic position to that of a "giant corporation" seeking foreign investors: "The rule of law and the institutions of policy making in a democracy are the political equivalent of corporate transparency and [\*155] accountability." n423 Stable interpretation of the law bolsters the stability of the system because other nations will know that they can rely on those interpretations and that there will be at least some degree of enforcement by the United States. At the same time, the separation of powers serves the global-governance function by reducing the ability of the executive branch to make "abrupt or aggressive moves toward other states." n424¶ The Bush Administration's detainee policy, for all of its virtues and faults, was an exceedingly aggressive departure from existing norms, and was therefore bound to generate intense controversy. It was formulated quickly, by a small group of policy-makers and legal advisors without consulting Congress and over the objections of even some within the executive branch. n425 Although the Administration invoked the law of armed conflict to justify its detention of enemy combatants, it did not seem to recognize limits imposed by that law. n426 Most significantly, it designed the detention scheme around interrogation rather than incapacitation and excluded the detainees from all legal protections of the Geneva Conventions. n427 It declared all detainees at Guantanamo to be "enemy combatants" without establishing a regularized process for making an individual determination for each detainee. n428 And when it established the military commissions, also without consulting Congress, the Administration denied defendants important procedural protections. n429¶ In an anarchic world characterized by great power conflict, one could make the argument that the executive branch requires maximum flexibility to defeat the enemy, who may not adhere to international law. Indeed, the precedents relied on most heavily by the Administration in the enemy combatant cases date from the 1930s and 1940s - a period when the international system was radically unstable, and the United States was one of several great powers vying for advantage. n4 30 But during that time, the executive branch faced much more exogenous pressure from other great powers to comply with international law in the treatment of captured enemies. If the United States strayed too far from established norms, it would risk retaliation upon its own soldiers or other consequences from [\*156] powerful rivals. Today, there are no such constraints: enemies such as al Qaeda are not great powers and are not likely to obey international law anyway. Instead, the danger is that American rule-breaking will set a pattern of rule-breaking for the world, leading to instability. n431 America's military predominance enables it to set the rules of the game. When the U.S. breaks its own rules, it loses legitimacy.¶ The Supreme Court's response to the detainee policy enabled the U.S. government as a whole to hew more closely to established procedures and norms, and to regularize the process for departing from them. After Hamdi, n432 the Department of Defense established a process, the CSRTs, for making an individual determination about the enemy combatant status of all detainees at Guantanamo. After the Court recognized habeas jurisdiction at Guantanamo, Congress passed the DTA, n433 establishing direct judicial review of CSRT determinations in lieu of habeas. Similarly, after the Court declared the military commissions unlawful in Hamdan, n434 this forced the Administration to seek congressional approval for commissions that restored some of the rights afforded at courts martial. n435 In Boumediene, the Court rejected the executive branch's foreign policy arguments, and bucked Congress as well, to restore the norm of habeas review. n436¶ Throughout this enemy combatant litigation, it has been the courts' relative insulation from politics that has enabled them to take the long view. In contrast, the President's (and Congress's) responsiveness to political concerns in the wake of 9/11 has encouraged them to depart from established norms for the nation's perceived short-term advantage, even at the expense of the nation's long-term interests. n437 As Derek Jinks and Neal Katyal have observed, "treaties are part of [a] system of time-tested standards, and this feature makes the wisdom of their judicial interpretation manifest." n438¶ At the same time, the enemy combatant cases make allowances for the executive branch's superior speed. The care that the Court took to limit the issues it decided in each case gave the executive branch plenty of time to [\*157] arrive at an effective detainee policy. n439 Hamdi, Rasul, and Boumediene recognized that the availability of habeas would depend on the distance from the battlefield and the length of detention. n440¶ The enemy combatant litigation also underscores the extent to which the classic realist assumptions about courts' legitimacy in foreign affairs have been turned on their head. In an anarchic world, legitimacy derives largely from brute force. The courts have no armies at their disposal and look weak when they issue decisions that cannot be enforced. n441 But in a hegemonic system, where governance depends on voluntary acquiescence, the courts have a greater role to play. Rather than hobbling the exercise of foreign policy, the courts are a key form of "soft power." n442 As Justice Kennedy's majority opinion observed in Boumediene, courts can bestow external legitimacy on the acts of the political branches. n443 Acts having a basis in law are almost universally regarded as more legitimate than merely political acts. Most foreign policy experts believe that the Bush Administration's detention scheme "hurt America's image and standing in the world." n444 The restoration of habeas corpus in Boumediene may help begin to counteract this loss of prestige.¶ Finally, the enemy combatant cases are striking in that they embrace a role for representation-reinforcement in the international realm. n445 Although defenders of special deference acknowledge that courts' strengths lie in protecting the rights of minorities, it has been very difficult for courts to protect these rights in the face of exigencies asserted by the executive branch in foreign affairs matters. This is especially difficult when the minorities are alleged enemy aliens being held outside the sovereign territory of the United States in wartime. In the infamous Korematsu decision, another World War II-era case, the Court bowed to the President's factual assessment of the emergency justifying detention of U.S. citizens of Japanese ancestry living in the United States. n446 In Boumediene, the Court [\*158] pointedly declined to defer to the executive branch's factual assessments of military necessity. n447 The court may have recognized that a more aggressive role in protecting the rights of non-citizens was required by American hegemony. In fact, the arguments for deference with respect to the rights of non-citizens are even weaker because aliens lack a political constituency in the United States. n448 This outward-looking form of representation-reinforcement serves important functions. It strengthens the legitimacy of U.S. hegemony by establishing equality as a benchmark and reinforces the sense that our constitutional values reflect universal human rights. n449¶ Conclusion¶ When it comes to the constitutional regime of foreign affairs, geopolitics has always mattered. Understandings about America's role in the world have shaped foreign affairs doctrines. But the classic realist assumptions that support special deference do not reflect the world as it is today. A better, more realist, approach looks to the ways that the courts can reinforce and legitimize America's leadership role. The Supreme Court's rejection of the government's claimed exigencies in the enemy combatant cases strongly indicates that the Judiciary is becoming reconciled to the current world order and is asserting its prerogatives in response to the fewer constraints imposed on the executive branch. In other words, the courts are moving toward the hegemonic model. In the great dismal swamp that is the judicial treatment of foreign affairs, this transformation offers hope for clarity: the positive reality of the international system, despite terrorism and other serious challenges, permits the courts to reduce the "deference gap" between foreign and domestic cases.

#### Alliance is key to hegemony

Joseph S. Nye 13 Jr. is a professor at Harvard’s Kennedy School of Government, “American power in the 21st century will be defined by the ‘rise of the rest’” 6-28-13, <http://articles.washingtonpost.com/2013-06-28/opinions/40255646_1_american-power-u-s-economy-united-states>, DOA: 7-23-13, y2k

In the last century, the United States rose from the status of second-tier power to being the world’s sole superpower. Some worry that the United States will be eclipsed in this century by China, but that is not the problem. There is never just one possible outcome. Instead, there are always a range of possibilities, particularly regarding political change in China. Aside from the political uncertainties, China’s size and high rate of economic growth will almost certainly increase its strength in relation to the United States. But even when China becomes the world’s largest economy, it will lag decades behind the United States in per-capita income, which is a better measure of an economy’s sophistication. Moreover, given our energy resources, the U.S. economy will be less vulnerable than the Chinese economy to external shocks. Growth will bring China closer to the United States in power resources, but as Singapore’s former prime minister Lee Kwan Yew has noted, that does not necessarily mean that China will surpass the United States as the world’s most powerful country. Even if China suffers no major domestic political setbacks, projections based on growth in gross domestic product alone ignore U.S. military and “soft power” advantages as well as China’s geopolitical disadvantages in the Asian balance of power. The U.S. culture of openness and innovation will keep this country central in an information age in which networks supplement, if not fully replace, hierarchical power. The United States is well positioned to benefit from such networks and alliances if our leaders follow smart strategies. In structural terms, it matters that the two entities with per-capita income and sophisticated economies similar to that of the United States — Europe and Japan — are both allied with the United States. In terms of balances-of-power resources, that makes a large difference for the net position of American power, but only if U.S. leaders maintain the alliances and institutional cooperation. In addition, in a more positive sum view of power with, rather than over, other countries, Europe and Japan provide the largest pools of resources for dealing with common transnational problems. On the question of absolute — rather than relative — American decline, the United States faces serious domestic problems in debt, secondary education and political gridlock. But these issues are only part of the picture. Of the many possible futures, stronger cases can be made for the positive over the negative. Among the negative futures, the most plausible is one in which the United States overreacts to terrorist attacks by turning inward and closing itself off to the strength it obtains from openness. But barring such mistaken strategies, there are, over a longer term, solutions to the major problems that preoccupy us. Of course, for political or other reasons, such solutions may remain forever out of reach. But it is important to distinguish between situations that have no solutions and those that, at least in principle, can be solved. Decline is a misleading metaphor and, fortunately, President Obama has rejected the suggested strategy of “managing decline.” As a leader in research and development, higher education and entrepreneurial activity, the United States is not in absolute decline, as happened in ancient Rome. In relative terms, there is a reasonable probability that the United States is likely to remain more powerful than any single state in the coming decades. We do not live in a “post-American world,” but neither do we live any longer in the “American era” of the late 20th century. In terms of primacy, the United States will be “first” but not “sole.” No one has a crystal ball, but the National Intelligence Council (which I once chaired) may be correct in its 2012 projection that although the unipolar moment is over, the United States probably will remain first among equals among the other great powers in 2030 because of the multifaceted nature of its power and legacies of its leadership. The power resources of many states and non-state actors will rise in the coming years. U.S. presidents will face an increasing number of issues in which obtaining our preferred outcomes will require power with others as much as power over others. Our leaders’ capacity to maintain alliances and create networks will be an important dimension of our hard and soft power. Simply put, the problem of American power in the 21st century is not one of a poorly specified “decline” or being eclipsed by China but, rather, the “rise of the rest.” The paradox of American power is that even the largest country will not be able to achieve the outcomes it wants without the help of others.

#### Heg solves nuclear war and decline of American power causes it

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This does not necessarily mean that the US is in systemic decline, but it encompasses a trend that appears to be negative and perhaps alarming. Although the US still possesses incomparable military prowess and its economy remains the world’s largest, the once seemingly indomitable chasm that separated America from anyone else is narrowing. Thus, the global distribution of power is shifting, and the inevitable result will be a world that is less peaceful, liberal and prosperous, burdened by a dearth of effective conflict regulation. Over the past two decades, no other state has had the ability to seriously challenge the US military. Under these circumstances, motivated by both opportunity and fear, many actors have bandwagoned with US hegemony and accepted a subordinate role. Canada, most of Western Europe, India, Japan, South Korea, Australia, Singapore and the Philippines have all joined the US, creating a status quo that has tended to mute great power conflicts. However, as the hegemony that drew these powers together withers, so will the pulling power behind the US alliance. The result will be an international order where power is more diffuse, American interests and influence can be more readily challenged, and conflicts or wars may be harder to avoid. As history attests, power decline and redistribution result in military confrontation. For example, in the late 19th century America’s emergence as a regional power saw it launch its first overseas war of conquest towards Spain. By the turn of the 20th century, accompanying the increase in US power and waning of British power, the American Navy had begun to challenge the notion that Britain ‘rules the waves.’ Such a notion would eventually see the US attain the status of sole guardians of the Western Hemisphere’s security to become the order-creating Leviathan shaping the international system with democracy and rule of law. Defining this US-centred system are three key characteristics: enforcement of property rights, constraints on the actions of powerful individuals and groups and some degree of equal opportunities for broad segments of society. As a result of such political stability, free markets, liberal trade and flexible financial mechanisms have appeared. And, with this, many countries have sought opportunities to enter this system, proliferating stable and cooperative relations. However, what will happen to these advances as America’s influence declines? Given that America’s authority, although sullied at times, has benefited people across much of Latin America, Central and Eastern Europe, the Balkans, as well as parts of Africa and, quite extensively, Asia, the answer to this question could affect global society in a profoundly detrimental way. Public imagination and academia have anticipated that a post-hegemonic world would return to the problems of the 1930s: regional blocs, trade conflicts and strategic rivalry. Furthermore, multilateral institutions such as the IMF, the World Bank or the WTO might give way to regional organisations. For example, Europe and East Asia would each step forward to fill the vacuum left by Washington’s withering leadership to pursue their own visions of regional political and economic orders. Free markets would become more politicised — and, well, less free — and major powers would compete for supremacy. Additionally, such power plays have historically possessed a zero-sum element. In the late 1960s and 1970s, US economic power declined relative to the rise of the Japanese and Western European economies, with the US dollar also becoming less attractive. And, as American power eroded, so did international regimes (such as the Bretton Woods System in 1973). A world without American hegemony is one where great power wars re-emerge, the liberal international system is supplanted by an authoritarian one, and trade protectionism devolves into restrictive, anti-globalisation barriers. This, at least, is one possibility we can forecast in a future that will inevitably be devoid of unrivalled US primacy.

#### Multilateral cooperation to solve warming, disease, and prolif impossible absent the plan

John G. Ikenberry 11, Albert G. Milbank Professor of Politics and International Affairs at Princeton, Spring, “A World of Our Making”, http://www.democracyjournal.org/20/a-world-of-our-making.php?page=all

