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### 1AC---LEGITIMACY

#### CONTENTION 1 IS LEGITIMACY:

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

Kate Martin 08, director of the Center for National Security Studies, July 16, "How the Administration's Failed Detainee Policies Have Hurt the Fight Against Terrorism: Putting the Fight Against Terrorism on Sound Legal Foundations," Statement before the Senate Judiciary Committee, https://www.fas.org/irp/congress/2008\_hr/detainees.html

As this Committee is well aware, since 2001, the Executive Branch has advanced extraordinary and unsupportable claims that the President is free to ignore and even violate established law in order to conduct the “war against terror.” These claims underlie the detention policies and the administration’s posture that neither Congress nor the judiciary have any role in legislating or overseeing detentions. While the Supreme Court has rejected that view on four occasions and Congress has since legislated, the administration continues to claim unprecedented authority to create new forms of detention and decide who may be detained without regard to established law or constitutional limits. ¶ On November 13, 2001, the President publicly instituted these policies with the issuance of Military Order No. 1. In addition to establishing military commissions, the Order authorized the military detention of any non- citizen found in the United States without charge solely on suspicion of being involved in terrorist activities. In May 2002, the President directed the military to seize a U.S. citizen in Chicago, who was then held for more than three years incommunicado without charge or access to a lawyer, solely on the say-so of the President. The administration also directed the military to ignore the Geneva Conventions and established military law and regulations when detaining individuals fighting in Afghanistan. It seized individuals in Bosnia, Europe and elsewhere and held them in secret prisons. It built a detention facility at Guantanamo in order to put detainees outside the reach of the law. ¶ The administration still claims the right to seize any individual anywhere in the world, hold him incommunicado in a secret prison indefinitely without trial. It is now clear that its core reason for doing so was to be able to use “enhanced interrogation techniques” that are internationally recognized and outlawed as torture. (In the case of U.S. citizen Jose Padilla who was held incommunicado for more than three years, the government confessed that it did so in order to interrogate him. 1) ¶ The result of this approach is the international view that the United States is not following the law, but is instead making up rules for detentions and interrogations. Most significantly, the argument that the United States is engaged in a “global war on terror” has been used to justify detentions that violate human rights and constitutional protections. Guantanamo Bay in particular, has come to be seen by the world as a symbol for lawlessness and abuse.¶ These detention policies have undermined rather than strengthened U.S. power. They have discouraged and interfered with, rather than advancing international cooperation and have provided fuel to al Qaeda efforts to recruit foreign terrorists. The universal calls to close Guantanamo reflect the recognition that these detention policies that are inconsistent with the U.S. commitment to the rule of law and human rights have also harmed our national security.

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

Marcia Pereira 08, Civil Litigation &Transactional Attorney and University of Miami School of Law Graduate, Spring, "ARTICLE: THE "WAR ON TERROR" SLIPPERY SLOPE POLICY: GUANTANAMO BAY AND THE ABUSE OF EXECUTIVE POWER," University of Miami International & Comparative Law Review, 15 U. Miami Int'l & Comp. L. Rev. 389, Lexis

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.

#### Reputational legitimacy theory is true and key to foster cooperation

Douglas M Gibler 8, Department of Political Science University of Alabama, Tuscaloosa “The Costs of Reneging: Reputation and Alliance Formation” The Journal of Conflict Resolution, Vol. 52, No. 3, June, pp. 426-454

More sophisticated treatments of the reputation logic have been produced by formal theorists, both in economics and in political science. In economics, the ability of firm reputation to deter competition has been well analyzed (see Kreps and Wilson, 1982; Wilson, 1989; and Weigelt and Camerer, 1988), and political scientists have adopted these theories as tools in understanding the types of signals leaders can send (see for example, Alt, Calvert, and Humes, 1988; Ordeshook, 1986; and Wagner, 1992). Sartori (2002) and Guisinger and Smith (2002) probably go furthest in arguing that leaders and their envoys have incentives to develop certain types of reputations in order to overcome the uncertainty endemic to crisis diplomacy. In these models, a reputation for honesty allows the sender to credibly give information that would otherwise be “cheap talk”, and thus, leaders may concede less important issues, without bluffing, in order to maintain a reputation for honesty when more important issues arise (Sartori, 2002: 122).¶ The sum argument of these statements and theoretical treatments is clear. Decision-makers argue and act, at least in part, based on reputations. Traditional deterrence theory suggests reputations should be pursued by leaders as important and manipulable tools, which are useful in future crises. Formal theorists agree; reputations provide valuable information when the costs of signaling are low.

#### Legitimacy’s the fundamental internal link to effective hegemony---power distributions perceived as illegitimate are the most likely causes of great power war

Martha Finnemore 9, professor of political science and international affairs at George Washington University, January 2009, “Legitimacy, Hypocrisy, and the Social Structure of Unipolarity: Why Being a Unipole Isn’t All It’s Cracked Up to Be,” World Politics, Volume 61, Number 1

Legitimacy is, by its nature, a social and relational phenomenon. One’s position or power cannot be legitimate in a vacuum. The concept only has meaning in a particular social context. Actors, even unipoles, cannot create legitimacy unilaterally. Legitimacy can only be given by others. It is conferred either by peers, as when great powers accept or reject the actions of another power, or by those upon whom power is exercised. Reasons to confer legitimacy have varied throughout history. Tradition, blood, and claims of divine right have all provided reasons to confer legitimacy, although in contemporary politics conformity with [End Page 61] international norms and law is more influential in determining which actors and actions will be accepted as legitimate. 9¶ Recognizing the legitimacy of power does not mean these others necessarily like the powerful or their policies, but it implies at least tacit acceptance of the social structure in which power is exercised. One may not like the inequalities of global capitalism but still believe that markets are the only realistic or likely way to organize successful economic growth. One may not like the P5 vetoes of the Security Council but still understand that the United Nations cannot exist without this concession to power asymmetries. We can see the importance of legitimacy by thinking about its absence. Active rejection of social structures and the withdrawal of recognition of their legitimacy create a crisis. In domestic politics, regimes suffering legitimacy crises face resistance, whether passive or active and armed. Internationally, systems suffering legitimacy crises tend to be violent and noncooperative. Post-Reformation Europe might be an example of such a system. Without at least tacit acceptance of power’s legitimacy, the wheels of international social life get derailed. Material force alone remains to impose order, and order creation or maintenance by that means is difficult, even under unipolarity. Successful and stable orders require the grease of some legitimation structure to persist and prosper.10¶ The social and relational character of legitimacy thus strongly colors the nature of any unipolar order and the kinds of orders a unipole can construct. Yes, unipoles can impose their will, but only to an extent. The willingness of others to recognize the legitimacy of a unipole’s actions and defer to its wishes or judgment shapes the character of the order that will emerge. Unipolar power without any underlying legitimacy will have a very particular character. The unipole’s policies will meet with resistance, either active or passive, at every turn. Cooperation will be induced only through material quid pro quo payoffs. Trust will be thin to nonexistent. This is obviously an expensive system to run and few unipoles have tried to do so.

#### Hegemony key to solve extinction

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It is worth first examining the larger picture: **We live in a time of arguably the greatest structural change in the global order yet endured**, **with this historical moment's most amazing feature being its** relative and absolute **lack of mass violence**. That is something to consider when Americans contemplate military intervention in Libya, because if we do take the step to prevent larger-scale killing by engaging in some killing of our own, we will not be adding to some fantastically imagined global death count stemming from the ongoing "megalomania" and "evil" of American "empire." We'll be engaging in the same sort of system-administering activity that has marked our **stunningly successful stewardship of global order** since World War II. Let me be more blunt: **As the guardian of globalization**, **the U.S. military has been the greatest force for peace the world has ever known**. Had America been removed from the global dynamics that governed the 20th century, the mass murder never would have ended. Indeed, it's entirely conceivable there would now be no identifiable human civilization left, once nuclear weapons entered the killing equation. But the **world did not keep sliding down that path of perpetual war**. **Instead, America stepped up and changed everything by ushering in our now-perpetual great-power peace**. **We introduced the international liberal trade order known as globalization** and played loyal Leviathan over its spread. **What resulted was the collapse of empires, an explosion of democracy**, the **persistent spread of human rights**, the liberation of women, **the doubling of life expectancy**, a roughly **10-fold increase in adjusted global GDP** **and a profound and persistent reduction in battle deaths from state-based conflicts.** That is what American "hubris" actually delivered. Please remember that the next time some TV pundit sells you the image of "unbridled" American military power as the cause of global disorder instead of its cure. With self-deprecation bordering on self-loathing, we now imagine a post-American world that is anything but. Just watch who scatters and who steps up as the Facebook revolutions erupt across the Arab world. While we might imagine ourselves the status quo power, we remain the world's most vigorously revisionist force. **¶** As for the sheer "evil" that is our military-industrial complex, again, let's examine what the world looked like before that establishment reared its ugly head. **The last great period of global structural change was the first half of the 20th century, a period that saw a death toll of about 100 million across two world wars.** That comes to an average of 2 million deaths a year in a world of approximately 2 billion souls. Today, with far more comprehensive worldwide reporting, researchers report an average of less than 100,000 battle deaths annually in a world fast approaching 7 billion people. Though admittedly crude**, these calculations suggest a 90 percent absolute drop and a 99 percent relative drop in deaths due to war. We are clearly headed for a world order characterized by multipolarity,** something the American-birthed system was designed to both encourage and accommodate. **But given how things turned out the last time we collectively faced such a fluid structure, we would do well to keep U.S. power, in all of its forms, deeply embedded in the geometry to come.¶** To continue the historical survey, after salvaging Western Europe from its half-century of civil war, **the U.S. emerged as the progenitor of a new, far more just form of globalization -- one based on actual free trade rather than colonialism1.** America then successfully replicated globalization further in East Asia over the second half of the 20th century, **setting the stage for the Pacific Century now unfolding.**

#### Two-thousand years of history prove

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Despite increasingly compelling findings concerning the importance of status seeking in human behavior, research on its connection to war waned some three decades ago.38 Yet empirical studies of the relationship between both systemic and dyadic capabilities distributions and war have continued to cumulate. If the relationships implied by the status theory run afoul of well-established patterns or general historical findings, then there is little reason to continue investigating them. **The clearest empirical implication** of the theory **is that** status **competition is unlikely to cause great power military conflict in unipolar systems**. If status competition is an important contributory cause of great power war, then, ceteris paribus, unipolar systems should be markedly less war-prone than bipolar or multipolar systems. And this appears to be the case. As Daniel Geller notes in a review of the empirical literature: "**The only polar structure that appears to influence conflict probability is unipolarity**."39 In addition, a larger number of studies at the dyadic level support the related expectation that narrow capabilities gaps and ambiguous or unstable capabilities hierarchies increase the probability of war.40 These studies are based entirely on post-sixteenth-century European history, and most are limited to the post-1815 period covered by the standard data sets. Though the systems coded as unipolar, near-unipolar, and hegemonic are all marked by a high concentration of capabilities in a single state, these studies operationalize unipolarity in a variety of ways, often very differently from the definition adopted here. An ongoing collaborative project looking at ancient interstate systems over the course of two thousand years suggests that historical systems that come closest to the definition of unipolarity used here exhibit precisely the behavioral properties implied by the theory. 41 As David C. Kang's research shows, the East Asian system between 1300 and 1900 was an unusually stratified unipolar structure, with an economic and militarily dominant China interacting with a small number of geographically proximate, clearly weaker East Asian states.42 Status politics existed, but actors were channeled by elaborate cultural understandings and interstate practices into clearly recognized ranks. Warfare was exceedingly rare, and the major outbreaks occurred precisely when the theory would predict: when China's capabilities waned, reducing the clarity of the underlying material hierarchy and increasing status dissonance for lesser powers. Much more research is needed, but initial exploration of other arguably unipolar systems-for example, Rome, Assyria, the Amarna system-appears consistent with the hypothesis.43 Status Competition and Causal Mechanisms Both theory and evidence demonstrate convincingly that competition for status is a driver of human behavior, and social identity theory and related literatures suggest the conditions under which it might come to the fore in great power relations. Both the systemic and dyadic findings presented in large-N studies are broadly consistent with the theory, but they are also consistent with power transition and other rationalist theories of hegemonic war.

