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### 1AC---LEGITIMACY

#### CONTENTION 1 IS LEGITIMACY:

#### Current US detention policies are collapsing US legitimacy in the rule of law

Katherine L. Vaughns 8/12/13, JD from Berkley, professor of Law at the University of Maryland, "Of Civil Wrongs and Rights: Kiyemba v. Obama¶ and the Meaning of Freedom, Separation of¶ Powers, and the Rule of Law Ten Years After 9/11," Asian American Law Journal, Vol 20.1

As history will recall, in May 1977, former President Richard M. ¶ Nixon famously told British interviewer David Frost that “when the ¶ President does it, that means that it is not illegal.”163 The Bush ¶ administration, taking a page out of Nixon’s playbook, used various tactics, ¶ apparently effectively, to “dismantle constitutional checks and balances and ¶ to circumvent the rule of law.”164 In so doing, the administration took ¶ advantage of 9/11 to assert “the most staggering view of unlimited ¶ presidential power since Nixon’s assertion of imperial prerogatives.”165¶ The D.C. Circuit’s opinion in Kiyemba III, reinstating as modified its ¶ opinion in Kiyemba I, is, as I have noted, now governing precedent. That ¶ earlier opinion, adopting a view that the government had argued all along, ¶ re-characterizes the law pertaining to detainees at Guantanamo Bay as a ¶ matter of immigration. Immigration is an area of law where the sovereign ¶ prerogative on which an individual is admitted or excluded from entry into ¶ the United States is virtually immune from judicial review.166 The Bush ¶ administration long ago adopted the position that judicial review of its ¶ detention policies would frustrate its war efforts and its Commander-in Chief authority, so that efforts to fit Kiyemba within the immigration ¶ framework worked to the government’s benefit. But, as the Boumediene ¶ Court explained, “the exercise of [the Executive’s Commander-in-Chief] ¶ powers is vindicated, not eroded, when [or if] confirmed” by the ¶ judiciary.167¶ In 2007, Ninth Circuit Judge A. Wallace Tashima observed that the ¶ rule of law—touted by the United States throughout the world since the end ¶ of World War II—has been “steadily undermined . . . since we began the ¶ so-called ‘War on Terror.’”168 “The American legal messenger,” Tashima notes, “has been regarded throughout the world as a trusted figure of ¶ goodwill, mainly by virtue of close identification with the message borne: ¶ that the rule of law is fundamental to a free, open, and pluralistic society,” ¶ that the United States represents “a government of laws and not of ¶ persons,” and that “no one—not even the President—is above the law.”169¶ But, according to Tashima, the actions that the United States has “taken in ¶ the War on Terror, especially [through] our detention policies, have belied our commitment to the rule of law and caused [a] dramatic shift in world opinion,” so that the War on Terror has been greeted internationally with ¶ “increasing skepticism and even hostility.”170 Put differently, the United ¶ States has shot the messenger—and with it, goes the message, the ¶ commitment to the rule of law, and our international credibility.¶ The primary assassin in this “assault on the role of law” is the ¶ argument “that the President is not bound by law—that he can flout the ¶ Constitution, treaties, and statutes of the United States as Commander-inChief during times of war.”171 Also wreaking havoc on the rule of law is ¶ the notion, described above, that the President’s actions in times of war are ¶ unreviewable, and that the judiciary has no role to play in checking ¶ wartime policies—a notion perpetuated by placement of issues like those ¶ raised in Kiyemba within the immigration framework.

#### First, military courts hamper US credibility---the plan’s key

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As these examples reveal, many propositions have been advanced to provide for a solution to these detainees with no particular success. Meanwhile, human rights advocates have their eyes centered on our nation. The Human Rights Watch has recently expressed its concerns with respect to the MCA. It advanced that the military commissions "fall far short of international due process standards." n156 It has been articulated that U.S. "artificial" derogation from the Geneva Conventions by virtue [\*440] of the MCA leaves open the door for other States to "opt-out" as well. In other words, any step back from the Geneva Conventions could also provoke mistreatment of captured U.S. military personnel. In addition, scholars of international jurisprudence claim there have been over 50 years since Geneva was entered into force and it has been applied in every conflict. n157 However, U.S. current policies undercut the overarching principles under international law to strive for uniform human rights policies around the World. In the current state of affairs, the Executive branch becomes three branches in one: legislator, executive enforcer, and judge of its own actions. The lack of independent judicial oversight deprives detainees from the opportunity of impartial judicial review of verdicts, regardless of their arbitrariness or lack of legal soundness.¶ In response to the consequences of this expansive executive power, the U.N. Human Rights Committee stated that the use of military courts could present serious problems as far as the equitable, impartial, independent administration of justice is concerned. As detainees have increasingly been deemed non-enemy-combatants, it is possible to assess how the Executive, now Congressional actions, captures civilians who had no connection to the armed conflict. In other words, as a consequence of the disparate overreaching power of the political branches and a rather weakened Judiciary, the U.S. is substantially regarded by the international community with complete disapproval.¶ Thus, the impact of U.S. current polities in the International Community is, at the very least, alarming. If entitling the detainees to a unified due process approach seems unrealistic, at minimum, they should be treated in a manner consistent with the principles of the Geneva Conventions. Relevant provisions in the Third Convention provide that detainees are entitled to a presumption of protection thereunder, "until such time as their status has been determined by a competent tribunal." The detainees must first be designated as civilians, combatant, or criminals rather than lumped into a single composite group of unlawful combatants by presidential fiat. Moreover, the International Covenant on Civil and Political Rights mandates that "[n]o one shall be subjected to arbitrary arrest or detention and those deprived of liberty shall be entitled [\*441] to take proceedings before a court." n158 The meaning of "court" within the Covenant was aimed at civilian courts, not military, in the sense that the preoccupation was to provide them with a fair adjudication with respect to the detainees' status. Yet, the U.S. Government chose to ignore the requirements under international law despite apparently false claims that it would be followed. n159 Instead, as previously discussed in Part II of this Article, Congress made sure that international law does not provide a substantive basis of relief for these detainees' claims by virtue of the MCA.¶ The vast cultural, economic and political differences among signatory States were deemed as plausible justification for permitting reservations treaties. By this mechanism, the States are provided the opportunity to somewhat "tailor" multilateral treaties to their realities. It is evident that the U.S. Government has granted itself the right not to be entirely bound by international law. How wise the use of this mechanism was undertaken by U.S. may be reflected by the current the impact of U.S. policies toward international law mandates. As the detainees' situation develops, however, the U.S. image within the international community is in serious jeopardy. As a result a widespread criticism of the U.S. policies generated an atmosphere of wariness of U.S's ability and willingness to preserve individuals' fundamental rights at any time a situation is categorized as "emergency."¶ [\*442] V. CONCLUSION¶ All the problems outlined in this Article can be corrected. It would not take more than going back to the Constitution and reconstituting the Framers' intent in promoting the leadership of the country as an integral body composed by the three branches of Government. The U.S. Government should ensure that the wide gap between domestic law and the law of armed conflict is minimized by allowing those tried before military commissions to receive trials up to the level of American justice. If no action is taken, the American justice once internationally admired will give space to a stain in the American history. Congress should be more active in undertaking its role of making the law rather than merely voting on proposals based on their political agenda or the Executive's wishes. The Judiciary should step up and actively "say what the law is" rather than handing down amorphous rulings stigmatizing detainees on the basis of their citizenship status. Under basic constitutional principles, doing justice means equal protections of the laws. Using the claim of times of emergency to justify abusive treatment does not foster a democratic society. If the military is not able to advance legal grounds to hold these detainees, they should be released. The Judiciary should be eager to have a case challenging the MCA sooner rather than later and take the opportunity to lay down a clearly ruling on how these detainees should be accorded equal safeguards regardless of their race, national origin, or status. In other words, the Judiciary should take back what Congress has taken away, through implementing major modifications to the Executive's ill-conceived policies regarding commissions. In terms of meaningful separation of powers mandates, what the Constitution has given, Congress cannot take away.

#### Second, current US policy conveys xenophobia---independently decks legitimacy

Neal K. Katyal 07, Professor of Law, Georgetown University Law Center, "Equality in the War on Terror," Stanford Law Review, 59 Stan. L. Rev. 1365-1394, scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1408&context=facpub

There is simply no reason why the government must subject aliens who are alleged to have participated in acts of terrorism to military commissions, but need not do so for citizens suspected of the same crimes. If it is truly necessary to treat aliens this way to combat terrorism effectively, then the very same need would exist for citizens as well. A citizen who commits a terrorist act is just as culpable as the alien who commits that act. Indeed, there is an argument that the citizen’s actions are worse—since he is guilty of treason in addition to whatever else he has perpetrated.¶ The breakdown in parity between citizen and alien post-9/11 is a new, and disturbing, trend. Even the horrendous internment of Japanese Americans in World War II applied symmetrically to citizens and aliens. 98 The policy was memorably defended by Lieutenant General John DeWit before Congress: “A Jap’s a Jap. It makes no difference whether he is an American citizen or not.” 99 Some, such as former Chief Justice Rehnquist, have disagreed, arguing that the problem in World War II was applying these exclusion orders to citizens. His argument was grounded entirely upon the Alien Enemy Act, which he recognized permitted only the “‘summary arrest, internment and deportation wherever a declared war exists.’” 100 Entirely missing from this account was any discussion of whether a disparity between alien and citizen might have made matters worse, instead of better. After all, the one positive thing that can be said in the policy’s favor was that at least it affected a few people who could vote. 101¶ To say this is not to argue that liberty concerns are always inappropriate and that the government has carte blanch e when it acts evenhandedly. There are some substantive constitutional principles—such as prohibiting the mass detention of an entire race of people without any individualized basis—that properly should be frozen into constitutional law. But when the boundaries of liberty are uncertain, as they tend to be today, equality arguments offer a mechanism to prompt legislative reconsideration and democratic accountability.¶ Laws of general applicability are not only preferable, they also keep us safer. In affording the same process to alien and citizen detainees, we maintain the superiority of our judicial system. The federal courts have a tried and true record of discerning the guilty from the innocent without turning to arbitrary distinctions such as alienage. Our civilian courts have handled a variety of challenges and complicated cases—from the trial of the Oklahoma City bombers to the awful spying of Aldrich Ames and others. They have tried the 1993 World Trade Center bombers, Manuel Noriega, and dozens of other cases. They have prosecuted cases where the crimes were committed abroad. Indeed, the Justice Department has recently extolled its resounding success in terrorism cases in federal civilian court—where it has proceeded to charge nearly 500 individuals with crimes of terrorism. 102 Our national security policy requires adherence to a judicial process that works for all terrorist suspects. A two- tiered justice system jeopardizes not only the rights of alien suspects, but also the safety of American citizens.¶ As the world becomes even smaller, and the movement of people across borders becomes even more fluid, we need a unitary legal system that is capable of embracing all those in our jurisdiction: one that does not pick and choose who gets fundamental protections. Only then can we be assured that the real terrorists are brought to justice.¶ Moreover, legislation should not play on post-9/11 xenophobia. In the wake of terrorism, fears are heightened, rationality is muted, and it is the government’s responsibility to be the source of reason amidst the chaos, not to fan fears and stimulate even greater hatred. In pointing toward alien detainees as the sole source of danger, however, legislation such as the MCA fails to provide actual solutions to the threat of terrorism. Our policy cannot afford to dally under any delusions that foreigners are the sole source of terrorist impulses. The threat of terrorism permeates all borders, and only fair and evenhanded laws can effectively ferret out that threat. Allowing rank discrimination to drive policy takes attention away from national security and focuses on meaningless distinctions of “us” versus “them.” 103¶ Finally, in the wake of international disdain for the military tribunals authorized by President Bush, our country is already under global scrutiny for its disparate treatment of non-U.S. citizens. We must be careful not to further the perception that, in matters of justice, the U.S. government adopts special rules that single out foreigners for disfavor. Otherwise, the result will be more international condemnation and increased enmity about Americans worldwide. The predictable result will be less cooperation and intelligence sharing, and fewer extraditions to boot.¶ In this respect, the laws of war have changed markedly in recent years, and now reflect the basic equality principle. The Geneva Conventions, for example, require a signatory to treat enemy prisoners of war the same way as it treats its own soldiers. 104 Even for non-prisoners of war, the minimum requirements of Common Article 3 require trials to take place in a “regularly constituted court.” 105 As the International Committee of the Red Cross Commentary puts it:¶ [C]ourt proceedings should be carried out in a uniform manner, whatever the nationality of the accused. Nationals, friends, enemies, all should be subject to the same rules of procedure and judged by the same courts. There is therefore no question of setting up special tribunals to try war criminals of enemy nationality. 106¶ Again, the logic of such provisions is best understood as creating virtual representation—ensuring that the interests of accused enemies will be vindicated by the application of longstanding procedural rules for the trial of the signatory power’s own troops.¶ Fidelity to these precepts, far from undermining the war on terror, is the best way to win it. By demonstrating that America is not being unfair—and by subjecting those from other lands to the same justice Americans face for the same crimes—America projects not only benevolence, but strength. America’s soft power depends, in no small part, on being able to rise above pettiness and to highlight the vitality of our system. Carving out special rules for “them” and reserving different rules for “us” is no way to win respect internationally. ¶ The British experience provides a useful contrast. The House of Lords in A v. Secretary of State for the Home Department, 107 struck down the terrorist detention policy on equality grounds. They found that there was no reasonable or objective justification why a non-U.K. national suspected of being a terrorist could be detained while a U.K. national would be allowed to go free. The Lords rejected the Attorney General’s arguments that immigration law and international law justified differential treatment, including detention, of aliens in times of war or public emergency. 108 As Lord Nicholls put it, “The principal weakness in the Government’s case lies in the different treatment accorded to nationals and non-nationals. . . . The Government has vouchsafed no persuasive explanation of why national security calls for a power of indefinite detention in one case but not the other.” 109 The upshot was that it was “difficult to see how the extreme circumstances, which alone would justify such detention, can exist when lesser protective steps apparently suffice in the case of British citizens suspected of being international terrorists.” 110¶ Sadly, the experience of Britain under the European Convention on Human Rights is far truer to our backbone of equality than that of our own politicians under our own Constitution, who conveniently forget about equality even on fundamental decisions such as who would face a military trial with the death penalty at stake. Indeed, the United Kingdom reacted to the decision by adopting laws that treated citizens and foreigners alike. 111 Although our Founders broke away from Britain in part because of the King’s refusal to adhere to the basic proposition that “all men are created equal,” it is now Britain that is teaching us about the meaning of those words.¶ In sum, by splitting our legal standards on the basis of alienage, we are in effect jeopardizing our own safety and national interest. When terror policy is driven by anti-alien sentiment, the result is only our own isolation. It will not only chill relations with key allies abroad and disrupt extraditions, it will also alienate many of our own citizens who have relied on our country’s longstanding commitment to equal justice for all.

#### 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. n430 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.

#### Nuclear war

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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.

#### Material power’s irrelevant---lack of legitimacy makes heg ineffective

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Going against common conceptions, I argue that the United States sought to advance more than what it viewed as simply its own interest. The United States stands behind multiple collaborative enterprises and should be credited for that. Nevertheless, sometimes it has overreached, sought to gain special rights other states do not have, or presented strategies that were not compatible with the general design of the war on terrorism, to which most states subscribed. When it went too far, the United States found that, while secondary powers could not stop it from taking action, they could deny it legitimacy and make the achievement of its objectives unattainable. Thus, despite the common narrative, U.S. power was successfully checked, and the United States found the limitations of its power, even under the Bush administration. Defining Hegemony Let me begin with my conception of hegemony. While the definition of hegemony is based on its material aspects—the preponderance of power—hegemony should be understood as a part of a social web comprised of states. A hegemon relates to the other states in the system not merely through the prism of power balances, but through shared norms and a system of rules providing an umbrella for interstate relations. Although interstate conflict is ubiquitous in international society and the pursuit of particularistic interests is common, the international society provides a normative framework that restricts and moderates the hegemon's actions. This normative framework accounts for the hegemon's inclination toward orderly and peaceful interstate relations and minimizes its reliance on power. A hegemon’s role in the international community relies on legitimacy. Legitimacy is associated with external recognition of the hegemon’s right of primacy, not just the fact of this primacy. States recognize the hegemon’s power, but they develop expectations that go beyond the idea that the hegemon will act as it wishes because it has the capabilities to do so. Instead, the primacy of the hegemon is manifested in the belief that, while it has special rights that other members of the international society lack, it also has a set of duties to the members of the international society. As long as the hegemon realizes its commitment to the collective, its position will be deemed legitimate. International cooperation is hard to achieve. And, in general, international relations is not a story of harmony. A state’s first inclination is to think about its own interests, and states always prefer doing less over doing more. The inclination to pass the buck or to free ride on the efforts of others is always in the background. If a hegemon is willing to lead in pursuit of collective interests and to shoulder most of the burden, it can improve the prospects of international cooperation. However, even when there is a hegemon willing to lead a collective action and when states accept that action is needed, obstacles may still arise. These difficulties can be attributed to various factors, but especially prominent is the disagreement over the particular strategy that the hegemon promotes in pursuing the general interest. When states think that the strategy and policies offered by the hegemon are not compatible with the accepted rules of “rightful conduct” and break established norms, many will disapprove and resist. Indeed, while acceptance of a hegemon’s leadership in international society may result in broad willingness to cooperate with the hegemon in pursuit of shared interests it does not guarantee immediate and unconditional compliance with all the policies the hegemon articulates. While its legitimacy does transfer to its actions and grants some leeway, that legitimacy does not justify every policy the hegemon pursues—particularly those policies that are not seen as naturally deriving from the existing order. As a result, specific policies must be legitimated before cooperation takes place. This process constrains the hegemon’s actions and prevents the uninhibited exercise of power.

#### Independently, absent renewal of rule of law principles, multilateral cooperation to solve warming and disease is impossible

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 causes extinction

Don Flournoy 12, Citing Feng Hsu, PhD NASA Scientist @ the Goddard Space Flight Center and Don is a PhD and MA from UT, former Dean of the University College @ Ohio University, former Associate Dean at SUNY and Case Institute of Technology, Former Manager for University/Industry Experiments for the NASA ACTS Satellite, currently Professor of Telecommunications @ Scripps College of Communications, Ohio University, “Solar Power Satellites,” January 2012, Springer Briefs in Space Development, p. 10-11

In the Online Journal of Space Communication , Dr. Feng Hsu, a  NASA scientist at Goddard Space Flight Center, a research center in the forefront of science of space and Earth, writes, “The evidence of global warming is alarming,” noting the potential for a catastrophic planetary climate change is real and troubling (Hsu 2010 ) . Hsu and his NASA colleagues were engaged in monitoring and analyzing climate changes on a global scale, through which they received first-hand scientific information and data relating to global warming issues, including the dynamics of polar ice cap melting. After discussing this research with colleagues who were world experts on the subject, he wrote: I now have no doubt global temperatures are rising, and that global warming is a serious problem confronting all of humanity. No matter whether these trends are due to human interference or to the cosmic cycling of our solar system, there are two basic facts that are crystal clear: (a) there is overwhelming scientific evidence showing positive correlations between the level of CO2 concentrations in Earth’s atmosphere with respect to the historical fluctuations of global temperature changes; and (b) the overwhelming majority of the world’s scientific community is in agreement about the risks of a potential catastrophic global climate change. That is, if we humans continue to ignore this problem and do nothing, if we continue dumping huge quantities of greenhouse gases into Earth’s biosphere, humanity will be at dire risk (Hsu 2010 ) . As a technology risk assessment expert, Hsu says he can show with some confidence that the planet will face more risk doing nothing to curb its fossil-based energy addictions than it will in making a fundamental shift in its energy supply. “This,” he writes, “is because the risks of a catastrophic anthropogenic climate change can be potentially the extinction of human species, a risk that is simply too high for us to take any chances” (Hsu 2010 ).