Grand Strategy as Liberal Order Building American dominance of the global system will eventually yield to the rise of other powerful states. The unipolar moment will pass. In facing this circumstance, American grand strategy should be informed by answers to this question: What sort of international order would we like to see in place in 2020 or 2030 when America is less powerful? Grand strategy is a set of coordinated and sustained policies designed to address the long-term threats and opportunities that lie beyond the country’s shores. Given the great shifts in the global system and the crisis of liberal hegemonic order, how should the United States pursue grand strategy in the coming years? The answer is that the United States should work with others to rebuild and renew the institutional foundations of the liberal international order and along the way re-establish its own authority as a global leader. The United States is going to need to invest in alliances, partnerships, multilateral institutions, special relationships, great-power concerts, cooperative security pacts, and democratic security communities. That is, the United States will need to return to the great tasks of liberal order building. It is useful to distinguish between two types of grand strategy: positional and milieu oriented. With a positional grand strategy, a great power seeks to diminish the power or threat embodied in a specific challenger state or group of states. Examples are Nazi Germany, Imperial Japan, the Soviet bloc, and perhaps—in the future—Greater China. With a milieu-oriented grand strategy, a great power does not target a specific state but seeks to structure its general international environment in ways that are congenial with its long-term security. This might entail building the infrastructure of international cooperation, promoting trade and democracy in various regions of the world, and establishing partnerships that might be useful for various contingencies. My point is that under conditions of unipolarity, in a world of diffuse threats, and with pervasive uncertainty over what the specific security challenges will be in the future, this milieu-based approach to grand strategy is necessary. The United States does not face the sort of singular geopolitical threat that it did with the fascist and communist powers of the last century. Indeed, compared with the dark days of the 1930s or the Cold War, America lives in an extraordinarily benign security environment. Rather than a single overriding threat, the United States and other countries face a host of diffuse and evolving threats. Global warming, nuclear proliferation, jihadist terrorism, energy security, health pandemics—these and other dangers loom on the horizon. Any of these threats could endanger Americans’ lives and way of life either directly or indirectly by destabilizing the global system upon which American security and prosperity depends. What is more, these threats are interconnected—and it is their interactive effects that represent the most acute danger. And if several of these threats materialize at the same time and interact to generate greater violence and instability, then the global order itself, as well as the foundations of American national security, would be put at risk. What unites these threats and challenges is that they are all manifestations of rising security interdependence. More and more of what goes on in other countries matters for the health and safety of the United States and the rest of the world. Many of the new dangers—such as health pandemics and transnational terrorist violence—stem from the weakness of states rather than their strength. At the same time, technologies of violence are evolving, providing opportunities for weak states or nonstate groups to threaten others at a greater distance. When states are in a situation of security interdependence, they cannot go it alone. They must negotiate and cooperate with other states and seek mutual restraints and protections. The United States can-not hide or protect itself from threats under conditions of rising security interdependence. It must get out in the world and work with other states to build frameworks of cooperation and leverage capacities for action against this unusually diverse, diffuse, and unpredictable array of threats and challenges. This is why a milieu-based grand strategy is attractive. The objective is to shape the international environment to maximize your capacities to protect the nation from threats. To engage in liberal order building is to invest in international cooperative frameworks—that is, rules, institutions, partnerships, networks, standby capacities, social knowledge, etc.—in which the United States operates. To build international order is to increase the global stock of “social capital”—which is the term Pierre Bourdieu, Robert Putnam, and other social scientists have used to define the actual and potential resources and capacities within a political community, manifest in and through its networks of social relations, that are available for solving collective problems. If American grand strategy is to be organized around liberal order building, what are the specific objectives and what is the policy agenda? There are five such objectives. First, the United States needs to lead in the building of an enhanced protective infrastructure that helps prevent the emergence of threats and limits the damage if they do materialize. Many of the threats mentioned above are manifest as socioeconomic backwardness and failure that cause regional and international instability and conflict. These are the sorts of threats that are likely to arise with the coming of global warming and epidemic disease. What is needed here is institutional cooperation to strengthen the capacity of governments and the international com-munity to prevent epidemics or food shortages or mass migrations that create global upheaval—and mitigate the effects of these upheavals if they occur. The international system already has a great deal of this protective infrastructure—institutions and networks that pro-mote cooperation over public health, refugees, and emergency aid. But as the scale and scope of potential problems grow in the twenty-first century, investments in these preventive and management capacities will also need to grow. Early warning systems, protocols for emergency operations, standby capacities, etc.—these safeguards are the stuff of a protective global infrastructure. Second, the United States should recommit to and rebuild its security alliances. The idea is to update the old bargains that lie behind these security pacts. In NATO, but also in the East Asia bilateral partner-ships, the United States agrees to provide security protection to the other states and brings its partners into the process of decision-making over the use of force. In return, these partners agree to work with the United States—providing manpower, logistics, and other types of support—in wider theaters of action. The United States gives up some autonomy in strategic decision-making, although it is more an informal restraint than a legally binding one, and in exchange it gets cooperation and political support. Third, the United States should reform and create encompassing global institutions that foster and legitimate collective action. The first move here should be to reform the United Nations, starting with the expansion of the permanent membership on the Security Council. Several plans have been proposed. All of them entail adding new members—such as Germany, Japan, India, Brazil, South Africa, and others—and reforming the voting procedures. Almost all of the candidates for permanent membership are mature or rising democracies. The goal, of course, is to make them stakeholders in the United Nations and thereby strengthen the primacy of the UN as a vehicle for global collective action. There really is no substitute for the legitimacy that the United Nations can offer to emergency actions—humanitarian interventions, economic sanctions, uses of force against terrorists, and so forth. Public support in advanced democracies grows rapidly when their governments can stand behind a UN-sanctioned action. Fourth, the United States should accommodate and institution-ally engage China. China will most likely be a dominant state, and the United States will need to yield to it in various ways. The United States should respond to the rise of China by strengthening the rules and institutions of the liberal international order—deepening their roots, integrating rising capitalist democracies, sharing authority and functional roles. The United States should also intensify cooperation with Europe and renew joint commitments to alliances and multilateral global governance. The more that China faces not just the United States but the entire world of capitalist democracies, the better. This is not to argue that China must face a grand counterbalancing alliance against it. Rather, it should face a complex and highly integrated global system—one that is so encompassing and deeply entrenched that it essentially has no choice but to join it and seek to prosper within it. The United States should also be seeking to construct a regional security order in East Asia that can provide a framework for managing the coming shifts. The idea is not to block China’s entry into the regional order but to help shape its terms, looking for opportunities to strike strategic bargains at various moments along the shifting power trajectories and encroaching geopolitical spheres. The big bargain that the United States will want to strike is this: to accommodate a rising China by offering it status and position within the regional order in return for Beijing’s acceptance and accommodation of Washington’s core strategic interests, which include remaining a dominant security provider within East Asia. In striking this strategic bargain, the United States will also want to try to build multilateral institutional arrangements in East Asia that will tie China to the wider region. Fifth, the United States should reclaim a liberal internationalist public philosophy. When American officials after World War II championed the building of a rule-based postwar order, they articulated a distinctive internationalist vision of order that has faded in recent decades. It was a vision that entailed a synthesis of liberal and realist ideas about economic and national security, and the sources of stable and peaceful order. These ideas—drawn from the experiences with the New Deal and the previous decades of war and depression—led American leaders to associate the national interest with the building of a managed and institutionalized global system. What is needed today is a renewed public philosophy of liberal internationalism—a shift away from neoliberal-ism—that can inform American elites as they make trade-offs between sovereignty and institutional cooperation. Under this philosophy, the restraint and the commitment of American power went hand in hand. Global rules and institutions advanced America’s national interest rather than threatened it. The alternative public philosophies that have circulated in recent years—philosophies that champion American unilateralism and disentanglement from global rules and institutions—did not meet with great success. So an opening exists for America’s postwar vision of internationalism to be updated and rearticulated today. The United States should embrace the tenets of this liberal public philosophy: Lead with rules rather than dominate with power; provide public goods and connect their provision to cooperative and accommodative policies of others; build and renew international rules and institutions that work to reinforce the capacities of states to govern and achieve security and economic success; keep the other liberal democracies close; and let the global system itself do the deep work of liberal modernization. As it navigates this brave new world, the United States will find itself needing to share power and rely in part on others to ensure its security. It will not be able to depend on unipolar power or airtight borders. It will need, above all else, authority and respect as a global leader. The United States has lost some of that authority and respect in recent years. In committing itself to a grand strategy of liberal order building, it can begin the process of gaining it back.

#### Warming is real and human caused- Prefer scientific consensus to their hack deniers

**Lewandowsky and Ashley 2011** (Stephan Lewandowsky, Professor of Cognitive Studies at the University of Western Australia, and Michael Ashley, Professor of Astrophysics at the University of New South Wales, June 24, 2011, “The false, the confused and the mendacious: how the media gets it wrong on climate change,” http://goo.gl/u3nOC)

But despite these complexities, some aspects of climate science are thoroughly settled. We know that atmospheric CO₂ is increasing due to humans. We know that this CO₂, while being just a small fraction of the atmosphere, has an important influence on temperature. We can calculate the effect, and predict what is going to happen to the earth’s climate during our lifetimes, all based on fundamental physics that is as certain as gravity. The consensus opinion of the world’s climate scientists is that climate change is occurring due to human CO₂ emissions. The changes are rapid and significant, and the implications for our civilisation may be dire. The chance of these statements being wrong is vanishingly small. Scepticism and denialism Some people will be understandably sceptical about that last statement. But when they read up on the science, and have their questions answered by climate scientists, they come around. These people are true sceptics, and a degree of scepticism is healthy. Other people will disagree with the scientific consensus on climate change, and will challenge the science on internet blogs and opinion pieces in the media, but no matter how many times they are shown to be wrong, they will never change their opinions. These people are deniers. The recent articles in The Conversation have put the deniers under the microscope. Some readers have asked us in the comments to address the scientific questions that the deniers bring up. This has been done. Not once. Not twice. Not ten times. Probably more like 100 or a 1000 times. Denier arguments have been dealt with by scientists, again and again and again. But like zombies, the deniers keep coming back with the same long-falsified and nonsensical arguments. The deniers have seemingly endless enthusiasm to post on blogs, write letters to editors, write opinion pieces for newspapers, and even publish books. What they rarely do is write coherent scientific papers on their theories and submit them to scientific journals. The few published papers that have been sceptical about climate change have not withstood the test of time. The phony debate on climate change So if the evidence is this strong, why is there resistance to action on climate change in Australia? At least two reasons can be cited. First, as The Conversation has revealed, there are a handful of individuals and organisations who, by avoiding peer review, have engineered a phony public debate about the science, when in fact that debate is absent from the one arena where our scientific knowledge is formed. These individuals and organisations have so far largely escaped accountability. But their free ride has come to an end, as the next few weeks on The Conversation will continue to show. The second reason, alas, involves systemic failures by the media. Systemic media failures arise from several presumptions about the way science works, which range from being utterly false to dangerously ill-informed to overtly malicious and mendacious. The false Let’s begin with what is merely false. A tacit presumption of many in the media and the public is that climate science is a brittle house of cards that can be brought down by a single new finding or the discovery of a single error. Nothing could be further from the truth. Climate science is a cumulative enterprise built upon hundreds of years of research. The heat-trapping properties of CO₂ were discovered in the middle of the 19th century, pre-dating even Sherlock Holmes and Queen Victoria.

#### Not inevitable – even if temporarily over the tipping point, can be brought back down.

**Dyer 2009** (Gwynne Dyer, MA in Military History and PhD in Middle Eastern History former [Senior Lecturer](file:///C:\wiki\Senior_Lecturer) in War Studies at the [Royal Military Academy Sandhurst](file:///C:\wiki\Royal_Military_Academy_Sandhurst), “Climate Wars,”)

There is no need to despair. The slow-feedback effects take a long time to work their way through the climate system, and if we could manage to get the carbon dioxide concentration back down to a safe level before they have run their course, they might be stopped in their tracks. As Hansen et al. put it in their paper: A point of no return can be avoided, even if the tipping level [which puts us on course for an ice-free world] is temporarily exceeded. Ocean and ice-sheet inertia permit overshoot, provided the [concentration of carbon dioxide] is returned below the tipping level before initiating irre­versible dynamic change .... However, if overshoot is in place for centuries, the thermal perturbation will so pen­etrate the ocean that recovery without dramatic effects, such as ice-sheet disintegration, becomes unlikely. The real, long-term target is 350 parts per million or lower, if we want the Holocene to last into the indefinite future, but for the remainder of this book I am going to revert to the 450 parts per million ceiling that has become common currency among most of those who are involved in climate change issues. If we manage to stop the rise in the carbon dioxide concentration at or not far beyond that figure, then we must immediately begin the equally urgent and arduous task of getting it back down to a much lower level that is safe for the long term, but one step at a time will have to suffice. I suspect that few now alive will see the day when we seriously start work on bringing the concen­tration back down to 350, so let us focus here on how to stop it rising past 450.

#### Unmitigated warming causes extinction

**Mazo 2010** (Jeffrey Mazo, Managing Editor of Survival and Research Fellow for Environmental Security and Science Policy at the International Institute for Strategic Studies, March 2010, “Climate Conflict: How global warming threatens security and what to do about it”)

The best estimates for global warming to the end of the century range from 2.5-4.~C above pre-industrial levels, depending on the scenario. Even in the best-case scenario, the low end of the likely range is 1.goC, and in the worst 'business as usual' projections, which actual emissions have been matching, the range of likely warming runs from 3.1--7.1°C. Even keeping emissions at constant 2000 levels (which have already been exceeded), global temperature would still be expected to reach 1.2°C (O'9""1.5°C)above pre-industrial levels by the end of the century." Without early and severe reductions in emissions, the effects of climate change in the second half of the twenty-first century are likely to be catastrophic for the stability and security of countries in the developing world - not to mention the associated human tragedy. Climate change could even undermine the strength and stability of emerging and advanced economies, beyond the knock-on effects on security of widespread state failure and collapse in developing countries.' And although they have been condemned as melodramatic and alarmist, many informed observers believe that unmitigated climate change beyond the end of the century could pose an existential threat to civilization." What is certain is that there is no precedent in human experience for such rapid change or such climatic conditions, and even in the best case adaptation to these extremes would mean profound social, cultural and political changes.

#### **Disease outbreak risks extinction.**

Yule ’13 Article¶ Biodiversity, Extinction, and Humanity’s Future: The¶ Ecological and Evolutionary Consequences of Human¶ Population and Resource Use¶ Jeffrey V. Yule \*, Robert J. Fournier and Patrick L. Hindmarsh¶ School of Biological Sciences, Louisiana Tech University, Ph.D. in Ecology and Evolution, August 2007. Stony Brook University, Stony¶ Brook, NY. Advisor: Lev R. Ginzburg Associate Professor of Biological Sciences and Environmental Sciences¶ Graduate and Research Faculty

We have assumed that humanity’s future will unfold in a way that avoids any of a number of global¶ disasters for Homo sapiens sapiens. An equally reasonable but less optimistic assessment could take¶ exception to that position. A variety of things could go badly wrong for humanity. Global human N¶ may not stabilize at or below where it stands now without being pushed there by some form(s) of crisis¶ that result from humans exceeding global K. As a result, anthropogenic factors from the intentionally¶ harmful (e.g., warfare) to the unintentionally disastrous (e.g., agricultural practices leading to topsoil¶ erosion and desertification) could occur singly or in conjunction with one another, with a variety of¶ natural disasters (e.g., volcanic eruptions, earthquakes), and with disasters that straddle the boundary¶ of natural and anthropogenic, the sorts of scenarios that otherwise could have been avoided or their¶ impacts lessened with more forethought (e.g., outbreaks of infectious disease that move easily through¶ dense human population centers and cannot be readily treated due to pathogen drug resistance).¶ Although we cannot rule out such eventualities, speculation about the future of humanity is inherently¶ more interesting if it proceeds on the assumption that the species will be at least moderately successful¶ beyond the short- to medium-term. However, it may not, and the potential failure of our species has¶ considerable biological implications.

#### Iranian prolif is happening now- diplomacy and effective threat of force is key to solve massive wars and nuclear conflicts **Economist Sep 14th 2013**  <http://www.economist.com/news/books-and-arts/21586282-hawkish-analyst-argues-against-military-action-how-cope-iranian-bomb> A hawkish analyst argues against military action

Nuclear Iran would pose a grave threat. Saudi Arabia and the other Gulf states could feel obliged to acquire weapons of their own. A many-sided nuclear stand-off would make the two-handed games of the cold war seem almost simple. Like Pakistan, which felt that the bomb equipped it to challenge India, Iran might well throw even more of its weight around the Middle East. Israel, especially, feels vulnerable to the mullahs’ machinations. Many people conclude that only the threat of military action can hold Iran back, and that despite the costs and the risks, an attack, they say, would be better than allowing Iran to arm itself. Mr Pollack disagrees. His worst outcome would be a solo Israeli raid. Israeli bombers have neither the range, nor refuelling capacity, nor ordnance to mount large, sustained raids on Iran’s nuclear facilities. An attack would cause turmoil in the Middle East and probably set Iran back by only a year or two; it might fail even to penetrate the enrichment plant deep inside a mountain at Fordow, near the holy city of Qom. An American air strike would certainly be more destructive. But, in the medium term, it might not be all that much more effective. Although it would wreck lots of machinery, Iranian know-how would survive. Iran would probably quit the Non- Proliferation Treaty, stopping international inspectors from monitoring its subsequent pursuit of a weapon. Mr Pollack argues that evidence of Iran’s continued defiance would present America with a horrible choice: defeat over a vital national interest, or an impossibly daunting invasion and occupation that would tie up virtually the entire active-duty American army and marine corps. Compared with that, Mr Pollack argues, containment has real merits. It need not result in appeasement any more than containing the Soviet Union did. It would rely on American deterrence to stop an Iranian nuclear attack and hard-nosed retaliation to limit Iranian bullying. Vigilant diplomacy would be needed to prevent crises escalating and to ensure that sanctions remained in place. Just as in the cold war, America could campaign for regime change and against the Iranian abuse of human rights.

#### Alliances prevent nuclear war---key to burden sharing

Douglas Ross 99 is professor of political science at Simon Fraser University, Winter 1998/1999, Canada’s functional

isolationism and the future of weapons of mass destruction, International Journal, p. lexis  
Thus, an easily accessible tax base has long been available for spending much more on international security than recent governments have been willing to contemplate. ? Negotiating the landmines ban, discouraging trade in small arms, promoting the United Nations arms register are all worthwhile, popular activities that polish the national ? self-image. But they should all be supplements to, not substitutes for, a proportionately equitable commitment of resources to the management and ? prevention of international conflict – and thus the containment of the WMD threat. Future American governments will not ‘police the ? world’ alone. For almost fifty years the Soviet threat compelled disproportionate military expenditures and sacrifice by the United States. That world is gone. Only by ? enmeshing the capabilities of the United States and other leading powers in a co-operative security management regime where the ? burdens are widely shared does the world community have any plausible hope of avoiding warfare involving nuclear or other WMD.

#### Judicial involvement is key to the credibility of detention decisions

Matthew C Waxman 9, Professor of Law; Faculty Chair, Roger Hertog Program on Law and National Security, “Legislating the War on Terror: An Agenda for Reform”, November 3, Book

Judicial review can help safeguard liberty and enhance the credibility at home and abroad of administrative detention decisions by ensuring the neutrality of the decisionmaker and publicly certifying the legality of the detention in question. Most calls for reform of existing detention laws start with a 47 strong role for courts. Some commentators believe that a special court is needed, perhaps a “national security court” made up of designated judges who would build expertise in terrorism cases over time. 16 Others suggest that the Foreign Intelligence Surveillance Court already has judges with expertise in handling sensitive intelligence matters and mechanisms in place to ensure secrecy, so its jurisdiction ought to be expanded to handle detention cases. 17 Still others insist that specialized terrorism courts are dangerous; the legitimacy of a detention system can best be ensured by giving regular, generalist judges a say in each decision. ¶ Adversarial process and access to attorneys can help further protect liberty and enhance the perceived legitimacy of detention systems. As with judicial review, however, proposals tend to split over how best to organize and ensure that process. Some argue that habeas corpus suits are the best check on administrative detention. 18 Others argue that administrative detention decisions should be contested at an early stage by a lawyer of the detainee’s choosing. 19 Still others recognize an imperative need for secrecy and deep expertise in terrorism and intelligence matters that calls for designating a special “defense bar” operated by the government on detainees’ behalf.¶ The issue of secrecy runs in tension with a third common element of procedural and institutional reform proposals: openness and transparency. The Bush administration’s approach was considered by some to be prone to error in part because of its excessive secrecy and hostility to the prying courts and Congress as well as to the press and advocacy groups. Critics and reformists argue that hearings should be open or at least partially open and that judgments should be written so that they can be scrutinized later by the public or congressional oversight committees; that, they claim, would help put pressure on the executive branch to exercise greater care in deciding which detention cases to pursue and put pressure on adjudicators to act in good faith and with more diligence.¶ These three elements of procedural design reform— judicial review, adversarial process, and transparency— may help reduce the likelihood of mistakes and restore the credibility of detention decisionmaking. Rarely, though, do the discussions pause long on the antecedent question of what it is that the courts— however constituted— will evaluate. Judicial review of what? A meaningful opportunity to contest what with the assistance of counsel? Transparent determinations of what?