#### War is at its lowest level in history because of US primacy---best statistical studies prove

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Andrew Mack and his colleagues at the Human Security Report Project are to be congratulated. Not only do they present a study with a striking conclusion, driven by data, free of theoretical or ideological bias, but they also do something quite unfashionable: they bear good news. Social scientists really are not supposed to do that. Our job is, if not to be Malthusians, then at least to point out disturbing trends, looming catastrophes, and the imbecility and mendacity of policy makers. And then it is to say why, if people listen to us, things will get better. We do this as if our careers depended upon it, and perhaps they do; for if all is going to be well, what need then for us?¶ Our colleagues at Simon Fraser University are brave indeed. That may sound like a setup, but it is not. I shall challenge neither the data nor the general conclusion that violent conflict around the world has been decreasing in fits and starts since the Second World War. When it comes to violent conflict among and within countries, **things have been getting better**. (The trends have not been linear—Figure 1.1 actually shows that the frequency of interstate wars peaked in the 1980s—but the 65-year movement is clear.) Instead I shall accept that Mack et al. are correct on the macro-trends, and focus on their explanations they advance for these remarkable trends. With apologies to any readers of this forum who recoil from academic debates, this might get mildly theoretical and even more mildly methodological.¶ Concerning international wars, one version of the “nuclear-peace” theory is not in fact laid to rest by the data. It is certainly true that nuclear-armed states have been involved in many wars. They have even been attacked (think of Israel), which falsifies the simple claim of “assured destruction”—that any nuclear country A will deter any kind of attack by any country B because B fears a retaliatory nuclear strike from A.¶ But the most important “nuclear-peace” claim has been about mutually assured destruction, which obtains between two robustly nuclear-armed states. The claim is that (1) rational states having second-strike capabilities—enough deliverable nuclear weaponry to survive a nuclear first strike by an enemy—will have an overwhelming incentive not to attack one another; and (2) we can safely assume that nuclear-armed states are rational. It follows that states with a second-strike capability will not fight one another.¶ Their colossal atomic arsenals neither kept the United States at peace with North Vietnam during the Cold War nor the Soviet Union at peace with Afghanistan. But the argument remains strong that those arsenals did help keep the United States and Soviet Union at peace with each other. Why non-nuclear states are not deterred from fighting nuclear states is an important and open question. But in a time when calls to ban the Bomb are being heard from more and more quarters, we must be clear about precisely what the broad trends toward peace can and cannot tell us. They may tell us nothing about why we have had no World War III, and little about the wisdom of banning the Bomb now.¶ Regarding the **downward trend in international war**, Professor Mack is friendlier to more palatable theories such as the “**democratic peace**” (democracies do not fight one another, and the proportion of democracies has increased, hence less war); the interdependence or “**commercial peace**” (states with extensive economic ties find it irrational to fight one another, and interdependence has increased, hence less war); and the notion that people around the world are more anti-war than their forebears were. Concerning the downward trend in civil wars, he favors theories of economic growth (where commerce is enriching enough people, violence is less appealing—a logic similar to that of the “commercial peace” thesis that applies among nations) and the end of the Cold War (which end reduced superpower support for rival rebel factions in so many Third-World countries).¶ These are all **plausible mechanisms for peace**. What is more, none of them excludes any other; all could be working toward the same end. That would be somewhat puzzling, however. Is the world just lucky these days? How is it that an array of peace-inducing factors happens to be working coincidentally in our time, when such a magical array was absent in the past? The answer may be that one or more of these mechanisms reinforces some of the others, or perhaps some of them are mutually reinforcing. Some scholars, for example, have been focusing on whether economic growth might support democracy and vice versa, and whether both might support international cooperation, including to end civil wars.¶ We would still need to explain how this charmed circle of causes got started, however. And here let me raise another factor, perhaps even less appealing than the “nuclear peace” thesis, at least outside of the United States. That factor is what international relations scholars call hegemony—specifically **American hegemony**.¶ A theory that many regard as discredited, but that refuses to go away, is called hegemonic stability theory. The theory emerged in the 1970s in the realm of international political economy. It asserts that **for the global economy to remain open**—for countries to keep barriers to trade and investment low—**one powerful country must take the lead**. Depending on the theorist we consult, “taking the lead” entails paying for global public goods (keeping the sea lanes open, providing liquidity to the international economy), coercion (threatening to raise trade barriers or withdraw military protection from countries that cheat on the rules), or both. The theory is skeptical that international cooperation in economic matters can emerge or endure absent a hegemon. The distastefulness of such claims is self-evident: they imply that it is good for everyone the world over if one country has more wealth and power than others. More precisely, they imply that it has been good for the world that the United States has been so predominant.¶ There is no obvious reason why hegemonic stability theory could not apply to other areas of international cooperation, including in security affairs, human rights, international law, peacekeeping (UN or otherwise), and so on. What I want to suggest here—suggest, not test—is that **American hegemony might just be a deep cause of the steady decline of political deaths in the world**.¶ How could that be? After all, the report states that United States is the third most war-prone country since 1945. Many of the deaths depicted in Figure 10.4 were in wars that involved the United States (the Vietnam War being the leading one). Notwithstanding politicians’ claims to the contrary, a candid look at U.S. foreign policy reveals that the country is as ruthlessly self-interested as any other great power in history.¶ The answer is that U.S. hegemony might just be a **deeper cause of the proximate causes** outlined by Professor Mack. Consider economic growth and openness to foreign trade and investment, which (so say some theories) **render violence irrational**. American power and policies may be responsible for these in two related ways. First, at least since the 1940s Washington has **prodded other countries to embrace the market capitalism** that entails economic openness and produces **sustainable economic growth**. The United States promotes capitalism for selfish reasons, of course: its own domestic system depends upon growth, which in turn depends upon the efficiency gains from economic interaction with foreign countries, and the more the better. During the Cold War most of its allies accepted some degree of market-driven growth.¶ Second, the U.S.-led western victory in the Cold War damaged the credibility of alternative paths to development—communism and import-substituting industrialization being the two leading ones—and **left market capitalism the best model**. The end of the Cold War also involved an end to the billions of rubles in Soviet material support for regimes that tried to make these alternative models work. (It also, as Professor Mack notes, **eliminated the superpowers’ incentives to feed civil violence** in the Third World.) What we call **globalization** is **caused in part by the emergence of the United States as the global hegemon**.¶ The same case can be made, with somewhat more difficulty, concerning the **spread of democracy**. Washington has supported democracy only under certain conditions—the chief one being the absence of a popular anti-American movement in the target state—but those conditions have become much more widespread following the collapse of communism. Thus in the 1980s the Reagan administration—the most anti-communist government America ever had—began to dump America’s old dictator friends, starting in the Philippines. Today Islamists tend to be anti-American, and so the Obama administration is skittish about democracy in Egypt and other authoritarian Muslim countries. But general U.S. material and moral support for liberal democracy remains strong.

**Heg decreases structural violence---any alt dooms humanity to deprivation**

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First the absurdity: A few of the most over-the-top Bush-Cheney neocons did indeed promote a vision of U.S. primacy by which America shouldn't be afraid to wage war to keep other rising powers at bay. **It was a nutty concept then**, and it **remains a nutty concept today**. But since it feeds a lot of major military weapons system purchases, especially for the China-centric Air Force and Navy, don't expect it to disappear so long as the Pentagon's internal budget fights are growing in intensity. ¶ Meanwhile, the Chinese do their stupid best to fuel this outdated logic by building a force designed to keep America out of East Asia just as their nation's dependency on resources flowing from unstable developing regions skyrockets. With America's fiscal constraints now abundantly clear, the world's primary policing force is pulling back, while that force's implied successor is nowhere close to being able to field a similar power-projection capacity -- and never will be. So with NATO clearly stretched to its limits by the combination of Afghanistan and Libya, a lot of future fires in developing regions will likely be left to burn on their own. We'll just have to wait and see how much foreign commentators delight in that G-Zero dynamic in the years ahead. ¶ That gets us to the original "insult": the U.S. did not lord it over the world in the 1990s. Yes, it did argue for and promote the most rapid spread of globalization possible. But **the "evil" of the Washington Consensus** only yielded the **most rapid growth of a truly global middle class that the world has ever seen**. Yes, we can, in our current economic funk, somehow cast that development as the "loss of U.S. hegemony," in that the American consumer is no longer the demand-center of globalization's universe. But this is without a doubt the most amazing achievement of U.S. foreign policy, surpassing even our role in World War II. ¶ Numerous world powers served as global or regional hegemons before we came along, **and their record on economic development was painfully transparent**: **Elites got richer, and the masses got poorer**. Then America showed up after World War II and engineered an international liberal trade order, one that was at first admittedly limited to the West. But within four decades it went virally global, and now for the first time in history, more than half of our planet's population lives in conditions of modest-to-mounting abundance -- **after millennia of mere sustenance**. ¶ You may choose to interpret this as some sort of cosmic coincidence, but the historical sequence is undeniable: **With its unrivaled power, America made the world a far better place**. ¶ That spreading wave of global abundance has reformatted all sorts of traditional societies that lay in its path. Some, like the Chinese, have adapted to it magnificently in an economic and social sense, with the political adaptation sure to follow eventually. Others, being already democracies, have done far better across the board, like Turkey, Indonesia and India. But there are also numerous traditional societies where that reformatting impulse from below has been met by both harsh repression from above and violent attempts by religious extremists to effect a "counterreformation" that firewalls the "faithful" from an "evil" outside world.¶ Does this violent blowback constitute the great threat of our age? Not really. As I've long argued, this "friction" from globalization's tectonic advance is merely what's left over now that great-power war has gone dormant for 66 years and counting, with interstate wars now so infrequent and so less lethal as to be dwarfed by the civil strife that plagues those developing regions still suffering weak connectivity to the global economy. ¶ Let's remember what the U.S. actually did across the 1990s after the Soviet threat disappeared. It went out of its way to police the world's poorly governed spaces, battling rogue regimes and answering the 9-1-1 call repeatedly when disaster and/or civil strife struck vulnerable societies. **Yes, playing globalization's bodyguard made America public enemy No. 1 in the eyes of its most violent rejectionist movements**, including al-Qaida, but we made the effort because, in our heart of hearts, we knew that this is what blessed powers are supposed to do. ¶ Some, like the Bush-Cheney neocons, were driven by more than that sense of moral responsibility. They saw a chance to remake the world so as to assure U.S. primacy deep into the future. The timing of their dream was cruelly ironic, for it blossomed just as America's decades-in-the-making grand strategy reached its apogee in the peaceful rise of so many great powers at once. Had Sept. 11 not intervened, the neocons would likely have eventually targeted rising China for strategic demonization. Instead, they locked in on Osama bin Laden. The rest, as they say, is history. ¶ The follow-on irony of the War on Terror is that its operational requirements actually revolutionized a major portion of the U.S. military -- specifically the Army, Marines and Special Forces -- in such a way as to redirect their strategic ethos from big wars to small ones. It also forged a new operational bond between the military's irregular elements and that portion of the Central Intelligence Agency that pursues direct action against transnational bad actors. The up-front costs of this transformation were far too high, largely because the Bush White House stubbornly refused to embrace counterinsurgency tactics until after the popular repudiation signaled by the 2006 midterm election. But the end result is clear: **We now have the force we actually need to manage this global era**.¶ But, of course, **that can all be tossed into the dumpster** if we convince ourselves that our "loss" of hegemony was somehow the result of our own misdeed, instead of being our most profound gift to world history. Again, we grabbed the reins of global leadership and patiently engineered not only the **greatest redistribution -- and expansion -- of global wealth ever seen,** but also the **greatest consolidation of global peace ever seen**. ¶ Now, if we can sensibly realign our strategic relationship with the one rising great power, China, whose growing strength upsets us so much, then in combination with the rest of the world's rising great powers we can collectively wield enough global policing power to manage what's yet to come. ¶ As always, **the choice is ours**.