#### Diseases end civilization

David Quammen 12, award-winning science writer, long-time columnist for Outside magazine for fifteen years, with work in National Geographic, Harper's, Rolling Stone, the New York Times Book Review and other periodicals, 9/29, “Could the next big animal-to-human disease wipe us out?,” The Guardian, pg. 29, Lexis

Infectious disease is all around us. It's one of the basic processes that ecologists study, along with predation and competition. Predators are big beasts that eat their prey from outside. Pathogens (disease-causing agents, such as viruses) are small beasts that eat their prey from within. Although infectious disease can seem grisly and dreadful, under ordinary conditions, it's every bit as natural as what lions do to wildebeests and zebras. But conditions aren't always ordinary. Just as predators have their accustomed prey, so do pathogens. And just as a lion might occasionally depart from its normal behaviour - to kill a cow instead of a wildebeest, or a human instead of a zebra - so a pathogen can shift to a new target. Aberrations occur. When a pathogen leaps from an animal into a person, and succeeds in establishing itself as an infectious presence, sometimes causing illness or death, the result is a zoonosis. It's a mildly technical term, zoonosis, unfamiliar to most people, but it helps clarify the biological complexities behind the ominous headlines about swine flu, bird flu, Sars, emerging diseases in general, and the threat of a global pandemic. It's a word of the future, destined for heavy use in the 21st century. Ebola and Marburg are zoonoses. So is bubonic plague. So was the so-called Spanish influenza of 1918-1919, which had its source in a wild aquatic bird and emerged to kill as many as 50 million people. All of the human influenzas are zoonoses. As are monkeypox, bovine tuberculosis, Lyme disease, West Nile fever, rabies and a strange new affliction called Nipah encephalitis, which has killed pigs and pig farmers in Malaysia. Each of these zoonoses reflects the action of a pathogen that can "spillover", crossing into people from other animals. Aids is a disease of zoonotic origin caused by a virus that, having reached humans through a few accidental events in western and central Africa, now passes human-to-human. This form of interspecies leap is not rare; about 60% of all human infectious diseases currently known either cross routinely or have recently crossed between other animals and us. Some of those - notably rabies - are familiar, widespread and still horrendously lethal, killing humans by the thousands despite centuries of efforts at coping with their effects. Others are new and inexplicably sporadic, claiming a few victims or a few hundred, and then disappearing for years. Zoonotic pathogens can hide. The least conspicuous strategy is to lurk within what's called a reservoir host: a living organism that carries the pathogen while suffering little or no illness. When a disease seems to disappear between outbreaks, it's often still lingering nearby, within some reservoir host. A rodent? A bird? A butterfly? A bat? To reside undetected is probably easiest wherever biological diversity is high and the ecosystem is relatively undisturbed. The converse is also true: ecological disturbance causes diseases to emerge. Shake a tree and things fall out. Michelle Barnes is an energetic, late 40s-ish woman, an avid rock climber and cyclist. Her auburn hair, she told me cheerily, came from a bottle. It approximates the original colour, but the original is gone. In 2008, her hair started falling out; the rest went grey "pretty much overnight". This was among the lesser effects of a mystery illness that had nearly killed her during January that year, just after she'd returned from Uganda. Her story paralleled the one Jaap Taal had told me about Astrid, with several key differences - the main one being that Michelle Barnes was still alive. Michelle and her husband, Rick Taylor, had wanted to see mountain gorillas, too. Their guide had taken them through Maramagambo Forest and into Python Cave. They, too, had to clamber across those slippery boulders. As a rock climber, Barnes said, she tends to be very conscious of where she places her hands. No, she didn't touch any guano. No, she was not bumped by a bat. By late afternoon they were back, watching the sunset. It was Christmas evening 2007. They arrived home on New Year's Day. On 4 January, Barnes woke up feeling as if someone had driven a needle into her skull. She was achy all over, feverish. "And then, as the day went on, I started developing a rash across my stomach." The rash spread. "Over the next 48 hours, I just went down really fast." By the time Barnes turned up at a hospital in suburban Denver, she was dehydrated; her white blood count was imperceptible; her kidneys and liver had begun shutting down. An infectious disease specialist, Dr Norman K Fujita, arranged for her to be tested for a range of infections that might be contracted in Africa. All came back negative, including the test for Marburg. Gradually her body regained strength and her organs began to recover. After 12 days, she left hospital, still weak and anaemic, still undiagnosed. In March she saw Fujita on a follow-up visit and he had her serum tested again for Marburg. Again, negative. Three more months passed, and Barnes, now grey-haired, lacking her old energy, suffering abdominal pain, unable to focus, got an email from a journalist she and Taylor had met on the Uganda trip, who had just seen a news article. In the Netherlands, a woman had died of Marburg after a Ugandan holiday during which she had visited a cave full of bats. Barnes spent the next 24 hours Googling every article on the case she could find. Early the following Monday morning, she was back at Dr Fujita's door. He agreed to test her a third time for Marburg. This time a lab technician crosschecked the third sample, and then the first sample. The new results went to Fujita, who called Barnes: "You're now an honorary infectious disease doctor. You've self-diagnosed, and the Marburg test came back positive." The Marburg virus had reappeared in Uganda in 2007. It was a small outbreak, affecting four miners, one of whom died, working at a site called Kitaka Cave. But Joosten's death, and Barnes's diagnosis, implied a change in the potential scope of the situation. That local Ugandans were dying of Marburg was a severe concern - sufficient to bring a response team of scientists in haste. But if tourists, too, were involved, tripping in and out of some python-infested Marburg repository, unprotected, and then boarding their return flights to other continents, the place was not just a peril for Ugandan miners and their families. It was also an international threat. The first team of scientists had collected about 800 bats from Kitaka Cave for dissecting and sampling, and marked and released more than 1,000, using beaded collars coded with a number. That team, including scientist Brian Amman, had found live Marburg virus in five bats. Entering Python Cave after Joosten's death, another team of scientists, again including Amman, came across one of the beaded collars they had placed on captured bats three months earlier and 30 miles away. "It confirmed my suspicions that these bats are moving," Amman said - and moving not only through the forest but from one roosting site to another. Travel of individual bats between far-flung roosts implied circumstances whereby Marburg virus might ultimately be transmitted all across Africa, from one bat encampment to another. It voided the comforting assumption that this virus is strictly localised. And it highlighted the complementary question: why don't outbreaks of Marburg virus disease happen more often? Marburg is only one instance to which that question applies. Why not more Ebola? Why not more Sars? In the case of Sars, the scenario could have been very much worse. Apart from the 2003 outbreak and the aftershock cases in early 2004, it hasn't recurred. . . so far. Eight thousand cases are relatively few for such an explosive infection; 774 people died, not 7 million. Several factors contributed to limiting the scope and impact of the outbreak, of which humanity's good luck was only one. Another was the speed and excellence of the laboratory diagnostics - finding the virus and identifying it. Still another was the brisk efficiency with which cases were isolated, contacts were traced and quarantine measures were instituted, first in southern China, then in Hong Kong, Singapore, Hanoi and Toronto. If the virus had arrived in a different sort of big city - more loosely governed, full of poor people, lacking first-rate medical institutions - it might have burned through a much larger segment of humanity. One further factor, possibly the most crucial, was inherent in the way Sars affects the human body: symptoms tend to appear in a person before, rather than after, that person becomes highly infectious. That allowed many Sars cases to be recognised, hospitalised and placed in isolation before they hit their peak of infectivity. With influenza and many other diseases, the order is reversed. That probably helped account for the scale of worldwide misery and death during the 1918-1919 influenza. And that infamous global pandemic occurred in the era before globalisation. Everything nowadays moves around the planet faster, including viruses. When the Next Big One comes, it will likely conform to the same perverse pattern as the 1918 influenza: high infectivity preceding notable symptoms. That will help it move through cities and airports like an angel of death. The Next Big One is a subject that disease scientists around the world often address. The most recent big one is Aids, of which the eventual total bigness cannot even be predicted - about 30 million deaths, 34 million living people infected, and with no end in sight. Fortunately, not every virus goes airborne from one host to another. If HIV-1 could, you and I might already be dead. If the rabies virus could, it would be the most horrific pathogen on the planet. The influenzas are well adapted for airborne transmission, which is why a new strain can circle the world within days. The Sars virus travels this route, too, or anyway by the respiratory droplets of sneezes and coughs - hanging in the air of a hotel corridor, moving through the cabin of an aeroplane - and that capacity, combined with its case fatality rate of almost 10%, is what made it so scary in 2003 to the people who understood it best. Human-to-human transmission is the crux. That capacity is what separates a bizarre, awful, localised, intermittent and mysterious disease (such as Ebola) from a global pandemic. Have you noticed the persistent, low-level buzz about avian influenza, the strain known as H5N1, among disease experts over the past 15 years? That's because avian flu worries them deeply, though it hasn't caused many human fatalities. Swine flu comes and goes periodically in the human population (as it came and went during 2009), sometimes causing a bad pandemic and sometimes (as in 2009) not so bad as expected; but avian flu resides in a different category of menacing possibility. It worries the flu scientists because they know that H5N1 influenza is extremely virulent in people, with a high lethality. As yet, there have been a relatively low number of cases, and it is poorly transmissible, so far, from human to human. It'll kill you if you catch it, very likely, but you're unlikely to catch it except by butchering an infected chicken. But if H5N1 mutates or reassembles itself in just the right way, if it adapts for human-to-human transmission, it could become the biggest and fastest killer disease since 1918. It got to Egypt in 2006 and has been especially problematic for that country. As of August 2011, there were 151 confirmed cases, of which 52 were fatal. That represents more than a quarter of all the world's known human cases of bird flu since H5N1 emerged in 1997. But here's a critical fact: those unfortunate Egyptian patients all seem to have acquired the virus directly from birds. This indicates that the virus hasn't yet found an efficient way to pass from one person to another. Two aspects of the situation are dangerous, according to biologist Robert Webster. The first is that Egypt, given its recent political upheavals, may be unable to staunch an outbreak of transmissible avian flu, if one occurs. His second concern is shared by influenza researchers and public health officials around the globe: with all that mutating, with all that contact between people and their infected birds, the virus could hit upon a genetic configuration making it highly transmissible among people. "As long as H5N1 is out there in the world," Webster told me, "there is the possibility of disaster. . . There is the theoretical possibility that it can acquire the ability to transmit human-to-human." He paused. "And then God help us." We're unique in the history of mammals. No other primate has ever weighed upon the planet to anything like the degree we do. In ecological terms, we are almost paradoxical: large-bodied and long-lived but grotesquely abundant. We are an outbreak. And here's the thing about outbreaks: they end. In some cases they end after many years, in others they end rather soon. In some cases they end gradually, in others they end with a crash. In certain cases, they end and recur and end again. Populations of tent caterpillars, for example, seem to rise steeply and fall sharply on a cycle of anywhere from five to 11 years. The crash endings are dramatic, and for a long while they seemed mysterious. What could account for such sudden and recurrent collapses? One possible factor is infectious disease, and viruses in particular.

#### 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?

### 1AC---DEMOCRACY

#### CONTENTION 2 IS DEMOCRACY

#### Democratic liberalism is backsliding now---the US model of an unrestrained executive causes collapse

Larry Diamond 9, Professor of Political Science and Sociology @ Stanford, “The Impact of the Global Financial Crisis on Democracy”, Presented to the SAIS-CGD Conference on New Ideas in Development after the Financial Crisis, Conference Paper that can be found on his Vita

Concern about the future of democracy is further warranted by the gathering signs of a democratic recession, even before the onset of the global economic recession. During the past decade, the global expansion of democracy has essentially leveled off and hit an equilibrium While freedom (political rights and civil liberties) continued to expand throughout the post-Cold War era, that progress also halted in 2006, and 2007 and 2008 were the worst consecutive years for freedom since the end of the Cold War, with the number of countries declining in freedom greatly outstripping the number that improved. Two-thirds of all the breakdowns of democracy since the third wave began in 1974 have occurred in the last nine years, and in a number of strategically important states like Russia, Nigeria, Venezuela, Pakistan and Thailand. Many of these countries have not really returned to democracy. And a number of countries linger in a twilight zone between democracy and authoritarianism. While normative support for democracy has grown around the world, it remains in many countries, tentative and uneven, or is even eroding under the weight of growing public cynicism about corruption and the self-interested behavior of parties and politicians. Only about half of the public, on average, in Africa and Asia meets a rigorous, multidimensional test of support for democracy. Levels of distrust for political institutions—particularly political parties and legislatures, and politicians in general—are very high in Eastern Europe and Latin America, and in parts of Asia. In many countries, 30-50 percent of the public or more is willing to consider some authoritarian alternative to democracy, such as military or one-man rule. And where governance is bad or elections are rigged and the public cannot rotate leaders out of power, skepticism and defection from democracy grow. Of the roughly 80 new democracies that have emerged during the third wave and are still standing, probably close to three-quarters are insecure and could run some risk of reversal during adverse global and domestic circumstances. Less at risk—and probably mostly consolidated—are the more established developing country democracies (India, Costa Rica, Botswana, Mauritius), and the more liberal democracies of this group: the ten postcommunist states that have been admitted to the EU; Korea and Taiwan; Chile, Uruguay, Panama, Brazil, probably Argentina; a number of liberal island states in the Caribbean and Pacific. This leaves about 50 democracies and near democracies—including such big and strategically important states as Turkey, Ukraine, Indonesia, the Philippines, South Africa, certainly Pakistan and Bangladesh, and possibly even Mexico—where the survival of constitutional rule cannot be taken for granted. In some of these countries, like South Africa, the demise of democracy would probably come, if it happened, not as a result of a blatant overthrow of the current system, but rather via a gradual executive strangling of political pluralism and freedom, or a steady decline in state capacity and political order due to rising criminal and ethnic violence. Such circumstances would also swallow whatever hopes exist for the emergence of genuine democracy in countries like Iraq and Afghanistan and for the effective restoration of democracy in countries like Thailand and Nepal.

#### Democratic transitions are hanging in the balance---only empowering checks on executive power through rule of law can tip the scales

CJA 4 The Center for Justice and Accountability, Amici Curiae in support of petitioners in Al Odah et al. v USA, "Brief of the Center for Justice and Accountability, the International League for Human Rights, and Individual Advocates for the Independence of the Judiciary in Emerging Democracies," 3-10, Lexis

Many of the newly independent governments that have proliferated over the past five decades have adopted these ideals. They have emerged from a variety of less-than-free contexts, including the end of European colonial rule in the 1950's and 1960's, the end of the Cold War and the breakup of the former Soviet Union in the late 1980's and 1990's, the disintegration of Yugoslavia, and the continuing turmoil in parts of Africa, Latin America and southern Asia. Some countries have successfully transitioned to stable and democratic forms of government that protect individual freedoms and human rights by means of judicial review by a strong and independent judiciary. Others have suffered the rise of tyrannical and oppressive rulers who consolidated their hold on power in part by diminishing or abolishing the role of the judiciary. And still others hang in the balance, struggling against the onslaught of tyrants to establish stable, democratic governments. In their attempts to shed their tyrannical pasts and to ensure the protection of individual rights, emerging democracies have consistently looked to the United States and its Constitution in fashioning frameworks that safeguard the independence of their judiciaries . See Ran Hirschl, The Political Origins of Judicial Empowerment through Constitutionalization: Lessons from Four Constitutional Revolutions, 25 Law & Soc. Inquiry 91, 92 (2000) (stating that of the “[m]any countries . . . [that] have engaged in fundamental constitutional reform over the past three decades,” nearly all adopted “a bill of rights and establishe[d] some form of active judicial review”). Establishing judicial review by a strong and independent judiciary is a critical step in stabilizing and protecting these new democracies. See Christopher M. Larkins, Judicial Independence and Democratization: A Theoretical and Conceptual Analysis, 44 Am. J. Comp. L. 605, 605-06 (1996) (describing the judicial branch as having "a uniquely important role" in transitional countries, not only to "mediate conflicts between political actors but also [to] prevent the arbitrary exercise of government power; see also Daniel C. Prefontaine and Joanne Lee, The Rule of Law and the Independence of the Judiciary, International Centre for Criminal Law Reform and Criminal Justice Policy (1998) ("There is increasing acknowledgment that an independent judiciary is the key to upholding the rule of law in a free society . . . . Most countries in transition from dictatorships and/or statist economies recognize the need to create a more stable system of governance, based on the rule of law."), available at http://www.icclr.law.ubc.ca/Publications/Reports/RuleofLaw. pdf (last visited Jan. 8, 2004). Although the precise form of government differs among countries, “they ultimately constitute variations within, not from, the American model of constitutionalism . . . [a] specific set of fundamental rights and liberties has the status of supreme law, is entrenched against amendment or repeal . . . and is enforced by an independent court . . . .” Stephen Gardbaum, The New Commonwealth Model of Constitutionalism, 49 Am. J. Comp. L. 707, 718 (2001). This phenomenon became most notable worldwide after World War II when certain countries, such as Germany, Italy, and Japan, embraced independent judiciaries following their bitter experiences under totalitarian regimes. See id. at 714- 15; see also United States v. Then, 56 F.3d 464, 469 (2d Cir. 1995) (Calabresi, J., concurring) (“Since World War II, many countries have adopted forms of judicial review, which — though different from ours in many particulars — unmistakably draw their origin and inspiration from American constitutional theory and practice. See generally Mauro Cappelletti, The Judicial Process in Comparative Perspective (Oxford: Clarendon Press, 1989).”). It is a trend that continues to this day. It bears mention that the United States has consistently affirmed and encouraged the establishment of independent judiciaries in emerging democracies. In September 2000, President Clinton observed that "[w]ithout the rule of law, elections simply offer a choice of dictators. . . . America's experience should be put to use to advance the rule of law, where democracy's roots are looking for room and strength to grow." Remarks at Georgetown University Law School, 36 Weekly Comp. Pres. Doc. 2218 (September 26, 2000), available at http://clinton6.nara.gov/2000/09/2000-09-26- remarks-by-president-at-georgetown-international-lawcenter. html. The United States acts on these principles in part through the assistance it provides to developing nations. For example, the United States requires that any country seeking assistance through the Millenium Challenge Account, a development assistance program instituted in 2002, must demonstrate, among other criteria, an "adherence to the rule of law." The White House noted that the rule of law is one of the "essential conditions for successful development" of these countries. See http://www.whitehouse.gov/infocus/developingnations (last visited Jan. 8, 2004).12

#### US detention policy is key---it has justified democratic backsliding globally

CJA 4 The Center for Justice and Accountability, Amici Curiae in support of petitioners in Al Odah et al. v USA, "Brief of the Center for Justice and Accountability, the International League for Human Rights, and Individual Advocates for the Independence of the Judiciary in Emerging Democracies," 3-10, Lexis