## Terror

### Uq

#### Offensive counter terror measures are inevitable- it’s just a question of effective oversight

Wittes 2013 (Benjamin Wittes, editor in chief of Lawfare and a Senior Fellow in Governance Studies at the Brookings Institution, March 19, 2013, “Coming at the AUMF Debate from a Different Angle,” Lawfare, http://www.lawfareblog.com/2013/03/coming-at-the-aumf-debate-from-a-different-angle/)

The spirit that animates our paper, by contrast, is the suspicion that this belief is a bit less than realistic. In my view, to sketch the alternative, whoever is president is going to continue our current counterterrorism policies for the foreseeable future. Barring a Rand Paul presidency (and it will be interesting to see if either Jen or Steve endorses that prospect in the name of peace), any president is going to feel obliged to maintain counterterrorism on offense, and Congress—whining, carping, complaining all the way both that the president is being too aggressive and that he is not being aggressive enough—will go along with it, indeed, will insist upon it. That’s just the political reality. And it’s the political reality for a very simple reason that is, at its core, not about a point of law: Americans overwhelmingly prefer killing terrorists overseas to allowing them operating wiggle-room with which to attack Americans.¶ This counterterrorism on offense will be justified, as it has been so far, by aggressive interpretation of the AUMF as covering associated forces in geographic locales far from hot battlefields. Or it will be justified by an expansive view of Article II powers. Or it will be justified by whatever other legal means may be available. The critical point, however, is that the core strategy is simply not going to be walked back, unless there is some dramatic political shift, and most fundamentally, it’s not going to be walked back because a group of lawyers think the AUMF is no longer a vital instrument—any more than the absence of a congressional action precluded the Libya operation.¶ If you buy this premise, the question before us as we contemplate the future of the AUMF is not one of continued war versus a return to peace. The question, rather, is whether you want the contours of this continuing armed conflict to be defined by the Executive Branch acting alone, or whether you want it defined by some joint action of the Executive Branch and Congress. Even recognizing that Congress may not play its role optimally, I am in the latter camp. I believe there’s a useful role for Congress to play in defining the conflict at its margins. I don’t believe that Congress has either the force or the will to decide that the nation is at peace—or that it believes anything of the kind.

#### Obama has chosen article III courts as the preferred venue to try terrorist suspects captured in the War on Terror SUSAN CRABTREE **OCTOBER** 14, 2013 High-profile terror suspect taken to N.Y. to face trial http://washingtonexaminer.com/high-profile-terror-suspect-taken-to-n.y.-to-face-trial/article/2537222 The [Obama](http://washingtonexaminer.com/section/barack-obama) administration Monday on transferred an alleged top [al Qaeda](http://washingtonexaminer.com/section/al-qaeda) figure captured by U.S. special forces to [New York](http://washingtonexaminer.com/section/new-york) to face charges in federal court. **The move is likely to revive debate about whether suspected** [**terrorists**](http://washingtonexaminer.com/section/terrorism) **should be tried in civilian or military courts.** Abu Anas al-Libi, a suspect in the 1998 bombings of U.S. embassies in [Kenya](http://washingtonexaminer.com/section/kenya) and Tanzania that killed 224 civilians, was captured by the U.S. Army Delta Force in Tripoli, [Libya](http://washingtonexaminer.com/section/libya) on Oct. 5. He was then whisked onto a Navy ship in the in the Mediterranean Sea where he was questioned by U.S. intelligence officials. U.S. Attorney Preet Bharara, the chief federal prosecutor for Manhattan, said the military handed al-Libi to U.S. civilian law enforcement over the weekend and he was brought directly to the New York area. He is expected to appear before a judge on Tuesday. The move is sure to draw sharp opposition from Republicans in Congress, who believe such a high-profile terrorist suspect should be sent to the U.S. prison at [Guantanamo Bay](http://washingtonexaminer.com/section/guantanamo-bay) for indefinite interrogations and detention. Republican Sens. [Lindsey Graham](http://washingtonexaminer.com/section/lindsey-graham), S.C., [Saxby Chambliss](http://washingtonexaminer.com/section/saxby-chambliss), Ga., and Kelly Ayotte, N.H., have strongly opposed the prospect of trying al-Libi in criminal court. They argue that al-Libi, who was once a close confidant of Osama bin Laden, should be sent to Guantanamo Bay to be interrogated by military intelligence officials for as long as needed and question if his brief interrogation at sea was sufficient.

### Convictions

#### CIPA didn’t solve the problems with classified evidence being used- Article III courts create a double bind- either we release vital information or let terrorists go free

American BAR July 2009

Due Process and Terrorism Series   
Trying Terrorists in Article III Courts   
Challenges and Lessons Learned A Post-Workshop Report http://www.americanbar.org/content/dam/aba/migrated/natsecurity/trying\_terrorists\_artIII\_report\_final.authcheckdam.pdf

Central to issues of trying terrorist suspects in the Article III courts are the issues associated with the use of classified and sensitive information. Congress enacted the Classified Information Procedures Act (CIPA) in 1980 to respond to the problem of “greymail”, a defense tactic that of forced the government either to disclose classified evidence or to dismiss its case altogether. In modern cases, CIPA is used to protect classified information in criminal trials generally by permitting the trial court to make pretrial judgments regarding the relevance, use, and admissibility of such information *in camera* and *ex parte*. Where the classified information is relevant to a criminal prosecution, the judge can permit the government to disclose summaries of or substitutions for the evidence in lieu of the actual evidence. Some of the most complex decisions arise when classified information is so central to a defense that a summary or substitution would be inadequate. In such situations, trial courts might preclude certain evidence from being introduced or simply dismiss certain counts of an indictment. At worst, the government may be forced to decide between either disclosing evidence to the defense or simply withdrawing its case altogether to prevent disclosure. Thus, even where CIPA applies, the government may still face a “greymail”- like situation in some cases if the classified information is highly relevant to the defense and a summary or substitution would prove inadequate.

#### **Article III case studies are inherently flawed-- even if they’re empirically successful your evidence doesn’t account for the number of cases the government has had to dismiss**

American BAR July 2009

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Several participants cautioned that most of these points are based only on those terrorism cases that have been tried in Article III courts to date, and that such cases do not afford a complete database for assessing the sufficiency of the Article III system. They noted that the success of the Article III criminal system may be overstated because there is no record of the terrorism prosecutions that the government never pursued as a result of challenges associated with the Article III courts. Several discussants suggested that the government, for reasons they felt they could not publicly disclose, came very close to withdrawing past terrorism cases because of challenges associated with the Article III system, and may have made compromises to pursue those cases in the Article III courts. Partly as a consequence of this reasoning, some of the discussants suggested that while it is generally desirable to prosecute terrorism cases in Article III courts, there may be some class of cases that require a backstop to the Article III framework to deal with terrorist suspects who may pose a threat to national security but who cannot be prosecuted successfully.

#### Emperics prove released detainees will return to the jihad against America

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| David Edwards and Joe Byrne January 27, 2009 |

Gitmo recruited thousands of terrorists, says US interrogator

<http://rawstory.com/news/2008/Gitmo_recruited_thousands_of_terrorists_says_0127.html>

A Pentagon report that 61 former inmates from Guantanamo Bay have "returned to the battlefield" doesn't seem to be scaring anyone. Matthew Alexander, a former senior interrogator in Iraq, told Keith Olbermann last night on MSNBC's *Countdown* that Guantanamo Bay is a persuasive argument for al-Qaeda in recruitment of fighters in Iraq. Matthew Alexander led the team of interrogators who found Abu Musab al-Zarqawi in August 2006. Since returning from Iraq, he has been outspoken about the tactics that the US military uses to interrogate prisoners. His book, *How to Break A Terrorist*, outlines his experience with the "deeply flawed, ineffective, un-American way the US military conducts interrogations in Iraq." The Pentagon report on former Gitmo inmates returning to terrorism has been the subject of much debate since its release. Only 18 former inmates are listed as "confirmed recidivists"; the remaining 43 are listed as "suspected," although the basis of suspicion isn't definitively documented. The activity of one "confirmed recidivist" amounts to being interviewed in a documentary about Guantanamo Bay. Seton Hall University law professor Mark Denbeaux published a [report](http://law.shu.edu/administration/public_relations/press_releases/2009/shl_defense_dept_wrong_on_gtmo.htm) on Jan. 15 pointing out that the Pentagon has altered its figures on "terrorist recidivism" multiple times, with the latest figure being the most egregiously inaccurate. Denbeaux [spoke to MSNBC host Rachel Maddow](http://rawstory.com/news/2008/Olbermann_debunks_released_Gitmo_detainee_propaganda_0123.html) at the beginning of the month. "Once again, they've failed to identify names, numbers, dates, times, places, or acts upon which their report relies," the professor asserts. "Every time they have been required to identify the parties, the DOD has been forced to retract their false IDs and their numbers. They have included people who have never even set foot in Guantanamo--much less were they released from there." Last night, Olbermann asked Matthew Alexander why the Pentagon would use the idea of former Gitmo inmates engaging in terrorism to try to keep the prison open. "Whether [the number of detainees that are suspected terrorists] is 68 or 100, that number pales in comparison to the number of fighters that have been recruited to al-Qaeda because of Guantanamo," Alexander responded. "That number would be in the thousands. The number one reason that I consistently heard while in Iraq that foreign fighters gave for coming there was 'torture and abuse occurring in Abu Ghraib and Guantanamo'... If we seriously want to undercut one of al-Qaeda's best recruiting tools, the best thing to do would be to close Guantanamo Bay."

#### NSC is key to convictions- hybrid courts are key to adjudicating terrorism- civilian models of law are inadequate even if the judges are qualified

Glenn Sulmasy 2009   
THE NATIONAL SECURITY COURT SYSTEM A NATURAL EVOLUTION OF JUSTICE IN AN AGE OF TERROR – pg 182  
Professor of law, commander, and judge advocate at the US Coast Guard Academy

The key is to balance, and legislatively guide, national security judges to equate justice in this arena as distinct from that of military criminal law or ordinary federal courts. The stakes in the national security courts are much greater than they are in standard federal courts. As it is currently constructed, the existing system allows for judges who have no background in warfare or national security to intervene, hear, and decide cases when they have little or no understanding of the issues because these are beyond the scope of the judges’ expertise. The legislation creating the NSCS must be specific and make clear to the judges that this is not an ordinary criminal court and, as such, the judges should refrain from making analogies to the civilian system in deciding their cases. The threat we face demands these enhanced requirements for specialized judges for this specialized court.

### Intel

#### Article III trials will clog our federal courts and release vital intelligence information to the public and terrorist organizations Amos N. **Guiora 9**, Professor of Law at the S.J. Quinney College of Law, University of Utah, served in the Judge Advocate General's Corps of the Israel Defense Forces where he held senior command positions related to the legal and policy aspects of operational counterterrorism, “Creating a Domestic Terror Court”, PDF

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

#### Article III trials will destroy foreign intel cooperation- has to be secretive

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First, the disclosure of evidence in some terrorism trials may force a decision about whether to expose important intelligence gathering priorities, methods, and sources. This exposure may lead to conflicting interests between U.S. intelligence and law enforcement agencies; the risk of conflict is no less substantial when using sensitive evidence as opposed to classified evidence. In addition, it is not always clear at the outset which intelligence information will be valuable in the future, meaning that intelligence agencies are resistant to disclosing any intelligence information unless its secrecy can be adequately safeguarded and its use will result in meaningful benefits to the government. *Second*, the use of classified and sensitive evidence obtained from the intelligence arm of a foreign government can pose an obstacle to future cooperation between the United States and the foreign government. Intelligence information is often shared between governments with the express understanding that such cooperation will remain secret. In terrorism trials, the prosecution may face the dilemma of either (i) turning over the evidence of foreign cooperation and thereby undermining the trust of the foreign government, (ii) proceeding with litigation on a more restricted set of evidence, or, in some rare cases, (iii) withdrawing some charges against the defendant.

#### Intel can’t leak in a NSC- trials with classified evidence would be closed- otherwise it’s open which solves our transparency and legitimacy advantage

Joseph Schaeffer, Pitt Law '12, attended a talk on a proposed national security court system given by US Coast Guard Captain Glenn Sulmasy\*, a law professor at the US Coast Guard Academy and a National Security and Human Rights Fellow at Harvard Universityhttp://jurist.org/dateline/2009/10/us-national-security-courts-sulmasys.php

But all this was only a preview of what was to come. Sulmasy felt obligated to rebut the feasibility of the military commission and the civilian court system alternatives, perhaps to preempt criticisms that his third way is unnecessary. According to Sulmasy, the primary defect of the civilian court system consists of its strict evidentiary and procedural requirements. While this might initially seem counter-intuitive, it actually makes quite a bit of sense. Guantanamo detainees were not captured according to civilian evidentiary and procedural requirements. Trial courts could deal with this by either acquitting detainees en masse or relaxing evidentiary and procedural requirements, thereby raising constitutional issues and weakening the protections afforded all Americans. Neither of these options seems particularly attractive. Sulmasy also argued that civilian court judges lack the requisite experience to try national security cases and that it would be difficult to find impartial jurors. Turning to military commissions, Sulmasy defended their use while simultaneously acknowledging their impracticability. Arguing that military commissions are both constitutional and just, since most detainees have more rights than in their home countries, Sulmasy nonetheless acknowledged that the previous administration's public relations blunders meant that the military commission would need to be abandoned. One could argue that this was a gross understatement, but Sulmasy seemed anxious to move on. It was time to discuss his proposed National Security Court System. A National Security Court System would be established by Congress under its Article III powers, similar in nature to current specialty taxation, bankruptcy, and FISA courts. The NSCS would be firmly in the public sphere, overseen by the Department of Justice rather than the Department of Defense, and proceedings would be presumptively open. As explained by Sulmasy, this means that the press, international observers, etc., would have access to the proceedings, except where classification and national security issues mandated otherwise. Detainees would be represented by either Judge Advocate Generals or federal public defenders and would be guaranteed a habeas corpus hearing within three months of capture and full trial within one year of capture. Detainees would not receive the full benefit of American constitutional protections, but would rather be subject to lessened evidentiary and procedural requirements. Sulmasy acknowledged the controversiality of these lessened protections without prompt, but argued again that the majority of detainees still would have more rights than in their home countries. The trials would occur on military bases for security reasons and would be chaired by special military National Security Court judges. Finally, the NSCS would be established with a sunset provision, which Sulmasy proposed setting at five years, in order to force Congress to reevaluate its efficacy and Constitutionality at some future point.

### Oil

#### The court’s key to getting groups like Al Qaeda and their close affiliates Glenn **Sulmasy 2009** THE NATIONAL SECURITY COURT SYSTEM A NATURAL EVOLUTION OF JUSTICE IN AN AGE OF TERROR – pg 180-181 Professor of law, commander, and judge advocate at the US Coast Guard Academy Similarly, legislation creating the system should be clear that persons subject to the court, regardless of citizenship, are those alleged to have been, or are, members of al Qaeda or affiliated groups that engage or plan to engage in acts of international terrorism. The Congress needs to clarify that “any terrorist” is not subject to this court but simply those who engage in international terrorism. This removes the fear of some that the court would have jurisdiction over any group that engages in terrorism. The limited jurisdiction of the NSCS would serve as a check on any arbitrary use of the court system.