#### The world is getting better now because heg is peaceful

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Is Unipolarity Peaceful? As evidence, Monteiro provides metrics of the number of years during which great powers have been at war. For the unipolar era since the end of the Cold War, the United States has been at war 13 of those 22 years or 59% (see his Table 2 below). Now, I've been following some of the discussion by and about Steven Pinker and Joshua Goldstein's [work](http://www.nytimes.com/2011/12/18/opinion/sunday/war-really-is-going-out-of-style.html?pagewanted=all) that suggests the world is becoming more peaceful with interstate wars and intrastate wars becoming more rare. I was struck by the graphic that Pinker used in a Wall Street Journal [piece](http://online.wsj.com/article/SB10001424053111904106704576583203589408180.html) back in September that drew on the Uppsala Conflict Data, which shows a steep decline in the number of deaths per 100,000 people. How do we square this account by Monteiro of a unipolar world that is not peaceful (with the U.S. at war during this period in Iraq twice, Afghanistan, Kosovo) and Pinker's account which suggests declining violence in the contemporary period? Where Pinker is focused on systemic outcomes, Monteiro's measure merely reflect years during which the great powers are at war. Under unipolarity, there is only one great power so the measure is partial and not systemic. However, Monteiro's theory aims to be systemic rather than partial. In critiquing Wohlforth's early work on unipolarity stability, Monteiro notes: Wohlforth’s argument does not exclude all kinds of war. Although power preponderance allows the unipole to manage conflicts globally, this argument is not meant to apply to relations between major and minor powers, or among the latter (17). So presumably, **a more adequate test of the peacefulness or not of unipolarity** (at least for Monteiro) is not the number of years the great power has been at war **but whether the system as a whole is becoming more peaceful under unipolarity compared** to previous eras, including wars between major and minor powers or wars between minor powers and whether the wars that do happen are as violent as the ones that came before. Now, as Ross Douthat pointed [out](http://douthat.blogs.nytimes.com/2011/10/17/steven-pinkers-history-of-violence/), Pinker's argument isn't based on a logic of benign hegemony. It could be that even if the present era is more peaceful, unipolarity has nothing to do with it. Moreover, Pinker may be wrong. Maybe the world isn't all that peaceful. I keep thinking about the places I don't want to go to anymore because they are violent (Mexico, Honduras, El Salvador, Nigeria, Pakistan, etc.) As Tyler Cowen [noted](http://marginalrevolution.com/marginalrevolution/2011/10/steven-pinker-on-violence.html), the measure Pinker uses to suggest violence is a per capita one, which doesn't get at the absolute level of violence perpetrated in an era of a greater world population. **But, if my read of other** [**reports**](http://www.hsrgroup.org/human-security-reports/20092010/graphs-and-tables.aspx) **based on Uppsala data is right, war is becoming more rare and less deadly** (though later [data](http://www.pcr.uu.se/research/ucdp/charts_and_graphs/) suggests lower level armed conflict may be increasing again since the mid-2000s). The apparent violence of the contemporary era may be something of a presentist bias and reflect our own lived experience and the ubiquity of news media .Even if the U.S. has been at war for the better part of unipolarity, the deadliness is declining, even compared with Vietnam, let alone World War II. Does Unipolarity Drive Conflict? So, I kind of took issue with the Monteiro's premise that unipolarity is not peaceful. What about his argument that unipolarity drives conflict? Monteiro suggests that the unipole has three available strategies - defensive dominance, offensive dominance and disengagement - though is less likely to use the third. Like Rosato and Schuessler, Monteiro suggests because other states cannot trust the intentions of other states, namely the unipole, that minor states won't merely bandwagon with the unipole. Some "recalcitrant" minor powers will attempt to see what they can get away with and try to build up their capabilities. As an aside, in Rosato and Schuessler world, unless these are located in strategically important areas (i.e. places where there is oil), then the unipole (the United States) should disengage. In Monteiro's world, disengagement would inexorably lead to instability and draw in the U.S. again (though I'm not sure this necessarily follows), but neither defensive or offensive dominance offer much possibility for peace either since it is U.S. power in and of itself that makes other states insecure, even though they can't balance against it.

#### No risk of heg bad---US engagement and reintervention are inevitable---it’s only a question of making it effective

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In theory, the United States could refrain from intervening abroad. But, in practice, will it? Many assume today that the American public has had it with interventions, and Alice Rivlin certainly reflects a strong current of opinion when she says that “much of the public does not believe that we need to go in and take over other people’s countries.” That sentiment has often been heard after interventions, especially those with mixed or dubious results. It was heard after the four-year-long war in the Philippines, which cost 4,000 American lives and untold Filipino casualties. It was heard after Korea and after Vietnam. It was heard after Somalia. Yet the reality has been that after each intervention, the sentiment against foreign involvement has faded, and the United States has intervened again. ¶ Depending on how one chooses to count, the United States has undertaken roughly 25 overseas interventions since 1898: Cuba, 1898 The Philippines, 1898-1902 China, 1900 Cuba, 1906 Nicaragua, 1910 & 1912 Mexico, 1914 Haiti, 1915 Dominican Republic, 1916 Mexico, 1917 World War I, 1917-1918 Nicaragua, 1927 World War II, 1941-1945 Korea, 1950-1953 Lebanon, 1958 Vietnam, 1963-1973 Dominican Republic, 1965 Grenada, 1983 Panama, 1989 First Persian Gulf war, 1991 Somalia, 1992 Haiti, 1994 Bosnia, 1995 Kosovo, 1999 Afghanistan, 2001-present Iraq, 2003-present¶ That is one intervention every 4.5 years on average. Overall, the United States has intervened or been engaged in combat somewhere in 52 out of the last 112 years, or roughly 47 percent of the time. Since the end of the Cold War, it is true, the rate of U.S. interventions has increased, with an intervention roughly once every 2.5 years and American troops intervening or engaged in combat in 16 out of 22 years, or over 70 percent of the time, since the fall of the Berlin Wall. ¶ The argument for returning to “normal” begs the question: What is normal for the United States? The historical record of the last century suggests that it is not a policy of nonintervention. This record ought to raise doubts about the theory that American behavior these past two decades is the product of certain unique ideological or doctrinal movements, whether “liberal imperialism” or “neoconservatism.” Allegedly “realist” presidents in this era have been just as likely to order interventions as their more idealistic colleagues. George H.W. Bush was as profligate an intervener as Bill Clinton. He invaded Panama in 1989, intervened in Somalia in 1992—both on primarily idealistic and humanitarian grounds—which along with the first Persian Gulf war in 1991 made for three interventions in a single four-year term. Since 1898 the list of presidents who ordered armed interventions abroad has included William McKinley, Theodore Roose-velt, William Howard Taft, Woodrow Wilson, Franklin Roosevelt, Harry Truman, Dwight Eisenhower, John F. Kennedy, Ronald Reagan, George H.W. Bush, Bill Clinton, and George W. Bush. One would be hard-pressed to find a common ideological or doctrinal thread among them—unless it is the doctrine and ideology of a mainstream American foreign policy that leans more toward intervention than many imagine or would care to admit. ¶ Many don’t want to admit it, and the only thing as consistent as this pattern of American behavior has been the claim by contemporary critics that it is abnormal and a departure from American traditions. The anti-imperialists of the late 1890s, the isolationists of the 1920s and 1930s, the critics of Korea and Vietnam, and the critics of the first Persian Gulf war, the interventions in the Balkans, and the more recent wars of the Bush years have all insisted that the nation had in those instances behaved unusually or irrationally. And yet the behavior has continued.¶ To note this consistency is not the same as justifying it. The United States may have been wrong for much of the past 112 years. Some critics would endorse the sentiment expressed by the historian Howard K. Beale in the 1950s, that “the men of 1900” had steered the United States onto a disastrous course of world power which for the subsequent half-century had done the United States and the world no end of harm. But whether one lauds or condemns this past century of American foreign policy—and one can find reasons to do both—the fact of this consistency remains. It would require not just a modest reshaping of American foreign policy priorities but a sharp departure from this tradition to bring about the kinds of changes that would allow the United States to make do with a substantially smaller force structure. ¶ Is such a sharp departure in the offing? It is no doubt true that many Americans are unhappy with the on-going warfare in Afghanistan and to a lesser extent in Iraq, and that, if asked, a majority would say the United States should intervene less frequently in foreign nations, or perhaps not at all. It may also be true that the effect of long military involvements in Iraq and Afghanistan may cause Americans and their leaders to shun further interventions at least for a few years—as they did for nine years after World War I, five years after World War II, and a decade after Vietnam. This may be further reinforced by the difficult economic times in which Americans are currently suffering. The longest period of nonintervention in the past century was during the 1930s, when unhappy memories of World War I combined with the economic catastrophe of the Great Depression to constrain American interventionism to an unusual degree and produce the first and perhaps only genuinely isolationist period in American history. ¶ So are we back to the mentality of the 1930s? It wouldn’t appear so. There is no great wave of isolationism sweeping the country. There is not even the equivalent of a Patrick Buchanan, who received 3 million votes in the 1992 Republican primaries. Any isolationist tendencies that might exist are severely tempered by continuing fears of terrorist attacks that might be launched from overseas. Nor are the vast majority of Americans suffering from economic calamity to nearly the degree that they did in the Great Depression. ¶ Even if we were to repeat the policies of the 1930s, however, it is worth recalling that the unusual restraint of those years was not sufficient to keep the United States out of war. On the contrary, the United States took actions which ultimately led to the greatest and most costly foreign intervention in its history. Even the most determined and in those years powerful isolationists could not prevent it. ¶ Today there are a number of obvious possible contingencies that might lead the United States to substantial interventions overseas, notwithstanding the preference of the public and its political leaders to avoid them. Few Americans want a war with Iran, for instance. But it is not implausible that a president—indeed, this president—might find himself in a situation where military conflict at some level is hard to avoid. The continued success of the international sanctions regime that the Obama administration has so skillfully put into place, for instance, might eventually cause the Iranian government to lash out in some way—perhaps by attempting to close the Strait of Hormuz. Recall that Japan launched its attack on Pearl Harbor in no small part as a response to oil sanctions imposed by a Roosevelt administration that had not the slightest interest or intention of fighting a war against Japan but was merely expressing moral outrage at Japanese behavior on the Chinese mainland. Perhaps in an Iranian contingency, the military actions would stay limited. But perhaps, too, they would escalate. One could well imagine an American public, now so eager to avoid intervention, suddenly demanding that their president retaliate. Then there is the possibility that a military exchange between Israel and Iran, initiated by Israel, could drag the United States into conflict with Iran. Are such scenarios so farfetched that they can be ruled out by Pentagon planners? ¶ Other possible contingencies include a war on the Korean Peninsula, where the United States is bound by treaty to come to the aid of its South Korean ally; and possible interventions in Yemen or Somalia, should those states fail even more than they already have and become even more fertile ground for al Qaeda and other terrorist groups. And what about those “humanitarian” interventions that are first on everyone’s list to be avoided? Should another earthquake or some other natural or man-made catastrophe strike, say, Haiti and present the looming prospect of mass starvation and disease and political anarchy just a few hundred miles off U.S. shores, with the possibility of thousands if not hundreds of thousands of refugees, can anyone be confident that an American president will not feel compelled to send an intervention force to help?¶ Some may hope that a smaller U.S. military, compelled by the necessity of budget constraints, would prevent a president from intervening. More likely, however, it would simply prevent a president from intervening effectively. This, after all, was the experience of the Bush administration in Iraq and Afghanistan. Both because of constraints and as a conscious strategic choice, the Bush administration sent too few troops to both countries. The results were lengthy, unsuccessful conflicts, burgeoning counterinsurgencies, and loss of confidence in American will and capacity, as well as large annual expenditures. Would it not have been better, and also cheaper, to have sent larger numbers of forces initially to both places and brought about a more rapid conclusion to the fighting? The point is, it may prove cheaper in the long run to have larger forces that can fight wars quickly and conclusively, as Colin Powell long ago suggested, than to have smaller forces that can’t. Would a defense planner trying to anticipate future American actions be wise to base planned force structure on the assumption that the United States is out of the intervention business? Or would that be the kind of penny-wise, pound-foolish calculation that, in matters of national security, can prove so unfortunate?¶ The debates over whether and how the United States should respond to the world’s strategic challenges will and should continue. Armed interventions overseas should be weighed carefully, as always, with an eye to whether the risk of inaction is greater than the risks of action. And as always, these judgments will be merely that: judgments, made with inadequate information and intelligence and no certainty about the outcomes. No foreign policy doctrine can avoid errors of omission and commission. But history has provided some lessons, and for the United States the lesson has been fairly clear: The world is better off, and the United States is better off, in the kind of international system that American power has built and defended.