While much of the world is moving to adopt the institutions necessary to secure individual rights, many still regularly abuse these rights. One of the hallmarks of tyranny is the lack of a strong and independent judiciary. Not surprisingly, where countries make the sad transition to tyranny, one of the first victims is the judiciary. Many of the rulers that go down that road justify their actions on the basis of national security and the fight against terrorism, and, disturbingly, many claim to be modeling their actions on the United States. Again, a few examples illustrate this trend. In Peru, one of former President Alberto Fujimori’s first acts in seizing control was to assume direct executive control of the judiciary, claiming that it was justified by the threat of domestic terrorism. He then imprisoned thousands, refusing the right of the judiciary to intervene. International Commission of Jurists, Attacks on Justice 2000-Peru, August 13, 2001, available at ttp://www.icj.org/news.php3?id\_article=2587&lang=en (last visited Jan. 8, 2004). In Zimbabwe, President Mugabe’s rise to dictatorship has been punctuated by threats of violence to and the co-opting of the judiciary. He now enjoys virtually total control over Zimbabweans' individual rights and the entire political system. R.W. Johnson, Mugabe’s Agents in Plot to Kill Opposition Chief, Sunday Times (London), June 10, 2001; International Commission of Jurists, Attacks on Justice 2002— Zimbabwe, August 27, 2002, available at http://www.icj.org/news.php3?id\_article=2695〈=en (last visited Jan. 8, 2004). While Peru and Zimbabwe represent an extreme, the independence of the judiciary is under assault in less brazen ways in a variety of countries today. A highly troubling aspect of this trend is the fact that in many of these instances those perpetuating the assaults on the judiciary have pointed to the United States’ model to justify their actions. Indeed, many have specifically referenced the United States’ actions in detaining persons in Guantánamo Bay. For example, Rais Yatim, Malaysia's "de facto law minister" explicitly relied on the detentions at Guantánamo to justify Malaysia's detention of more than 70 suspected Islamic militants for over two years. Rais stated that Malyasia's detentions were "just like the process in Guantánamo," adding, "I put the equation with Guantánamo just to make it graphic to you that this is not simply a Malaysian style of doing things." Sean Yoong, "Malaysia Slams Criticism of Security Law Allowing Detention Without Trial," Associated Press, September 9, 2003 (available from Westlaw at 9/9/03 APWIRES 09 :34:00). Similarly, when responding to a United States Government human rights report that listed rights violations in Namibia, Namibia's Information Permanent Secretary Mocks Shivute cited the Guantánamo Bay detentions, claiming that "the US government was the worst human rights violator in the world." BBC Monitoring, March 8, 2002, available at 2002 WL 15938703. Nor is this disturbing trend limited to these specific examples. At a recent conference held at the Carter Center in Atlanta, President Carter, specifically citing the Guantánamo Bay detentions, noted that the erosion of civil liberties in the United States has "given a blank check to nations who are inclined to violate human rights already." Doug Gross, "Carter: U.S. human rights missteps embolden foreign dictators," Associated Press Newswires, November 12, 2003 (available from Westlaw at 11/12/03 APWIRES 00:30:26). At the same conference, Professor Saad Ibrahim of the American University in Cairo (who was jailed for seven years after exposing fraud in the Egyptian election process) said, "Every dictator in the world is using what the United States has done under the Patriot Act . . . to justify their past violations of human rights and to declare a license to continue to violate human rights." Id. Likewise, Shehu Sani, president of the Kaduna, Nigeriabased Civil Rights Congress, wrote in the International Herald Tribune on September 15, 2003 that "[t]he insistence by the Bush administration on keeping Taliban and Al Quaeda captives in indefinite detention in Guantánamo Bay, Cuba, instead of in jails in the United States — and the White House's preference for military tribunals over regular courts — helps create a free license for tyranny in Africa. It helps justify Egypt's move to detain human rights campaigners as threats to national security and does the same for similar measures by the governments of Ivory Coast, Cameroon and Burkina Faso." Available at http://www.iht.com/ihtsearch.php?id=109927&owner=(IHT)&dat e=20030121123259. In our uni-polar world, the United States obviously sets an important example on these issues. As reflected in the foundational documents of the United Nations and many other such agreements, the international community has consistently affirmed the value of an independent judiciary to the defense of universally recognized human rights. In the crucible of actual practice within nations, many have looked to the United States model when developing independent judiciaries with the ability to check executive power in the defense of individual rights. Yet others have justified abuses by reference to the conduct of the United States. Far more influential than the words of Montesquieu and Madison are the actions of the United States. This case starkly presents the question of which model this Court will set for the world.

#### The plan reaffirms US commitment to the rule of law---modeled

Charles Swift 08, Navy's Lt. Commander and JAG lawyer in the Hamdan vs Rumsfeld, November 25, "The American Way of Justice," Esquire, www.esquire.com/features/ESQ0307swift-5

If we are to be a great nation, then we must be willing to be a nation bound by the rule of law in our treatment of all people. That means we have to be willing to be held accountable for our past actions. That means giving each detainee the fair and neutral hearing that was set out by the Supreme Court in another recent decision (Hamdan v. Rumsfeld). That means holding regular criminal trials as required by the Supreme Court in Hamdan. That means using something other than coerced confessions to convict our enemies. That means closing Guantánamo Bay, because in a nation dedicated to the rule of law, there is no need for a legal black hole.¶ Both Guantánamo Bay and the Military Commissions Act were deemed necessary because of a decision to interrogate prisoners in violation of both domestic and international law. To interrogate a handful of religious fanatics, we created this legal black hole and turned our back on 250 years of our jurisprudence. This is not a problem that can be fixed by trying to change the law after the fact in an effort to cover up what we did. This is not a problem that can be fixed by cutting off access to the courts so that we will not be held accountable. This is not a problem that can be fixed by building a $125 million court complex in an effort to create an illusion of justice. None of those things will solve the problem, because it is not a problem at all. As Dr. Kissinger might say, it is a dilemma. The question is not, Will we survive Guantánamo, because of course we will survive Guantánamo. The question is: Will we survive Guantánamo as a great nation?¶ When I was a kid, my father was a forest scientist, and we began to have a scientific exchange with Russia under Nixon, and these Russian scientists would come and stay with us. They were fascinated with toasters. They didn't have toasters. My mom had one. She pushed it down, the bread popped up toasted. They liked toast. They wanted a toaster, badly. They wanted a better life. It's what every human being wants for his children.¶ When I was in Yemen, I went to Hamdan's house with a female attorney. On the next-to-last night the grandmother called all the little girls living in the house together. There had to have been at least ten of them. They all had on blue jeans and tennis shoes and little T-shirts with Care Bears. It's not a rich family, but they're clean and they're dressed well and they look like little girls the world over. Their faces are shining and their eyes are bright and so full of promise. The grandmother pointed at my colleague and said, "She went to school and studied very, very hard and she got very good grades, and now she's a lawyer." And then she looked at them and said, "If you go to school and study very, very hard, you can be anything."¶ The toaster in my mother's kitchen was tangible evidence to the Soviet scientists that democracy and capitalism created a better life. Ultimately, the people of the Soviet Union saw what we had and rejected communism. The grandmother in Yemen wants her granddaughters to be treated not as rightless, faceless women but as people. If we are about equal rights, then the grandmother is with us.¶ President Ronald Reagan was right: In our best moments we are the shining city on the hill. The world is angry with us because they think we've failed in that promise. But if we are committed to the rule of law and remain faithful to our principles, then America will be a beacon to that grandmother, and her promise will have a chance of coming true.

#### Global democratic transitions are inevitable---the only way for the US to bolster democracies is constitutionalism---prevents war

Fareed Zakaria 97, PhD Poli Sci @ Harvard, Managing Editor of Foreign Affairs, 1997, Lexis

Of course cultures vary, and different societies will require different frameworks of government. This is not a plea for the wholesale adoption of the American way but rather for a more variegated conception of liberal democracy, one that emphasizes both parts of that phrase. Before new policies can be adopted, there lies an intellectual task of recovering the constitutional liberal tradition, central to the Western experience and to the development of good government throughout the world. Political progress in Western history has been the result of a growing recognition over the centuries that, as the Declaration of Independence puts it, human beings have "certain inalienable rights" and that "it is to secure these rights that governments are instituted." If a democracy does not preserve liberty and law, that it is a democracy is a small consolation. LIBERALIZING FOREIGN POLICY A proper appreciation of constitutional liberalism has a variety of implications for American foreign policy. First, it suggests a certain humility. While it is easy to impose elections on a country, it is more difficult to push constitutional liberalism on a society. The process of genuine liberalization and democratization is gradual and long-term, in which an election is only one step. Without appropriate preparation, it might even be a false step. Recognizing this, governments and nongovernmental organizations are increasingly promoting a wide array of measures designed to bolster constitutional liberalism in developing countries. The National Endowment for Democracy promotes free markets, independent labor movements, and political parties. The U.S. Agency for International Development funds independent judiciaries. In the end, however, elections trump everything. If a country holds elections, Washington and the world will tolerate a great deal from the resulting government, as they have with Yeltsin, Akayev, and Menem. In an age of images and symbols, elections are easy to capture on film. (How do you televise the rule of law?) But there is life after elections, especially for the people who live there. Conversely, the absence of free and fair elections should be viewed as one flaw, not the definition of tyranny. Elections are an important virtue of governance, but they are not the only virtue. Governments should be judged by yardsticks related to constitutional liberalism as well. Economic, civil, and religious liberties are at the core of human autonomy and dignity. If a government with limited democracy steadily expands these freedoms, it should not be branded a dictatorship. Despite the limited political choice they offer, countries like Singapore, Malaysia, and Thailand provide a better environment for the life, liberty, and happiness of their citizens than do either dictatorships like Iraq and Libya or illiberal democracies like Slovakia or Ghana. And the pressures of global capitalism can push the process of liberalization forward. Markets and morals can work together. Even China, which remains a deeply repressive regime, has given its citizens more autonomy and economic liberty than they have had in generations. Much more needs to change before China can even be called a liberalizing autocracy, but that should not mask the fact that much has changed. Finally, we need to revive constitutionalism. One effect of the overemphasis on pure democracy is that little effort is given to creating imaginative constitutions for transitional countries. Constitutionalism, as it was understood by its greatest eighteenth century exponents, such as Montesquieu and Madison, is a complicated system of checks and balances designed to prevent the accumulation of power and the abuse of office. This is done not by simply writing up a list of rights but by constructing a system in which government will not violate those rights. Various groups must be included and empowered because, as Madison explained, "ambition must be made to counteract ambition." Constitutions were also meant to tame the passions of the public, creating not simply democratic but also deliberative government. Unfortunately, the rich variety of unelected bodies, indirect voting, federal arrangements, and checks and balances that characterized so many of the formal and informal constitutions of Europe are now regarded with suspicion. What could be called the Weimar syndrome -- named after interwar Germany's beautifully constructed constitution, which failed to avert fascism -- has made people regard constitutions as simply paperwork that cannot make much difference. (As if any political system in Germany would have easily weathered military defeat, social revolution, the Great Depression, and hyperinflation.) Procedures that inhibit direct democracy are seen as inauthentic, muzzling the voice of the people. Today around the world we see variations on the same majoritarian theme. But the trouble with these winner-take-all systems is that, in most democratizing countries, the winner really does take all. DEMOCRACY'S DISCONTENTS We live in a democratic age. Through much of human history the danger to an individual's life, liberty and happiness came from the absolutism of monarchies, the dogma of churches, the terror of dictatorships, and the iron grip of totalitarianism. Dictators and a few straggling totalitarian regimes still persist, but increasingly they are anachronisms in a world of global markets, information, and media. There are no longer respectable alternatives to democracy; it is part of the fashionable attire of modernity. Thus the problems of governance in the 21st century will likely be **problems within democracy**. This makes them more difficult to handle, wrapped as they are in the mantle of legitimacy. Illiberal democracies gain legitimacy, and thus strength, from the fact that they are reasonably democratic. Conversely, the greatest danger that illiberal democracy poses -- other than to its own people -- is that it will discredit liberal democracy itself, casting a shadow on democratic governance. This would not be unprecedented. Every wave of democracy has been followed by setbacks in which the system was seen as inadequate and new alternatives were sought by ambitious leaders and restless masses. The last such period of disenchantment, in Europe during the interwar years, was seized upon by demagogues, many of whom were initially popular and even elected. Today, in the face of a spreading virus of illiberalism, the most useful role that the international community, and most importantly the United States, can play is -- instead of searching for new lands to democratize and new places to hold elections -- to consolidate democracy where it has taken root and to encourage the gradual development of constitutional liberalism across the globe. Democracy without constitutional liberalism is not simply inadequate, but dangerous, bringing with it the erosion of liberty, the abuse of power, ethnic divisions, and even war. Eighty years ago, Woodrow Wilson took America into the twentieth century with a challenge, to make the world safe for democracy. As we approach the next century, our task is to make democracy safe for the world.

#### Democratic backsliding causes great power war

Azar Gat 11, the Ezer Weizman Professor of National Security at Tel Aviv University, 2011, “The Changing Character of War,” in The Changing Character of War, ed. Hew Strachan and Sibylle Scheipers, p. 30-32

Since 1945, the decline of major great power war has deepened further. Nuclear weapons have concentrated the minds of all concerned wonderfully, but no less important have been the institutionalization of free trade and the closely related process of rapid and sustained economic growth throughout the capitalist world. The communist bloc did not participate in the system of free trade, but at least initially it too experienced substantial growth, and, unlike Germany and Japan, it was always sufﬁciently large and rich in natural resources to maintain an autarky of sorts. With the Soviet collapse and with the integration of the former communist powers into the global capitalist economy, the prospect of a major war within the developed world seems to have become very remote indeed. This is one of the main sources for the feeling that war has been transformed: its geopolitical centre of gravity has shifted radically. The modernized, economically developed parts of the world constitute a ‘zone of peace’. War now seems to be conﬁned to the less-developed parts of the globe, the world’s ‘zone of war’, where countries that have so far failed to embrace modernization and its pacifying spin-off effects continue to be engaged in wars among themselves, as well as with developed countries.¶ While the trend is very real, one wonders if the near disappearance of armed conﬂict within the developed world is likely to remain as stark as it has been since the collapse of communism. The post-Cold War moment may turn out to be a ﬂeeting one. The probability of major wars within the developed world remains low—because of the factors already mentioned: increasing wealth, economic openness and interdependence, and nuclear deterrence. But the deep sense of change prevailing since 1989 has been based on the far more radical notion that the triumph of capitalism also spelled the irresistible ultimate victory of democracy; and that in an afﬂuent and democratic world, major conﬂict no longer needs to be feared or seriously prepared for. This notion, however, is fast eroding with the return of capitalist non-democratic great powers that have been absent from the international system since 1945. Above all, there is the formerly communist and fast industrializing authoritarian-capitalist China, whose massive growth represents the greatest change in the global balance of power. Russia, too, is retreating from its postcommunist liberalism and assuming an increasingly authoritarian character.¶ Authoritarian capitalism may be more viable than people tend to assume. 8 The communist great powers failed even though they were potentially larger than the democracies, because their economic systems failed them. By contrast, the capitalist authoritarian/totalitarian powers during the ﬁrst half of the twentieth century, Germany and Japan, particularly the former, were as efﬁcient economically as, and if anything more successful militarily than, their democratic counterparts. They were defeated in war mainly because they were too small and ultimately succumbed to the exceptional continental size of the United States (in alliance with the communist Soviet Union during the Second World War). However, the new non-democratic powers are both large and capitalist. China in particular is the largest player in the international system in terms of population and is showing spectacular economic growth that within a generation or two is likely to make it a true non-democratic superpower.¶ Although the return of capitalist non-democratic great powers does not necessarily imply open conﬂict or war, it might indicate that the democratic hegemony since the Soviet Union’s collapse could be short-lived and that a universal ‘democratic peace’ may still be far off. The new capitalist authoritarian powers are deeply integrated into the world economy. They partake of the development-open-trade-capitalist cause of peace, but not of the liberal democratic cause. Thus, it is crucially important that any protectionist turn in the system is avoided so as to prevent a grab for markets and raw materials such as that which followed the disastrous slide into imperial protectionism and conﬂict during the ﬁrst part of the twentieth century. Of course, the openness of the world economy does not depend exclusively on the democracies. In time, China itself might become more protectionist, as it grows wealthier, its labour costs rise, and its current competitive edge diminishes.¶ With the possible exception of the sore Taiwan problem, China is likely to be less restless and revisionist than the territorially conﬁned Germany and Japan were. Russia, which is still reeling from having lost an empire, may be more problematic. However, as China grows in power, it is likely to become more assertive, ﬂex its muscles, and behave like a superpower, even if it does not become particularly aggressive. The democratic and non-democratic powers may coexist more or less peacefully, albeit warily, side by side, armed because of mutual fear and suspicion, as a result of the so-called ‘security dilemma’, and against worst-case scenarios. But there is also the prospect of more antagonistic relations, accentuated ideological rivalry, potential and actual conﬂict, intensiﬁed arms races, and even new cold wars, with spheres of inﬂuence and opposing coalitions. Although great power relations will probably vary from those that prevailed during any of the great twentieth-century conﬂicts, as conditions are never quite the same, they may vary less than seemed likely only a short while ago.

#### Independently, the plan prevents eroding checks on executive power that creates global dissident crack-down

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, p. 58

Opponents and skeptics of administrative detention rightly point out that creating new mechanisms for detention with procedural protections that are diluted compared with those granted criminal suspects may put liberty at risk. The most obvious concern is that innocent individuals will get swept up and imprisoned— the “false positive” problem. Civil libertarians rightly worry too that aside from the specific risk to particular individuals, any expansion of administrative detention— and I say “expansion” because, as noted earlier, it already exists in some nonterrorist contexts in U.S. law— risks eroding the checks on state power more generally. To some, the idea of administrative detention of suspected terrorists is the kind of “loaded weapon” that Justice Robert Jackson worried about at the time of Japanese internment. 52 Even if critics are satisfied that the U.S. government can use administrative detention responsibly, there are many unsavory foreign regimes that will not. The United States therefore needs to be cautious about justifying principles that might be used by less democratic regimes as a pretext to crack down, for example, on dissidents that they label “terrorists” or “national security threats.”

#### Chinese crackdowns on Uighurs make them stronger and cause Asian war

Dr. Elizabeth Van Wie Davis 8, division director and professor of liberal arts and international studies at Colorado School of Mines, 2008, "Uyghur Muslim Ethnic Separatism in Xinjiang, China," Asian Affairs: An American Review, 2008, Vol. 35, Issue 1, pg. 15-30, ebsco

Alternative Futures¶ The scenario most worrisome to the Chinese would be the Uyghur Muslim movement in Xinjiang externally joining with international Muslim movements throughout Asia and the Middle East, bringing an influx of Islamic extremism and a desire to challenge the central government. The Chinese also fear the Uyghur movement could internally radicalize other minorities, whether the ethnic Tibetans or the Muslim Hui. Beijing is currently successfully managing the separatist movements in China, but the possibility of increased difficulty is linked partly to elements outside Chinese control, such as political instability or increased Islamic extremism in neighboring Pakistan, Afghanistan, Tajikistan, Kyrgyzstan, and Kazakhstan. Chinese policies and reactions, however, will largely determine the progress of separatist movements in China. If “strike hard” campaigns are seen to discriminate against nonviolent Uyghurs and if the perception that economic development in Xinjiang aids Han Chinese at the expense of Uyghurs, the separatist movements will be fueled.¶ The whole region has concerns about growing Uyghur violence. Central Asian countries, especially those with sizable Uyghur minorities, already worry about Uyghur violence and agitation. Many of the regional governments, especially secular authoritarian governments in South Asia and Central Asia, are worried about the contagion of increasing Muslim radicalization. The governments of Southeast Asia are also worried about growing radical networks and training camps, but they also fear the idea of a fragmenting China. Political instability in China would impact all of Asia.