#### Yemen is the training ground for terrorism against Saudi Arabia – will attack oil facilities

Ulrichsen 2011 (Kristian Ulrichsen, Kuwait Research Fellow in the Kuwait Programme for Development, Governance and Globalisation in the Gulf States Centre for the Study of Global Governance at the London School of Economics and Political Science, "The Geopolitics of Insecurity in the Horn of Africa and the Arabian Peninsula," Middle East Policy Council, http://www.mepc.org/journal/middle-east-policy-archives/geopolitics-insecurity-horn-africa-and-arabian-peninsula?print)

The reconstitution of AQAP in January 2009, following the merger of al-Qaeda's Yemeni and Saudi wings, confirmed suspicions held by many security officials that the counterterrorism campaign in the GCC against the original AQAP organization had merely displaced the threat from terrorism to the undergoverned periphery of the peninsula.3 From the beginning, the organization featured a newer generation of radicals who displayed both the intent and, increasingly, the capability to operate transnationally. This built upon existing trends of terror suspects' infiltration and weapons smuggling across the Yemeni-Saudi boundary. In May 2008, for example, Yemen's vice president, Abd al-Rab Mansur al-Hadi, claimed that 16,000 suspected members of al-Qaeda had been expelled from Yemen since 2003. This figure included many "Arab Afghans" who had fled Afghanistan for Saudi Arabia following the overthrow of the Taliban in 2001, and subsequently moved to Yemen to avoid capture by Saudi security forces.4 Despite these arrests, plots and cells continued to be uncovered in Yemen during 2008, including a Yemeni-led cell linked to al-Qaeda that was planning to attack oil-installation facilities in the Eastern Province of Saudi Arabia.5 Reminiscent of al-Qaeda's failed attack in February 2006 at Abqaiq, this highlighted the vulnerability of Saudi Arabia's 1,800-kilometer border with Yemen.6 The coordinated attack on the U.S. embassy compound in the Yemeni capital of Sanaa on September 17, 2008, which killed 10 people, marked the beginning of the "second generation" of transnational terrorism in the peninsula. This attack melded the threats to regional security from Iraq, al-Qaeda and the growing lawlessness in Yemen itself. Three of the six suicide bombers had recently returned from Iraq; following their arrival in Yemen, they reportedly attended al-Qaeda training camps in the southern provinces of Hadramawt and Maarib.7 Yemeni security officials already suspected these camps of training an aggressive new generation of extremist leaders and jihadi footsoldiers.8 Together with the relocation of extremists from Saudi Arabia and the growing incidence of militant flows linking Yemen to the Islamist insurgents of Al-Shabaab in Somalia, they represented a deadly new threat to internal security in Yemen and regional stability in the Arabian Peninsula.9

#### Attacks on Saudi oil facilities collapse the global economy

Gartenstein-Ross 2011 (Daveed Gartenstein-Ross, Directs the Center for the Study of Terrorist Radicalization at the Foundation for the Defense of Democracies, May 23, 2013, "Osama's Oil Obsession," Foreign Policy, www.foreignpolicy.com/articles/2011/05/23/osamas\_oil\_obsession)

Bin Laden long believed that undermining the U.S. economy was central to his war against the United States -- an outlook that has permeated al Qaeda's ranks and will outlive him. Al Qaeda views attacking the oil supply as a smart strategy for good reason: America's reliance on oil for its transportation needs makes it a commodity that, if disrupted or made unaffordable, will cause the U.S. economy to collapse. The United States holds only 3 percent of conventional global oil reserves, yet uses 25 percent of the world's daily production. It imports more than 66 percent of its oil, amounting to a daily purchase of 12 million barrels of imported oil. A significant rise in the price of oil due to a terrorist attack would deal al Qaeda's main enemy a severe economic blow.¶ The threat that keeps counterterrorism officials up at night is a massive strike on Saudi oil installations, taking advantage of the limited number of production hubs to knock a significant amount of oil off the world market. The kingdom relies on its Abqaiq facility to process two-thirds of its crude oil, and on two primary terminals (Ras Tanura and Ras al-Ju'aymah) to export its oil to the world. The economic impact of a successful attack on one of these targets would be tremendous: Gal Luft and Anne Korin of the Institute for the Analysis of Global Security estimate that, if a terrorist cell hijacked a plane and crashed it into either the Abqaiq or Ras Tanura facilities in a 9/11-style attack, it could "take up to 50% of Saudi oil off the market for at least six months and with it most of the world's spare capacity, sending oil prices through the ceiling."¶ Former CIA case officer Robert Baer agrees, writing his 2004 book Sleeping with the Devil, "A single jumbo jet with a suicide bomber at the controls, hijacked during takeoff from Dubai and crashed into the heart of Ras Tanura, would be enough to bring the world's oil-addicted economies to their knees, America's along with them."¶ The prospect of a terrorist strike is so worrying because of the critical role that Saudi oil production plays in the world economy. Saudi Arabia produces almost 10 million barrels of oil per day, and is the only country able to maintain excess daily production capacity of around 1.5 million barrels per day (a "swing reserve") to keep world prices stable.Al Qaeda has certainly tried to attack the kingdom's key oil targets. The threat of terrorist attacks on Saudi oil infrastructure first became a reality in September 2005, when a 48-hour shootout with Islamic militants at a villa in the Saudi seaport of al-Dammam ended with Saudi police introducing light artillery. When police entered the compound in the aftermath of the battle, they found not only what Newsweek described as "enough weapons for a couple of platoons of guerilla fighters," but also forged documents that would have given the terrorists access to the country's key oil and gas facilities. Saudi Interior Minister Prince Nayef bin Abdul Aziz confirmed to the newspaper Okaz that the cell had planned to attack energy facilities, noting that "there isn't a place that they could reach that they didn't think about."

#### Global economic crisis causes war---strong statistical support—also causes great power transitions

Royal 10 – Jedediah Royal, Director of Cooperative Threat Reduction at the U.S. Department of Defense, 2010, “Economic Integration, Economic Signaling and the Problem of Economic Crises,” in Economics of War and Peace: Economic, Legal and Political Perspectives, ed. Goldsmith and Brauer, p. 213-214

Less intuitive is how periods of economic decline may increase the likelihood of external conflict. Political science literature has contributed a moderate degree of attention to the impact of economic decline and the security and defence behaviour of interdependent states. Research in this vein has been considered at systemic, dyadic and national levels. Several notable contributions follow. First, on the systemic level, Pollins (2008) advances Modelski and Thompson’s (1996) work on leadership cycle theory, finding that rhythms in the global economy are associated with the rise and fall of pre-eminent power and the often bloody transition from one pre-eminent leader to the next. As such, exogenous shocks such as economic crises could usher in a redistribution of relative power (see also Gilpin, 10981) that leads to uncertainty about power balances, increasing the risk of miscalculation (Fearon, 1995). Alternatively, even a relatively certain redistribution of power could lead to a permissive environment for conflict as a rising power may seek to challenge a declining power (Werner, 1999). Seperately, Polllins (1996) also shows that global economic cycles combined with parallel leadership cycles impact the likelihood of conflict among major, medium, and small powers, although he suggests that the causes and connections between global economic conditions and security conditions remain unknown. Second, on a dyadic level, Copeland’s (1996,2000) theory of trade expectations suggests that ‘future expectation of trade’ is a significant variable in understanding economic conditions and security behavior of states. He argues that interdependent states are likely to gain pacific benefits from trade so long as they have an optimistic view of future trade relations. However, if the expectation of future trade decline, particularly for difficult to replace items such as energy resources, the likelihood for conflict increases , as states will be inclined to use force to gain access to those resources. Crises could potentially be the trigger for decreased trade expectations either on its own or because it triggers protectionist moves by interdependent states. Third, others have considered the link between economic decline and external armed conflict at a national level. Blomberg and Hess (2002) find a strong correlation between internal conflict and external conflict, particularly during periods of economic downturn. They write, The linkages between internal and external conflict and prosperity are strong and mutually reinforcing. Economic conflict tends to spawn internal conflict, which in turn returns the favour. Moreover, the presence of a recession tends to amplify the extent to which international and external conflicts self-reinforce each other. (Blomberg & Hess, 2002, p.89). Economic decline has also been linked with an increase in the likelihood of terrorism (Blomberg, Hess, & Weerapana, 2004), which has the capacity to spill across borders and lead to external tensions. Furthermore, crises generally reduce the popularity of a sitting government. ‘Diversionary theory’ suggests that, when facing unpopularity arising from economic decline, sitting governments have increased incentives to create a ‘rally round the flag’ effect. Wang (1996), DeRouen (1995), and Blomberg, Hess and Thacker (2006) find supporting evidence showing that economic decline and use of force are at least indirectly correlated. Gelpi (1997) Miller (1999) and Kisanganie and Pickering (2009) suggest that the tendency towards diversionary tactics are greater for democratic states than autocratic states, due to the fact that democratic leaders are generally more susceptible to being removed from office due to lack of domestic support. DeRouen (2000) has provided evidence showing that periods of weak economic performance in the United States, and thus weak presidential popularity, are statistically linked to an increase in the use of force..

### Retal

**Extinction via retal**

**Ayson 2010** (Robert Ayson, Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand at the Victoria University of Wellington, “After a Terrorist Nuclear Attack: Envisaging Catalytic Effects,” Studies in Conflict & Terrorism, Volume 33, Issue 7, July, Available Online to Subscribing Institutions via InformaWorld)

A terrorist nuclear attack, and even the use of nuclear weapons in response by the country attacked in the first place, would not necessarily represent the worst of the nuclear worlds imaginable. Indeed, there are reasons to wonder whether nuclear terrorism should ever be regarded as belonging in the category of truly existential threats. A contrast can be drawn here with the global catastrophe that would come from a massive nuclear exchange between two or more of the sovereign states that possess these weapons in significant numbers. Even the worst terrorism that the twenty-first century might bring would fade into insignificance alongside considerations of what a general nuclear war would have wrought in the Cold War period. And it must be admitted that as long as the major nuclear weapons states have hundreds and even thousands of nuclear weapons at their disposal, there is always the possibility of a truly awful nuclear exchange taking place precipitated entirely by state possessors themselves. But these two nuclear worlds—a non-state actor nuclear attack and a catastrophic interstate nuclear exchange—are not necessarily separable. It is just possible that some sort of terrorist attack, and especially an act of nuclear terrorism, could precipitate a chain of events leading to a massive exchange of nuclear weapons between two or more of the states that possess them. In this context, today’s and tomorrow’s terrorist groups might assume the place allotted during the early Cold War years to new state possessors of small nuclear arsenals who were seen as raising the risks of a catalytic nuclear war between the superpowers started by third parties. These risks were considered in the late 1950s and early 1960s as concerns grew about nuclear proliferation, the so-called n+1 problem. It may require a considerable amount of imagination to depict an especially plausible situation where an act of nuclear terrorism could lead to such a massive inter-state nuclear war. For example, in the event of a terrorist nuclear attack on the United States, it might well be wondered just how Russia and/or China could plausibly be brought into the picture, not least because they seem unlikely to be fingered as the most obvious state sponsors or encouragers of terrorist groups. They would seem far too responsible to be involved in supporting that sort of terrorist behavior that could just as easily threaten them as well. Some possibilities, however remote, do suggest themselves. For example, how might the United States react if it was thought or discovered that the fissile material used in the act of nuclear terrorism had come from Russian stocks,40 and if for some reason Moscow denied any responsibility for nuclear laxity? The correct attribution of that nuclear material to a particular country might not be a case of science fiction given the observation by Michael May et al. that while the debris resulting from a nuclear explosion would be “spread over a wide area in tiny fragments, its radioactivity makes it detectable, identifiable and collectable, and a wealth of information can be obtained from its analysis: the efficiency of the explosion, the materials used and, most important … some indication of where the nuclear material came from.”41 Alternatively, if the act of nuclear terrorism came as a complete surprise, and American officials refused to believe that a terrorist group was fully responsible (or responsible at all) suspicion would shift immediately to state possessors. Ruling out Western ally countries like the United Kingdom and France, and probably Israel and India as well, authorities in Washington would be left with a very short list consisting of North Korea, perhaps Iran if its program continues, and possibly Pakistan. But at what stage would Russia and China be definitely ruled out in this high stakes game of nuclear Cluedo? In particular, if the act of nuclear terrorism occurred against a backdrop of existing tension in Washington’s relations with Russia and/or China, and at a time when threats had already been traded between these major powers, would officials and political leaders not be tempted to assume the worst? Of course, the chances of this occurring would only seem to increase if the United States was already involved in some sort of limited armed conflict with Russia and/or China, or if they were confronting each other from a distance in a proxy war, as unlikely as these developments may seem at the present time. The reverse might well apply too: should a nuclear terrorist attack occur in Russia or China during a period of heightened tension or even limited conflict with the United States, could Moscow and Beijing resist the pressures that might rise domestically to consider the United States as a possible perpetrator or encourager of the attack? Washington’s early response to a terrorist nuclear attack on its own soil might also raise the possibility of an unwanted (and nuclear aided) confrontation with Russia and/or China. For example, in the noise and confusion during the immediate aftermath of the terrorist nuclear attack, the U.S. president might be expected to place the country’s armed forces, including its nuclear arsenal, on a higher stage of alert. In such a tense environment, when careful planning runs up against the friction of reality, it is just possible that Moscow and/or China might mistakenly read this as a sign of U.S. intentions to use force (and possibly nuclear force) against them. In that situation, the temptations to preempt such actions might grow, although it must be admitted that any preemption would probably still meet with a devastating response. As part of its initial response to the act of nuclear terrorism (as discussed earlier) Washington might decide to order a significant conventional (or nuclear) retaliatory or disarming attack against the leadership of the terrorist group and/or states seen to support that group. Depending on the identity and especially the location of these targets, Russia and/or China might interpret such action as being far too close for their comfort, and potentially as an infringement on their spheres of influence and even on their sovereignty. One far-fetched but perhaps not impossible scenario might stem from a judgment in Washington that some of the main aiders and abetters of the terrorist action resided somewhere such as Chechnya, perhaps in connection with what Allison claims is the “Chechen insurgents’ … long-standing interest in all things nuclear.”42 American pressure on that part of the world would almost certainly raise alarms in Moscow that might require a degree of advanced consultation from Washington that the latter found itself unable or unwilling to provide. There is also the question of how other nuclear-armed states respond to the act of nuclear terrorism on another member of that special club. It could reasonably be expected that following a nuclear terrorist attack on the United States, both Russia and China would extend immediate sympathy and support to Washington and would work alongside the United States in the Security Council. But there is just a chance, albeit a slim one, where the support of Russia and/or China is less automatic in some cases than in others. For example, what would happen if the United States wished to discuss its right to retaliate against groups based in their territory? If, for some reason, Washington found the responses of Russia and China deeply underwhelming, (neither “for us or against us”) might it also suspect that they secretly were in cahoots with the group, increasing (again perhaps ever so slightly) the chances of a major exchange. If the terrorist group had some connections to groups in Russia and China, or existed in areas of the world over which Russia and China held sway, and if Washington felt that Moscow or Beijing were placing a curiously modest level of pressure on them, what conclusions might it then draw about their culpability? If Washington decided to use, or decided to threaten the use of, nuclear weapons, the responses of Russia and China would be crucial to the chances of avoiding a more serious nuclear exchange. They might surmise, for example, that while the act of nuclear terrorism was especially heinous and demanded a strong response, the response simply had to remain below the nuclear threshold. It would be one thing for a non-state actor to have broken the nuclear use taboo, but an entirely different thing for a state actor, and indeed the leading state in the international system, to do so. If Russia and China felt sufficiently strongly about that prospect, there is then the question of what options would lie open to them to dissuade the United States from such action: and as has been seen over the last several decades, the central dissuader of the use of nuclear weapons by states has been the threat of nuclear retaliation. If some readers find this simply too fanciful, and perhaps even offensive to contemplate, it may be informative to reverse the tables. Russia, which possesses an arsenal of thousands of nuclear warheads and that has been one of the two most important trustees of the non-use taboo, is subjected to an attack of nuclear terrorism. In response, Moscow places its nuclear forces very visibly on a higher state of alert and declares that it is considering the use of nuclear retaliation against the group and any of its state supporters. How would Washington view such a possibility? Would it really be keen to support Russia’s use of nuclear weapons, including outside Russia’s traditional sphere of influence? And if not, which seems quite plausible, what options would Washington have to communicate that displeasure? If China had been the victim of the nuclear terrorism and seemed likely to retaliate in kind, would the United States and Russia be happy to sit back and let this occur? **In the charged** atmosphere immediately after a nuclear terrorist attack, how would the attacked country respond to pressure from other major nuclear powers not to respond in kind? The phrase “how dare they tell us what to do” immediately springs to mind. Some might even go so far as to interpret this concern as a tacit form of sympathy or support for the terrorists. This might not help the chances of nuclear restraint.