#### Focus on deterrence and democracy is key to adverting crisis escalation—reject infinite root causes that debilitate action

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If major interstate war is predominantly a product of a synergy between a potential nondemocratic aggressor and an absence of effective deterrence, what is the role of the many traditional "causes" of war? Past, and many contemporary, theories of war have focused on the role of specific disputes between nations, ethnic and religious differences, arms races, poverty and social injustice, competition for resources, incidents and accidents, greed, fear, perceptions of "honor," and many other factors. Such factors may well play a role in motivating aggression or generating fear and manipulating public opinion. The reality, however, is that whie some of these factors may have more potential to contribute to war than others, there may well be an infinite set of motivating factors, or human wants, motivating aggression. It is not the independent existence of such motivating factors for war but rather the circumstances permitting or encouraging high-risk decisions leading to war that is the key to more effectively controlling armed conflict. And the same may also be true of democide. The early focus in the Rwanda slaughter on "ethnic conflict," as though Hutus and Tutsis had begun to slaughter each other through spontaneous combustion, distracted our attention from the reality that a nondemocratic Hutu regime had carefully planned and orchestrated a genocide against Rwandan Tutsis as well as its Hutu opponents. 158 Certainly if we were able to press a button and end poverty, racism, religious intolerance, injustice, and endless disputes, we would want to do so. Indeed, democratic governments must remain committed to policies that will produce a better world by all measures of human progress. The broader achievement of democracy and the rule of law will itself assist in this progress. No one, however, has yet been able to demonstrate the kind of robust correlation with any of these "traditional" causes of war that is reflected in the "democratic peace." Further, given the difficulties in overcoming many of these social problems, an approach to war exclusively dependent on their solution may doom us to war for generations to come. [\*394] A useful framework for thinking about the war puzzle is provided in the Kenneth Waltz classic Man, the State and War, 159 first published in 1954 for the Institute of War and Peace Studies, in which he notes that previous thinkers about the causes of war have tended to assign responsibility at one of the three levels of individual psychology, the nature of the state, or the nature of the international system. This tripartite level of analysis has subsequently been widely copied in the study of international relations. We might summarize my analysis in this classical construct by suggesting that the most critical variables are the second and third levels, or "images," of analysis. Government structures, at the second level, seem to play a central role in levels of aggressiveness in high-risk behavior leading to major war. In this, the "democratic peace" is an essential insight. The third level of analysis, the international system, or totality of external incentives influencing the decision to go to war, is also critical when government structures do not restrain such high-risk behavior on their own. Indeed, nondemocratic systems may not only fail to constrain inappropriate aggressive behavior, they may even massively enable it by placing the resources of the state at the disposal of a ruthless regime elite. It is not that the first level of analysis, the individual, is unimportant - I have already argued that it is important in elite perceptions about the permissibility and feasibility of force and resultant necessary levels of deterrence. It is, instead, that the second level of analysis, government structures, may be a powerful proxy for settings bringing to power those who are disposed to aggressive military adventures and in creating incentive structures predisposed to high-risk behavior. We might also want to keep open the possibility that a war/peace model focused on democracy and deterrence might be further usefully refined by adding psychological profiles of particular leaders as we assess the likelihood of aggression and levels of necessary deterrence. Nondemocracies' leaders can have different perceptions of the necessity or usefulness of force and, as Marcus Aurelius should remind us, not all absolute leaders are Caligulas or Neros. Further, the history of ancient Egypt reminds us that not all Pharaohs were disposed to make war on their neighbors. Despite the importance of individual leaders, however, the key to war avoidance is understanding that major international war is critically an interaction, or synergy, of certain characteristics at levels two and three - specifically an absence of [\*395] democracy and an absence of effective deterrence. Yet another way to conceptualize the importance of democracy and deterrence in war avoidance is to note that each in its own way internalizes the costs to decision elites of engaging in high-risk aggressive behavior. Democracy internalizes these costs in a variety of ways including displeasure of the electorate at having war imposed upon it by its own government. And deterrence either prevents achievement of the objective altogether or imposes punishing costs making the gamble not worth the risk. 160 III. Testing the Hypothesis Hypotheses, or paradigms, are useful if they reflect the real world better than previously held paradigms. In the complex world of foreign affairs and the war puzzle, perfection is unlikely. No general construct will fit all cases even in the restricted category of "major interstate war;" there are simply too many variables. We should insist, however, on testing against the real world and on results that suggest enhanced usefulness over other constructs. In testing the hypothesis, we can test it for consistency with major wars. That is, in looking, for example, at the principal interstate wars in the twentieth century, did they present both a nondemocratic aggressor and an absence of effective deterrence? 161 And although it, by itself, does not prove causation, we might also want to test the hypothesis against settings of potential wars that did not occur. That is, in non-war settings, was there an absence of at least one element of the synergy? We might also ask questions about the effect of changes on the international system in either element of the synergy. That is, what, in general, happens when a totalitarian state makes a transition to stable democracy or vice versa? And what, in general, happens when levels of deterrence are dramatically increased or decreased?

#### Independently, absent renewal of rule of law principles, multilateral cooperation 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.

#### 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---PLAN

#### PLAN TEXT:

#### The United States Federal Government should grant Article III Courts exclusive jurisdiction over the United States’ indefinite detention policy as described in the 2001 Authorization for Use of Military Force.