#### Asian war goes nuclear---no defense---interdependence and institutions don’t check

C. Raja Mohan 13, distinguished fellow at the Observer Research Foundation in New Delhi, March 2013, Emerging Geopolitical Trends and Security in the Association of Southeast Asian Nations, the People’s Republic of China, and India (ACI) Region,” background paper for the Asian Development Bank Institute study on the Role of Key Emerging Economies, <http://www.iadb.org/intal/intalcdi/PE/2013/10737.pdf>

Three broad types of conventional conflict confront Asia. The first is the prospect of war between great powers. Until a rising PRC grabbed the attention of the region, there had been little fear of great power rivalry in the region. The fact that all major powers interested in Asia are armed with nuclear weapons, and the fact that there is growing economic interdependence between them, has led many to argue that great power conflict is not likely to occur. Economic interdependence, as historians might say by citing the experience of the First World War, is not a guarantee for peace in Asia. Europe saw great power conflict despite growing interdependence in the first half of the 20th century. Nuclear weapons are surely a larger inhibitor of great power wars. Yet we have seen military tensions build up between the PRC and the US in the waters of the Western Pacific in recent years. The contradiction between the PRC’s efforts to limit and constrain the presence of other powers in its maritime periphery and the US commitment to maintain a presence in the Western Pacific is real and can only deepen over time.29 We also know from the Cold War that while nuclear weapons did help to reduce the impulses for a conventional war between great powers, they did not prevent geopolitical competition. Great power rivalry expressed itself in two other forms of conflict during the Cold War: inter-state wars and intra-state conflict. If the outcomes in these conflicts are seen as threatening to one or other great power, they are likely to influence the outcome. This can be done either through support for one of the parties in the inter-state conflicts or civil wars. When a great power decides to become directly involved in a conflict the stakes are often very high. In the coming years, it is possible to envisage conflicts of all these types in the ACI region. ¶ Asia has barely begun the work of creating an institutional framework to resolve regional security challenges. Asia has traditionally been averse to involving the United Nations (UN) in regional security arrangements. Major powers like the PRC and India are not interested in “internationalizing” their security problems—whether Tibet; Taipei,China; the South China Sea; or Kashmir—and give other powers a handle. Even lesser powers have had a tradition of rejecting UN interference in their conflicts. North Korea, for example, prefers dealing with the United States directly rather than resolve its nuclear issues through the International Atomic Energy Agency and the UN. Since its founding, the involvement of the UN in regional security problems has been rare and occasional.¶ The burden of securing Asia, then, falls squarely on the region itself. There are three broad ways in which a security system in Asia might evolve: collective security, a concert of major powers, and a balance of power system.30 Collective security involves a system where all stand for one and each stands for all, in the event of an aggression. While collective security systems are the best in a normative sense, achieving them in the real world has always been difficult. A more achievable goal is “cooperative security” that seeks to develop mechanisms for reducing mutual suspicion, building confidence, promoting transparency, and mitigating if not resolving the sources of conflict. The ARF and EAS were largely conceived within this framework, but the former has disappointed while the latter has yet to demonstrate its full potential. ¶ A second, quite different, approach emphasizes the importance of power, especially military power, to deter one’s adversaries and the building of countervailing coalitions against a threatening state. A balance of power system, as many critics of the idea point out, promotes arms races, is inherently unstable, and breaks down frequently leading to systemic wars. There is growing concern in Asia that amidst the rise of Chinese military power and the perception of American decline, many large and small states are stepping up their expenditure on acquiring advanced weapons systems. Some analysts see this as a structural condition of the new Asia that must be addressed through deliberate diplomatic action. 31 A third approach involves cooperation among the great powers to act in concert to enforce a broad set of norms—falling in between the idealistic notions of collective security and the atavistic forms of balance of power. However, acting in concert involves a minimum level of understanding between the major powers. The greatest example of a concert is the one formed by major European powers in the early 18th century through the Congress of Vienna after the defeat of Napoleonic France. The problem of adapting such a system to Asia is the fact that there are many medium-sized powers who would resent any attempt by a few great powers to impose order in the region.32 In the end, the system that emerges in Asia is likely to have elements of all the three models. In the interim, though, there are substantive disputes on the geographic scope and the normative basis for a future security order in Asia.

### 1AC---Plan

**The United States Federal Government should grant jurisdiction to Article III criminal courts over individuals detained by the United States under its war powers detention policy as described in the 2001 Authorization for Use of Military Force and the relevant National Defense Authorization Acts.**

### 1AC---SOLVENCY

#### CONTENTION 3 IS SOLVENCY

#### Federal courts are critical to resolving US legitimacy abroad

Hathaway et al 13, Oona Hathaway, Gerard C. and Bernice Latrobe Smith Professor of International Law, Yale Law School, Samuel Adelsberg, Spencer Amdur, and Freya Pitts, J.D. candidates at Yale Law School, Philip Levitz and Sirine Shebaya J.D.s Yale Law School (2012), Winter, "Article: The Power To Detain: Detention of Terrorism Suspects After 9/11," The Yale Journal of International Law, 38 Yale J. Int'l L. 123, Lexis

2. Legitimacy ¶ Federal courts are also generally considered more legitimate than military commissions. The stringent procedural protections reduce the risk of error and generate trust and legitimacy. n245 The federal courts, for example, provide more robust hearsay protections than the commissions. n246 In addition, jurors are [\*165] ordinary citizens, not U.S. military personnel. Indeed, some of the weakest procedural protections in the military commission system have been successfully challenged as unconstitutional. n247 Congress and the Executive have responded to these legal challenges - and to criticism of the commissions from around the globe - by significantly strengthening the commissions' procedural protections. Yet the remaining gaps - along with what many regard as a tainted history - continue to raise doubts about the fairness and legitimacy of the commissions. The current commissions, moreover, have been active for only a short period - too brief a period for doubts to be confirmed or put to rest. n248 Federal criminal procedure, on the other hand, is well-established and widely regarded as legitimate.¶ Legitimacy of the trial process is important not only to the individuals charged but also to the fight against terrorism. As several successful habeas corpus petitions have demonstrated, insufficient procedural protections create a real danger of erroneous imprisonment for extended periods. n249 Such errors can generate resentment and distrust of the United States that undermine the effectiveness of counterterrorism efforts. Indeed, evidence suggests that populations are more likely to cooperate in policing when they believe they have been treated fairly. n250 The understanding that a more legitimate detention regime will be a more effective one is reflected in recent statements from the Department of Defense and the White House. n251¶ 3. Strategic Advantages¶ ¶ There is clear evidence that other countries recognize and respond to the difference in legitimacy between civilian and military courts and that they are, indeed, more willing to cooperate with U.S. counterterrorism efforts when terrorism suspects are tried in the criminal justice system. Increased international cooperation is therefore another advantage of criminal prosecution.¶ Many key U.S. allies have been unwilling to cooperate in cases involving law-of-war detention or prosecution but have cooperated in criminal [\*166] prosecutions. In fact, many U.S. extradition treaties, including those with allies such as India and Germany, forbid extradition when the defendant will not be tried in a criminal court. n252 This issue has played out in practice several times. An al-Shabaab operative was extradited from the Netherlands only after assurances from the United States that he would be prosecuted in criminal court. n253 Two similar cases arose in 2007. n254 In perhaps the most striking example, five terrorism suspects - including Abu Hamza al-Masr, who is accused of providing material support to al-Qaeda by trying to set up a training camp in Oregon and of organizing support for the Taliban in Afghanistan - were extradited to the United States by the United Kingdom in October 2012. n255 The extradition was made on the express condition that they would be tried in civilian federal criminal courts rather than in the military commissions. n256 And, indeed, both the European Court of Human Rights and the British courts allowed the extradition to proceed after assessing the protections offered by the U.S. federal criminal justice system and finding they fully met all relevant standards. n257 An insistence on using military commissions may thus hinder extradition and other kinds of international prosecutorial cooperation, such as the sharing of testimony and evidence.

#### Federal courts are the most effective method---critics are fear-mongers

Dianne Feinstein 10, U.S. Senator from California and former chairman of the Senate Intelligence Committee, April 5, "Civilian Courts Can Prosecute Terrorists," The Wall Street Journal, ProQuest

Anyone who says America's federal courts can't bring terrorists to justice is overlooking the facts. In the Dirksen U.S. Courthouse in Chicago on March 18, David Headley pleaded guilty to a dozen terror-related felonies, including helping plan the 2008 attacks in Mumbai, India, that killed 164 people. He is also providing authorities with valuable intelligence about terrorist activities, according to the Justice Department.¶ Wearing leg shackles and heavily guarded by U.S. marshals, Headley admitted to scouting sites in Mumbai for the Pakistan-based terror group Lashkar-e-Tayyiba, and to plotting to attack a Danish newspaper. He faces life imprisonment when he is eventually sentenced for his crimes.¶ His guilty plea and his cooperation are significant victories for justice and our intelligence agencies. They demonstrate that federal criminal courts -- also called Article III courts in reference to the article of the Constitution establishing the federal judiciary -- can effectively prosecute terrorists and gather intelligence.¶ Some of the most well-known terrorists of the past decade -- "Shoe Bomber" Richard Reid, "Blind Sheik" Omar Abdel Rahman and the "20th Hijacker" Zacarias Moussaoui -- are serving life sentences after being tried in Article III criminal courts. Military commissions have prosecuted just three Guantanamo detainees since 9/11. Two of these terrorists served light sentences and are free.¶ This contrast between life sentences and light sentences leaves no doubt that federal criminal courts effectively punish terrorists.¶ There may be times when a military commission is the best venue for a trial. But the president should have the flexibility to choose which system in which to prosecute. The decision should hinge on which system is most likely to produce actionable intelligence, protect our national security, bring terrorists to justice quickly, and keep them behind bars for good. Prosecutions in Article III courts can achieve all of these objectives.¶ For example, Najibullah Zazi, accused of plotting to bomb New York City's subway system, pleaded guilty in federal court on Feb. 22 and is reported to be cooperating. In the case of 9/11 mastermind Khalid Sheikh Mohammed, the attorney general is confident that prosecutors can secure a conviction and a death sentence in federal court.¶ Hundreds of international terrorists have been convicted in our federal courts since 9/11 and are locked away in heavily fortified federal prisons. Federal courts are tried, tested and capable of dealing with extremely dangerous defendants and classified intelligence. In contrast, military commissions are slow, untested and have not yet overseen a death penalty trial since 9/11.¶ President Obama's fear-mongering critics make three false accusations in their bid to discredit America's federal courts:¶ -- First, they claim terrorists will have access to classified evidence. But the Classified Information Procedures Act sets up a process for federal judges to protect classified information during terrorist trials. The rules for how military commissions treat classified information are based on the rules used in federal criminal courts.¶ -- Second, they claim federal prosecutors can't properly try terrorists. Yet federal prosecutors have more experience handling terrorists than anyone else. According to a Bush-era Department of Justice document, "Since September 11, 2001, the Department has charged 512 individuals with terrorism or terrorism-related crimes and convicted or obtained guilty pleas in 319 terrorism-related and anti-terrorism cases." That's far more than the three convictions in military commissions.¶ -- Finally, they claim federal courts allow terrorists to take advantage of constitutional requirements for Miranda warnings and search warrants. But it is simply wrong to claim that a search warrant is required to obtain physical evidence from overseas, or that a criminal prosecution requires that detainees be immediately given Miranda warnings.¶ The record speaks for itself: Our criminal justice system is very effective at punishing terrorists. Headley's guilty plea in an Article III court has provided the most recent evidence of this. Headley admitted his crimes, is providing intelligence, and is likely to spend the rest of his life in federal prison. Case closed.

#### Comprehensive research proves federal courts solve

Richard B. Zabel and James J. Benjamin, Jr. 08, Deputy U.S. Attorney for the Southern District of New York AND partner in the New York office of Akin Gump Strause Hauer & Feld LLP, May, "In Pursuit of Justice: Prosecuting Terrorism Cases in the Federal Courts," Human Rights First, https://www.humanrightsfirst.org/wp-content/uploads/pdf/080521-USLS-pursuit-justice.pdf

In preparing this White Paper, we have relied not only on legal authorities such as judicial decisions and statutes, but also on docket sheets, indictments, and motion papers filed in numerous terrorism prosecutions around the country. We have also studied the views of academics and journalists and have sought out the personal perspectives of people who have firsthand experience in the litigation of international terrorism cases. 5 Our conclusion, based on the data we have examined and our review of the key legal and practical issues, is that the criminal justice system is reasonably well- equipped to handle most international terrorism cases. Specifically, prosecuting terrorism defendants in the court system appears as a general matter to lead to just, reliable results and not to cause serious security breaches or other problems that threaten the nation’s security. Of course, challenges arise from time to time—sometimes serious ones— but most of these challenges are not unique to international terrorism cases. One implication of our conclusion that the criminal justice system serves as an effective means of convicting and incapacitating terrorists is that the need for a “national security court” that would displace the criminal justice system is not apparent. However, there are several important qualifications on our conclusion. ¶ First, we firmly agree with those who say that the criminal justice system, by itself, is not “the answer” to the problem of international terrorism. Given the magnitude and complexity of the international terrorism threat, it is plain that the government must employ a multifaceted approach involving the use of military, intelligence, diplomatic, economic, and law enforcement resources in order to address the threat of international terrorism. Managing these different efforts is a challenging task that requires flexibility and creativity on the part of the government.¶ Second, we also agree with those who note that major terrorism cases pose strains and burdens on the criminal justice system. Some of the cases have presented challenges—both legal and practical—that are virtually unprecedented. The blockbuster international terrorism cases are extraordinarily complex. Managing them successfully requires navigating through thorny legal issues as well as challenging practical problems.¶ Third, we agree with those who argue that the criminal justice system sometimes stumbles. It is susceptible to errors of all kinds and may fairly be criticized, in different cases, as being too slow, too fast, too harsh, too lenient, too subtle, too blunt, too opaque, and too transparent. Yet for all of these well-justified criticisms, experience has shown that the justice system has generally remained a workable and credible system. Indeed, the justice system has shown a key characteristic in dealing with criminal terrorism cases: adaptability. The evolution of statutes, courtroom procedures, and efforts to balance security issues with the rights of the parties reveals a challenged but flexible justice system that generally has been able to address its shortcomings. Where appropriate, we have offered our constructive criticisms of the court system and our views on still-unsettled legal questions.

#### The plan is comparatively the best method

Eric Montalvo 10, J.D. Temple University School of Law, former US Marine Corps Major and JAG Officer, Partner at Puckett and Faraj, February 26, "US can restore legitimacy with federal trials of terror suspects at Guantanamo Bay," Jurist, jurist.org/hotline/2010/02/us-can-restore-legitimacy-with-federal.php#

"The careless approach to the issues surrounding all things Guantanamo Bay is an affront to the Constitution and the credibility of our legal institutions. As the most recent "flip flop" by Attorney General Holder regarding the prosecution of Khalid Sheik Mohammed (KSM) demonstrates, the original quick and forceful end of Guantanamo has not, by association, led to the end of "indefinite detention." The apparent conundrum is fractured into two basic issues which are the venue of the trial and the forum to be used. While the decision of where and how to prosecute is one of the most hotly contested contemporary political issues, there is a way ahead that will restore legitimacy to our broken system.¶ In a perfect world the conventional wisdom among legal scholars is that the United States should use the federal court system to prosecute KSM and do so in a location that provides for security while containing costs. The Obama administration spent close to a year figuring out that the federal court system provided the most credible and effective option for prosecution, however, they failed to foresee the incredibly high security costs, political backlash, and emotional anguish brought upon New York's citizens once again. This is where the plan derailed and now the Attorney General is contemplating the placement of KSM back into military commissions system. The answer lies in the fusion of these two ideas — holding federal court at Guantanamo Bay where a virtually brand new multimillion dollar state of the art court room awaits usage.¶ The legitimacy of federal courts compared to other prevailing options is truly without question. Federal courts have repeatedly demonstrated the ability to prosecute and successfully convict numerous alleged "terrorists" such as the "shoe bomber" Richard Reid, the "American Taliban" John Walker Lindh, Jose Padilla, the Lackawanna Six, and Zacarias Moussaoui. These examples demonstrate the capacity of our federal courts to handle the unique and complex issues latent in prosecuting alleged terrorists ranging from the pursuit of capital punishment to the national security legal morass.

#### Independently, the plan reinvigorates due process in detention

Amos N. Guiora 12, Professor of Law, S.J. Quinney College of Law, University of Utah, "Due Process and Counterterrorism", Emory International Law Review, Vol. 26, www.law.emory.edu/fileadmin/journals/eilr/26/26.1/Guiora.pdf

While some have suggested that the Iraqi and Afghan judiciaries are appropriate forums for adjudicating guilt of detainees presently detained in both countries, significant and sufficient doubt has been raised regarding objectivity and judicial fairness. 126 Precisely because the Bush Administrations have ordered the American military to engage in Iraq and Afghanistan in accordance with the Authorization to Use Military Force resolution passed by Congress, the United States bears direct responsibility for ensuring adjudication in a court of law premised on the “rule of law.” 127 Simply put: core principles of due process and fundamental fairness demand the United States ensure resolution of individual accountability.¶ While imposing American judicial norms on Iraq and Afghanistan raise legitimate international law questions regarding violations of national sovereignty, the continued denial of due process raises questions and concerns no less legitimate. History suggests there is no perfect answer to this question; similarly, both basic legal principles and fundamental moral considerations suggest that in a balancing analysis the scale must tip in favor of trial, regardless of valid sovereignty and constitutional concerns. While justice is arguably not blind, continued detention of thousands of suspects without hope of trial is a blight on society that violates core due process principles.¶ Regardless of which proposal above is adopted, the fundamental responsibility is to articulate and implement a judicial policy facilitating trial before an impartial court of law. That is the minimum due process obligation owed the detainee. ¶ VI. MOVING FORWARD¶ Due process is the essence of a proper judicial process; denial of due process, whether in interrogation or trial, violates both the Constitution and moral norms. Denying suspects and defendants due process protections results in counterterrorism measures antithetical to the essence of democracies. While threats posed by terrorism must not be ignored, there is extraordinary danger in failing to carefully distinguish between real and perceived threats. Casting an extraordinarily wide net results in denying the individual rights; similarly, there is no guarantee that such an appr oach contributes to effective operational counterterrorism. Extending constitutional privileges and protections to non- citizens does not threaten the nation-state; rather, it illustrates the already slippery slope. In proposing that due process be an inherent aspect of counterterrorism, I am in full accordance with Judge Bates’ holding. The time has come to implement his words in spirit and law alike; habeas hearings are an important beginning but do not ensure adjudication of individual accountability. Determining innocence or guilt is essential to effective counterterrorism predicated on the rule of law.