## Solvency

#### The creation of a National Security Court is crucial to restore legitimacy and rule of law in detention

David Welsh 11, J.D. from the University of Utah, “Procedural Justice Post-9/11: The Effects of Procedurally Unfair Treatment of Detainees on Perceptions of Global Legitimacy”, http://law.unh.edu/assets/images/uploads/publications/unh-law-review-vol-09-no2-welsh.pdf

In the context of the War on Terror, legitimacy is the critical missing element under the current U.S. detention regime. Legitimacy can be defined as “a psychological property of an authority, institution, or social arrangement that leads those connected to it to believe that it is appropriate, proper, and just.” 50 As far back as Plato and Aristotle, philosophers have recognized that influencing others merely through coercion and power is costly and inefficient. 51 Today, empirical evidence suggests that legitimacy, rather than deterrence, is primarily what causes individuals to obey the law. 52 Thus, while legal authorities may possess the immediate power to stop illegal action, long-term compliance requires that the general public perceives the law to be legitimate. 53 Terrorism is primarily an ideological war that cannot be won by technology that is more sophisticated or increased military force. 54 While nations combating terrorism must continue to address immediate threats by detaining suspected terrorists, they must also consider the prevention of future threats by analyzing how their policies are perceived by individuals throughout the world. Ultimately, in the War on Terror, “the benefits to be derived from maximizing legitimacy are too important to neglect.” 55¶ Over time, perceptions of legitimacy create a “reservoir of support” for an institution that goes beyond mere self -interest. 56 In the context of government:¶ Legitimacy is [an] endorphin of the democratic body politic; it is the substance that oils the machinery of democracy, reducing the friction that inevitably arises when people are not able to get everything they want from politics. Legitimacy is loyalty; it is a reservoir of goodwill that allows the institutions of government to go against what people may w ant at the moment without suffering debilitating consequences. 57¶ The widespread acceptance of highly controversial decisions by the U.S. Supreme Court illustrates the power of institutional legitimacy. 58 The Court itself noted that it “cannot buy support for its decisions by spending money and, except to a minor degree, it can- not independently coerce obedience to its decrees.” 59 “The Court’s power lies, rather, in its legitimacy . . . .” 60 For example, by empha- sizing “equal treatment,” “honesty and neutrality,” “gathering infor- mation before decision making,” and “making princip led, or rule based, decisions instead of political decisions,” the Court maintained legitimacy through the controversial abortion case Planned Parent- hood of Southeastern Pennsylvania v. Casey in 1992 . 61 Thus, al- though approximately half of Americans oppose abort ion, 62 the vast majority of these individuals give deference to the Court’s ruling on this issue. 63¶ In the post-World War II era, the United States built up a world- wide reservoir of support based upon four pillars: “its commitment to international law, its acceptance of consensual decision-making, its reputation for moderation, and its identification with the preservation of peace.” 64 Although some U.S. policies between 1950 and 2001 did not align with these pillars, on a whole the United States legitimized itself as a world superpower during this period. 65 In the 1980s, President Ronald Reagan spoke of America as a “shining city on a hill,” suggesting that it was a model for the nations of the world to look to. 66 While the United States received a virtually unprecedented outpouring of support from the international community following 9/11, a nation’s reservoir of support will quickly evaporate when its government overreacts. Across the globe, individuals have expressed a growing dissatisfaction with U.S. conduct in the War on Terror, and by 2006, even western allies of the Uni ted States lobbied for the immediate closure of Guantanamo Bay, callin g it “an embar- rassment.” 67 Former Secretary of State Colin Powell proclaimed that “Guantanamo has become a major, major problem . . . in the way the world perceives America and if it were up to me I would close Guantanamo not tomorrow but this afternoon . . . .” 68 Similarly, President Obama noted in his campaign that “Guantanamo has become a recruiting tool for our enemies.” 69¶ Current U.S. detention policies erode each of the four pillars on which the United States established global legitimacy. In fact, critics have argued that the “United States has assumed man y of the very features of the ‘rogue nations’ against which it has rhetorically—and sometimes literally—done battle over the years.” 70 While legitimacy cannot be regained overnight, the recent election o f President Barack Obama presents a critical opportunity for a re-articulation of U.S. detention policies. Although President Obama issued an executive order calling for the closure of Guantanamo Bay only two days after being sworn into office, 71 significant controversy remains about the kind of alternate detention system that will replace it. 72 In contrast to the current model, which has largely rendered in efficient decisions based on ad hoc policies, I argue for the establishment of a domestic terror court (DTC) created specifically to deal with the unique procedural issues created by a growing number of suspected terrorists.

#### NSC is the best solution to the detainee issue---other options fail

Anthony L. Kimery 9, Homeland Security Today's Online Editor and Online Media Division manager, draws on 30 years of experience and extensive contacts as he investigates homeland security, counterterrorism and border security, citing Glenn Sulmasy, first permanent commissioned military law professor at the Coast Guard Academy, where he is a Professor of Law teaching international, constitutional, and criminal law, "The Case For A 'National Security Court'", December 3, [www.hstoday.us/blogs/the-kimery-report/blog/the-case-for-a-national-security-court/a9333d82c11cecd35e74c8c0b65c2698.html](http://www.hstoday.us/blogs/the-kimery-report/blog/the-case-for-a-national-security-court/a9333d82c11cecd35e74c8c0b65c2698.html)

“The administration is now fully aware that this is a vastly complex issue – and one that requires a complex solution,” Sulmasy said.¶ “The President, in an eloquent speech at the National Archives in late May, identified there would be various options to consider for the detainees: diplomatic re-patriation, the use of military commissions, civilian Article III federal courts, and that he was still reviewing what to do with the 75-100 detainees that do not fit neatly in any of these regimes. That is where the National Security Court system provides the best, most pragmatic alternative for those difficult cases, as well as those inevitable future captures in the War on al Qaeda,” Sulmasy said.¶ Sulmasy continued: “Recent reports discuss the possibility of a hybrid court held on military bases within the US. Of course, I am delighted to hear of such ideas and progress. However, the nation needs to go further and create one court system that is best suited for this unique Al Qaeda fighter once captured. Rather than offering options to the detainees of either choosing a military commission or a civilian court, the National Security Court system provides one forum to attain the necessary balance between human rights, due process, and national security."¶ “We have to move forward, and recognize that the two existing paradigms – use of our traditional federal courts or the use of the law of war model (military commissions) – are simply jamming a square peg in a round hole. The administration now has the opportunity to statutorily create a legal system that best serves the needs of the nation, as well as the detainees.”¶ “The key distinction with my system from those now proposed by various commentators and scholars … is that the NSCS must be presumptively adjudicatory – and not used as a means of preventative detention,” Sulmasy said, noting that “the presumption should be to try, and if determined by the Commander-in-Chief and the military that such a trial would be either too risky or not possible, then as an exception such a decision can be made. This distinction is important and vital to ensure we fully support the rule of law, promote the national security, and still garner and maintain international support for our efforts.”

# 2AC

## Restrictions = Prohibition T

#### We meet- plan text gives exclusive jurisdiction of detention to the Congressional NSC

#### Counter Interp-- “Statutory restriction” means limits imposed by legislation

Black’s Law

“statutory restriction”, <http://thelawdictionary.org/statutory-restriction/>, accessed 6-2-13

Limits or controls that have been placed on activities by its ruling legislation.

**Authority is in the plan text**

**War Powers Authority is 3 things- statutes that authorize conflict, congressional authorization, or self defense**

Mark J. **Yost** 19**89** Georgetown Law

Georgetown Law Journal December, 1989 78 Geo. L.J. 415 LENGTH: 13829 words NOTE: Self Defense or Presidential Pretext? The Constitutionality of Unilateral Preemptive Military Action. NAME: Mark J. Yost

This note explores the limits of the President's war powers authority. Specifically, it analyzes whether the President, consistent with his constitutional grant of war powers, can order preemptive military action without congressional consultation. The preemptive air strike that President Reagan planned, but did not order, against the chemical weapons factory at Rabta, Libya provides the context for this discussion. Part I outlines the history of United States-Libyan relations and tracks the construction of the chemical weapons plant at Rabta. Part II discusses the various types of war that may [\*417] be waged under the Constitution. It argues that the Constitution provides for only three types of warmaking: (1) acts of war pursuant to a congressional declaration of war, 10 (2) acts of war authorized by statute, 11 and (3) acts of war pursuant to the President's self-defense power under the commander in chief clause and the executive power clause of article II. This Part then analyzes the factual circumstances attending the Rabta chemical weapons factory and concludes that because there was no congressional declaration of war and because no legislation authorized a preemptive military strike, the President constitutionally could have ordered a strike only under his self-defense power. It concludes by tracing the development of this presidential authority and analyzing the factors that have determined its scope.

#### Limits DA- You have four topical affs if a restriction is prohibition- you would have to ban the practice of all 4 topic areas and the topic comes down to terrible agent CP debates

#### Our interp allows multiple affirmatives within each category as long as they limit statutes

#### Precision- their interp does not define the noun phrase in the resolution- their interp is only of restriction not statutory restriction- interps that moot an entire word of the topic are bad- key to aff predictability which is important to aff construction and creativity

#### Reasonability- best to evaluate T debates, competing interps force a race to the bottom of overlimiting interps

### Heg

#### Heg sustainable – doomsayers are wrong

Carla Norrlof (an Associate Professor in the Department of Political Science at the University of Toronto) 2010 “ America’s Global Advantage US Hegemony and International Cooperation” p. 1-2

The United States has been the most powerful country in the world for more than sixty years. Throughout this period, it has had the world’s largest economy and the world’s most important currency. For most of this time, it had the world’s most powerful military as well – and its military supremacy today is beyond question. We are truly in an era of US hegemony, a unipolar moment, a Pax Americana, which has enabled Americans to enjoy the highest standard of living in human history. Is this privileged position being undercut by serial trade deficits? The pessimists are growing more numerous by the day. They see the country’s spendthrift ways as a disaster waiting to happen. They warn that the cavernous gap in merchandise trade, well above 6 percent in 2006, is an ominous sign of competitive slippage. In 2008, the liabilities acquired to finance the shortfall in exports reached an amazing 29 percent of GDP. A falling dollar, military overstretch, the rise of the euro, the rise of China, and progressively deeper integration in East Asia are among the factors that many believe herald the imminent decline of American hegemony. In my view, the doomsayers are mistaken. I argue that American hegemony is stable and sustainable. While the United States certainly does face a number of challenges, an analysis of the linkages between trade, money, and security shows that American power is robust. This book is a story about why and how American hegemony works, and what other states would have to do to emulate or, on other grounds, thwart, America’s power base. As I will show, the United States benefits from running persistent trade deficits as a result of its special position in the international system. I will argue that any comparably situated country would choose to pursue the same cyclical deficit policy as the one encouraged by the US government. A series of size advantages cut across trade, money, and security: the size of the American market, the role of the dollar, and American military power interact to make a trade deficit policy rewarding and buffer the United States from the extreme consequences that a sustained deficit policy would otherwise have.

#### Even if they win collapse inevitable – we should retain hegemony as long as possible

Thayer, 07 – Associate Professor in the Department of Defense and Strategic Studies, Missouri State University (Bradley A., American Empire, Routledge, page 105)

Knowing that American hegemony will end someday does not mean that we should welcome or facilitate its demise; rather the reverse. The United States should labor to maintain hegemony as long as possible—just as know-ing that you will die someday does not keep you from planning your future and living today. You strive to live as long as possible although you realize that it is inevitable that you will die. Like good health, Americans and most of the world should welcome American primacy and work to preserve it as long as possible.

### Terror

**Extinction via retal**

**Ayson 2010** (Robert Ayson, Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand at the Victoria University of Wellington, “After a Terrorist Nuclear Attack: Envisaging Catalytic Effects,” Studies in Conflict & Terrorism, Volume 33, Issue 7, July, Available Online to Subscribing Institutions via InformaWorld)

A terrorist nuclear attack, and even the use of nuclear weapons in response by the country attacked in the first place, would not necessarily represent the worst of the nuclear worlds imaginable. Indeed, there are reasons to wonder whether nuclear terrorism should ever be regarded as belonging in the category of truly existential threats. A contrast can be drawn here with the global catastrophe that would come from a massive nuclear exchange between two or more of the sovereign states that possess these weapons in significant numbers. Even the worst terrorism that the twenty-first century might bring would fade into insignificance alongside considerations of what a general nuclear war would have wrought in the Cold War period. And it must be admitted that as long as the major nuclear weapons states have hundreds and even thousands of nuclear weapons at their disposal, there is always the possibility of a truly awful nuclear exchange taking place precipitated entirely by state possessors themselves. But these two nuclear worlds—a non-state actor nuclear attack and a catastrophic interstate nuclear exchange—are not necessarily separable. It is just possible that some sort of terrorist attack, and especially an act of nuclear terrorism, could precipitate a chain of events leading to a massive exchange of nuclear weapons between two or more of the states that possess them. In this context, today’s and tomorrow’s terrorist groups might assume the place allotted during the early Cold War years to new state possessors of small nuclear arsenals who were seen as raising the risks of a catalytic nuclear war between the superpowers started by third parties. These risks were considered in the late 1950s and early 1960s as concerns grew about nuclear proliferation, the so-called n+1 problem. It may require a considerable amount of imagination to depict an especially plausible situation where an act of nuclear terrorism could lead to such a massive inter-state nuclear war. For example, in the event of a terrorist nuclear attack on the United States, it might well be wondered just how Russia and/or China could plausibly be brought into the picture, not least because they seem unlikely to be fingered as the most obvious state sponsors or encouragers of terrorist groups. They would seem far too responsible to be involved in supporting that sort of terrorist behavior that could just as easily threaten them as well. Some possibilities, however remote, do suggest themselves. For example, how might the United States react if it was thought or discovered that the fissile material used in the act of nuclear terrorism had come from Russian stocks,40 and if for some reason Moscow denied any responsibility for nuclear laxity? The correct attribution of that nuclear material to a particular country might not be a case of science fiction given the observation by Michael May et al. that while the debris resulting from a nuclear explosion would be “spread over a wide area in tiny fragments, its radioactivity makes it detectable, identifiable and collectable, and a wealth of information can be obtained from its analysis: the efficiency of the explosion, the materials used and, most important … some indication of where the nuclear material came from.”41 Alternatively, if the act of nuclear terrorism came as a complete surprise, and American officials refused to believe that a terrorist group was fully responsible (or responsible at all) suspicion would shift immediately to state possessors. Ruling out Western ally countries like the United Kingdom and France, and probably Israel and India as well, authorities in Washington would be left with a very short list consisting of North Korea, perhaps Iran if its program continues, and possibly Pakistan. But at what stage would Russia and China be definitely ruled out in this high stakes game of nuclear Cluedo? In particular, if the act of nuclear terrorism occurred against a backdrop of existing tension in Washington’s relations with Russia and/or China, and at a time when threats had already been traded between these major powers, would officials and political leaders not be tempted to assume the worst? Of course, the chances of this occurring would only seem to increase if the United States was already involved in some sort of limited armed conflict with Russia and/or China, or if they were confronting each other from a distance in a proxy war, as unlikely as these developments may seem at the present time. The reverse might well apply too: should a nuclear terrorist attack occur in Russia or China during a period of heightened tension or even limited conflict with the United States, could Moscow and Beijing resist the pressures that might rise domestically to consider the United States as a possible perpetrator or encourager of the attack? Washington’s early response to a terrorist nuclear attack on its own soil might also raise the possibility of an unwanted (and nuclear aided) confrontation with Russia and/or China. For example, in the noise and confusion during the immediate aftermath of the terrorist nuclear attack, the U.S. president might be expected to place the country’s armed forces, including its nuclear arsenal, on a higher stage of alert. In such a tense environment, when careful planning runs up against the friction of reality, it is just possible that Moscow and/or China might mistakenly read this as a sign of U.S. intentions to use force (and possibly nuclear force) against them. In that situation, the temptations to preempt such actions might grow, although it must be admitted that any preemption would probably still meet with a devastating response. As part of its initial response to the act of nuclear terrorism (as discussed earlier) Washington might decide to order a significant conventional (or nuclear) retaliatory or disarming attack against the leadership of the terrorist group and/or states seen to support that group. Depending on the identity and especially the location of these targets, Russia and/or China might interpret such action as being far too close for their comfort, and potentially as an infringement on their spheres of influence and even on their sovereignty. One far-fetched but perhaps not impossible scenario might stem from a judgment in Washington that some of the main aiders and abetters of the terrorist action resided somewhere such as Chechnya, perhaps in connection with what Allison claims is the “Chechen insurgents’ … long-standing interest in all things nuclear.”42 American pressure on that part of the world would almost certainly raise alarms in Moscow that might require a degree of advanced consultation from Washington that the latter found itself unable or unwilling to provide. There is also the question of how other nuclear-armed states respond to the act of nuclear terrorism on another member of that special club. It could reasonably be expected that following a nuclear terrorist attack on the United States, both Russia and China would extend immediate sympathy and support to Washington and would work alongside the United States in the Security Council. But there is just a chance, albeit a slim one, where the support of Russia and/or China is less automatic in some cases than in others. For example, what would happen if the United States wished to discuss its right to retaliate against groups based in their territory? If, for some reason, Washington found the responses of Russia and China deeply underwhelming, (neither “for us or against us”) might it also suspect that they secretly were in cahoots with the group, increasing (again perhaps ever so slightly) the chances of a major exchange. If the terrorist group had some connections to groups in Russia and China, or existed in areas of the world over which Russia and China held sway, and if Washington felt that Moscow or Beijing were placing a curiously modest level of pressure on them, what conclusions might it then draw about their culpability? If Washington decided to use, or decided to threaten the use of, nuclear weapons, the responses of Russia and China would be crucial to the chances of avoiding a more serious nuclear exchange. They might surmise, for example, that while the act of nuclear terrorism was especially heinous and demanded a strong response, the response simply had to remain below the nuclear threshold. It would be one thing for a non-state actor to have broken the nuclear use taboo, but an entirely different thing for a state actor, and indeed the leading state in the international system, to do so. If Russia and China felt sufficiently strongly about that prospect, there is then the question of what options would lie open to them to dissuade the United States from such action: and as has been seen over the last several decades, the central dissuader of the use of nuclear weapons by states has been the threat of nuclear retaliation. If some readers find this simply too fanciful, and perhaps even offensive to contemplate, it may be informative to reverse the tables. Russia, which possesses an arsenal of thousands of nuclear warheads and that has been one of the two most important trustees of the non-use taboo, is subjected to an attack of nuclear terrorism. In response, Moscow places its nuclear forces very visibly on a higher state of alert and declares that it is considering the use of nuclear retaliation against the group and any of its state supporters. How would Washington view such a possibility? Would it really be keen to support Russia’s use of nuclear weapons, including outside Russia’s traditional sphere of influence? And if not, which seems quite plausible, what options would Washington have to communicate that displeasure? If China had been the victim of the nuclear terrorism and seemed likely to retaliate in kind, would the United States and Russia be happy to sit back and let this occur? **In the charged** atmosphere immediately after a nuclear terrorist attack, how would the attacked country respond to pressure from other major nuclear powers not to respond in kind? The phrase “how dare they tell us what to do” immediately springs to mind. Some might even go so far as to interpret this concern as a tacit form of sympathy or support for the terrorists. This might not help the chances of nuclear restraint.