### 1AC---SOLVENCY

#### CONTENTION 2 IS SOLVENCY

#### Public debate is the necessary corrective to the current unrestrained targeted killing and detention policies

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We live at a time in the United States when the notion of political enemies has become a euphemism for dismantling prohibitions against targeted assassinations, torture, abductions and indefinite detention. Under the elastic notion of permanent war and the use of Orwellian labels like terrorists, enemy combatants, enemies of the state or the all-encompassing "evil-doers," the United States has tortured prisoners in Iraq and Guantanamo for more than a decade. It also kidnapped suspected terrorists, held them in CIA "black sites," and subjected them to extraordinary rendition - "the practice [of] taking detainees to and from US custody without a legal process ... and often ... handing [them] over to countries that practiced torture."1 As a new report from the Open Society Foundation, "Globalizing Torture," points out, since 9/11 the CIA has illegally kidnaped and tortured more than 136 people and was aided in its abhorrent endeavors by 54 countries.2 All of this was done in secrecy and when it was eventually exposed, the Obama administration refused to press criminal charges against those government officials who committed atrocious human rights abuses, signalling to the military and various intelligence agencies that they would not be held accountable for engaging in such egregious and illegal behavior. The notion that torture, kidnapping and the killing of Americans without due process is an illegitimate function of any state, including the United States, has overtly suffered the fate of the Geneva Conventions, apparently too quaint and antiquated to be operative.¶ Excessive torture, cruel and unusual punishment, secret detention and the violation of civil liberties are not only deeply ingrained in American history; they also have become normalized in both popular culture and in government policy. For example, popular representations of and support for torture extend from the infamous former television series 24 to the more recent highly acclaimed Hollywood film, Zero Dark Thirty.3 Whereas popular representations of torture and other legal illegalities prior to 2001 were viewed largely as the acts of desperate and psychologically unbalanced individuals or rogue governments, the post- September 11, 2001 climate has accommodated such representations, as torture has become common fare in mainstream culture - from action films and TV dramas to comedies. As torture moves from state policy to screen culture it contains "an echo of the pornographic in maximizing the pleasure of violence."4 In this instance, the spectacle of violence mimics a new kind of mad violence that has engulfed American society. Torture is now a mainstay of what might be called the state-sanctioned carnival of cruelty, designed to delight and titillate while in real life torture has been shamelessly sanctioned as a military necessity and state policy. At the same time, torture, violence and the culture of cruelty have been removed from the discourse of ethics, jurisprudence, accountability and human rights.5¶ This retreat from moral responsibility reveals more than political failure, more than a perverse victory for those who argue for the acceptability of what was once considered unthinkable in a democracy. It signals the emergence of a kind of anti-politics, the dismantling of a politics in which matters of power, justice, governance and social responsibility are inextricably connected to democratic institutions, laws, values and education. This is an anti-politics in which the obligations of justice and responsibility to others has been overtaken by a rhetoric of fear, national security and war that has made Americans accomplices of a tyrannical and terrorist state apparatus. Under such circumstances, the critical project of democracy, if not politics itself, is replaced by the shared experience of fear, the instrumentalization of culture and society and a state of emergency that "eradicates political freedom, democratic processes and legality as such."6¶ The move toward an authoritarian and dystopian state - one marked by its flight from moral and political responsibility - has been made more acceptable by the widespread popular willingness to overlook, if not legitimate, the ongoing violation of civil liberties as a central theme of government policy, military conduct, mainstream news media and popular culture in general. Mainstream culture is flooded with endless representations of individuals, government officials, and the police operating outside of the law as a legitimate way to seek revenge, implement vigilante justice and rewrite the rationales for violating human rights and domestic law. TV programs like Dexter and Person of Interest, as well as a spate of Hollywood films like as Gangster Squad and Django Unchained have provided a spectacle of legal lawlessness and violence unchecked by ethical considerations and allegedly justified by the pursuit of noble ends.¶ The culture of violence, fear and sometimes manufactured terror takes a toll politically and ethically on any democratic society, especially when it becomes the most popular spectacle in town. Unfortunately, the line between fiction and material reality, along with the more hallowed spheres of politics and governance, has collapsed and it has become more difficult to determine one from the other. Forms of violence and violations of civil rights that should be unthinkable in a democracy are now lauded as necessary and effective tactics in the war on terrorism, and so rarely subject to critical interrogation. Some of the more notable transgressions are evident in former Vice-President Dick Cheney's infamous statement to Tim Russert on NBC's Meet the Press in which he stated that the Bush administration would have to "work ... the dark side" and the 2006 comment by John Brennan in which he claimed that we have "to take off the gloves" in some areas in order to wage a war against terrorism. And while torture has been denounced by President Obama, the administration has in actuality created a new foundation for violating civil rights and promoting human abuses.¶ As the White Paper memo produced by the Justice Department's Office of Legal Counsel makes clear, Obama has put into play government policies so extreme and brutal that the administration has propelled itself to the vanishing point of legal illegalities. This is partly evident in the Obama administration's claim, duly noted even in the mainstream press, that it can target and kill American citizens anywhere on the globe. The emergence of such practices has little to do with a legitimate need to promote national security and a country's right to self-defense. On the contrary, such policies represent America's slide into barbarism, made all too vivid by the fact that the officials who are responsible for them are not only held unaccountable, but nominated to the highest positions in the American government. Witness the nomination of John Brennan as the next director of the CIA. Moreover, the Obama administration now has carried this institutionalization of mad violence to an extreme with the assertion that a few officials in the highest reaches of government can decide which Americans and foreigners can be targeted and killed as enemies of the United States.¶ The winter 2013 release of the Justice Department's "White Paper," the confirmation hearings for John Brennan as the next CIA Director, and the publication of "Globalizing Torture: CIA Secret Detention and Extraordinary Rendition"8 all provide powerful evidence of the ongoing assault on American democracy under the Bush and Obama administrations, and the consolidation of a culture in which fear and punishment reign unchecked and the law is on the side of the most frightening of anti-democratic practices. These indices reveal, in turn, a society in which terror becomes as totalizing as the loss of any sense of ethical and political responsibility. These revelations are about more than the fact that the United States is losing its moral compass or is violating civil liberties and promoting human rights abuses, though these registers should not be dismissed.¶ What such commentary misses is the degree to which the Obama administration exercises scorn toward democracy itself, such that it now resembles an authoritarian state. The White Paper, for instance, reveals a mode of governance, policy, and practice that is deeply anti-democratic in its claim to be able to use lethal, yet legal, force against American citizens anywhere on the globe. When secrecy replaces judicial review and presidential power can be evoked without limits to kill Americans, it becomes difficult to recognize the United States as a democratic nation. Evoking the language of Orwellian legality to legitimate the claim that Americans can be killed without due process, the White Paper justifies assassinating American citizens if they are a "senior operational leader of al-Qaeda or associated force," if they "pose an imminent threat of violent attack to the United States" and if their "capture is infeasible."9¶ This Orwellian language operates in the dead zone of morality and jurisprudence. Moreover, this discourse becomes meaningless in light of the administration's claim that the use of such sweeping authority and actions do not need judicial review, can be done in secret, away from the public domain and does not need to provide evidence to a judge before or after an attack.10 What is truly shocking is that an American citizen can be targeted for assassination by the US government without the latter having to provide any proof of guilt - or the former being given the right to establish innocence. This is more than an attack on constitutional rights or a violation of human rights; it is a capitulation to authoritarianism. Glenn Greenwald captures this in his insightful comment:¶ The most extremist power any political leader can assert is the power to target his own citizens for execution without any charges or due process, far from any battlefield. The Obama administration has not only asserted exactly that power in theory, but has exercised it in practice.... The definition of an extreme authoritarian is one who is willing blindly to assume that government accusations are true without any evidence presented or opportunity to contest those accusations. This memo - and the entire theory justifying Obama's kill list - centrally relies on this authoritarian conflation of government accusations and valid proof of guilt. They are not the same and never have been. Political leaders who decree guilt in secret and with no oversight, inevitably succumb to error and/or abuse of power. Such unchecked accusatory decrees are inherently untrustworthy.... That's why due process is guaranteed in the Constitution and why judicial review of government accusations has been a staple of western justice since the Magna Carta: because leaders can't be trusted to decree guilt and punish citizens without evidence and an adversarial process. That is the age-old basic right on which this memo, and the Obama presidency, is waging war.11¶ The administration's legal rhetoric and the practices it legitimates increasingly make the United States look like the ruthless Latin American dictatorships that seized power in the 1970s, all of which appealed to paranoia, fear, security and the use of extra-legal practices to defend barbaric acts of assassinations, torture, abuse and disappearance. The writer Isabel Hilton rightly invokes this repressed piece of history and what it reveals about the current Obama administration. She writes:¶ The delusion that office-holders know better than the law is an occupational hazard of the powerful and one to which those of an imperial cast of mind are especially prone. Checks and balances - the constitutional underpinning of the democratic idea that no one individual can be trusted with unlimited power - are there to keep such delusions under control.... When disappearance became state practice across Latin America in the 70s, it aroused revulsion in democratic countries where it is a fundamental tenet of legitimate government that no state actor may detain—or kill—another human being without having to answer to the law.12¶ Not only has the Obama administration discarded the principles of justice, judicial review and international law in its willingness to kill Americans without limits on its authority, it openly flaunts such behavior as integral to how the United States defines itself in a post- 9/11 world. And while it has agreed recently to release its legal reasoning for killing US citizens by armed drones, it has done so only "to ease pressure on John Brennan, the architect of the drones strategy, at his Senate confirmation hearing as CIA Director."13 How can any American possibly talk about living in a democracy in which the President of the United States claims that he and a few high-ranking government officials have the right and "the power ... to carry out the targeted killing of American citizens who are located far away from any battlefield, even when they have not been charged with a crime, even when they do not present any imminent threat in any ordinary meaning of that word."14¶ In a democracy, citizens have constitutional rights, checks and balances limit unaccountable authority and human rights are upheld rather than scorned. The task of governance and political leadership is not to promote dangerous policies, but to draw out injustices embedded in the recesses of the past and present, to make clear that the cover of secrecy and silence will not protect those who violate the law, and to reject forms of patriotic militarism that sanction illegality in the name of a permanent war on terrorism. But there is more at stake here than a call for transparency, the embrace of human rights and the rejection of a government that imprisons, eavesdrops on US citizens or kills them without charges, trial and due process. There is also an obligation of democratic leadership and governance to uphold some measure of accountability and to redress the policies and practices that implicate the United States in a long history of torture - one that extends from the genocide of Native Americans to the enslavement of millions of Africans and their descendants, to the killing of 21,000 Vietnamese under the aegis of the CIA's infamous Phoenix Program. The purpose of this history is not to induce shame but to recognize that such crimes were legitimated by political conditions and institutionalized policies that must be excised from American domestic and foreign policies if there is to be hope for a future that does not simply repeat the past.¶ What is missing in the refusal to make visible the United States' descent into authoritarianism is the necessity for the American people to see what is wrong with such actions, who should be held accountable, why such acts of human cruelty should not happen (again) and what actions must be taken to open up the possibilities for society to exercise collective judgments that enable a rejection of past actions as well as the possibility of a more just future. Moreover, as philosophy professor Maria Pia Lara argues, refusing to narrate human cruelty is tantamount to relinquishing the moral imperative to build a transformed democratic community. She contends that exposing and engaging the hidden dimensions of cruelty and the abuse of human rights is part of a moral imperative "directed at making others understand that what happened did not need to happen." Moreover, such "stories [provide] us with a moral sense of the need to keep examining the past in order to ... build a space for self-reflection [and] define the process of establishing a connection between the collective critical examination of past catastrophes and the learning processes in which societies engage."15¶ At a time in history when American society is overtly subject to the quasi militarization of everyday life and endlessly exposed to mass-produced spectacles of commodified and ritualized violence, a culture of cruelty and barbarism has become deeply entrenched and more easily tolerated. Beyond creating in this instance a moral and affective void in the collective consciousness - a refusal to recognize and rectify the illegal and morally repugnant violence, abuse and suffering imposed on those alleged to be dangerous and "disposable" others - such a culture contributes to the undoing of the very fabric of civilization and justice. The descent into barbarism can take many forms, but one version may be glimpsed when torture becomes a defining feature of what a country considers acceptable policy (to say nothing of riveting entertainment), or the majority of its inhabitants remain passive when the President of the United States claims he has the right to put together a kill list in order to assassinate American citizens. How else to explain the fact that 49 percent of the American public "consider torture justified at least some of the time [and] fully 71 [percent] refuse to rule it out entirely"?16¶ Frank Rich has suggested that the American public's indifference to national security issues is partly due to the massive hardships and suffering many Americans have endured as a result of the Great Recession.17 This may be true but what it overlooks are the ever-growing anti-democratic forces, or what might be called authoritarianism with a soft edge, which haunt American politics and the modern ideal of democracy. The civic imagination is in retreat in American society and the public spheres that make it possible are disappearing.¶ Clearly, political and popular culture are in dire need of being condemned, interrogated, unlearned and transformed through modes of critical education and public debate, if American democracy is to survive as more than a distant and unfulfilled promise. Americans have lived too long with governments that use power to promote violent acts, conveniently hiding their guilt behind a notion of secrecy and silence that selectively punishes those considered expendable - in its prisons, public schools, foster care institutions and urban slums. As Tom Engelhardt points out, what has not sunk in for most Americans, including the mainstream media, is that the United States has become a lockdown state, or more appropriately an authoritarian state, as evidenced by the fact that the Obama administration can:¶ torture at will; imprison at will, indefinitely and without trial; assassinate at will (including American citizens); kidnap at will anywhere in the world and 'render' the captive in the hands of allied torturers; turn any mundane government document (at least 92 million of them in 2011 alone) into a classified object and so help spread a penumbra of secrecy over the workings of the American government; surveil Americans in ways never before attempted (and only 'legalized' by Congress after the fact, the way you might back-date a check); make war perpetually on their own say-so; and transform whistleblowing - that is, revealing anything about the inner workings of the lockdown state to other Americans - into the only prosecutable crime that anyone in the complex can commit.18¶ The fateful consolidation of an authoritarian state reaches its tipping point when a government engages in these practices along with the claim that it can kill its own citizens anywhere in the world without recourse to due process or any moral qualms. Such policies point to more than an ethically empty space and the atrophy of democratic modes of governance, politics and culture, they point inexorably to the dark caverns of a society that has embraced the foundations of authoritarianism. Democracy has been hijacked in the United States by right-wing extremists, the financial elite, the military-industrial-academic complex and a demagogic cultural apparatus that has created a state of emergency that appears to "lack the kind of collective sense of urgency that would prompt us to fundamentally question our own ways of thinking and acting, and form new spaces of operation."19 All of us are now in the shooting gallery and we are all potentially the targets.