## 2AC

### T – Restrictions

#### We meet ---

#### Restriction means a limit or qualification, and includes conditions on action

CAA 8,COURT OF APPEALS OF ARIZONA, DIVISION ONE, DEPARTMENT A, STATE OF ARIZONA, Appellee, v. JEREMY RAY WAGNER, Appellant., 2008 Ariz. App. Unpub. LEXIS 613

P10 The term "restriction" is not defined by the Legislature for the purposes of the DUI statutes. See generally A.R.S. § 28-1301 (2004) (providing the "[d]efinitions" section of the DUI statutes). In the absence of a statutory definition of a term, we look to ordinary dictionary definitions and do not construe the word as being a term of art. Lee v. State, 215 Ariz. 540, 544, ¶ 15, 161 P.3d 583, 587 (App. 2007) ("When a statutory term is not explicitly defined, we assume, unless otherwise stated, that the Legislature intended to accord the word its natural and obvious meaning, which may be discerned from its dictionary definition.").

P11 The dictionary definition of "restriction" is "[a] limitation or qualification." Black's Law Dictionary 1341 (8th ed. 1999). In fact, "limited" and "restricted" are considered synonyms. See Webster's II New Collegiate Dictionary 946 (2001). Under these commonly accepted definitions, Wagner's driving privileges were "restrict[ed]" when they were "limited" by the ignition interlock requirement. Wagner was not only [\*7] statutorily required to install an ignition interlock device on all of the vehicles he operated, A.R.S. § 28-1461(A)(1)(b), but he was also prohibited from driving any vehicle that was not equipped with such a device, regardless whether he owned the vehicle or was under the influence of intoxicants, A.R.S. § 28-1464(H). These limitations constituted a restriction on Wagner's privilege to drive, for he was unable to drive in circumstances which were otherwise available to the general driving population. Thus, the rules of statutory construction dictate that the term "restriction" includes the ignition interlock device limitation.

#### A restriction on war powers authority limits Presidential discretion

Jules Lobel 8, Professor of Law at the University of Pittsburgh  Law School, President of the Center for Constitutional Rights, represented members of Congress challenging assertions of Executive power to unilaterally initiate warfare, “Conflicts Between the Commander in Chief and Congress: Concurrent Power  over the Conduct of War,” Ohio State Law Journal, Vol 69, p 391, 2008, http://moritzlaw.osu.edu/students/groups/oslj/files/2012/04/69.3.lobel\_.pdf

So too, the congressional power to declare or authorize war has been long held to permit Congress to authorize and wage a limited war—“limited in place, in objects, and in time.” 63 When Congress places such restrictions on the President’s authority to wage war, it limits the President’s discretion to conduct battlefield operations. For example, Congress authorized President George H. W. Bush to attack Iraq in response to Iraq’s 1990 invasion of Kuwait, but it confined the President’s authority to the use of U.S. armed forces pursuant to U.N. Security Council resolutions directed to force Iraqi troops to leave Kuwait. That restriction would not have permitted the President to march into Baghdad after the Iraqi army had been decisively ejected from Kuwait, a limitation recognized by President Bush himself.64

#### Prefer it

#### a) Aff ground – only process-based affs can beat the executive CP

#### b) Topic education – it’s the “authority” topic not the “war on terror” topic – only we allow a discussion of decision-making procedures

#### Reasonability – good is good enough---competing interpretations causes a race to the bottom to arbitrarily limit out every aff

### Legitimacy

**Obama believes he is constrained by statute – won’t circumvent**

Saikrishna **Prakash 12,** professor of law at the University of Virginia and Michael Ramsey, professor of law at San Diego, “The Goldilocks Executive” Feb, SSRN

We accept that the President’s lawyers search for legal arguments to justify presidential action, that they find the President’s policy preferences legal more often than they do not, and that the President sometimes disregards their conclusions. But the close attention the Executive pays to legal constraints suggests that the President (who, after all, is in a good position to know) **believes** himself constrained by **law**. Perhaps Posner and Vermeule believe that the President is mistaken. But we think, to the contrary, it represents the President’s **recognition of** the various **constraints** we have listed, and his **appreciation** that attempting to operate **outside the bounds of law** would **trigger censure from Congress, courts, and the public**.

**No circumvention – review mechanism distributes power and insulates from pressure**

**Siegel 12** - Senior Editor for UCLA Law Review, UCLA Law Review, April, 2012, 59 UCLA L. Rev. 1076Reconciling Caperton and Citizens United: When Campaign Spending Should Compel Recusal of Elected Officials, Samuel P. Siegel

BIO: \* AUTHOR Samuel P. Siegel is a Senior Editor for UCLA Law Review

The influence of campaign expenditures is further lessened when an adjudicatory decision is made by a **group of executive officials**, even if each of those officials is directly accountable to the elected official. For example, the Committee on Foreign Investment in the United States - comprised of top-ranking officials from various executive departments n258 - is a body authorized by Congress to screen and investigate foreign-investment proposals "to determine the effects of the transaction on the national security of the United States," n259 negotiate mitigation agreements with foreign investors to minimize national security concerns, n260 and, should mitigation efforts fail, recommend to the president that she block the [\*1119] deal, n261 powers that are "like individual adjudications (or quasi-adjudications)." n262 Yet the very fact that a committee, rather than a single officer, exercises this adjudicatory power **insulates its decisions from presidential control**: "With a single agency, the President could credibly threaten to remove or otherwise pressure or discipline that agency's Secretary or Administrator. **But there is strength in numbers**." n263 Thus, **even within a unitary executive**, such a structure **would likely temper** the **influence** that campaign expenditures would have on the outcome of an adjudication.

#### NSA details don’t matter

Josef Joffe ‘13, Fellow in International Relations at the Hoover Institution, senior fellow at Stanford University’s Freeman Spogli Institute of International Studies, publisher-editor of the German weekly Die Zeit 10-18-13, “A Beautiful Friendship,” http://www.hoover.org/publications/hoover-digest/article/159101

Meanwhile, the Merkel government has begun to climb down in the¶ face of Snowden’s tales, according to which the NSA monitors between¶ 15 million and 60 million transmissions daily from Germany alone. Mr.¶ “No-no” Seibert now concedes a longstanding cooperation between Germany’s¶ Bundesnachrichtendienst (BND) and U.S. agencies, all in accordance¶ with “law and order.” The Intelligence Committee of the Bundestag¶ knew all about it. Of course, the German government also remains¶ keenly interested in the trade talks. ¶¶¶ This means that Merkel is unlikely to be too impressed by news magazine¶ Der Spiegel, which has condemned the NSA’s snooping as a “state¶ crime” and urged Berlin to grant asylum to Snowden. And well she might¶ remain tranquil. For there are three hard facts that speak more loudly than¶ Snowden’s words. ¶¶¶ COMING IN FROM THE COLD (WAR)¶ First, the discreet collaboration between the BND and U.S. spy agencies¶ goes back to the very birth of the Federal Republic. Though the number of¶ U.S. troops in reunified Germany has dwindled, the huge white listening¶ spheres dotting the Bavarian landscape near Bad Aibling are an enduring¶ testimony to the two countries’ hand-in-glove relationship—regardless of¶ the departure of Russian troops in 1994. ¶¶¶ Second, both the United States and Germany have profited handsomely¶ from this relationship. During the Cold War, the BND was Washington’s¶ choice supplier of intelligence from the Warsaw Pact. It is said that¶ the BND alerted the CIA of the impending Soviet march into Czechoslovakia¶ in 1968. Another war story has it that the West Germans were first¶ to know about the Soviet invasion of Afghanistan. More recently, in 2007,¶ U.S. snoopers told German security agencies about the terror plot of the¶ Sauerland Group of homegrown terrorists. They did so on the basis of¶ intercepted e-mails—the very “unacceptable” activity that Berlin recently¶ denounced.¶Third, the lady doth protest too much. It so happens that American¶ agencies supply the Germans (and, one assumes, other Europeans as well)¶ with information they are either technically unable to fish out of cyberspace¶ themselves or are prohibited from doing so. Thus one hand washes¶ the other. Not quite kosher, but not to be dispensed with. ¶¶¶Still, best not to know. This is why presidents and chancellors have¶ always kept their distance from their intelligence services. The reigning¶ principle is “plausible deniability”—until the story erupts. The Prism¶ debacle, stirred up in the bowels of NSA’s Fort Meade headquarters, is¶ but the latest chapter in an old drama. In 2001, the European Parliament¶ published a report about the infamous Echelon system, jointly managed¶ by the United States, Britain, Canada, Australia, and New Zealand, which¶ survived the Cold War and was being used to spy on “private and commercial”¶ communications. ¶¶¶ Yet the huffing and puffing has always subsided—for good old reasons¶ of state. There are just too many plump fruits falling off the Anglo-American¶ spy tree. And the Europeans will continue to savor them as long as¶ they are unwilling to put up the funds for a Euro-NSA. It is so convenient¶ to have the Americans tell you what the Russians are up to in Syria, or¶ which homegrown terrorists are looking for a training camp in Pakistan.¶ Realism (or resignation) finally tells the Europeans that cutting the¶ umbilical cord will leave them worse off than ever. The United States and¶ Britain will continue to snoop anyway, but without delivering goodies to¶ the Europeans. Such are the cruel facts of life among nations.

### WOT turn

#### War on terror fails- terrorists threat unaffected

Zoha Waseem 8/26/13, A freelance writer with a post-graduate degree from King's College London in MA Terrorism and Security, 8/26/13, "Is Alqeada Dead or Thriving," <http://blogs.thenews.com.pk/blogs/2013/08/is-alqeada-dead-or-thriving/>

Is Al Qaeda weakened already?¶ Obama is but one of many US officials who have argued with relentless zeal that al Qaeda has been globally weakened. Their narratives grossly exaggerated the negative impacts of bin Laden’s death on the organization; helped put Obama’s administration back in the White House a second time around; and justified on-going operations in Afghanistan and Iraq that were becoming increasingly unpopular within the American masses. Nothing could be more misleading if we consider the evolution of al Qaeda over the years.¶ ¶ On 11 August 2013, al Qaeda observed its silver jubilee. In its 25 years, al Qaeda has transformed from a hierarchically structured combatant group to a flexible, decentralised global ideology. Despite bin Laden’s death, it has now expanded exactly the way its founder had dreamed, a worldwide Islamic ‘revolution’ for which Zawahiri provides theological rhetoric and oversight.¶ ¶ AlQaeda’s new structure:¶ ¶ Its structure was dissolved ten years ago when US diverted focus from Kabul to Baghdad, allowing al Qaeda fighters to regroup, reorganize and rid themselves of their dependence on bin Laden. It was the most sensible and logical enhancement of networking, in line with globally evolving war fronts and the technological advancements introduced by the Internet. It was to be the most flabbergasting transformation of old terrorism to new terrorism.¶ ¶ And still, the US and President Obama appear to have learned so little about tackling ideological terrorism. Al Qaeda’s so-called transfer of terror to Yemen is not a new development. It also cannot imply that central al Qaeda is on the run. It simply provides the organization and the US a new battleground in the War on Terror, where the US has decided to implement another faulty counter-terrorism strategy: employing its beloved drones.¶ ¶ From Pakistan to Yemen:¶ ¶ Four years of bombings have killed over 600 people in Yemen, while al Qaeda in the Arabian Peninsula (AQAP), one of the organization’s several international affiliates, remains undeterred. This month’s unleashing of death by drones came shortly after the closure of 19 embassies in response to Zawahiri’s communication with Nasser al Wahayshi (AQAP’s head, now al Qaeda’s general manager). The conference call included eleven other ‘jihadis’, some from Pakistan. The interceptions paint an intimidating picture.¶ ¶ Firstly, Zawahiri’s continued presence in Pakistan implies no geographical shift in al Qaeda’s core to Yemen; it merely demonstrates the expansion of its core. Shifting this core from areas surrounding the Durand Line in current circumstances would be insensible. Should Afghanistan erupt into a civil war post-withdrawal, the region could continue providing the network the ideal environment and landscape necessary for survival and maneuver.

No intel sharing now --- indefinite detention causes allies to backlash to intel cooperation and decline extradition treaties --- that’s Hathaway

#### CIPA solves---it’s never failed

Richard B. Zabel and James J. Benjamin, Jr. 08, Deputy U.S. Attorney for the Southern District of New York AND partner in the New York office of Akin Gump Strause Hauer & Feld LLP, May, "In Pursuit of Justice: Prosecuting Terrorism Cases in the Federal Courts," Human Rights First, https://www.humanrightsfirst.org/wp-content/uploads/pdf/080521-USLS-pursuit-justice.pdf

In many terrorism cases, the government seeks to rely on evidence that is probative of the defendant’s guilt but which implicates sensitive national security interests, particularly intelligence sources, means of intelligence gathering, and even the state of our intelligence on other subjects or intelligence priorities. Dealing with classified or sensitive evidence can be one of the most important challenges in terrorism cases. Over the years, however, courts have proved, again and again, that they are up to the task of balancing the defendant’s right to a fair trial, the government’s desire to offer relevant evidence, and the imperative of protecting national security.¶ The Foreign Intelligence Surveillance Act (“FISA”), provides a lawful means for the government to conduct wiretaps and physical searches within the United States in terrorism investigations without satisfying the normal Fourth Amendment requirement of probable cause that a crime was committed. Under FISA, the government must make an ex parte application to a special FISA court, composed of a select group of federal judges, and must satisfy a number of technical requirements before the FISA court can give authority to conduct a FISA wiretap or a FISA search. The FISA procedures are very differ ent from those used in normal criminal investigations.¶ In the years before 9/11, the Department of Justice (“DOJ”) imposed an internal “wall” that made it difficult for FISA evidence to be used in court. Under the “wall” procedures, the government erected barriers between intelligence gathering, on one hand, and criminal prosecution on the other. As a result, it was difficult for the government to use FISA evidence in court, since it was deemed to be the province of the intelligence community. FISA itself, however, did not require the “wall”; to the contrary, from its inception the statute envisioned that FISA evidence could be used in court. After 9/11, Congress amended FISA to make it clear that the “wall” should be dismantled and FISA evidence could be shared with criminal investigators and prosecutors. Courts have found the amendments constitutional, and in the years since 9/11, FISA evidence has been used without incident in many criminal terrorism cases. ¶ A separate statute, the Classified Information Procedures Act (“CIPA”), outlines a comprehensive process for dealing with instances in which either the defendant or the government seeks to use evidence that is classified. Before CIPA was adopted in 1980, some criminal defendants, mainly in espionage cases, sought to engage in “graymail,” the practice of threatening to disclose classified information in open court in an effort to force the government to dismiss the charges. CIPA was intended to eliminate this tactic and, more broadly, to establish regularized procedures and heavy involvement by the presiding judge, so that the defendant’s right to a fair trial would be protected while national security would not be jeopardized by the release of classified information.¶ Under CIPA’s detailed procedures, classified evidence need not be disclosed to the defense in discovery unless the court finds, based on an in camera review, that it is relevant under traditional evidentiary standards. If the government still objects to the disclosure after a finding that the information is relevant, then the court enters a non-disclosure order and determines an appropriate sanction for the government’s failure to disclose. Absent a non-disclosure order, the judge enters a protective order and the information is disclosed only to defense counsel, who must obtain a security clearance, but not to the defendant. Alternatively, the judge may find that the information can be provided directly to the defendant in a sanitized form—e.g., through a summary or redacted documents.¶ As trial draws near, if either the government or the defense seeks to use classified information at trial, a separate proceeding occurs, in private, in which the judge and the lawyers for both sides (but not the defendant himself) attempt to craft substitutions for the classified evidence— using pseudonyms, paraphrasing, and the like—which must afford the defendant substantially the same ability to make his defense as if the original evidence were used. If it proves impossible to craft an adequate substitution, then the court must consider an appropriate sanction against the government, ranging from the exclusion of evidence to findings against the government on particular issues to dismissal of the indictment in extreme cases. Under CIPA, all of these proceedings are conducted in secure facilities within the courthouse, and sensitive documents are carefully safeguarded pursuant to written security procedures.¶ CIPA repeatedly has been upheld as constitutional, and it has been used successfully in scores of terrorism prosecutions. We are aware of two reported incidents in which sensitive information was supposedly disclosed in terrorism cases, but we have not been able to confirm one of those incidents, and in the other it is our understanding that the government did not try to invoke non-disclosure protections. Based on our review of the case law, we are not aware of a single terrorism case in which CIPA procedures have failed and a serious security breach has occurred. This is not to say that CIPA is perfect, and in this White Paper we note some potentially problematic situations—e.g., where a defendant seeks to proceed pro se such as Zacarias Moussaoui—as well as some areas for possible improvement in the statute.

#### Indefinite detention hurts our ability to fight terrorism---bureaucratic confusion and wrecks intel sharing

WB 11 Washington's Blog, "Indefinite Detention Hurts Our National Security and Increases the Risk of Terrorism", December 15, www.washingtonsblog.com/2011/12/indefinite-detention-hurts-our-national-security-and-increases-the-risk-of-terrorism.html

Indefinite Detention Bill Hurts Our Ability to Fight Terrorism¶ Top counter-terrorism officials have said that indefinite detention increases terrorism.¶ A former Admiral and Judge Advocate General says that indefinite detention of Americans hands a big win to the terrorists.¶ And as Huffington Post notes today, indefinite detention is opposed by our own military and intelligence and police:¶ FBI Director Robert Mueller just this morning told the Senate that he fears the proposed law will create confusion over who has authority to investigate terrorism cases.¶ Defense Secretary Leon Panetta said the National Defense Authorization Act will restrain the Executive Branch’s ability to use “all the counterterrorism tools that are now legally available” and “needlessly complicate efforts by frontline law enforcement professionals to collect critical intelligence concerning operations and activities within the United States.”¶ Director of National Intelligence James Clapper has written that it “would introduce unnecessary rigidity at a time when our intelligence, military and law enforcement professionals are working more closely than ever to defend our nation effectively and quickly from terrorist attacks.”¶ Still, ignoring the advice from his most senior federal military and law enforcement professionals, President Obama is expected to sign the 2012 law, according to his senior advisors.¶ The concerns aren’t limited to federal officials. Earlier this week the 20,000-member International Association of Chiefs of Police wrote to Congress expressing concern that the law could “undermine the ability of our law enforcement counterterrorism experts, in particular those involved with Joint Terrorism Task Forces, to conduct effective investigations of suspected terrorists.”¶ A bipartisan group of 26 retired generals and admirals recently wrote that the legislation “both reduces the options available to our Commander-in-Chief to incapacitate terrorists and violates the rule of law” and “would seriously undermine the safety of the American people.”¶ The U.K. and Germany have said they won’t share intelligence or turn over suspected terrorists to the U.S. if they know they’ll be headed to indefinite military custody.¶ So not only will the bill allowing indefinite detention of Americans more or less create an overt police state, but it will also make us more vulnerable to terrorism.