### Politics

### Minimum wage

#### Terminally non-unique – pay raise already happened

Rowley 1/16 James Rowley, writer for the Washington Post, “Federal judges in cost-of-living suit collect a 14 percent raise after years of legal battles”, January 16th, 2014, http://www.washingtonpost.com/politics/federal-judges-in-cost-of-living-suit-collect-a-14-percent-raise-after-years-of-legal-battles/2014/01/16/c06ee214-7eda-11e3-93c1-0e888170b723\_story.html

All federal judges — from Chief Justice John G. Roberts Jr. down to bankruptcy court judges — got five-figure raises because of a court ruling that erased pay freezes going back to 1995.¶ Their salaries rose by 14 percent on Jan. 1 as years of catch-up cost-of-living adjustments were added to their paychecks. “The law had promised them they would get these adjustments in the years all federal employees got them, and Congress blocked them,” Washington lawyer Christopher Landau said in a telephone interview. Landau represented six judges who filed a 2009 lawsuit challenging the denial of pay raises.¶ During the 1990s, as the size of congressional paychecks became a political issue, lawmakers canceled four automatic cost-of-living bumps for themselves and the judiciary. That led to lawsuits, including a class action that the judges won.¶ The Court of Federal Claims in Washington issued the final order last month.¶ In letters to Congress on Oct. 29 and Dec. 4 of last year, Attorney General Eric H. Holder Jr. informed lawmakers that the Justice Department was no longer contesting the court cases and would consent to applying pay adjustments to all members of the federal judiciary.¶ There are 781 members of the federal judiciary and 93 vacant judgeships, according to the courts’ Web site. That figure doesn’t include senior judges, who take a reduced workload and continue working part time.¶ The chief justice is now paid $255,500, up from $223,500, according to court documents and data compiled by Bloomberg News. The other Supreme Court justices now make $244,400, up from $213,900. U.S. Court of Appeals judges are getting $211,200 a year, up from $184,500. The annual salary of a U.S. District Court judge increased to $199,100 from $174,000.¶ This all goes back to the 1989 Ethics Reform Act, Public Law 101-94, which limited outside earnings of judges in exchange for giving them the cost-of-living raises received by other federal employees.¶ Later, when lawmakers took those pay adjustments away from themselves, they also denied the raises to the judges.¶ In 2012, the U.S. Court of Appeals for the Federal Circuit ruled in the case of six district and appellate judges that Congress had unconstitutionally cut the compensation to which federal judges were entitled under the 1989 ethics law.¶ That law “reduced judges’ income by banning outside income” such as honorariums for speeches, “but promised in exchange automatic maintenance of compensation — a classic legislative quid pro quo,” the court found.¶ The law pegged the salaries of district judges to the pay of House and Senate lawmakers.¶ Laws that Congress passed in 1995, 1996, 1997 and 1999 violated the Constitution’s compensation clause that bars a “diminution in judicial compensation,” the appeals court said. Congress erroneously applied another law to withhold two other cost-of-living adjustments from judges in 2007 and 2010, the court ruled.¶ The original six judges who sued received almost $940,000 in back pay, including pretax interest for the denial of their COLAs. Individual judges received payouts ranging from $147,930 to $163,155.

#### Article III terror trials will relax procedural protections and erode democratic rights across the board Glenn **Sulmasy 2009** THE NATIONAL SECURITY COURT SYSTEM A NATURAL EVOLUTION OF JUSTICE IN AN AGE OF TERROR – pg 155-156 Professor of law, commander, and judge advocate at the US Coast Guard Academy Perhaps the greatest concern to me (as well as many others concerned about the use of U.S. courts) is the potential for “bleed over” from the inevitable relaxations in traditional constitutional expectations when trying international terrorists in civilian courts. Some recognition by the Article III courts of the need for different standards (relaxed evidentiary and procedural rules) required for admitting evidence, prosecution guidelines, and other areas of procedure when prosecuting “war criminals” could begin a “slippery slope” within traditional law enforcement prosecutions. The civilian Article III courts would have to make exceptions in certain areas because there would be “unique” prosecutions- brought against an enemy of the United States that we are engaging in armed conflict and certainly in the context of a national emergency, and especially when the prosecution involves possible future attacks on the United States. Therefore, the potential for using these new, different standards in drug prosecution or Racketeer Influenced and Corrupt Organizations Act (RICO) prosecutions or others would likely have some advocates claiming that these too are “national crisis” cases that also require similar relaxed rules of evidence and decreased expectations of constitutional protections. In doing so, society, as well as some members of the bench and bar**, may seek to employ similar relaxations in these ordinary cases. This seemingly innocent and well intentioned relaxation of traditional standards would create the unintended consequence of erosion of the constitutional principles Americans hold as part of their citizenship.** This, above all other concerns, should be paramount to both policy makers and civil libertarians who seek to employ civilian courts. Ironically, some proponents’ zeal to give terrorists their “day in court” would create the potential of weakening our traditional protections held in such high regard by all U.S. citizens**. Every effort should be made to ensure that this does not occur. The best means to do so is to keep the terrorist prosecutions out of traditional courts and place them into specialized court systems. This ensures that the civilian system does not become tainted with such necessary relaxations and gives formal recognition that these international terrorists are not the average criminal- nor the average warrior.** Thus, although seemingly benign and well intentioned, the use of civilian courts to handle this threat is inappropriate. Those who advocate this use seem interested in returning to a pre-9/11 mentality that many have asserted set the stage for the attacks of that day. The best advice on why not to use civilian courts can be found in the hearings held by the 9/11 Commission and their report; this report details the need to recognize that the acts committed by al Qaeda are not ordinary criminal acts, or even similar to regional or national terrorists acts. Al Qaeda has declared war upon the United States and the West and we should never return to what we know has been unsuccessful.

#### Federal material witness statute makes detention without charge inevitable in the civilian court system- the plan removes this from the civilian court realm

Sudha **Setty 2010**

Comparative Perspectives On Specialized Trials For Terrorism  
http://digitalcommons.law.wne.edu/cgi/viewcontent.cgi?article=1151&context=facschol

The government also has used Article III courts proactively, to prevent planned terrorist acts from occurring and to elicit valuable counterterrorism and intelligence information as part of the interrogation, negotiation, and plea bargain process. The federal material witness statute, which empowers the government to detain and question individuals without charge has enhanced the ability of law enforcement to detain individuals with potentially relevant information for terrorism prosecutions, but it has also increased the potential for abuse of discretion and abuse of executive power. Nevertheless, the statute remains a potent tool for prosecutors within the ordinary criminal justice system. Perhaps ironically, although individual defendants and civil libertarians have objected to the scope and application of the material support and material witness statutes, the main criticism of using the criminal law to prosecute terrorism is that the tools available to prosecutors are not strong enough given the level of protections guaranteed to criminal defendants under the Constitution.

### Iran

#### No Israeli strikes---politics have changed

Mark Landler 13 NYT Reporter, "A Goal for Obama in Israel: Finding Some Overlap on Iran," March 18, 2013, [www.nytimes.com/2013/03/19/world/middleeast/obama-in-israel-visit-to-seek-common-ground-with-netanyahu-on-iran.html?pagewanted=1&nl=todaysheadlines&emc=edit\_th\_20130319](http://www.nytimes.com/2013/03/19/world/middleeast/obama-in-israel-visit-to-seek-common-ground-with-netanyahu-on-iran.html?pagewanted=1&nl=todaysheadlines&emc=edit_th_20130319)

Some analysts believe that Mr. Obama now holds the upper hand, in part because doubts about the wisdom of a unilateral strike have grown in Israel since last year, when it was widely discussed.¶ Iran has made enough progress reinforcing its Fordo nuclear facility that it is no longer clear whether Israeli warplanes could destroy it.¶ “There has been a dramatic change in the policy views of most Israeli elites since last fall,” Mr. Kupchan said. “There is a fresh sense that there’s not as much they can do militarily.”¶ The politics in Israel, moreover, have changed. Ehud Barak, the defense minister who was a leading hawk on Iran, has left Mr. Netanyahu’s cabinet. The prime minister’s new cabinet, though not necessarily composed of doves, will need to be briefed before the ministers are likely to vote in favor of unilateral action, analysts said.

#### No Israel strikes—Netanyahu and Barak have toned down the rhetoric and pressure from the US and Israeli elections prevents action.

NYT 13—New York Times [January 26, 2013, “Israeli Official Hints Pentagon Plans May Make Lone Strike on Iran Unnecessary,” http://www.nytimes.com/2013/01/27/world/middleeast/defense-official-hints-that-israel-is-stepping-back-from-plans-to-unilaterally-attack-iran.html?\_r=0]

Israel’s departing defense minister, Ehud Barak, said that the Pentagon had prepared sophisticated blueprints for a surgical operation to set back Iran’s nuclear program should the United States decide to attack — a statement that was a possible indication that Israel might have shelved any plans for a unilateral strike, at least for now.¶ In an interview conducted at the World Economic Forum in Davos, Switzerland, and published by The Daily Beast on Friday, Mr. Barak was asked if there was any way Israel could go to war with Iran over what many in the West believe is a nuclear weapons program without dragging in the United States.¶ Mr. Barak replied that there were more than just the two options — of full-scale war or allowing Iran to obtain nuclear weapons capability — in the event that sanctions and diplomacy failed.¶ “What we basically say is that if worse comes to worst, there should be a readiness and an ability to launch a surgical operation that will delay them by a significant time frame and probably convince them that it won’t work because the world is determined to block them,” he said.¶ Under orders from the White House, “the Pentagon prepared quite sophisticated, fine, extremely fine, scalpels,” Mr. Barak added, referring to the ability to carry out pinpoint strikes.¶ Herbert Krosney, an American-Israeli analyst and the author of a book about the arming of Iran and Iraq, said Mr. Barak’s statement now “indicates that there is close cooperation” between Israel and the United States following months of tension between the country’s leaders (though military and intelligence services continued to work together closely).¶ “I think there is a realization in Israel that it would be extremely difficult for Israel to operate alone,” he said.¶ Last year, Prime Minister Benjamin Netanyahu of Israel was pushing hard for the Obama administration to set clear “red lines” on Iran’s nuclear progress that would prompt the United States to undertake a military strike, infuriating the administration. And Mr. Barak repeatedly warned that because of Israel’s more limited military capabilities, its own window of opportunity to carry out an effective strike was closing.¶ It has appeared that Mr. Barak has drifted away from Mr. Netanyahu in recent months, sounding more conciliatory toward the Obama administration, but even the prime minister has become less antagonistic.¶ The Pentagon declined to comment on The Daily Beast report, but a senior defense official said, “The U.S. military constantly plans for a range of contingencies we might face around the world, and our planning is often quite detailed.” The official added, “That shouldn’t come as a surprise to anyone.”¶ In recent years, Mr. Barak and Mr. Netanyahu had become increasingly alarmed as Iran moved forward with a nuclear program that it says is solely for peaceful purposes, but that Israel, the United States and others believe is geared toward producing a bomb. The two men consistently emphasized Israel’s doctrine of self-reliance for such existential issues.¶ But faced with tough opposition from Washington and public criticism from a string of former Israeli security chiefs, the prospect of an imminent unilateral Israeli strike receded in recent months.¶ In the past few weeks Mr. Netanyahu campaigned for re-election in Israel as a strong leader who, among other things, had managed to persuade the world to deal with the Iranian threat.¶ Mr. Netanyahu and his conservative Likud Party emerged weakened from the elections, with much of the Israeli electorate more focused on domestic issues. In a speech after the voting, he said, “The first challenge was and still is to prevent Iran from acquiring nuclear weapons.” But he did not again threaten to go it alone.

#### The squo costs more capital than the plan- bipartisan opposition, public popularity, and rights groups

[Bansi Bhatt](http://www.policymic.com/profiles/27672/bansi-bhatt) January 2013   
NDAA 2013 Allows Indefinite Detention Of U.S. Citizens By President  
<http://www.policymic.com/articles/22288/ndaa-2013-allows-indefinite-detention-of-u-s-citizens-by-president>

This notion of detaining U.S. citizens has people screaming on both sides of the aisle, such as Senator Dianne Feinstein (D - Calif.) and Senator Rand Paul (R - Ky.). Some argue that the bill does not allow the indefinite detention of U.S. citizens because one part of the bill states that it will not change the law in regards to the detention of U.S. citizens. However, with further examination, it becomes clear that another part of the bill actually states that it will change the law. From this, another argument arises which is that the provisions are too vague. With all this in mind, it should be noted that it is left up to the executive branch to decide whether or not it will adopt these powers. The president has made it clear that his administration will not be detaining U.S. citizens. But nonetheless, this provision in particular has civil liberties activists barking mad. Civil liberties groups believe that this bill further strengthens the power of the federal government and continues to infringe upon our constitutional rights as citizens of the United States of America. Civil liberties groups point out that this is not the only time Obama has signed a bill that he threatened to veto. Executive director of the Bill of Rights Defense Committee, Shahid Buttar, made a public statement in regards to the president signing the NDAA. Very poignantly, [Buttarnoted](http://www.salon.com/2013/01/03/obama_signs_ndaa_again/), “Once again, Obama has failed to lead on Guantánamo and surrendered closure issues to his political opponents in Congress. In one fell swoop, he has belied his recent lip-service about a continued commitment to closing Guantánamo.” This argument is shared by many Americans who are disappointed that Obama has signed the NDAA, and argue that he has failed to keep his promise and has failed to take appropriate action when it comes to Guantánamo. But overall, this is a clear example of “politics as usual” and the failure of politicians to act on their promises.

#### Political capital is a joke- Congressional voting is determined by ideology

Richard **Fleisher** Fordham University Professor Department of Political Science Jon R. **Bond** Texas A&M University Professor Department of Political Science **and** B. Dan **Wood** Texas A&M University Professor Department of Political Science “Which Presidents Are Uncommonly Successful in Congress?” **2008**. In Bert A. Rockman and Richard W. Waterman (eds.), Presidential Leadership: The Vortex of Power. Oxford University Press, pp. 191-213 http://webdoc.sub.gwdg.de/ebook/p/2005/american\_congress/congress.wustl.edu/fleisher.pdf

Presidency scholars claim that presidential success is a function of both skill and political conditions. Although students of presidential-congressional relations have been unable to demonstrate convincingly that presidential activities systematically affect success, the literature provides substantial theory and evidence regarding the political conditions that determine presidential success in Congress. Our analysis contributes additional evidence that presidential success on the floor of Congress is determined primarily by whether political conditions are favorable or unfavorable. Although our model leaves some variance unexplained, few of the residuals would be considered outliers. That is, none of the ten presidents analyzed here were uncommonly successful or unsuccessful relative to the conditions they faced. The few instances of uncommon success could occur by random chance. Presidential skill, nonetheless, continues to occupy a central, if not dominant, position in the literature. This analysis cannot refute skill as an explanation. Previous research has found a number of interesting and important cases on which a skilled performance (or lack of it) made the difference between success and failure. But the debate over the relative importance of skills cannot be resolved simply by agreeing that skills matter some of the time on some issues. If presidential skill is to provide a theoretical understanding of presidential success on par with that provided by political conditions, then we should be able to observe more than idiosyncratic effects on a small number of issues. The burden of providing systematic evidence rests on proponents of the skill part of the explanation. The persistent failure to find systematic evidence should raise doubts about skill as scientific theory. We should also continue to work to improve our understanding of the conditions that affect presidential success, and how they operate. Our finding of significant interactions of party polarization with public approval and majority control is noteworthy. Party control sets the basic condition for presidential success, and presidents do somewhat better in their honeymoon year. The marginal effect of public opinion on success is conditioned by the level of partisanship in Congress. At low levels of partisanship, the president’s standing with the public has a modest positive effect on success. But at high levels of partisanship, which have characterized Congress in recent decades, the marginal effect of public approval diminishes (and even turns negative in the House). Party polarization also interacts with party control, enhancing the benefit of majority status. Thus, polarized parties further reduce the ability of presidential activities to affect success even at the margins. In polarized periods, electoral processes reduce the number of moderate and cross-pressured members, the very members who are most inclined to search beyond the primary cues of party and ideology for guidance in making decisions. Fewer members who look beyond party and ideology, means fewer members subject to presidential persuasion. This condition places a high premium on having majorities in the House and Senate. Unless the level of partisanship in Congress declines, a rational strategy for a president who seeks to improve his legislative success is to focus on maintaining or winning partisan majorities in the House and Senate. President Bush seems to have successfully followed this strategy in the 2002 midterm elections. Ironically, electoral activities aimed at electing sympathetic majorities in Congress are likely to contribute to more party polarization.