#### 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.

#### 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.

#### 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.

#### 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.

## 2AC

### 2AC---RACE K

#### a limited topic of discussion that provides for equitable ground is key to productive inculcation of decision-making and advocacy skills in every and all facets of life---even if their position is contestable that’s distinct from it being valuably debatable---this still provides room for flexibility, creativity, and innovation, but targets the discussion to avoid mere statements of fact

Steinberg & Freeley 8 \*Austin J. Freeley is a Boston based attorney who focuses on criminal, personal injury and civil rights law, AND \*\*David L. Steinberg , Lecturer of Communication Studies @ U Miami, Argumentation and Debate: Critical Thinking for Reasoned Decision Making pp45-

Debate is a means of settling differences, so there must be a difference of opinion or a conflict of interest before there can be a debate. If everyone is in agreement on a tact or value or policy, there is no need for debate: the matter can be settled by unanimous consent. Thus, for example, it would be pointless to attempt to debate "Resolved: That two plus two equals four," because there is simply no controversy about this statement. (Controversy is an essential prerequisite of debate. Where there is no clash of ideas, proposals, interests, or expressed positions on issues, there is no debate. In addition, debate cannot produce effective decisions without clear identification of a question or questions to be answered. For example, general argument may occur about the broad topic of illegal immigration. How many illegal immigrants are in the United States? What is the impact of illegal immigration and immigrants on our economy? What is their impact on our communities? Do they commit crimes? Do they take jobs from American workers? Do they pay taxes? Do they require social services? Is it a problem that some do not speak English? Is it the responsibility of employers to discourage illegal immigration by not hiring undocumented workers? Should they have the opportunity- to gain citizenship? Docs illegal immigration pose a security threat to our country? Do illegal immigrants do work that American workers are unwilling to do? Are their rights as workers and as human beings at risk due to their status? Are they abused by employers, law enforcement, housing, and businesses? I low are their families impacted by their status? What is the moral and philosophical obligation of a nation state to maintain its borders? Should we build a wall on the Mexican border, establish a national identification can!, or enforce existing laws against employers? Should we invite immigrants to become U.S. citizens? Surely you can think of many more concerns to be addressed by a conversation about the topic area of illegal immigration. Participation in this "debate" is likely to be emotional and intense. However, it is not likely to be productive or useful without focus on a particular question and identification of a line demarcating sides in the controversy. To be discussed and resolved effectively, controversies must be stated clearly. Vague understanding results in unfocused deliberation and poor decisions, frustration, and emotional distress, as evidenced by the failure of the United States Congress to make progress on the immigration debate during the summer of 2007.

Someone disturbed by the problem of the growing underclass of poorly educated, socially disenfranchised youths might observe, "Public schools are doing a terrible job! They are overcrowded, and many teachers are poorly qualified in their subject areas. Even the best teachers can do little more than struggle to maintain order in their classrooms." That same concerned citizen, facing a complex range of issues, might arrive at an unhelpful decision, such as "We ought to do something about this" or. worse. "It's too complicated a problem to deal with." Groups of concerned citizens worried about the state of public education could join together to express their frustrations, anger, disillusionment, and emotions regarding the schools, but without a focus for their discussions, they could easily agree about the sorry state of education without finding points of clarity or potential solutions. A gripe session would follow. But if a precise question is posed—such as "What can be done to improve public education?"—then a more profitable area of discussion is opened up simply by placing a focus on the search for a concrete solution step. One or more judgments can be phrased in the form of debate propositions, motions for parliamentary debate, or bills for legislative assemblies. The statements "Resolved: That the federal government should implement a program of charter schools in at-risk communities" and "Resolved: That the state of Florida should adopt a school voucher program" more clearly identify specific ways of dealing with educational problems in a manageable form, suitable for debate. They provide specific policies to be investigated and aid discussants in identifying points of difference.

To have a productive debate, which facilitates effective decision making by directing and placing limits on the decision to be made, the basis for argument should be clearly defined. If we merely talk about "homelessness" or "abortion" or "crime'\* or "global warming" we are likely to have an interesting discussion but not to establish profitable basis for argument. For example, the statement "Resolved: That the pen is mightier than the sword" is debatable, yet fails to provide much basis for clear argumentation. If we take this statement to mean that the written word is more effective than physical force for some purposes, we can identify a problem area: the comparative effectiveness of writing or physical force for a specific purpose.

Although we now have a general subject, we have not yet stated a problem. It is still too broad, too loosely worded to promote well-organized argument. What sort of writing are we concerned with—poems, novels, government documents, website development, advertising, or what? What does "effectiveness" mean in this context? What kind of physical force is being compared—fists, dueling swords, bazookas, nuclear weapons, or what? A more specific question might be. "Would a mutual defense treaty or a visit by our fleet be more effective in assuring Liurania of our support in a certain crisis?" The basis for argument could be phrased in a debate proposition such as "Resolved: That the United States should enter into a mutual defense treatv with Laurania." Negative advocates might oppose this proposition by arguing that fleet maneuvers would be a better solution. This is not to say that debates should completely avoid creative interpretation of the controversy by advocates, or that good debates cannot occur over competing interpretations of the controversy; in fact, these sorts of debates may be very engaging. The point is that debate is best facilitated by the guidance provided by focus on a particular point of difference, which will be outlined in the following discussion.

#### Second, discussion of specific policy-questions is crucial for skills development---we control uniqueness: university students already have preconceived and ideological notions about how the world operates---government policy discussion is vital to force engagement with and resolution of competing perspectives to improve social outcomes, however those outcomes may be defined---and, it breaks out of traditional pedagogical frameworks by positing students as agents of decision-making

Esberg & Sagan 12 \*Jane Esberg is special assistant to the director at New York University's Center on. International Cooperation. She was the winner of 2009 Firestone Medal, AND \*\*Scott Sagan is a professor of political science and director of Stanford's Center for International Security and Cooperation “NEGOTIATING NONPROLIFERATION: Scholarship, Pedagogy, and Nuclear Weapons Policy,” 2/17 The Nonproliferation Review, 19:1, 95-108

These government or quasi-government think tank simulations often provide very similar lessons for high-level players as are learned by students in educational simulations. Government participants learn about the importance of understanding foreign perspectives, the need to practice internal coordination, and the necessity to compromise and coordinate with other governments in negotiations and crises. During the Cold War, political scientist Robert Mandel noted how crisis exercises and war games forced government officials to overcome ‘‘bureaucratic myopia,’’ moving beyond their normal organizational roles and thinking more creatively about how others might react in a crisis or conflict.6 The skills of imagination and the subsequent ability to predict foreign interests and reactions remain critical for real-world foreign policy makers. For example, simulations of the Iranian nuclear crisis\*held in 2009 and 2010 at the Brookings Institution’s Saban Center and at Harvard University’s Belfer Center, and involving former US senior officials and regional experts\*highlighted the dangers of misunderstanding foreign governments’ preferences and misinterpreting their subsequent behavior. In both simulations, the primary criticism of the US negotiating team lay in a failure to predict accurately how other states, both allies and adversaries, would behave in response to US policy initiatives.7

By university age, students often have a pre-defined view of international affairs, and the literature on simulations in education has long emphasized how such exercises force students to challenge their assumptions about how other governments behave and how their own government works.8 Since simulations became more common as a teaching tool in the late 1950s, educational literature has expounded on their benefits, from encouraging engagement by breaking from the typical lecture format, to improving communication skills, to promoting teamwork.9 More broadly, simulations can deepen understanding by asking students to link fact and theory, providing a context for facts while bringing theory into the realm of practice.10 These exercises are particularly valuable in teaching international affairs for many of the same reasons they are useful for policy makers: they force participants to ‘‘grapple with the issues arising from a world in flux.’’11 Simulations have been used successfully to teach students about such disparate topics as European politics, the Kashmir crisis, and US response to the mass killings in Darfur.12 Role-playing exercises certainly encourage students to learn political and technical facts\* but they learn them in a more active style. Rather than sitting in a classroom and merely receiving knowledge, students actively research ‘‘their’’ government’s positions and actively argue, brief, and negotiate with others.13 Facts can change quickly; simulations teach students how to contextualize and act on information.14

#### Effective decision-making outweighs---

#### Key to social improvements in every and all facets of life

Steinberg & Freeley 8 \*Austin J. Freeley is a Boston based attorney who focuses on criminal, personal injury and civil rights law, AND \*\*David L. Steinberg , Lecturer of Communication Studies @ U Miami, Argumentation and Debate: Critical Thinking for Reasoned Decision Making pp9-10

If we assume it to be possible without recourse to violence to reach agreement on all the problems implied in the employment of the idea of justice we are granting the possibility of formulating an ideal of man and society, valid for all beings endowed with reason and accepted by what we have called elsewhere the universal audience.14

I think that the only discursive methods available to us stem from techniques that are not demonstrative—that is, conclusive and rational in the narrow sense of the term—but from argumentative techniques which are not conclusive but which may tend to demonstrate the reasonable character of the conceptions put forward. It is this recourse to the rational and reasonable for the realization of the ideal of universal communion that characterizes the age-long endeavor of all philosophies in their aspiration for a city of man in which violence may progressively give way to wisdom.13

Whenever an individual controls the dimensions of" a problem, he or she can solve the problem through a personal decision. For example, if the problem is whether to go to the basketball game tonight, if tickets are not too expensive and if transportation is available, the decision can be made individually. But if a friend's car is needed to get to the game, then that person's decision to furnish the transportation must be obtained.

Complex problems, too, are subject to individual decision making. American business offers many examples of small companies that grew into major corporations while still under the individual control of the founder. Some computer companies that began in the 1970s as one-person operations burgeoned into multimillion-dollar corporations with the original inventor still making all the major decisions. And some of the multibillion-dollar leveraged buyouts of the 1980s were put together by daring—some would say greedy—financiers who made the day-to-day and even hour-to-hour decisions individually.

When President George H. W. Bush launched Operation Desert Storm, when President Bill Clinton sent troops into Somalia and Haiti and authorized Operation Desert Fox, and when President George W. Bush authorized Operation Enduring Freedom in Afghanistan and Operation Iraqi Freedom in Iraq, they each used different methods of decision making, but in each case the ultimate decision was an individual one. In fact, many government decisions can be made only by the president. As Walter Lippmann pointed out, debate is the only satisfactory way the exact issues can be decided:

A president, whoever he is, has to find a way of understanding the novel and changing issues which he must, under the Constitution, decide. Broadly speaking ... the president has two ways of making up his mind. The one is to turn to his subordinates—to his chiefs of staff and his cabinet officers and undersecretaries and the like—and to direct them to argue out the issues and to bring him an agreed decision…

The other way is to sit like a judge at a hearing where the issues to be decided are debated. After he has heard the debate, after he has examined the evidence, after he has heard the debaters cross-examine one another, after he has questioned them himself he makes his decision…

It is a much harder method in that it subjects the president to the stress of feeling the full impact of conflicting views, and then to the strain of making his decision, fully aware of how momentous it Is. But there is no other satisfactory way by which momentous and complex issues can be decided.16

John F. Kennedy used Cabinet sessions and National Security Council meetings to provide debate to illuminate diverse points of view, expose errors, and challenge assumptions before he reached decisions.17 As he gained experience in office, he placed greater emphasis on debate. One historian points out: "One reason for the difference between the Bay of Pigs and the missile crisis was that [the Bay of Pig\*] fiasco instructed Kennedy in the importance of uninhibited debate in advance of major decision."18 All presidents, to varying degrees, encourage debate among their advisors.

We may never be called on to render the final decision on great issues of national policy, but we are constantly concerned with decisions important to ourselves for which debate can be applied in similar ways. That is, this debate may take place in our minds as we weigh the pros and cons of the problem, or we may arrange for others to debate the problem for us. Because we all are increasingly involved in the decisions of the campus, community, and society in general, it is in our intelligent self-interest to reach these decisions through reasoned debate.