#### No terrorism impact

John Mueller and Mark G. Stewart 12, Senior Research Scientist at the Mershon Center for International Security Studies and Adjunct Professor in the Department of Political Science, both at Ohio State University, and Senior Fellow at the Cato Institute AND Australian Research Council Professorial Fellow and Professor and Director at the Centre for Infrastructure Performance and Reliability at the University of Newcastle, "The Terrorism Delusion," Summer, International Security, Vol. 37, No. 1, politicalscience.osu.edu/faculty/jmueller//absisfin.pdf

In 2009, the U.S. Department of Homeland Security (DHS) issued a lengthy report on protecting the homeland. Key to achieving such an objective should be a careful assessment of the character, capacities, and desires of potential terrorists targeting that homeland. Although the report contains a section dealing with what its authors call “the nature of the terrorist adversary,” the section devotes only two sentences to assessing that nature: “The number and high profile of international and domestic terrorist attacks and disrupted plots during the last two decades underscore the determination and persistence of terrorist organizations. Terrorists have proven to be relentless, patient, opportunistic, and flexible, learning from experience and modifying tactics and targets to exploit perceived vulnerabilities and avoid observed strengths.”8¶ This description may apply to some terrorists somewhere, including at least a few of those involved in the September 11 attacks. Yet, it scarcely describes the vast majority of those individuals picked up on terrorism charges in the United States since those attacks. The inability of the DHS to consider this fact even parenthetically in its fleeting discussion is not only amazing but perhaps delusional in its single-minded preoccupation with the extreme.¶ In sharp contrast, the authors of the case studies, with remarkably few exceptions, describe their subjects with such words as incompetent, ineffective, unintelligent, idiotic, ignorant, inadequate, unorganized, misguided, muddled, amateurish, dopey, unrealistic, moronic, irrational, and foolish.9 And in nearly all of the cases where an operative from the police or from the Federal Bureau of Investigation was at work (almost half of the total), the most appropriate descriptor would be “gullible.”¶ In all, as Shikha Dalmia has put it, would-be terrorists need to be “radicalized enough to die for their cause; Westernized enough to move around without raising red flags; ingenious enough to exploit loopholes in the security apparatus; meticulous enough to attend to the myriad logistical details that could torpedo the operation; self-sufficient enough to make all the preparations without enlisting outsiders who might give them away; disciplined enough to maintain complete secrecy; and—above all—psychologically tough enough to keep functioning at a high level without cracking in the face of their own impending death.”10 The case studies examined in this article certainly do not abound with people with such characteristics. ¶ In the eleven years since the September 11 attacks, no terrorist has been able to detonate even a primitive bomb in the United States, and except for the four explosions in the London transportation system in 2005, neither has any in the United Kingdom. Indeed, the only method by which Islamist terrorists have managed to kill anyone in the United States since September 11 has been with gunfire—inflicting a total of perhaps sixteen deaths over the period (cases 4, 26, 32).11 This limited capacity is impressive because, at one time, small-scale terrorists in the United States were quite successful in setting off bombs. Noting that the scale of the September 11 attacks has “tended to obliterate America’s memory of pre-9/11 terrorism,” Brian Jenkins reminds us (and we clearly do need reminding) that the 1970s witnessed sixty to seventy terrorist incidents, mostly bombings, on U.S. soil every year.12¶ The situation seems scarcely different in Europe and other Western locales. Michael Kenney, who has interviewed dozens of government officials and intelligence agents and analyzed court documents, has found that, in sharp contrast with the boilerplate characterizations favored by the DHS and with the imperatives listed by Dalmia, Islamist militants in those locations are operationally unsophisticated, short on know-how, prone to making mistakes, poor at planning, and limited in their capacity to learn.13 Another study documents the difficulties of network coordination that continually threaten the terrorists’ operational unity, trust, cohesion, and ability to act collectively.14¶ In addition, although some of the plotters in the cases targeting the United States harbored visions of toppling large buildings, destroying airports, setting off dirty bombs, or bringing down the Brooklyn Bridge (cases 2, 8, 12, 19, 23, 30, 42), all were nothing more than wild fantasies, far beyond the plotters’ capacities however much they may have been encouraged in some instances by FBI operatives. Indeed, in many of the cases, target selection is effectively a random process, lacking guile and careful planning. Often, it seems, targets have been chosen almost capriciously and simply for their convenience. For example, a would-be bomber targeted a mall in Rockford, Illinois, because it was nearby (case 21). Terrorist plotters in Los Angeles in 2005 drew up a list of targets that were all within a 20-mile radius of their shared apartment, some of which did not even exist (case 15). In Norway, a neo-Nazi terrorist on his way to bomb a synagogue took a tram going the wrong way and dynamited a mosque instead.15

### Democracy

#### Democracy create deterrence – stop conflict by changing calculations of leaders

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[James P. Terry, Foreword, Democracy and Deterrence: foundations for an Enduring World Peace by Dr. Walter Gary Sharp Sr. Air University press, p. ix – x]

The causes of armed conflict have historically been viewed inprimarily sociological terms, with political. religious, economic.and military factors sharing primacy. Few have examined thecauses of warfare in the context of a deterrence model or. specically, the deterrence factors inherent in the checks and balances of a democratic state and the absence of such factors inthe nondemocratic state. More significantly. none before Prof.John Norton Moore has argued the value of democratic principles in deterrence and conflict avoidance.

In this important book. Dr. Gary Sharp analyzes the conceptsIn Moore's semlnal work The War Puzzle (2005). whIch describesMoore’s incentive theory of war avoidance. Sharp carefully disssects Moore’s deterrence model and examines those incentivesthat discourage nondemocratic governments from pursuing violeent conflicts. Arguing that existing democracies must make anactive effort to foster thie political environment in which new democracies can develop. Sharp discusses the elements critical topromoting democratization and thus strengthening system widedeterrence at the state and international levels.

Sharp also examines the incentives for conflict avoidance (internaal checks and balances) inherent in the demdocratic state and theirrelationship to war avoidance. In examining current demnocraciesand comparing them statistically to nondemocratic sates, sharpcalculates an aggregated index value of democracy based upon resppeceed databases that rank the jurisdictions of the world on poliiicaal rights. civil liberties, media independence. religious freedom.economic freedom, and human development. Demonstratingthrough his analysis that demnocracies are inherently more peacefulbecause of the internal checks and balances on the aggressiveuse of force. Sharp similarly demonstrates how nondemocraciesrequire external checks and balances to preclude aggression.

Sharp's analysis and validation of Moore's incentive theory orwar avoidance is critical to an understanding of those foreignpolicy strategies that the United States and other democraticnations must embrace as they attempt to reverse a course orhistory in which 38.5 million war deaths were recorded in thetwentieth century alone. By demonstrating how democracy,economic freedom. and the rule of law provide essential mechanisms to deter leaders from precipitous decisions concerningthe use of force. Sharp has provided an Invaluable service tothe statesman and international lawyer alike.

#### Democratization spurs open markets – bigger internal than other factors

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[Helen V. Milner and Keiko Kubota, Why the Move to Free Trade? Democracy and Trade Policy in the Developing Countries, International Organization, Vol. 59, No. 1 (Winter, 2005), pp. 107-143]

Conclusion

Why countries thatlongpursued protectionism should suddenlyliberalize theirtrade regimesis animportant and underexplored question. While economists havelong preachedthe benefits offree trade, developing countries have only recentlybegunto heed their advice. Indeed, much of the extant literature arguesthat eco-nomic reforms, such as tradeliberalization, rarely occur. However, many develop-ing countries began liberalizingtrade in the mid-1980s, and the move to free tradesince has been remarkable.

Our argumentisthat a changein the political regimetoward more democracyshould be followed bya move to liberalize trade. Autocratic politicalleaders inLDCs can cater to the capital-rich segment of the population because the "selec-torate" that picksthem islimited. Trade barriers are thenimposed oncapital-intensiveimports so that wealth is redistributed from those who are not part of theselectorate tothose whoare. Democratization, whichimplies an increase in theselectorate's size,changesthe calculations of politicalleaders about the optimallevel of trade barriers;it induces the adoption of trade policiesthat better promotethe welfare of consumers/voters atlarge, whichimpliestrade liberalization in thiscontext. While protectionistinterest groups remainimportantin developing democ-racies, other groups preferringlower trade barriers become moreimportantforpoliticalleaders becausethey are now part of the selectorate upon which leadersdependfor their political survival.

We think that future research shouldtrytodisaggregate regime typefurther.Our datasuggestthat autocracies may varyinthe likelihoodofchoosingeco-nomic reform, withsingle-party and military-controlled systems being morelikelythan personalistic ones. The two formertypes of regimes rely on a broader selec-torate and are not asable to useprotectionismtogarner political support. Thelikelihood ofreform may also depend onthetype ofdemocratic institutions inplace. Examiningtheimpact of different politicalinstitutions on trade policyis anunexplored area of great potentialinterest.

We view democratization as exogenous. However, trade policy could exert animpact on political regimes. Although welag all of ourindependent variables (fromone to three periods) and include tests for endogeneity,this could be a muchlonger-term effect. Most models predicting regime type, however, do not include tradepolicy or even the extent of openness of the economy as a predictor.120 Moreoverwe found no evidence ofsuch animpactin our data; trade policy did not predictdemocracy. Even afterinstrumentingfor democracy, regime typestill played animportant role inexplainingthe movetofree trade. Democracies choose lowerlevelsof trade barriers, even when holding many other factors constant.

Our results cast some doubt on theleading alternative theories of trade policyreform. Although much discussion exists of the role of economic crises, externalpressures, and the role of ideas on economic reform, littlesystematic research hasbeen done. To the extent that our measures adequately control for these factors,they did not seem to play a consistent role inexplainingtrade policy. Neither cri-ses, nor international pressures, nor new leaders seem to account very well for themove to free trade. We concur with Jenkins, who points out that "the existence ofa crisis isnoguarantee that a government willrespond, and moreimportantly,that it willbesuccessful inconvincinginterest groupsthat'something must bedone.'"121 Moreover, international institutions that weresupposedto foster tradeliberalization, such as the GATT/WTO and the IMF, do not appearto be playingthat role. As Rose has argued,the GATT does not seem to promote a more liberaltrade policyfor most countries; and as Ozden and Reinhardt show, the GSP in theWTO has slowed down liberalization in LDCs.122 Our research certainly does notrule out any ofthese factors, especiallythespread of neoliberal ideas. Our mea-sures ofthe rise ofnew ideas are very crude, and better research into thistopicrequires more and different data.

Our argument does not explain all cases or all pressuresfor liberalization. Nosingle variable can possibly account for the dramatic changein economic policiesin the LDCs duringthe past twenty years. Changesin domestic politicalinstitu-tions, however, have been an underappreciatedfactor. Hence wehighlighttheirrole. Additionally, we cannot explain all countries. India, forinstance, remains apuzzle; long a democracy,the government has only recently chosen to lower tradebarriers. Although alarge number of casesseem to fit our claim, as discussed inthefirst section ofthisarticle, nosinglevariable can possiblyaccount for thismove to free trade in all countries

In general, more-democratic countries are more willingto opentheir markets tothe internationaleconomy, even when holding many other factors constant. Democ-ratization thus may have promotedthe globalization of the pasttwo decades. Asweshowvis-ia-vis trade, and as Quinn shows relative to capital controls, democ-racies in the late twentiethcentury may have been morelikelytojointhe globaleconomy by eliminatingthe barriers protectingtheir markets.123 Democratizationmay have fostered theincreasing globalization of the pasttwo decades. Whetherthe new democracies in the developing world willsurvive and thrive in a global-ized world is aseparateissue that should command future research.

### 2AC Executive

#### Congress key to solve legal uncertainty and political friction

Chesney & Wittes 13 –Prof of Law @ Texas School of Law & Sr. Fellow @ Brookings

“Protecting U.S. Citizens’ Constitutional Rights During the War on Terror”, Robert Chesney, <http://www.brookings.edu/research/testimony/2013/05/22-war-on-terror-chesney-wittes>

Aside from a Padilla-like scenario, a ban on military detention in domestic capture scenarios thus would foreclose no course of action that is realistically available to the executive branch at this stage given its own preferences. It would, rather, merely codify the existing understanding reflected in executive branch policy and practice—policy and practice reinforced over the years by well-informed expectations about the likely views of the justices on the underlying legal issues. Adopting such a change, it is worth emphasizing, would run with the grain of America’s traditional wariness when it comes to a domestic security role for the U.S. military. There have unfortunately been times in our nation’s history when it has been necessary and proper for the military to play such a role. It is far from clear that this is the case today, however, given the demonstrated capacity of the criminal justice system in the counterterrorism context. In the final analysis, we conclude that the manifest legal uncertainty and political friction overhanging the domestic military detention option entail costs that, in our view, outweigh the hypothetical benefits of continuing to leave that option open as a statutory matter. We therefore favor legislation that would clarify that military detention in counterterrorism under the AUMF is not available with respect to any persons--whether United States citizens or aliens--arrested within the United States.

#### Failure to codify de facto Obama policy on domestic detention into law triggers suits and massive political conflicts – Only Congress solves

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“Protecting U.S. Citizens’ Constitutional Rights During the War on Terror”, Robert Chesney, <http://www.brookings.edu/research/testimony/2013/05/22-war-on-terror-chesney-wittes>

In our view, Congress should put this issue to rest at last by clarifying that neither the AUMF nor the NDAA FY’12 should be read to confer detention authority over persons captured in the United States (regardless of citizenship). The benefits of keeping the option open in theory are slim, while the offsetting costs are substantial. We say the benefits are slim chiefly because the executive branch has so little interest in using detention authority domestically. The Bush administration had little appetite for military detention in such cases all along, preferring in almost all instances involving al Qaeda suspects in the United States to stick with the civilian criminal justice system. The experiment of military detention with Padilla and al-Marri did little to encourage a different course, given the legal uncertainty the cases exposed. That uncertainty has, in turn, created an enormous disincentive for any administration—of whatever political stripe—to attempt this sort of detention again. A de facto policy thus developed in favor of using the criminal justice apparatus whenever humanly possible for terrorist suspects apprehended in the United States. And whenever humanly possible turned out to mean always; while military detention may remain potentially available as a theoretical matter, it is not functionally available for the simple reasons that (i) executive branch lawyers are not adequately confident that the Supreme Court would affirm its legality and (ii) in any event, they have a viable and far-more-reliable alternative in the criminal justice apparatus. In September 2010, the Obama administration made this unstated policy official, announcing that it would use the criminal justice system exclusively both for domestic captures and for citizens captured anywhere in the world. In a speech at the Harvard Law School, then-White House official John Brennan stated: it is the firm position of the Obama Administration that suspected terrorists arrested inside the United States will—in keeping with long-standing tradition—be processed through our Article III courts. As they should be. Our military does not patrol our streets or enforce our laws—nor should it. . . . Similarly, when it comes to U.S. citizens involved in terrorist-related activity, whether they are captured overseas or at home, we will prosecute them in our criminal justice system. To put the matter simply, military detention for citizens or for terrorist suspects captured domestically, was tried a handful of times early in the Bush administration; the strategy was abandoned; it has been many years since there was any appetite in the executive branch—under the control of either party—for trying it again; and it has for some time been the stated policy of the executive branch not to attempt it under any circumstances. We do not expect any administration of either party to break blithely with the consensus that has developed absent some dramatically changed circumstance. The litigation risk is simply too great, and the criminal justice system’s performance has been too strong to warrant assuming this risk. But ironically, even as this strong executive norm against military detention of domestic captures and citizens has developed, a fierce commitment to this type of detention has also developed in some quarters. The fact that the norm against detention is not currently written into law has helped fuel this commitment, enabling the persistent perception that there is greater policy latitude than functionally exists. The result is that every time a major terrorist suspect has been taken into custody domestically in recent years—the arrest of Djokhar Tsarnaev is only the most recent example—the country explodes in the exact same unproductive and divisive political debate. To caricature it only slightly, one side argues that the suspect should have been held in military custody, instead of being processed through the criminal justice system; it decries the reading of the suspect his Miranda rights; and it criticizes the administration, more generally, for a supposed return to a pre-9/11 law enforcement paradigm. The other side, meanwhile, defends the civilian justice system, while also demanding the closure of Guantánamo and attacking the performance of military commissions for good measure. This kabuki dance of a debate is not merely a matter of rhetoric. Separate and apart from the U.S. citizen detention language we described above, in the course of producing the 2012 NDAA Congress also explored the option of mandating military detention for suspects (citizen or not) taken into custody within the United States. The administration resisted these efforts, and the resulting language in conference committee ultimately stopped far short of requiring military detention. The administration further softened the effects of that language, moreover, through its subsequent interpretation of the new language. All of which brings us back to our point: there is a big gulf between the real, functional state of play (in which the criminal justice system provides the exclusive means of processing terrorist suspects captured within the United States) and the perception in some quarters that military detention remains a viable option, perhaps even a norm, for domestic and citizen terrorist captures. That gulf has real costs. Most obviously, it generates significant political friction every time a major terrorist arrest happens in the United States. It increases the apparent political polarization of an area that should be above politics—and in which the counterterrorism reality is far less polarized than the inter-branch relations over the issue would suggest. And it reinforces the perception that domestic military detention remains a viable option, needlessly alarming those who fear it and needlessly misleading those who wish to see it. The resulting confusion fuels sharp debate over something that is no longer meaningfully an option in functional terms. That debate even spills over at times into litigation, most notably—and disruptively—in the context of the Hedges case in New York (in which journalists and activists persuaded a district judge to enjoin enforcement of detention authority, despite the utter implausibility of the claim that they might be subjected to it).

#### Obama literally tried to the do the CP and Congress rolled it back

WSJ 10, Congress Bars Gitmo Transfers, online.wsj.com/article/SB10001424052748704774604576036520690885858.html

Congress on Wednesday passed legislation that would effectively bar the transfer of Guantanamo detainees to the U.S. for trial, rejecting pleas from Obama administration officials who called the move unwise.¶ A defense authorization bill passed by the House and Senate included the language on the offshore prison, which President Barack Obama tried unsuccessfully to close in his first year in office.¶ The measure for fiscal year 2011 blocks the Department of Defense from using any money to move Guantanamo prisoners to the U.S. for any reason. It also says the Pentagon can't spend money on any U.S. facility aimed at housing detainees moved from Guantanamo, in a slap at the administration's study of building such a facility in Illinois.¶ The Guantanamo ban was originally included in a broad appropriations bill earlier this month in the House, which died for unrelated reasons. At the time, Attorney General Eric Holder sent a letter to congressional leaders calling the ban "an extreme and risky encroachment on the authority of the executive branch to determine when and where to prosecute terrorist suspects."¶ Republicans and some Democrats say the prison at Guantanamo Bay, Cuba, which the government has spent millions of dollars upgrading, is the most secure place to keep terror suspects.¶ By banning transfers to the U.S., Congress is blocking trials of detainees in U.S. civilian courts. Proponents of the ban say military tribunals, not civilian courts, are the proper forum for bringing to justice suspects accused of trying to attack the U.S.¶ Those contentions grew stronger last month when a New York federal jury acquitted a former Guantanamo detainee of all but one count in the 1998 bombings of U.S. embassies in Africa. The defendant, Ahmed Ghailani, still faces 20 years to life in prison.¶ [2justice]¶ ERIC HOLDER¶ Mr. Obama originally pledged to close the prison by January 2010. That goal has foundered amid congressional opposition, and some 174 detainees remain at Guantanamo.¶ At a news conference Wednesday, the president expressed renewed desire to close Guantanamo, saying it has "become a symbol" and a recruiting tool for "al Qaeda and jihadists." "That's what closing Guantanamo is about," he said, adding: "I think we can do just as good of a job housing [detainees] somewhere else.

#### Future presidents prevent solvency

Harvard Law Review 12, "Developments in the Law: Presidential Authority," Vol. 125:2057, www.harvardlawreview.org/media/pdf/vol125\_devo.pdf

The recent history of signing statements demonstrates how public opinion can effectively check presidential expansions of power by inducing executive self-binding. It remains to be seen, however, if this more restrained view of signing statements can remain intact, for **it relies on the promises of one branch — indeed of one person — to enforce and maintain the separation of powers**. To be sure, President Obama’s guidelines for the use of signing statements contain all the hallmarks of good executive branch policy: transparency, accountability, and fidelity to constitutional limitations. Yet, in practice, this apparent constraint (however well intentioned) may amount to little more than voluntary self-restraint. 146 Without a formal institutional check, it is unclear what mechanism will prevent the next President (or President Obama himself) from reverting to the allegedly abusive Bush-era practices. 147 Only time, and perhaps public opinion, will tell.