#### Congress won’t backlash against itself

## OLC CP

#### Interp- reject object fiat

#### The president is the object of the resolution

#### The CP would fiat a mindset of the object

#### Justifies a CP to not go to war with X country to solve all of our advantages

#### Not a fair test of the lit – we test how to DEAL with power not how to use the power you have

#### Destroys limits- there are an infinite number of ways to use power and an infinite number of things you could attack or not attack

#### Do both

#### Executive action risks rollback – plan/perm solve it

Richard Wolf, citing Paul Light, 10-27-11 Public Service Professor

“Obama Uses Executive Powers to Get Past Congress,” USA TODAY, [www.usatoday.com/news/washington/story/2011-10-26/obama-executive-orders/50942170/1](http://www.usatoday.com/news/washington/story/2011-10-26/obama-executive-orders/50942170/1)

On all three initiatives, Obama used his executive authority rather than seeking legislation. That limited the scope of his actions, but it enabled him to blow by his Republican critics. "It's the executive branch flexing its muscles," presidential historian and author Douglas Brinkley says. "President Obama's showing, 'I've still got a lot of cards up my sleeve.'" The cards aren't exactly aces, however. Unlike acts of Congress, executive actions cannot appropriate money. And they can be wiped off the books by courts, Congress or the next president. Thus it was that on the day after Obama was inaugurated, he revoked one of George W. Bush's executive orders limiting access to presidential records. On the very next day, Obama signed an executive order calling for the Guantanamo Bay military detention facility in Cuba to be closed within a year. It remains open today. Harry Truman's federal seizure of steel mills was invalidated by the Supreme Court. George H.W. Bush's establishment of a limited fetal tissue bank was blocked by Congress. Bill Clinton's five-year ban on senior staff lobbying former colleagues was lifted eight years later — by Clinton. "Even presidents sometimes reverse themselves," says Paul Light, a professor of public service at New York University. "Generally speaking, it's more symbolic than substantive."

#### Obama uniquely proves rollback of the OLC through covert action—even if they win that executives don’t typically roll back decisions Obama is a bastard

Jack Goldsmith, 7-15-13 Professor at Harvard Law School

Blaming (or Crediting) the Lawyers for Our Syria Policy Lawfare Blog, 7-15, http://www.lawfareblog.com/2013/07/blaming-or-crediting-the-lawyers-for-our-syria-policy/

First, the Obama administration has continued controversial Bush-era interpretations of international law related to intervention – such as the use of the “unwilling or unable” standard in assessing self-defense for drone strikes – when it suits their interests. Second, the administration has in other contexts interpreted international law opportunistically when it wants to intervene, such as when it read UNSCR 1973 very broadly (many say too broadly) in removing Gadhafi in Libya. Third, the President has overruled OLC on legal matters concerning domestic law when he wanted to continue an intervention (I am thinking here of the President’s disregard of OLC Libya War Powers Resolution advice), and could surely do the same with legal advice concerning international law in a similar context. And fourth, according to both the WSJ and the NYT, the administration eventually went forward with the military aid to certain Syrian rebels in any event, even though it could not find a justification to do so under international law – but it did so through CIA covert action rather than through more open channels. I have no doubt that law and lawyers and concern for creating unfavorable precedents are influencing this debate inside the administration. But the responsibility for the halting nature and scope of the USG’s intervention in Syria cannot be placed on the lawyers’ shoulders. It rests with the President, who has plenty of legal room for more aggressive intervention if he wants to do more. (For what it is worth, I find the President’s reluctance to intervene admirable and appropriate – but I think that he alone, and not the lawyers, deserves credit, or blame, for our Syria policy.)

#### Do the CP

#### Can’t solve the aff- the CP text wouldn’t have the OLC announce their decision- even if you win that it’s binding, it’s published in a law review and not perceived

Cornelia T Pillard 2005 –Faculty Director - Supreme Court Institute at Georgetown University Law

Michigan Law Review, “The Unfulfilled Promise of the Constitution in Executive Hands”, 103 Mich. L. Rev. 676-758

The SG's Office now has a publicly accessible, searchable database with all its briefs, and all arguments to and decisions of the Supreme Court are made public and routinely covered by the national news media. When it comes to public scrutiny, the larger problem lies with OLC, whose opinions typically relate to actions under consideration but not yet taken, and are therefore covered by deliberative-process privilege. Compare the secrecy of the OLC torture memo before it was leaked with the public scrutiny of the SG's positions in the recent detainee cases.22 ' Harold Koh identifies as one of OLC's major problems this "opacity" of its work, "namely, the danger that it will support political action with a legal opinion that cannot be publicly examined or tested."2'22 Koh's proposed corrective - broad publication of OLC opinions - proves elusive in practice. OLC seeks to publish some opinions after the immediate issues are no longer hot. But Koh relates chilling examples of OLC's opacity in his litigation over the fate of Haitian refugees interdicted ten miles off the United States coast and repatriated to Haiti without due process. One "public" OLC opinion explaining that the president had extended the United States' territorial waters from three to twelve miles offshore was printed only in "an obscure law review called the Territorial Sea Journal" that Koh, by sheer happenstance, saw mentioned in a draft of a symposium paper.223 Koh then filed suit arguing that the refugees were entitled to due process, relying on publicly available OLC opinions on the due process rights of refugees, only later to discover when confronted with a motion for hefty Rule 11 sanctions that OLC had secretly overruled its earlier opinions in an unpublished opinion letter during the course of another refugee litigation. In the ensuing decade, publication of OLC constitutional advice remains spotty.

#### An NSC would literally create an entire court system through congressional legislation- solves perception

#### Can’t solve terrorism—wouldn’t close Gitmo, even if you do it wouldn’t close camp x ray which an external internal link to the alliances which are key to solve terrorism through intel sharing

#### Links to politics – DADT proves

Marybeth Ulrich June 2008 (SSI) Strategic Studies Institute of the US Army War College

mercury.ethz.ch/serviceengine/Files/ISN/90207/.../Chapter\_5.pdf‎ European Studies – Wilson Center National Security Powers: Are the Checks in Balance?

Executive orders have mainly been used in three areas: to combat various forms of discrimination against citizens, to increase White House control over the executive branch, and to maintain secrets.21 When Congress perceives that executive orders are taken to bypass Congress on controversial issues, they may elicit great political controversy and be a source of conflict between the two branches. This is why the congressional reaction to President George W. Bush’s series of executive orders authorizing the National Security Agency (NSA) to eavesdrop on the conversations of Americans without warrants as required in the Foreign Intelligence Surveillance Act (FISA) has been uncharacteristically strong. Members of Congress on both sides of the aisle saw the action as a challenge to the Congress’ power vis-à-vis the executive. Even the prospect of an executive order being issued can erupt in major political controversy as was the case with President Bill Clinton’s proposal to lift the ban on gays serving in the military. There was no question that the President had the legitimate authority to issue such an order as President Truman had done to integrate the armed forces in 1948, but the political backlash was so strong in 1993 that President Clinton abandoned the idea in order to salvage his domestic agenda before Congress.22

## Flex

#### No link to restrictions, if the impact is true the threat will be convicted in court or indefinitely detained until the end of hostilities Jack **Goldsmith**\* February 4, **2009** Long-Term Terrorist Detention and Our National Security Courthttp://www.brookings.edu/~/media/research/files/papers/2009/2/09%20detention%20goldsmith/0209\_detention\_goldsmith.pdf One could argue that there should be no outside limit on the time period available for detention orders. England limits non-criminal detention to 28 days,43 and France limits it to 6 days unless someone is charged with a crime. But these limited detention periods assume that war powers are not in play.44 Moreover, if someone poses a very serious threat to the United States and cannot practically be tried, a single period of detention is unlikely to mitigate the threat. So there exists a legitimate need for a longer term period of detention. At the same time, Congress should not lightly countenance indefinite detention, especially under some of the looser standards articulated above. The appropriate compromise is for a detention order to be limited to some period of time, say six months, and then be subject to renewal using the same processes as governed the initial order. In each instance, the government will have to convince the national security court that the individual remains a threat and satisfies other detention criteria. The fact that the government will have to repeatedly come back to court to justify its detention will also be a natural constraint on the expansion of preventative detention. Many prosecutors will dislike the continued need to justify detention and will favor prosecution where possible instead. At some point, moreover, the periods of semi-annual detention will begin to look more criminal in their nature than civil. As detention continues for years, it may be appropriate to require an escalating burden of proof on the government—perhaps from a “preponderance of the evidence” standard to something more akin to “clear and convincing evidence” or “beyond a reasonable doubt.” In the alternative, it may be appropriate to insist on specialized procedures that are triggered when an individual is detained for more than a certain number of years.

#### Prez could get retroactive approval for an emergency second strike

Fisher 1995 (Louis Fisher, Senior Specialist in Separation of Powers at the Congressional Research Service at The Library of Congress, 1994-95, Political Science Quarterly Volume 109 Number 5, JSTOR)

Does the specter of nuclear war - unknown to the Framers - require concentrating in the president the sole responsibility for launching missiles? That is a beguiling, but misleading proposition. There is a difference between first use of nuclear weapons (any initiation of war ¶ requires prior congressional authority) and retaliatory second strikes ¶ (a unilateral presidential power pursuant to the executive duty to repel ¶ sudden attacks). Policy makers generally assume that nuclear weapons ¶ would be used only after a conventional war escalates, over a period ¶ of weeks or months, to a nuclear confrontation. Time is available ¶ within the executive branch to debate and decide the use of nuclear ¶ weapons, permitting adequate opportunity for a congressional role." ¶ If presidents decide that an emergency requires action without first ¶ obtaining approval from Congress, it is far better for them to use ¶ military force on suspect authority and come later to Congress to ¶ explain what they did, why they acted, and request Congress to provide¶ retroactive authorization. The burden is wholly on the president to ¶ make the case. Congress is the only branch that can confer legitimacy ¶ on an emergency measure. That is the procedure Abraham Lincoln ¶ used in the Civil War. It is the model for all presidents. Congress ¶ should not attempt to provide advance authority for every type of ¶ emergency action. Having been burned on the Tonkin Gulf Resolution, ¶ the Senate Foreign Relations Committee concluded in 1969: ¶ Finally, should the president find himself confronted with a situation of such ¶ complexity and ambiguity as to leave him without guidelines for constitutional ¶ action, it would be far better for him to take the action he saw fit without ¶ attempting to justify it in advance and leave it to Congress or the courts to ¶ evaluate his action in retrospect. A single unconstitutional act, later explained ¶ or pronounced unconstitutional, is preferable to an act dressed up in some ¶ spurious, precedent-setting claim of legitimacy.12

#### NSC wont link to your pres flex net benefits- we link turn this **Kevin E. Lunday\* and Harvey Rishikof\*\*** **Fall 2008** \* Kevin E. Lunday is a Captain and judge advocate in the U.S. Coast Guard. The views expressed in this article are those of the author and do not reflect the official policy or position of the Commandant or Judge Advocate General, the U.S. Coast Guard, the Department of Homeland Security, or the U.S. Government. \*\* Harvey Rishikof is a professor of law and former chair of the Department of National Security Strategy, National War College. The views expressed in this article are those of the author and do not reflect the official policy or position of the National Defense University, the National War College, the U.S. Department of Defense, or the U.S. Government. <http://www.lexisnexis.com/lnacui2api/mungo/lexseestat.do?bct=A&risb=21_T18256136877&homeCsi=138801&A=0.9712615206089685&urlEnc=ISO-8859-1&&citeString=39%20Cal.%20W.%20Int'l%20L.J.%2087,at%2094&countryCode=USA&_md5=00000000000000000000000000000000> The involvement of an Article III court in review of actions traditionally reserved almost entirely to the discretion of the executive raises concerns about interference with the President's constitutional commander-in-chief and foreign relations powers to direct military operations under the laws of war or the statutory authority to direct special activities such as covert actions. [n98](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-23.930436.7390262749&target=results_DocumentContent&returnToKey=20_T18256147522&parent=docview&rand=1380406808850&reloadEntirePage=true#n98) However, the executive's authority is not plenary. Article I of the Constitution provides Congress with the power to make rules for capture on land and sea. [n99](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-23.930436.7390262749&target=results_DocumentContent&returnToKey=20_T18256147522&parent=docview&rand=1380406808850&reloadEntirePage=true#n99) Additionally, Congress is granted authority by statute to conduct general oversight of certain special activities. [n100](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-23.930436.7390262749&target=results_DocumentContent&returnToKey=20_T18256147522&parent=docview&rand=1380406808850&reloadEntirePage=true#n100) The NSC's jurisdiction provides a constitutional balance between these grants of authority, without interfering with the President's prerogative to direct military operations as commander-in-chief, nor Congress' authority to make laws and provide oversight in order to ensure political accountability. [n101](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-23.930436.7390262749&target=results_DocumentContent&returnToKey=20_T18256147522&parent=docview&rand=1380406808850&reloadEntirePage=true#n101)

## Legalism K

#### Academic debate regarding war powers makes checks on excessive presidential authority effective---college students are the unique internal link

Kelly Michael Young 13, Associate Professor of Communication and Director of Forensics at Wayne State University, "Why Should We Debate About Restriction of Presidential War Powers", 9/4, public.cedadebate.org/node/13

Beyond its obviously timeliness, we believed debating about presidential war powers was important because of the stakes involved in the controversy. Since the Korean War, scholars and pundits have grown increasingly alarmed by the growing scope and techniques of presidential war making. In 1973, in the wake of Vietnam, Congress passed the joint War Powers Resolution (WPR) to increase Congress’s role in foreign policy and war making by requiring executive consultation with Congress prior to the use of military force, reporting within 48 hours after the start of hostiles, and requiring the close of military operations after 60 days unless Congress has authorized the use of force. Although the WPR was a significant legislative feat, 30 years since its passage, presidents have frequently ignores the WPR requirements and the changing nature of conflict does not fit neatly into these regulations. After the terrorist attacks on 9-11, many experts worry that executive war powers have expanded far beyond healthy limits. Consequently, there is a fear that continued expansion of these powers will undermine the constitutional system of checks and balances that maintain the democratic foundation of this country and risk constant and unlimited military actions, particularly in what Stephen Griffin refers to as a “long war” period like the War on Terror (http://www.hup.harvard.edu/catalog.php?isbn=9780674058286). In comparison, pro-presidential powers advocates contend that new restrictions undermine flexibility and timely decision-making necessary to effectively counter contemporary national security risks. Thus, a debate about presidential wars powers is important to investigate a number of issues that have serious consequences on the status of democratic checks and national security of the United States.¶ Lastly, debating presidential war powers is important because we the people have an important role in affecting the use of presidential war powers. As many legal scholars contend, regardless of the status of legal structures to check the presidency, an important political restrain on presidential war powers is the presence of a well-informed and educated public. As Justice Potter Stewart explains, “the only effective restraint upon executive policy and power…may lie in an enlightened citizenry – in an informed and critical public opinion which alone can protect the values of a democratic government” (http://www.law.cornell.edu/supct/html/historics/USSC\_CR\_0403\_0713\_ZC3.html). As a result, this is not simply an academic debate about institutions and powers that that do not affect us. As the numerous recent foreign policy scandals make clear, anyone who uses a cell-phone or the internet is potential affected by unchecked presidential war powers. Even if we agree that these powers are justified, it is important that today’s college students understand and appreciate the scope and consequences of presidential war powers, as these students’ opinions will stand as an important potential check on the presidency.

#### External checks on pres war powers are effective

Aziz Z. Huq 12, Assistant Professor of Law, University of Chicago Law School, "Binding the Executive (by Law or by Politics)", May 25, www.law.uchicago.edu/files/file/400-ah-binding.pdf

Paulson ’ s genuflection and Obama ’ s reticence, I will contend here, are symptomatic of our political system ’ s operation rather than being aberration al . It is generally the case that even in the heart of crisis, and even on matters where executive competence is supposedly at an acme , legislators employ formal institutional powers not only to delay executive initiatives but also affirmatively to end presidential policies. 20 Numerous examples from recent events illustrate the point. Congressional adversaries of Obama, for instance, cut off his policy of emptying Guantánamo Bay via appropriations riders. 21 Deficit hawks spent 2011 resisting the President’s solutions to federal debt, while the President declined to short - circuit negotiations with unilateral action. 22 Even in military matters, a growing body of empirical research suggests Congress often successfully influences the course of overseas engagements to a greater degree than legal scholars have discerned or acknowledged. 23¶ That work suggests that the failure of absolute congressional control over military matters cannot be taken as evidence of “the inability of law to constrain the executive ” in more subtle ways (p 5). The conventional narrative of executive dominance , in other words, is at best incomplete and demands supplementing .¶ This Review uses The Executive Unbound as a platform to explore how the boundaries of discretionary executive action are established. As the controversial national security policies of the Bush administration recede in time, the issue of executive power becomes ripe for reconsideration. Arguments for or against binding the executive are starting to lose their partisan coloration. There is more room to investigate the dynamics of executive power in a purely positive fashion without the impinging taint of ideological coloration.¶ Notwithstanding this emerging space for analys i s, t here is still surprising inattention to evidence of whether the executive is constrained and to the positive question of how constraint works. The Executive Unbound is a significant advance because it takes seriously this second “ mechanism question. ” Future studies of the executive branch will ignore its i mportant and trenchant analysis at their peril. 24 Following PV ’ s lead, I focus on the descriptive , positive question of how the executive is constrained . I do speak briefly and in concluding to normative matters . B ut f irst and foremost, my arguments should be understood as positive and not normative in nature unless otherwise noted.¶ Articulating and answering the question “ W hat binds the executive ?” , The Executive Unbound draws a sharp line between legal and political constraints on discretion — a distinction between laws and institutions on the one hand, and the incentives created by political competition on the other hand . While legal constraints usually fail, it argues, political constraints can prevail. PV thus postulate what I call a “strong law/ politics dichotomy. ” My central claim in this Review is that this strong law/politics dichotomy cannot withstand scrutiny. While doctrinal scholars exaggerate law ’s autonomy, I contend, the realists PV underestimate the extent to which legal rules and institutions play a pivotal role in the production of executive constraint. Further, the political mechanisms they identify as substitutes for legal checks cannot alone do the work of regulating executive discretion. Diverging from both legalist and realist positions, I suggest that law and politics do not operate as substitutes in the regulation of executive authority. 25 They instead work as interlocking complements. An account of the borders of executive discretion must focus on the interaction of partisan and electoral forces on the one hand and legal rules. It must specify the conditions under which the interaction of political actors’ exertions and legal rules will prove effective in limiting such discretion.