#### Academic debate over war power restrictions is critical to check excessive presidential authority and prevent future quagmires

Julian E. Zelizer 11, Professor of History and Public Affairs at Princeton University, "War powers belong to Congress and the president", June 27, www.cnn.com/2011/OPINION/06/27/zelizer.war.powers/index.html

But the failure of Congress to fully participate in the initial decision to use military force has enormous costs for the nation beyond the obvious constitutional questions that have been raised.¶ The first problem is that the U.S. now tends to go to war without having a substantive debate about the human and financial costs that the operation could entail. Asking for a declaration of war, and thus making Congress take responsibility for the decision, had required presidents to enter into a heated debate about the rationale behind the mission, the potential for large-scale casualties and how much money would be spent.¶ When presidents send troops into conflict without asking Congress for approval, it has been much easier for presidents to elude these realities. President Lyndon Johnson famously increased the troop levels in Vietnam without the public fully realizing what was happening until after it was too late.¶ Although Johnson promised Democrats when they debated the Gulf of Tonkin Resolution in 1964 that they would only have a limited deployment and he would ask them again if the mission increased, he never did. He used the broad authority granted to him to vastly expand the operations during his presidency.¶ By the end of his time in office, hundreds of thousands of troops were fighting a hopeless war in the jungles of Vietnam. Johnson also continued to mask the budgetary cost, realizing the opposition that would emerge if legislators knew how much the nation would spend. When the costs became clear, Johnson was forced to request a tax increase from Congress in 1967, a request which greatly undermined his support.¶ The second cost of presidents going to war rather than Congress doing so is that major mistakes result when decisions are made so quickly. When there is not an immediate national security risk involved, the slowness of the legislative process does offer an opportunity to force policymakers to prove their case before going to war.¶ Speed is not always a virtue. In the case of Iraq, the president started the war based on the shoddiest of evidence about WMD. The result was an embarrassment for the nation, an operation that undermined U.S. credibility abroad.¶ Even in military actions that have stronger justifications, there are downsides to speed. With President Obama and the surge in Afghanistan, there is considerable evidence that the administration went in without a clear strategy and without a clear objective. With Libya, there are major concerns about what the administration hopes to accomplish and whether we are supporting rebel forces that might be connected with terrorist networks intent on harming the U.S.¶ The third cost has been the cheapening of the decision about using military force. In the end, the decision about whether to send human treasure and expend valuable dollars abroad should be one that is made by both branches of government and one that results from a national dialogue. Requiring Congress to declare war forces voters to think about the decision sooner rather than later.¶ While efficiency is essential, so too is the democratic process upon which our nation is built.¶ The result of the decision-making process that has been used in recent decades is that as a nation too many citizens lose their connection to the war. Indeed, most Americans don't even think twice when troops are sent abroad. The shift of power toward the president has compounded the effects of not having a draft, which Congress dismantled in 1973. Wars sometimes resemble just another administrative decision made by the White House rather than a democratic decision.¶ So Boehner has raised a fair point, though he and other Republicans don't have much ground to stand on given their own party's history. Republicans, like Democrats, have generally supported presidential-war power in addition to a weak Congress.¶ Most politicians have only worried about war power when it is politically convenient. Indeed, in 2007, then-Sen. Obama wrote, the "President does not have power under the Constitution to unilaterally authorize a military attack in a situation that does not involve stopping an actual or imminent threat to this nation."¶ Clearly, Obama has not governed by the principles on which he campaigned.¶ It is doubtful whether the parties will do anything about this. The War Powers Resolution has not worked well and there seems to be little appetite to pass something else. But the consequences of the path that the nation has chosen are enormously high.¶ We've moved too far away from the era when Congress matters. As a result, the decision to use troops is too easy and often made in haste. Obama, who spoke about this issue so cogently on the campaign trail, should be a president who understands that reality.

#### Political deliberation about war powers promotes agency and decision-making---reciprocity and public debate facilitates mutual respect that lays the groundwork for cooperation on other issues

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WHAT DELIBERATIVE DEMOCRACY MEANS¶ To go to war is the most consequential decision a nation can make. Yet most nations, even most democracies, have ceded much of the power to make that decision to their chief executives--to their presidents and prime ministers. Legislators are rarely asked or permitted to issue declarations of war. The decision to go to war, it would seem, is unfriendly territory for pursuing the kind of reasoned argument that characterizes political deliberation.¶ Yet when President George W. Bush announced that the United States would soon take military action against Saddam Hussein, he and his advisors recognized the need to justify the decision not only to the American people but also to the world community. Beginning in October 2002, the administration found itself engaged in argument with the U.S. Congress and, later, with the United Nations. During the months of preparation for the war, Bush and his colleagues, in many different forums and at many different times, sought to make the case for a preventive war against Iraq.1 Saddam Hussein, they said, was a threat to the United States because he had or could soon have weapons of mass destruction, and had supported terrorists who might have struck again against the United States. Further, he had tyrannized his own people and destabilized the Middle East.¶ In Congress and in the United Nations, critics responded, concurring with the judgment that Hussein was a terrible tyrant but challenging the administration on all its arguments in favor of going to war before exhausting the nonmilitary actions that might have controlled the threat. As the debate proceeded, it became clear that almost no one disagreed with the view that the world would be better off if Saddam Hussein no longer ruled in Iraq, but many doubted that he posed an imminent threat, and many questioned whether he actually supported the terrorists who had attacked or were likely to attack the United States.¶ This debate did not represent the kind of discussion that deliberative democrats hope for, and the deliberation was cut short once U.S. troops began their invasion in March 2003. Defenders and critics of the war seriously questioned one another's motives and deeply suspected that the reasons offered were really rationalizations for partisan politics. The administration, for its part, declined to wait until nonmilitary options had been exhausted, when a greater moral consensus might have been reached. But the remarkable fact is that even under the circumstances of war, and in the face of an alleged imminent threat, the government persisted in attempting to justify its decision, and opponents persevered in responding with reasoned critiques of a preventive war.¶ The critics are probably right that no amount of deliberation would have prevented the war, and the supporters are probably right that some critics would never have defended going to war even if other nonmilitary sanctions had ultimately failed. Yet the deliberation that did occur laid the foundation for a more sustained and more informative debate after the U.S. military victory than would otherwise have taken place**. Because the administration had given reasons** (such as the threat of the weapons of mass destruction) for taking action, **critics had more basis to continue to dispute the original decision, and to challenge the administration's judgment. The imperfect deliberation that preceded the war** prepared the ground for the less imperfect deliberation that followed.¶ Thus even in a less than friendly environment, deliberative democracy makes an appearance, and with some effect. Both the advocates and the foes of the war acted as if they recognized an obligation to justify their views to their fellow citizens. (**That their motives were political or partisan is less important than that their actions were responsive to this obligation.**) This problematic episode can help us discern the defining characteristics of deliberative democracy if we attend to both the presence and the absence of those characteristics in the debate about the war.¶ What Is Deliberative Democracy?¶ Most fundamentally, deliberative democracy affirms the need to justify decisions made by citizens and their representatives. Both are expected to justify the laws they would impose on one another. In a democracy, leaders should therefore give reasons for their decisions, and respond to the reasons that citizens give in return. But not all issues, all the time, require deliberation. Deliberative democracy makes room for many other forms of decision-making (including bargaining among groups, and secret operations ordered by executives), as long as the use of these forms themselves is justified at some point in a deliberative process. Its first and most important characteristic, then, is its reason-giving requirement.¶ The reasons that deliberative democracy asks citizens and their representatives to give should appeal to principles that individuals who are trying to find fair terms of cooperation cannot reasonably reject. The reasons are neither merely procedural ("because the majority favors the war") nor purely substantive ("because the war promotes the national interest or world peace"). They are reasons that should be accepted by free and equal persons seeking fair terms of cooperation.¶ The moral basis for this reason-giving process is common to many conceptions of democracy**. Persons should be treated not merely as objects of legislation, as passive subjects to be ruled, but as** autonomous agents **who take part in the governance of their own society, directly or through their representatives.** In deliberative democracy an important way these agents take part is by presenting and responding to reasons, or by demanding that their representatives do so, with the aim of justifying the laws under which they must live together. The reasons are meant both to produce a justifiable decision and to express the value of mutual respect. It is not enough that citizens assert their power through interest-group bargaining, or by voting in elections. No one seriously suggested that the decision to go to war should be determined by logrolling, or that it should be subject to a referendum. Assertions of power and expressions of will, though obviously a key part of democratic politics, still need to be justified by reason. When a primary reason offered by the government for going to war turns out to be false, or worse still deceptive, then not only is the government's justification for the war called into question, so also is its respect for citizens.¶ A second characteristic of deliberative democracy is that the reasons given in this process should be accessible to all the citizens to whom they are addressed. To justify imposing their will on you, your fellow citizens must give reasons that are comprehensible to you. If you seek to impose your will on them, you owe them no less. This form of reciprocity means that the reasons must be public in two senses. First, the deliberation itself must take place in public**, not merely in the privacy of one's mind.** In this respect deliberative democracy stands in contrast to Rousseau's conception of democracy, in which individuals reflect on their own on what is right for the society as a whole, and then come to the assembly and vote in accordance with the general will.2¶ The other sense in which the reasons must be public concerns their content. A deliberative justification does not even get started if those to whom it is addressed cannot understand its essential content. It would not be acceptable, for example, to appeal only to the authority of revelation, whether divine or secular in nature. Most of the arguments for going to war against Iraq appealed to evidence and beliefs that almost anyone could assess. Although President Bush implied that he thought God was on his side, he did not rest his argument on any special instructions from his heavenly ally (who may or may not have joined the coalition of the willing).¶ **Admittedly, some of the evidence on both sides of the debate was technical** (for example, the reports of the U.N. inspectors). But this is a common occurrence in modern government. Citizens often have to rely on experts. This does not mean that the reasons**, or the bases of the reasons,** are inaccessible. Citizens are justified in relying on experts if they describe the basis for their conclusions in ways that citizens can understand; and if the citizens have some independent basis for believing the experts to be trustworthy (such as a past record of reliable judgments, or a **decision-making structure that contains checks and balances by experts who have reason to exercise critical scrutiny over one another**).¶ To be sure, the Bush administration relied to some extent on secret intelligence to defend its decision. Citizens were not able at the time to assess the validity of this intelligence, and therefore its role in the administration's justification for the decision. In principle, using this kind of evidence does not necessarily violate the requirement of accessibility if good reasons can be given for the secrecy, and if opportunities for challenging the evidence later are provided. As it turned out in this case, the reasons were indeed challenged later, and found to be wanting. Deliberative democracy would of course have been better served if the reasons could have been challenged earlier.¶ **The third characteristic of deliberative democracy is that its process** aims at producing a decision that is binding **for some period of time**. **In this respect the deliberative process is not like a talk show or an academic seminar. The participants do not argue for argument's sake; they do not argue even for truth's own sake** (although the truthfulness of their arguments is a deliberative virtue because it is a necessary aim in justifying their decision). They intend their discussion to influence a decision the government will make, or a process that will affect how future decisions are made. At some point, the deliberation temporarily ceases, and the leaders make a decision. The president orders troops into battle, the legislature passes the law, or citizens vote for their representatives. Deliberation about the decision to go to war in Iraq went on for a long period of time, longer than most preparations for war. Some believed that it should have gone on longer (to give the U.N. inspectors time to complete their task). But at some point the president had to decide whether to proceed or not. Once he decided, deliberation about the question of whether to go to war ceased.¶ Yet deliberation about a seemingly similar but significantly different question continued: was the original decision justified? Those who challenged the justification for the war of course did not think they could undo the original decision. They were trying to cast doubt on the competence or judgment of the current administration. They were also trying to influence future decisions--to press for involving the United Nations and other nations in the reconstruction effort, or simply to weaken Bush's prospects for reelection.¶ This continuation of debate illustrates the fourth characteristic of deliberative democracy--its process is dynamic. Although deliberation aims at a justifiable decision, it does not presuppose that the decision at hand will in fact be justified, let alone that a justification today will suffice for the indefinite future. **It keeps open the** possibility of a continuing dialogue**, one in which citizens can criticize previous decisions and move ahead on the basis of that criticism**. Although a decision must stand for some period of time, it is provisional in the sense that it must be open to challenge at some point in the future. This characteristic of deliberative democracy is neglected even by most of its proponents. (We discuss it further below in examining the concept of provisionality.)¶ Deliberative democrats care as much about what happens after a decision is made as about what happens before. Keeping the decision-making process open in this way--recognizing that its results are provisional--is important for two reasons. First, **in politics as in much of practical life, decision-making processes and the human understanding upon which they depend are imperfect.** We therefore cannot be sure that the decisions we make today will be correct tomorrow, and even the decisions that appear most sound at the time may appear less justifiable in light of later evidence. Even in the case of those that are irreversible, like the decision to attack Iraq, reappraisals can lead to different choices later than were planned initially. Second, **in politics most decisions are not consensual. Those citizens and representatives who disagreed with the original decision are more likely to accept it if they believe they have a chance to reverse or modify it in the future. And they are more likely to be able to do so if they have a chance to keep making arguments**.¶ One important implication of this dynamic feature of deliberative democracy is that the continuing debate it requires should observe what we call the principle of the economy of moral disagreement**. In giving reasons for their decisions, citizens and their representatives should try to find justifications that** minimize their differences with their opponents. Deliberative democrats do not expect deliberation always or even usually to yield agreement. How citizens deal with the disagreement that is endemic in political life should therefore be a central question in any democracy. Practicing the economy of moral disagreement promotes the value of mutual respect (which is at the core of deliberative democracy). By economizing on their disagreements, citizens and their representatives can continue to work together to find common ground, if not on the policies that produced the disagreement, then on related policies about which they stand a greater chance of finding agreement. Cooperation on the reconstruction of Iraq does not require that the parties at home and abroad agree about the correctness of the original decision to go to war. Questioning the patriotism of critics of the war, or opposing the defense expenditures that are necessary to support the troops, does not promote an economy of moral disagreement.¶ Combining these four characteristics, we can define deliberative democracy as a form of government in which free and equal citizens (and their representatives), justify decisions in a process in which they give one another reasons that are mutually acceptable and generally accessible, with the aim of reaching conclusions that are binding in the present on all citizens but open to challenge in the future.3 This definition obviously leaves open a number of questions. We can further refine its meaning and defend its claims by considering to what extent deliberative democracy is democratic; what purposes it serves; why it is better than the alternatives; what kinds of deliberative democracy are justifiable; and how its critics can be answered.