#### Exec fiat is a voter---aff authors assume the exec WON’T act---no comparative lit kills aff ground and real world education

Richard H. Pildes 13, J.D. candidate at NYU school of law, and Samuel Issacharoff, J.D. candidate at NYU school of law, June 1st, 2013, "Drones and the Dilemma of Modern Warfare,"lsr.nellco.org/cgi/viewcontent.cgi?article=1408&context=nyu\_plltwp

As with all use of lethal force, there must be procedures in place to maximize the likelihood of correct identification and minimize risk to innocents. In the absence of form al legal processes, sophisticated institutional entities engaged in repeated, sensitive actions – including the military – will gravitate toward their own internal analogues to legal process, even without the compulsion or shadow of formal judicial review. This is the role of bureaucratic legalism 63 in developing sustained institutional practices, even with the dim shadow of unclear legal commands. These forms of self- regulation are generated by programmatic needs to enable the entity’s own aims to be accomplished effectively; at times, that necessity will share an overlapping converge with humanitarian concerns to generate internal protocols or process-like protections that minimize the use of force and its collateral consequences, in contexts in which the use of force itself is otherwise justified. But because these process-oriented protections are not codified in statute or reflected in judicial decisions, they typically are too invisible to draw the eye of constitutional law scholars who survey these issues from much higher levels of generality.

#### Links to politics through bypassing debate

Billy Hallowell 13, writer for The Blaze, B.A. in journalism and broadcasting from the College of Mount Saint Vincent in Riverdale, New York and an M.S. in social research from Hunter College in Manhattan, “HERE’S HOW OBAMA IS USING EXECUTIVE POWER TO BYPASS LEGISLATIVE PROCESS” Feb. 11, 2013, <http://www.theblaze.com/stories/2013/02/11/heres-how-obamas-using-executive-power-to-bylass-legislative-process-plus-a-brief-history-of-executive-orders/>

“In an era of polarized parties and a fragmented Congress, the opportunities to legislate are few and far between,” Howell said. “So presidents have powerful incentive to go it alone. And they do.”¶ And the political opposition howls.¶ Sen. Marco Rubio, R-Fla., a possible contender for the Republican presidential nomination in 2016, said that on the gun-control front in particular, Obama is “abusing his power by imposing his policies via executive fiat instead of allowing them to be debated in Congress.”¶ The Republican reaction is to be expected, said John Woolley, co-director of the American Presidency Project at the University of California in Santa Barbara.¶ “For years there has been a growing concern about unchecked executive power,” Woolley said. “It tends to have a partisan content, with contemporary complaints coming from the incumbent president’s opponents.”

### Iran

#### Iran fight is over and PC’s not key---UQ overwhelms

Stacy Kaper 2/2, National Journal, "How Obama Won the War on Iran Sanctions", 2014, www.nationaljournal.com/defense/how-obama-won-the-war-on-iran-sanctions-20140202

The push for new sanctions on Iran has stalled. The Democrats who bucked President Obama to back the sanctions bill are backpedaling mightily—no longer even pretending they're pushing Harry Reid to hold a vote on the measure. And while there's still plenty of chest-pounding and posturing, the debate's end result seems clear: The Senate will wait, at least so long as the negotiations move in the right direction.¶ That's a full flip from just more than a month ago. Before the December recess, the Senate's pro-sanctions faction was surging. Senators—including Democrats who are typically Obama loyalists—were agreeing with Israeli Prime Minister Benjamin Netanyahu's claim that the nuclear negotiations with Iran bordered on capitulation.¶ So how did Obama—a supposedly feckless president when it comes to handling Congress—turn the tide?¶ Obama's in-person, all-hands-on-deck advocacy campaign with the Senate appears to have advanced his cause, but it's not that simple.¶ The president combined tangible developments abroad with fervent support from the Left, and used it to win out over a fracturing Israel lobby. In the process, he won—at least for now—a foreign policy victory just as his critics were insisting Obama's age of influence was over.¶ "It's a combination of one side not doing that much and the other side doing a lot. The AIPAC guys have not been calling us and usually we would be hearing from them," a Democratic Senate aide said. AIPAC is shorthand for the American Israel Public Affairs Committee, Washington's best-known pro-Israel lobby group.¶ Obama started by reaching out to Congress in their house and his: He sent envoys, including Secretary of State John Kerry, to Capitol Hill, and he invited key players to a White House meeting to make a case that independent Sen. Angus King of Maine labeled "incredibly powerful."¶ But outreach on Iran is nothing new. What is different this time is that, unlike with past rounds of sanctions against Iran where the interplay has been more theoretical, the Islamic republic is actually at the negotiating table, at least going through the motions of entertaining the dismantling of its nuclear-weapons capabilities. Tremendous skepticism remains that the talks will ultimately work—including from inside the administration—but the ongoing talks at least give concerned senators an alternative.¶ And then there was the resurgent progressive movement that capitalized on a war-weary public to push Democrats in Obama's direction. MoveOn.org, Daily Kos, The Huffington Post, and other liberal media outlets have mobilized against Democrats who supported sanctions, accusing them of undermining Obama with warmongering and asking, "Where's the antiwar Left?"¶ Finally, Obama was the beneficiary of weakened opposition. The Israel lobby has succeeded in influencing Iran policy for decades, but it's currently in a state of upheaval. AIPAC has not been beating down doors canvassing Capitol Hill in a concerted campaign as it has in the past, and J Street—AIPAC's younger, rising counterweight—is making the case against sanctions.¶ "The bottom line is that more and more members want to give the administration the space they are asking for to try to negotiate a deal with Iran. If it doesn't work they'll begin to ratchet up the sanctions more," a former senior Democratic Senate aide said. "I believe the administration now has the space they are looking for."¶ Another Senate aide agreed that outside forces are making a difference.¶ "The president's base has gone all-in with his party, cashed in every chit possible, applied every possible pressure point on Democrats, used messaging and rhetoric that fires up the liberal base, and activated grass roots to target Democrats and make them afraid of this bill from the left," said the aide. "Unfortunately it's turned it partisan, and we'll see if Republicans will take the next step."¶ The impact of Democrats growing gun-shy could have implications for the GOP agenda. The House passed additional sanctions against Iran in July, before the current negotiations were announced. House GOP leaders have since flirted with bringing up the pending Senate sanctions bill, but have been concerned about losing Democrats and thus losing any impact by turning an intended bipartisan message partisan. At the same time, House Republican leaders have struggled to convince senior Democrats to push forward a less controversial, bipartisan nonbinding resolution on Iran.¶ Matthew Duss, a policy analyst with the liberal Center for American Progress, argued that the outreach from liberal groups has made an impact by tapping into war fatigue.¶ "Without question, there has been great work done by progressive organizations, communicating with policymakers and legislators some of the problems with the sanctions bill and urging the activists and grassroots community and constituents to call their own elected members," he said. "You've seen the resurrection of elements of the Iraq War Coalition on the left who remember that we got ourselves into a huge mess in the Middle East are sending this message: 'Let's not do that again.' That's a very strong motivating factor."¶ Democratic operatives tracking the issue said that as Democrats have had time to digest the legislation, the details have given them cold feet. The bill, for example, does more than simply impose additional sanctions if Iran breaks its agreement. It also calls for authorizing military force to support Israel in any military conflict against Iran.¶ "The recognition that the language was so broadly written that passage of the legislation could in fact lead to the possibility of a confrontation with Iran is what tipped the scales," the former senior Democratic Senate aide said. "That language was written pretty strongly. The more folks delved into it, the more concerned they became that it puts the U.S. in a very aggressive posture. Everyone wants to do everything they can to support Israel, but more folks are beginning to look inwards again and are very war-weary."¶ Of the 59 cosponsors on the legislation, 16 are Democrats. But it is hard to find any Democratic cosponsor who is eager to talk about the bill these days. Many dodged questions, while others such as Sens. Richard Blumenthal of Connecticut, Joe Manchin of West Virginia, Christopher Coons of Delaware, and Ben Cardin of Maryland are frank that they are not pushing for a vote.¶ Manchin said he intended the bill to send a message of support for Israel and underscore a goal of upending Iran's nuclear-weapons ambitions. But he said that a vote could actually cost his sponsorship of the bill.¶ "I never intended for that bill to come to a vote and debate," he said. "If they start moving it forward I might need to start making a decision about whether I stay on the bill or not."

#### **The public fears concessions to Iran not Israel---won’t support veto**

Michael Barone 12/24/13, enior Political Analyst for the Washington Examiner, "Bill to Increase Sanctions on Iran,"http://www.realclearpolitics.com/articles/2013/12/24/bill\_to\_increase\_sanctions\_on\_iran\_121047.html

This is not a new idea. The House voted to increase sanctions last July. And it was sanctions, and the threat of increased sanctions, that surely drove Iran's leaders to the negotiating table where they hammered out an interim agreement with Secretary of State John Kerry in Geneva in November.¶ That agreement, however, left members of Congress of both parties -- and the public -- dissatisfied. For the first time the U.S. recognized, tacitly, Iran's right to continue possessing the centrifuges used to enrich uranium up to the levels needed to produce a nuclear bomb.¶ It does not take much time or effort to increase the level of enrichment from current to bomb-ready levels.¶ The agreement leaves a final agreement to be negotiated in six months. But that six-month period only begins when some still unsettled issues are agreed on.¶ So Iran has more than six months, as things currently stand, to advance its nuclear program -- during which time sanctions will be softened and economic pressure on the mullah regime will be reduced.¶ The public, which tended to give Barack Obama and his foreign policy positive marks during his first term, has tended to oppose Kerry's Iran agreement, polls show. Evidently many ordinary citizens who don't follow issues closely share the fear of many well-informed members of Congress that the United States is giving up too much and gaining too little.¶ The sponsors of the Senate sanctions legislation include leading Democrats, like Foreign Relations Chairman Bob Menendez and New York's Charles Schumer, who has been something of a consigliere for Majority Leader Harry Reid.

#### SOTU “small-ball” admitted failure and wrecks Obama

Jack Kelly 2/2, RCP, "The State of Obama: Not Good", 2014, www.realclearpolitics.com/articles/2014/02/02/the\_state\_of\_obama\_is\_not\_good\_121436.html

Mr. Obama went “small ball” and softened his rhetoric because he recognizes the grandiose initiatives that warm the hearts of liberals are unpopular, said Noah Rothman of Mediaite.¶ If that’s so, the light dawned in the White House very recently.¶ “The entire speech seemed like a cut and paste of old State of the Union speeches with a late rewrite, as if the White House figured out that ‘opportunity’; (the GOP term) polls better than ‘inequality’ (the base’s favorite),” Ms. Rubin said.¶ After shrinking during the presidency of George W. Bush, income inequality has increased on Mr. Obama’s watch. Only 4 percent of respondents in a Gallup poll this month think it’s the most important problem; only 13 percent in a Fox News poll think the government should do something about it. So soft pedaling the “income inequality shtick” was prudent.¶ But his small ball, recycled initiatives — he even plagiarized lines from Mr. Bush’s 2007 SOTU, according to former Bush speechwriter Mark Thiessen — are an implicit admission of failure. They’ll do next to nothing to alleviate the hardship that’s been caused, in large part, by his policies. They may make things worse.¶ Americans understand this. “Do you approve of the policies President Obama presented in his State of the Union speech?” asked the San Diego Union Tribune in an online poll to which anyone could respond. Seventy five percent of those who did said no.¶ This SOTU drew the smallest audience in decades. The reaction to it of an unaffiliated voter in Colorado illustrates why gimmicks and a change in rhetoric won’t stop the president’s slide into political irrelevance.¶ “He was talking about me but has no ability to help me,” Scott Valenti told the Associated Press. “I need a job now.”

#### Trade thumps

Raum 1/25 -- Tom, Yahoo Finance, AP News, Foes of Obama trade pacts mostly fellow Democrats, 2014, finance.yahoo.com/news/foes-obama-trade-pacts-mostly-fellow-democrats-090237783.html

WASHINGTON (AP) — Debates on lowering trade barriers can turn Congress upside down for Democratic presidents promoting such legislation. Business-minded Republicans suddenly turn into allies and Democrats aligned with organized labor can become outspoken foes.¶ It's a reversal of the usual order of things, where a Democratic president can generally count on plenty of support from fellow Democrats in Congress along with varying levels of resistance from Republicans.¶ Now it is President Barack Obama's turn to experience such a role reversal. Already, he is encountering pockets of Democratic resistance, especially from those representing manufacturing states, to his efforts to win congressional approval for renewal of "fast track" negotiating authority.¶ Such expedited powers help speed the process for major trade agreements by restricting Congress to up-and-down votes on what's already been negotiated — with no amendments allowed.¶ Two such free-trade deals are in the works. One is a Pacific Rim trade pact — the Trans-Pacific Partnership — between the United States and 11 Asian and Latin American nations. A final round of negotiations begins next month and may be wrapped up by year's end.¶ "We are now in the endgame," said Acting Deputy U.S. Trade Representative Wendy Cutler.¶ The other negotiation, not as far along, is a trans-Atlantic trade alliance, mainly between the United States and European Union countries. So far it hasn't generated as much controversy as the nearly done trans-Pacific deal — largely because Europe is a generally high-cost, generally high-wage manufacturing area.¶ Obtaining fast-track authority from a deeply divided Congress will be a hard sell for Obama, one likely to get even harder as November's midterm congressional elections draw nearer. Democrats now control the Senate, Republicans the House.

#### Low PC inevitable and not key

Schier 11 Steven E. Schier is the Dorothy H. and Edward C. Congdon professor of political science at Carleton College, The contemporary presidency: the presidential authority problem and the political power trap. Presidential Studies Quarterly December 1, 2011 lexis

Implications of the Evidence¶ The evidence presented here depicts a decline in presidential political capital after 1965. Since that time, presidents have had lower job approval, fewer fellow partisans and less voting support in Congress, less approval of their party, and have usually encountered an increasingly adverse public policy mood as they governed.¶ Specifically, average job approval dropped. Net job approval plummeted, reflecting greater polarization about presidential performance.The proportion of fellow partisans in the public dropped and became less volatile. Congressional voting support became lower and varied more. The number of fellow partisans in the House and Senate fell and became less volatile. Public issue mood usually moved against presidents as they governed. All of these measures, with the exception of public mood, correlate positively with each other, suggesting they are part of a broader phenomenon.¶ That "phenomenon" is political authority. The decline in politicalcapital has produced great difficulties for presidential political authority in recent decades. It is difficult to claim warrants for leadership in an era when job approval, congressional support, and partisan affiliation provide less backing for a president than in times past.¶ Because of the uncertainties of political authority, recent presidents have adopted a governing style that is personalized, preemptive,and, at times, isolated. Given the entrenched autonomy of other elite actors and the impermanence of public opinion, presidents have had to "sell themselves" in order to sell their governance. Samuel Kernell (1997) first highlighted the presidential proclivity to "go public"in the 1980s as a response to these conditions. Through leveraging public support, presidents have at times been able to overcome institutional resistance to their policy agendas. Brandice Canes-Wrone (2001) discovered that presidents tend to help themselves with public opinion by highlighting issues the public supports and that boosts their congressional success--an effective strategy when political capital is questionable.¶ Despite shrinking political capital, presidents at times have effectively pursued such strategies, particularly since 1995. Clinton's centrist "triangulation" and George W. Bush's careful issue selection early in his presidency allowed them to secure important policy changes--in Clinton's case, welfare reform and budget balance, in Bush's tax cuts and education reform--that at the time received popular approval. This may explain the slight recovery in some presidential political capital measures since 1993. Clinton accomplished much with a GOPCongress, and Bush's first term included strong support from a Congress ruled by friendly Republican majorities. David Mayhew finds that from 1995 to 2004, both highly important and important policy changeswere passed by Congress into law at higher rates than during the 1947-1994 period. (2) A trend of declining political capital thus does not preclude significant policy change, but a record of major policy accomplishment has not reversed the decline in presidential political capital in recent years, either. Short-term legislative strategies can win policy success for a president but do not serve as an antidote to declining political capital over time, as the final years of both the Clinton and George W. Bush presidencies demonstrate.

#### Plan’s bipartisan---previous proposals prove support

Nick Sibilla 12, "Bipartisan effort to ban indefinite detention, amend the NDAA", May 18, www.constitutioncampaign.org/blog/?p=7479#.UjHhXz8uhuk

Democrats and Tea Party Republicans are advocating a new proposal to ban indefinite detention on American soil. After President Obama signed the National Defense Authorization Act (NDAA) last year, anyone accused of being a terrorist, committing any “belligerent act” or even providing “material support,” can now be detained indefinitely by the military without a trial. This includes American citizens.¶ Fortunately, a bipartisan coalition is working to stop the NDAA. Congressmen Adam Smith (D-WA), a Ranking Member of the House Armed Services Committee, and Justin Amash (R-MI), who Reason magazine called “the next Ron Paul,” have sponsored an amendment to the latest defense authorization bill, currently on the House floor.¶ If adopted, the Smith-Amash Amendment would make three significant changes to the NDAA. First, it would amend Section 1021 (which authorizes indefinite detention) to ensure that those detained will not be subject to military commissions, but civilian courts established under Article III of the Constitution. As Congressman Smith put it, this would “restore due process rights.”¶ Second, the Smith-Amash Amendment would ban “transfer to military custody:”¶ No person detained, captured, or arrested in the United States, or a territory or possession of the United States, may be transferred to the custody of the Armed Forces for detention…¶ Finally, their amendment would repeal Section 1022 of the NDAA, which mandates military custody for those accused of foreign terrorism.¶ Both Smith and Amash have criticized the NDAA. Amash blasted the NDAA as “one of the most anti-liberty pieces of legislation of our lifetime.” In a letter urging his Republican colleagues to support the amendment, Amash writes:¶ A free country is defined by the rule of law, not the government’s whim. Americans demand that we protect their right to a charge and trial.¶ Meanwhile, in an interview with The Hill, Smith was concerned about the potential abuses of power:¶ It is very, very rare to give that amount of power to the president [and] take away any person’s fundamental freedom and lock them up without the normal due process of law…Leaving this on the books is a dangerous threat to civil liberties.¶ The Smith-Amash Amendment is expected to be voted on later this week. So far, it has 60 co-sponsors in the House. Meanwhile, Senators Mark Udall (D-CO) and Patrick Leahy (D-VT) have introduced a similar bill in the Senate.