#### Best recent scholarship and examples prove

Aziz Z. Huq 12, Assistant Professor of Law, University of Chicago Law School, "Binding the Executive (by Law or by Politics)", May 25, www.law.uchicago.edu/files/file/400-ah-binding.pdf

There is some merit to this story. But in my view it again understates the observed effect of positive legal constraints on executive discretion. Recent scholarship, for example, has documented congressional influence on the shape of military policy via framework statutes . This work suggests Congress influences executive actions during military engagements through hearings and legislative proposals. 75 Consistent with this account, two legal scholars have recently offered a revisionist history of constitutional war powers in which “ Congress has been an active participant in setting the terms of battle, ” in part because “ congressional willingness to enact [ ] laws has only increased ” over time. 76 In the last decade, Congress has often taken the initiative on national security, such as enacting new statutes on military commissions in 2006 and 2009. 77 Other recent landmark security reforms, such as a 2004 statute restr ucturing the intelligence community, 78 also had only lukewarm Oval Office support. 79 Measured against a baseline of threshold executive preferences then , Congress has achieved nontrivial successes in shaping national security policy and institutions through both legislated and nonlegislated actions even in the teeth of White House opposition.

#### Posner and Vermuele vastly overgeneralize --- law can effectively restrain the executive

Aziz Z. Huq 12, Assistant Professor of Law, University of Chicago Law School, "Binding the Executive (by Law or by Politics)", May 25, www.law.uchicago.edu/files/file/400-ah-binding.pdf

The Executive Unbound paints a n image of executive discretion almost or completely unbridled by law or coequal branch. But PV also concede that “ the pre sident can exert control only in certain [policy] areas ” (p 59). 51 They give no account, however, of what limits a President ’ s discretionary actions. To remedy that gap, this Section explores how the President has been and continues to be hemmed in by Congress and law. My aim here is not to present a comprehensive account of law as a constraining mechanism. Nor is my claim that law is always effective. Both as a practical matter and as a result of administrative law doctrine, the executive has considerable a uthority to leverage ambiguities in statutory text into warrants for discretionary action. 52 Rather, my more limited aspiration here is to show that Congress and law do play a meaningful role in cabining executive discretion than The Executive Unbound credits . I start with Congress and then turn to the effect of statutory restrictions on the presidency.¶ Consider first a simple measure of Presidents ’ ability to obtain policy change : Do they obtain the policy changes they desire? Every President enters office with an agenda they wish to accomplish. 53 President Obama came into office, for example, promising health care reform, a cap - and - trade solution to climate change, and major immigration reform. 54 President George W. Bush came to the White House committed to educational reform, social security reform, and a new approach to energy issues. 55 One way of assessing presidential influence is by examining how such presidential agendas fare , and asking whet her congressional obstruction or legal impediments — which could take the form of existing laws that preclude an executive policy change or an absence of statutory authority for desired executive action — is correlated with presidential failure. Such a correlation would be prima facie evidence that institutions and laws play some meaningful role in the production of constraints on executive discretion. ¶ Both recent experience and long - term historical data suggest presidential agenda items are rarely achieved , and that legal or institutional impediments to White House aspirations are part of the reason . In both the last two presidencies, the White House obtained at least one item on its agenda — education for Bush and health care for Obama — but failed to secure othe rs in Congress . Such limited success is not new. His famous first hundred days notwithstanding, Franklin Delano Roosevelt saw many of his “ proposals for reconstruction [of government] . . . rejected outright. ” 56 Even in the midst of economic crisis, Congres s successfully resisted New Deal initiatives from the White House . This historical evidence suggests that the diminished success of presidential agendas cannot be ascribed solely to the narrowing scope of congressional attention in recent decades; it is a n older phenomenon. Nevertheless, in more recent periods, presidential agendas have shrunk even more . President George W. Bush ’ s legislative agenda was “ half as large as Richard Nixon ’ s first - term agenda in 1969 – 72, a third smaller than Ronald Reagan ’ s firs t - term agenda in 1981 – 84, and a quarter smaller than his father ’ s first - term agenda in 1989 – 92. ” 57 The White House not only cannot always get what it wants from Congress but has substantially downsized its policy ambitions.¶ Supplementing this evidence of pr esidential weakness are studies of the determinants of White House success on Capitol Hill . These find that “ presidency - centered explanations ” do little work. 58 Presidents ’ legislative agendas succeed not because of the intrinsic institutional characteristi cs of the executive branch, but rather as a consequence of favorable political conditions within the momentarily dominant legislative coalition. 59 Again, correlational evidence suggests that institutions and the legal frameworks making up the statutory status quo ante play a role in delimiting executive discretion.

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#### No more intervention

Mandelbaum 11 (Michael Mandelbaum, A. Herter Professor of American Foreign Policy, the Paul H. Nitze School of Advanced International Studies, Johns Hopkins University, Washington DC; and Director, Project on East-West Relations, Council on Foreign Relations, “CFR 90th Anniversary Series on Renewing America: American Power and Profligacy,” Jan 2011) <http://www.cfr.org/publication/23828/cfr_90th_anniversary_series_on_renewing_america.html?cid=rss-fullfeed-cfr_90th_anniversary_series_on-011811&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed:+cfr_main+(CFR.org+-+Main+Site+Feed>

MANDELBAUM: I think it is, Richard. And I think that **this period really goes back two decades**. **I think the wars or the interventions in Somali**a, in Bosnia, in Kosovo, in **Haiti** belong with the interventions in **Afghanistan** and **Iraq**, although they were undertaken by different administrations for different reasons, and had different costs. But **all of them ended up in the protracted, unexpected, unwanted and expensive task of nation building.** **Nation building has never been popular. The country has never liked it. It likes it even less now. And I think we're not going to do it again**. We're not going to do it because **there won't be enough money**. We're not going to do it because **there will be other demands on the public purse.** We won't do it because **we'll be busy enough doing the things** that **I think ought to be done in foreign policy**. And we won't do it **because it will be clear to politicians that the range of legitimate choices that they have in foreign policy will have narrowed and will exclude interventions of that kind.** So I believe and I say in the book that the last -- **the first two post-Cold War decades can be seen as a single unit**. And **that** **unit has come to an end**.

#### Professors agree---NK has no capability no matter how crazy they are

Neuman ‘13 SCOTT NEUMAN, NPR "How Credible Are North Korea's Threats?," March 9 www.npr.org/2013/03/09/173839660/how-credible-are-north-koreas-threats

**Simply possessing a static nuclear device**, however, **is not the same as having one that can be launched atop a missile,** Lind says.¶ **North Korea's claims aside, the physical size of the device used in the most recent test seem likely to be "way too big" to launch on a missile or even deliver, in any practical sense**, by airplane, she says.¶ George **Lopez, a political science professor** at the University of Notre Dame, **is more emphatic. Even if the North had a small, deliverable weapon,** he says, "I think most of the bets are that **they do not have the capability to reliably reach a target**."¶ "**They don't seem to have the booster they need to get a workable weapon to land where they want it to,**" Lopez says.¶ "**Could they build something**, load it on an airplane and drop it over South Korea? Maybe, but **it would [be]** pretty difficult, **probably impossible**."¶ \*\*\*First 2 paragraphs cite Jennifer Linn, associate professor of government @ Dartmouth

### Politics

#### Israel wont strike—all eyes are on it and logistical hurdles – empirics

Keiler, 10 [7/25/10, Jonathan F , former captain in the Army's Judge-Advocate General Corps, The American Thinker, “Surprise! Why An Israeli Strike on Iran is Unlikely”, http://www.americanthinker.com/2010/07/surprise\_why\_an\_israeli\_strike.html

If Israel does launch a military strike against Iran's nuclear facilities it will be the most widely anticipated military operation in modern history, even more so than D-Day or the 2003 campaign against Iraq. The buildup to those operations lasted a few years. Speculation about an Israeli strike on Iran has persisted for more than a decade. And this leads one to the most obvious of conclusions -- that **if Israel has not struck yet, it won't.** I don't pretend to know one way or the other, but the fact that conditions for an Israeli strike against Iran were more favorable a few years ago than they are today is a relatively persuasive argument that the window of opportunity, if it ever existed, may have passed. In a recent piece, The Weekly Standard's Reuel Marc Gerecht makes this point, among many others. But the gist of Gerecht's piece is that if the leadership of the Israeli Air Force (IAF) believes that military success is probable, then the widely bruited, supposedly disastrous consequences of such a strike, (e.g. Iranian counter moves in the Persian Gulf and against American and Israeli interests, strengthening of the Iranian regime, weakening of opposition movements, etc.) are much overrated. Gerecht makes a compelling case for an Israeli strike, if the IAF leadership thinks it is feasible. Where I think he may err -- and many other pundits as well -- is in guessing that if the IAF proposes a plan, that Israeli Prime Minister Benjamin Netanyahu would be particularly inclined accept an optimistic IAF evaluation and launch a strike. Of course, nobody knows the exact conditions for a successful IAF strike, although if you want a hypothetical plane-by-plane and target-by-target operational plan the Center for Strategic and International Studies produced one for general consumption. The real question is at what point Israel's political leadership pushes past the uncertainty. Here the threshold is likely much higher than Gerecht and other like-minded pundits imagine. It's true historically that Israel's leadership has put great faith in the IAF, and that this confidence has generally been well rewarded. The IAF is the world's only air force to have taken out enemy nuclear installations, and it is a perfect two-for-two in that regard (against Iraq and Syria.) Likewise, the IAF had spectacular successes in the 1967 War and the 1982 Lebanon War. On the other hand, over-reliance in the ability of Israel's airman to solve its military problems led to setbacks in the 1973 Yom Kippur War and the 2006 Lebanon War. Gerecht not only places great store on what the IAF might tell Netanyahu but on the fact that Netanyahu is an ardent Zionist and Israeli patriot. And for that matter, there is little reason to doubt the bona fides of Defense Minister Ehud Barak, or any other element of Israel's mainstream leadership when it comes to a genuine desire to protect the nation. The radical anti-Zionist Israeli left has yet to come to power, and hopefully never will. Gerecht also particularly cites the Netanyahu's family background, noting that his father was a famous scholar of oppressed Spanish Jewry, and his brother, the only commando to die at Entebbe. Here is an implication that Netanyahu might be willing gamble on the IAF if he truly believes Iran is near to producing a nuclear weapon. But the brother who is likely to have the most influence on Netanyahu is not his fallen older brother Jonathan, but rather his younger brother Iddo, who has over the past decades devoted much time and effort to detailing the circumstances of Jonathan Netanyahu's death at Entebbe, the results of which are sobering. For the truth is, the military situation vis a vis Iran is in many ways more similar to Entebbe, than it is to the surgical anti-nuclear strikes carried out by the IAF against Iraq and Syria. And the reasons for this are the issues of complexity and surprise. **An Israeli attack on Iran would be an enormously complex undertaking, so much so, that the actual point the attack, dropping bombs on Iran's nuclear facilities, is but one facet of a gigantic political, diplomatic, logistic, technical, and operational problem.** It is similar to the situation faced at Entebbe, when the problem of getting a rescue force from Israel into the heart of Africa to a large extent subsumed the actual goal of the raid -- rescuing the hostages. The truth about Entebbe, divorced from superficial accounts of daring, heroism and Hollywood fantasy, is that the raid, which can legitimately be considered the boldest and most successful hostage rescue in history, came very close to becoming a tragic failure. There is insufficient space here for a full detailed account of the matter, but the actual rescue of the hostages was arguably the weakest part of the plan, and the portion of the operation that came closest to failure. In summary, Entebbe occurred in 1976, when Western armies were still adjusting to the problem of suicidal hostage takers, and sophisticated hostage rescue techniques were in their infancy. Many devices rescue forces take for granted today, such as flash bang grenades or night vision devices, were unavailable. Success, even for the best troops, was a hit and miss affair. Two years before Entebbe, at a high school in the northern Israeli town of Ma'alot, a botched IDF rescue attempt resulted in scores of deaths and injuries. The Entebbe rescue plan sought to avoid another Ma'alot through the element of surprise. It called for a thirty man sayeret matkal team (led by Lieutenant Colonel Netanyahu) to immediately drive off the first aircraft to land at Entebbe in a black Mercedes and a pair of Land Rovers meant to imitate Ugandan President Idi Amin's motorcade. The commandos themselves were crudely disguised in Ugandan style uniforms and blackface, and carried AK-47s like the Ugandan army. The vehicles were to drive up to the doors of the terminal where the hostages were held, whereupon the commandos were to leap out, rush the building and rescue the hostages before the terrorists knew what was happening. But this was just one element of a much more complex plan, that also required three other transport aircraft to reach Entebbe via a long dangerous flight route, land unobserved and unmolested, seize the airport, destroy Ugandan fighter planes, ambush Ugandan reinforcements, guard the rescue aircraft, treat and evacuate casualties and rescued hostages, refuel the aircraft and withdraw, all of which required 120 or so additional troops plus vehicles. There were of course, also multiple additional political, diplomatic, command/control and logistic considerations. In the event, Colonel Netanyahu's rescue convoy was intercepted by a pair of Ugandan soldiers several hundred meters from the terminal. The Israelis tried to kill both with small caliber silenced pistols, but one soldier survived the assault and fled. Commandos gunned him down with un-silenced machine guns. Ugandan soldiers then opened fire on the convoy as it moved out again. Netanyahu, fearing that the rescue team would be annihilated in its thin skinned vehicles, ordered the commandos to abandon them and run to the terminal, still at least fifty meters away. Some commandos fired back as they ran, emptying their ammo magazines. They arrived at the terminal disordered and sheltered in the lee of the building, the plan a shambles. To add to the confusion, the terminal building did not match the mock-up upon which they'd trained. The assault came to a stop. Netanyahu then stepped out into the open to urge on the attack and was mortally wounded. At this point the rescue at Entebbe would seem to have failed. What saved it was the still overwhelming effect of surprise, and a bit of individual courage and initiative. Inside the terminal the German and Palestinian terrorists had been alarmed by the shooting and shouting outside, but were so certain that they were safe from an Israeli rescue attempt that they attributed the commotion to in-fighting among the Ugandans, whom they held in low regard anyway. This over-confidence had been deliberately fostered by the Israeli government, which prior to the raid had essentially admitted surrender, and agreed (at that time contrary to Israeli practice) to negotiate with the terrorists. As the terrorists stood by, a few individual commandos acted on their own initiative and stormed the building. They killed the terrorists and rescued the hostages. **Netanyahu and Barak are former commandos themselves**, and when briefed by IAF commanders they will know the story of Entebbe, and countless other operations, many from personal involvement. **They will understand that anything in a complex plan that can go wrong likely will.** **And they will also know that the one thing that saved the day at Entebbe, the element of strategic surprise, will be absent in an assault on Iran**. The only surprise the Israelis can hope for in a strike against Iran is the precise date and time, and considering the complexities of getting scores of aircraft through hostile airspace before even reaching Iranian skies, they might not even have that. If the Israelis were serious about attacking Iran, the best thing they could do now is stop talking about it. Indeed, ideally, the Israelis would appear accept the position that seems to be that of the United States under President Obama -- that a nuclear Iran is inevitable and manageable. Then maybe they could lull the Iranian leadership and military into complacency and hope to regain a bit of strategic surprise. But right now, **with every eye trained on Israeli skies and the world expectantly awaiting an Israeli assault, the chances of Israeli success must be dramatically reduced, a fact not lost on Netanyahu and Barak.** I don't pretend to know what Israel will do, and nobody would be happier to see a successful Israeli strike on Iran than me, but **logic suggests that if the Israelis haven't done it yet, they probably never will.** And Benjamin **Netanyahu is no more likely to launch an attack than his predecessors, for the same set of complex reasons that they were restrained.**