#### Winner’s win

Hirsh 13 Michael, chief correspondent for National Journal; citing Ornstein, a political scientist and scholar at the American Enterprise Institute and Bensel, gov’t prof at Cornell, "There's No Such Thing as Political Capital", 2/7, [www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207](http://www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207)

But the abrupt emergence of the immigration and gun-control issues illustrates how suddenly shifts in mood can occur and how political interests can align in new ways just as suddenly. Indeed, the pseudo-concept of political capital masks a larger truth about Washington that is kindergarten simple: You just don’t know what you can do until you try. Or as Ornstein himself once wrote years ago, “Winning wins.” In theory, and in practice, depending on Obama’s handling of any particular issue, even in a polarized time, he could still deliver on a lot of his second-term goals, depending on his skill and the breaks. Unforeseen catalysts can appear, like Newtown. Epiphanies can dawn, such as when many Republican Party leaders suddenly woke up in panic to the huge disparity in the Hispanic vote.¶ Some political scientists who study the elusive calculus of how to pass legislation and run successful presidencies say that political capital is, at best, an empty concept, and that almost nothing in the academic literature successfully quantifies or even defines it. “It can refer to a very abstract thing, like a president’s popularity, but there’s no mechanism there. That makes it kind of useless,” says Richard Bensel, a government professor at Cornell University. Even Ornstein concedes that the calculus is far more complex than the term suggests. Winning on one issue often changes the calculation for the next issue; there is never any known amount of capital. “The idea here is, if an issue comes up where the conventional wisdom is that president is not going to get what he wants, and he gets it, then each time that happens, it changes the calculus of the other actors” Ornstein says. “If they think he’s going to win, they may change positions to get on the winning side. It’s a bandwagon effect.”

#### No US or Israel strike on Iran---their evidence ignores Israel’s true motives

Zarrabi 11—conducted lectures and seminars on international affairs, particularly in relation to Iran, with focus on US/Iran issues. President, regional chapter of World Affairs Council of San Diego. Author of 2 books about Iran. (Kam, CRYING WOLF, AGAIN?, 9 June 2011, [www.payvand.com/news/11/jun/1118.html](http://www.payvand.com/news/11/jun/1118.html))

Portrayal of Iran as a marketable international threat has been serving the interests of the Israeli regimes, as well as quite arguably those of the United States, the latter worth more careful examination. Israel's agendas are quite straightforward and easy to understand:

Israel intends to remain the sole regional superpower.

Israel must enjoy the unwavering financial, diplomatic and military support of the United States for its very survival.

Israel has no intention of giving the Palestinians any level of meaningful autonomy or nationhood, or give up a square inch of territory in the occupied areas or in East Jerusalem.

Israel intends to remain a "Jewish" state at any cost.

The United States has also involvements in the region that cannot be downplayed or ignored:

With the ongoing military operations in Iraq, Afghanistan and Pakistan, and the explosive developments in Yemen, Bahrain, Syria and possibly Saudi Arabia, America's military presence in the Middle East region, particularly in the Persian Gulf, must and shall continue.

The proverbial Military Industrial Complex and its contributions to the economy of the nation cannot be exaggerated. Unlike the human costs of war, the material losses turn into gains by America's own manufacturing industries, not to mention the tens or hundreds of billions of dollars worth of mostly second hand or nearly obsolete hardware sold to the oil-rich Arab states who are "supposedly" in danger of some Iranian assault. Of course, they know full well that Iran poses no physical threat to their kingdoms, but they have no option but to accept America's offer, as their very survival against their own people depends on the American military and diplomatic support. The Saudis, the purchasers of some 100 billion dollars worth of American arms are, for example, quite vulnerable to internal uprisings by their disenfranchised citizenry.

Last but not least is the need for a strong American presence in the region to monitor and, if necessary, to prevent or buffer a potential Israeli adventurism against Iran, which would have catastrophic results all around.

Both the Israelis and the Americans realize that any attack on Iran would be ill advised, not only because it would not have the advertised desired effects or, worse yet, the fact that it would promote more aggressive militarization by the Iranians, but because it would cause major adverse ripples throughout the region with global economic repercussions. Both Israel and the Unites States also know that the mere portrayal of Iran as a regional or even a global threat plays the intended role, much more safely and effectively than would Iran as a real threat.

It has, therefore, been the policy to keep this negative portrayal convincingly alive, to which end the Iranian regime itself has been contributing significantly, albeit by default!

There have been numerous occasions, from the initial American attack against Al-Gha'eda and Taliban bases in Afghanistan and the establishment of the Karzai government, to the IAEA nuclear negotiations with Iran during the El Baradei leadership of that United Nations' agency, that the "problems" with Iran could have been resolved, leading to a rapprochement between the United States and Iran. Each time a hand was stretched from either side, some unexpected, or actually quite expected, excuse blocked the path to such an opening. Examples are far too numerous to recount here. The obvious lack of interest by the United States to negotiate the way to a rapprochement was interpreted quite correctly by the Iranian regime as a clear indication that, short of total capitulation, something that the Iranians would never be expected to submit to, there was nothing Iran could reasonably do to remedy its negative portrayal.

This, and the repeated open threats of violation of Iran's territorial integrity and regime change, as well as the admitted and undeniable acts of infiltration and sabotage fomented by the Israeli and American agencies, played into the hands of Iran's hardliners to further strengthen their position as the guardians of the nation. The result, as though well plotted in advance, has been a continuous postponement of democratic reforms toward moderation and opening, and the resulting public dissatisfaction with more restrictive sociopolitical environment. The increasing economic sanctions spearheaded by the United States, mostly on behest of the Israeli powerhouses, have been adding to the internal problems the Iranian regime has been trying to cope with.

It has been my long-term belief that the detrimental effects of America's Iran policies for America's own interests must be well known by the American policy makers. I have to, therefore, conclude that it is a lack of ability, rather than the absence of desire, in the part of the Administration, from the office of the President on down to the US Congress, that the nation's best strategic interests in the Middle East are being compromised for the dictates of America's true enemy who has been parading as a friend and as an inseparable ally.

Many Middle East analysts, among whom Professor Seyed Mohammad Marandi of the University of Tehran, who in his latest article appearing in CASMII website, blames poor intelligence and reliance on dubious sources for a misperception of Iranian affairs. I, however, am of the opinion that those in the know in the State Department, from Hillary Clinton on down to the CIA and NSC staff advising her, do understand the situation on the ground, but are forced to resort to diplomatic hypocrisy and propaganda routines to cover up the system's inability to override the influence of special interest groups and lobbies that have a stranglehold on the nation's Middle East policy apparatus.

As I look at the status quo, I do not see any prospects for change looming on a visible horizon when it comes to this one-sided parasitic relationship. The best interests of both the United States and Iran have been suffering because of the toxins injected into the system by this parasite.

As the new threats of an attack on Iran, this time supposedly between June and September this year, loom larger, I have little doubt that the goal posts will be pushed back once again. As I have said, Iran as an existing threat serves the purpose much better than a friendly or a defeated Iran. An existing regional pariah serves Israel's interests and agendas perfectly well.

The only hope for a change in this ongoing macabre theatrical scenario is for some other regional actor to replace Iran convincingly enough to satisfy the ticket holders to this drama. I believe the script is actually undergoing changes in that direction.

There are enough military and civilian brains here to realize that a change in the status quo must be initiated sooner rather than later. My prediction is that Pakistan, a real nuclear-armed state with tribal factions that are not under the control of a viable central government and who are known for their vehement anti West and anti American sentiments can take up Iran's role as a regional pariah quite convincingly. It seems to be heading that way. Give it two to three years, and a great sea changes might be taking place in the region, especially with respect to a rapprochement with Iran, with prospects of positive developments within the Islamic Republic as tensions ease.

Meanwhile, Israel can use its time-tested tactics of keeping the United States on edge by feinting its intentions of a preemptive strike against Iran, in order to blackmail and extort more military and financial support from its big benefactor and to further postpone any prospects of a compromise with regard to its Palestinian dilemmas.

#### No Middle East war and the aff can’t solve it

F. Gregory Gause ‘11, professor of political science at the University of Vermont, and was director of the University's Middle East Studies Program. PhD in pol sci from Harvard, 12/21/11, “Don't Just Do Something, Stand There!,” [www.foreignpolicy.com/articles/2011/12/21/america\_arab\_spring\_do\_nothing?page=0,0](http://www.foreignpolicy.com/articles/2011/12/21/america_arab_spring_do_nothing?page=0,0)

If we back away from the domestic politics of Arab states (as well as those of Afghanistan, Iran, and Pakistan) and look at the region in classic balance-of-power terms, we need not be so concerned about American regional interests. This is a multipolar region where balancing dynamics operate. Those balancing dynamics are complicated by the appeal of cross-border identities and ideologies, a factor that can be exploited by ambitious regional powers (as with Nasserist Arab nationalism in the 1950s and 1960s or Iran's ties with Islamist groups in the Arab world today). But the modern history of the region indicates that no local power can achieve a dominant position and thus put at risk American interests in oil access. If the United States, the most powerful country in the history of the world, could not impose its hegemony on the region, then it should not be too worried about Iran, even an Iran with a few nuclear weapons, doing so. In this case, system dynamics work in America's favor.¶ Those systemic dynamics are strengthened by the fact that the most powerful state in the region militarily, Israel, and the richest state in the region, Saudi Arabia, are opposed to regional hegemonic plays and are both allied with the United States. Each is an uncomfortable ally in its own way: Saudi Arabia for the obvious reasons and Israel, increasingly, because of its obstinacy regarding a two-state solution with the Palestinians. But their power helps to serve American geopolitical interests in the region during a period of enormous change and uncertainty. Turkey's re-entry as an active player into regional politics also works in America's favor. While the AKP government will occasionally cause headaches, particularly in its stance toward Israel, having another strong (both domestically and internationally) state playing the regional game makes it even more unlikely that Iran, or any other state, can achieve a position of regional hegemony.¶ Thus, the United States should approach regimes in the region, new and old, autocratic and democratic, with a minimalist agenda based on state-to-state interests. New democratic regimes will be as concerned about balancing dynamics as their old authoritarian predecessors. They will turn to Washington for help in their own balance-of-power games (to some extent, this is already happening on Syria). If one state chooses to adopt a hostile position toward the United States, its neighbors will probably seek out U.S. help. America can afford to take a less involved, less intense interest in the region and step in as needed to prevent the worst outcomes -- which can be done without a large U.S. land-based military presence in Iraq, Afghanistan, or anywhere else. The term of art in the international relations scholarship is "offshore balancing." That should be the overriding guide to American Middle East policy, not intense involvement in the domestic politics of regional states.¶ I am not advocating a complete U.S. political or military disengagement from the region. Maintaining U.S. bases in the small Gulf states is a relatively cost-effective way of sustaining a military capability in an important area. (Bahrain is becoming more problematic on this score; the United States has no interest in having bases in unstable countries and getting caught up in their domestic politics.) Washington should engage with all regional governments, even Iran, on a regular basis. It should encourage balancing dynamics, bolstering those threatened by America's regional enemies. If circumstances are propitious (though I think this will be rare in the immediate future), Washington should push for progress on the Arab-Israeli front.¶ But America should avoid plunging into the domestic affairs of Arab states, even when it thinks it has influence there. Egypt is the perfect example. America's $1.3 billion in annual aid to the Egyptian military certainly gives the United States some leverage over it. But America should not use that to try to micromanage what will inevitably be a complex and drawn-out process of negotiations among the Army, the newly empowered Islamists, other factions in the new parliament, and the body selected to write a new constitution about just what the relationship between the Army and new political order will be. The United States should simply make it clear that continued aid to the Egyptian military depends on Egyptian foreign-policy decisions toward America and on Egypt's peace treaty with Israel.¶ Of course, the ground rules of U.S. foreign policy have changed, even for an offshore balancer. The United States needs to communicate those ground rules to allied Arab governments and their publics: Washington cannot provide aid to militaries that brutally suppress nonviolent popular demonstrations as a matter of regular policy. Washington will issue statements in support of democratic reform and human rights across the board, affecting allies and adversaries equally. If allies do not like that, tough for them. But these minimal guidelines are far different from the interventionist programs being put forward by both neoconservatives and liberal internationalists in an effort to guide the politics of the Arab world.¶ The United States is well positioned to restrain itself in this period of flux in the Middle East. It needs only to make the choice to do so. U.S. vital interests are not threatened. America's power to prevent such threats is still significant. Regional balance-of-power dynamics work in America's favor. The United States can afford to let developments play out, not getting too exercised by the Islamist wave in the region but not encouraging it through active democracy promotion either. America can husband its resources rather than waste them in the pursuit of chimeras, like liberal democratic Arab states at peace with Israel and strongly allied with the United States. It can take the moral high ground in a way that neoconservatives and liberal interventionists do not appreciate, by not interfering in the domestic politics of Arab states. America can confidently stand aside and wait for regional states, driven by regional dynamics, to come to it for assistance and support. A decade of failed efforts to remake the politics of the region should be enough. Washington needs to learn the wisdom of the White Rabbit and just stand there in the Middle East.

## 1AR

### Democracy

**Spreading Democracy checks wars & minimizes the impact**

**RUMMEL 09** Professor Emeritus of Political Science at the University of Hawaii

[Rudy (R.J.) Rummel, Democracy, Democratic peace, freedom, globalization, This entry was posted on Sunday, January 18th, 2009 at 4:02 pm, <http://democraticpeace.wordpress.com/2009/01/18/why-freedom/>]

There is still more to say about freedom’s value. While we now know that the world’s ruling thugs generally kill several times more of their subjects than do wars, it is war on which moralists and pacifists generally focus their hatred, and devote their resources to ending or moderating. This singular concentration is understandable, given the horror and human costs, and the vital political significance of war. Yet, it should be clear by now that war is a symptom of freedom’s denial, and that freedom is the cure. **First**:

**Democratically free people do not make war on each other**

Why? The diverse groups, cross-national bonds, social links, and shared values of democratic peoples sew them together; and shared liberal values dispose them toward peaceful negotiation and compromise with each other. It is as though the people of democratic nations were one society

This truth that **democrac**ies do not make war on each other provides a solution for eliminating war from the world: globalize democratic freedom

**Second**:

The less free the people within any two nations are, the bloodier and more destructive the wars between them; the greater their freedom, the less likely such wars become

And third:

The more freedom the people of a nation have, the less bloody and destructive their wars.

What this means is that we do not have to wait for all, or almost all nations to become liberal **democrac**ies to reduce the severity of war. As we promote freedom, as the people of more and more nations gain greater human rights and political liberties, as those people without any freedom become partly free, we will decrease the bloodiness of the world’s wars. **In short: Increasing freedom in the world decreases the death toll of its war**s. Surely, whatever reduces and then finally ends the scourge of war in our history, without causing a greater evil, must be a moral good. And this is freedom

In conclusion, then, we have wondrous human freedom as a moral force for the good, as President Bush well recognizes. Freedom produces social justice, creates wealth and prosperity, minimizes violence, saves human lives, and is a solution to war. In two words, it creates human security. Moreover, and most important:

People should not be free only because it is good for them. They should be free because it is their right as human beings.

**Democracy spurs growth – checks back conflict**

**LAPPIN 09** PhD candidate at the Centre for Peace Research and Strategic Studies at the Catholic University of Leuven in Belgium under the supervision of Prof. Dr. Luc Reychler

Richard Lappin, What Democracy? Exploring the Absent Centre of Post-Conflict Democracy Assistance, Journal of Peace, Conflict and Development, Issue 14, July 2009, <http://www.humansecuritygateway.com/documents/JPCD_ExploringAbsentCentrePostConflictDemocracyAssistance.pdf>

In subsequent years, the UnitedStates and many other bilateral donors followed suit and incorporated **democrac**y aspart of their overall development agendas.32The attitude towards the relationshipbetween **democrac**y and development is perhaps best expressed by an Organisationfor Economic Co-operation and Development (OECD) policy document, whichstated:

It has become increasingly apparent that there is a vita**l** connectionbetween open, democratic and accountable systems of governance andrespect for human rights, and the ability to achieve sustained economicand social development… this connection is so fundamental thatparticipatory development and good governance must be central concernsin the allocation and design of development assistance.33

More recently, it has been argued that improved economic development cancreate a further peace dividend. Paul Collier and Anke Hoeffler have argued that thecapacity to fund an insurgency is pivotal to explaining violent conflict and thatfinancing a war is easier in regions with lower average incomes because the thresholdof financial incentive for attracting recruits is much lower.34

Additionally, a rise in percapita income provides a firmer tax base for post-conflict countries. James Fearon andDavid Laitin claim that a high per capita income is associated with higher financial,administrative, and police capabilities, a terrain more ‗disciplined‘ by roads andagriculture, and a wider diffusion of state power. Such a societal context, it is argued,is hugely advantageous for proactively countering potential insurgencies and thusreduing the possibility of civil war.35

**Empirically democratization helps the environment**

**LI & REUVENY 06**  1. The Pennsylvania State University 2. Indiana University

[Quan Li, Rafael Reuveny, Democracy and Environmental Degradation, International Studies Quarterly, Volume 50, Issue 4, pages 935–956, December 2006]

The various causal mechanisms in the theoretical literature on the effect of democracy on environmental degradation, although often conflicting, are all plausible given their theoretical assumptions. In other words, it is not possible to distinguish among them based on the theoretical arguments alone. **As these causal mechanisms may operate at the same time, it is important to study their overall or net effect empirically**. This is the focus of our analysis.

The dependent variable in our empirical/statistical model, environmental degradation, is measured with five salient types of human-induced degradation: carbon dioxide (CO2) emissions, nitrogen oxide (NOx) emissions, land degradation, deforestation, and organic pollution in water. For each type of degradation, we estimate several regression-based statistical models using various measures of democracy/autocracy. Depending on data availability for the environmental indicators, the number of countries included in the empirical sample varies from 105 for the land degradation analysis to 143 for the CO2 emissions per capita analysis.

Our empirical analysis differs from previous studies in a number of ways. We focus on human activities that directly affect environmental quality. The sample size is generally larger than previous studies. **The empirical results for the effect of democracy on the environment are consistent across all the above types of human-induced degradation**: **a rise in democracy reduces environmental degradation and improves environmental performance**. The substantive effect of democracy on the environment is considerable, but it varies in size across different aspects of environmental degradation. We also find nonmonotonic effects of democracy that vary across the environmental indicators.

### Case legit

#### Indefinite detention is the clearest signal of illegitimacy

Alex Kane 13, AlterNet, "5 Ways President Obama Has Doubled Down on Bush's Most Tragic Mistakes", January 8, [www.alternet.org/civil-liberties/5-ways-president-obama-has-doubled-down-bushs-most-tragic-mistakes?paging=off](http://www.alternet.org/civil-liberties/5-ways-president-obama-has-doubled-down-bushs-most-tragic-mistakes?paging=off)

5. Indefinite Detention¶ This issue, over all the others, says loud and clear that the Obama administration is preparing for an endless war on terror.¶ Domestically, indefinite detention reared its ugly head back in December 2011, when President Obama signed the National Defense Authorization Act of 2012, a defense funding bill. Included in the bill was a provision allowing for indefinite military detention without charge or trial. Despite concerns raised by civil liberties activists, Obama signed the bill into law, although an executive signing statement vowed that the president would “not authorize the indefinite military detention without trial of American citizens.”¶ That has not allayed the concerns of civil liberties groups. The American Civil Liberties Union states: “The NDAA’s dangerous detention provisions would authorize the president — and all future presidents — to order the military to pick up and indefinitely imprison people captured anywhere in the world, far from any battlefield....Under the Bush administration, similar claims of worldwide detention authority were used to hold even a U.S. citizen detained on U.S. soil in military custody, and many in Congress now assert that the NDAA should be used in the same way again.”¶ While no American citizens have been detained under the law yet, indefinite detention has been a hallmark of the war in Afghanistan. Thousands of detainees have remained in Bagram Air Field, including non-Afghan detainees. Picked up on the battlefield in Afghanistan, they have been held for years without charge or trial.¶ “Since 2002, the U.S. government has detained indefinitely thousands of people there in harsh conditions and without charge, without access to lawyers, without access to courts, and without a meaningful opportunity to challenge their detention,” the ACLU notes.