#### There’s no warrant for why a state-based policy focus destroys politics---the point of our aff is that the squo is complex, but if we find a way to reduce some of the material impacts, we shouldn’t discard it---the perm’s best

Robert Talisse 5, philosophy professor at Vanderbilt, Philosophy & Social Criticism, 31.4, “Deliberativist responses to activist challenges”, \*note: gendered language in this article refers to arguments made by two specific individuals in an article by Iris Young

Part of the response to the first challenge is offered by Young herself. The deliberative democrat does not advocate public political discussion only at the level of state policy, and so does not advocate a program that must accept as given existing institutional settings and contexts for public discussion. Rather, the deliberativist promotes an ideal of democratic politics according to which deliberation occurs at all levels of social association, including households, neighborhoods, local organizations, city boards, and the various institutions of civil society. The longrun aim of the deliberative democrat is to cultivate a more deliberative polity, and the deliberativist claims that this task must begin at more local levels and apart from the state and its policies. We may say that deliberativism promotes a ‘decentered’ (Habermas, 1996: 298) view of public deliberation and a ‘pluralistic’ (Benhabib, 2002: 138) model of the public sphere; in other words, the deliberative democrat envisions a ‘multiple, anonymous, heterogeneous network of many publics and public conversations’ (Benhabib, 1996b: 87). The deliberativist is therefore committed to the creation of ‘an inclusive deliberative setting in which basic social and economic structures can be examined’; these settings ‘for the most part must be outside ongoing settings of official policy discussion’ (115).¶ Although Young characterizes this decentered view of political discourse as requiring that deliberative democrats ‘withdraw’ (115) from ‘existing structural circumstances’ (118), it is unclear that this follows. There certainly is no reason why the deliberativist must choose between engaging arguments within existing deliberative sites and creating new ones that are removed from established institutions. There is no **need to accept Young’s** dichotomy; the deliberativist holds that work must be done both within existing structures and within new contexts. As Bohman argues,¶ Deliberative politics has no single domain; it includes such diverse activities as formulating and achieving collective goals, making policy decisions and means and ends, resolving conflicts of interest and principle, and solving problems as they emerge in ongoing social life. Public deliberation therefore has to take many forms. (1996: 53)¶ The second challenge requires a detailed response, so let us begin with a closer look at the proposed argument. The activist has moved quickly from the claim that discourses can be systematically distorting to the claim that all political discourse operative in our current contexts is systematically distorting. The conclusion is that properly democratic objectives cannot be pursued by deliberative means. The first thing to note is that, as it stands, the conclusion does not follow from the premises; the argument is enthymematic. What is required is the additional premise that the distorting features of discussion cannot be corrected by further discussion. That discussion cannot rehabilitate itself is a crucial principle in the activist’s case, but is nowhere argued.

#### Policy focus is key to challenge structures of anti-blackness

Makani Themba-Nixon 2k, Executive Director of The Praxis Project, a nonprofit organization helping communities use media and policy advocacy, July 31, Colorlines, Changing the Rules: What Public Policy Means for Organizing, Vol 3.2

“This is all about policy," a woman complained to me in a recent conversation. "I'm an organizer." The flourish and passion with which she made the distinction said everything. Policy is for wonks, sell-out politicians, and ivory-tower eggheads. Organizing is what real, grassroots people do. Common as it may be, this distinction doesn't bear out in the real world. Policy is more than law. It is any written agreement (formal or informal) that specifies how an institution, governing body, or community will address shared problems or attain shared goals. It spells out the terms and the consequences of these agreements and is the codification of the body's values-as represented by those present in the policymaking process. Given who's usually present, most policies reflect the political agenda of powerful elites. Yet, policy can be a force for change-especially when we bring our base and community organizing into the process. In essence, policies are the codification of power relationships and resource allocation. Policies are the rules of the world we live in. Changing the world means changing the rules. So, if organizing is about changing the rules and building power, how can organizing be separated from policies? Can we really speak truth to power, fight the right, stop corporate abuses, or win racial justice without contesting the rules and the rulers, the policies and the policymakers? The answer is no-and double no for people of color. Today, racism subtly dominates nearly every aspect of policymaking. From ballot propositions to city funding priorities, policy is increasingly about the control, de-funding, and disfranchisement of communities of color. Take the public conversation about welfare reform, for example. Most of us know it isn't reallyabout putting people to work. The right's message was framed around racial stereotypes of lazy, cheating "welfare queens" whose poverty was "cultural." But the new welfare policy was about moving billions of dollars in individual cash payments and direct services from welfare recipients to other, more powerful, social actors. Many of us were too busy to tune into the welfare policy drama in Washington, only to find it washed up right on our doorsteps. Our members are suffering from workfare policies, new regulations, and cutoffs.Families who were barely getting by under the old rules are being pushed over the edge by the new policies. Policy doesn't get more relevant than this. And so we got involved in policy-as defense. Yet we have to do more than block their punches. We have to start the fight with initiatives of our own. Those who do are finding offense a bit more fun than defense alone. Living wage ordinances, youth development initiatives, even gun control and alcohol and tobacco policies are finding their way onto the public agenda, thanks to focused community organizing that leverages power for community-driven initiatives. - Over 600 local policies have been passed to regulate the tobacco industry. Local coalitions have taken the lead by writing ordinances that address local problems and organizing broad support for them. - Nearly 100 gun control and violence prevention policies have been enacted since 1991. - Milwaukee, Boston, and Oakland are among the cities that have passed living wage ordinances: local laws that guarantee higher than minimum wages for workers, usually set as the minimum needed to keep a family of four above poverty. These are just a few of the examples that demonstrate how organizing for local policy advocacy has made inroads in areas where positive national policy had been stalled by conservatives. Increasingly, the local policy arena is where the action is and where activists are finding success. Of course, corporate interests-which are usually the target of these policies-are gearing up in defense. Tactics include front groups, economic pressure, and the tried and true: cold, hard cash. Despite these barriers, grassroots organizing can be very effective at the smaller scale of local politics. At the local level, we have greater access to elected officials and officials have a greater reliance on their constituents for reelection. For example, getting 400 people to show up at city hall in just about any city in the U.S. is quite impressive. On the other hand, 400 people at the state house or the Congress would have a less significant impact. Add to that the fact that all 400 people at city hall are usually constituents, and the impact is even greater. Recent trends in government underscore the importance of local policy. Congress has enacted a series of measures devolving significant power to state and local government. Welfare, health care, and the regulation of food and drinking water safety areamong the areas where states and localities now have greater rule. Devolution has some negative consequences to be sure. History has taught us that, for social services and civil rights in particular, the lack of clear federal standards and mechanisms for accountability lead to uneven enforcement and even discriminatory implementation of policies. Still, there are real opportunities for advancing progressive initiatives in this more localized environment. Greater local control can mean greater community power to shape and implement important social policies that were heretofore out of reach. To do so will require careful attention to the mechanics of local policymaking and a clear blueprint of what we stand for. Much of the work of framing what we stand for takes place in the shaping of demands. By getting into the policy arena in a proactive manner, we can take our demands to the next level. Our demands can become law, with real consequences if the agreement is broken. After all the organizing, press work, and effort, a group should leave a decisionmaker with more than a handshake and his or her word. Of course, this work requires a certain amount of interaction with "the suits," as well as struggles with the bureaucracy, the technical language, and the all-too-common resistance by decisionmakers. Still, if it's worth demanding, it's worth having in writing-whether as law, regulation, or internal policy. From ballot initiatives on rent control to laws requiring worker protections, organizers are leveraging their power into written policies that are making a real difference in their communities. Of course, policy work is just one tool in our box.

#### Incremental reform is better than pure rejection---the alternative infinitely replicates the SQ

Jefferey Pyle 99, Boston College Law School, J.D., magna cum laude, Race, Equality and the Rule of Law: Critical Race Theory's Attack on the Promises of Liberalism, 40 B.C.L. Rev. 787

"Critique," however, never built anything, and liberalism, for all its shortcomings, is at least constructive. It provides broadly-accepted, reasonably well-defined principles to which political advocates may appeal in ways that transcend sheer power, with at least some hope of incremental success:26' Critical race theory would "deconstruct" this imperfect tradition, but offers nothing in its place.

An apt example of how unconstructive CRT is can be found in its approach to equality. To the extent that race-crits discuss "equality" at all, they do so less to advance tangible goals than to disparage liberalism's different approaches, including the ultimate goal of a society where race does not matter. 265 The race-crits are particularly hostile to the liberal ideal of "color blindness," expressed most eloquently by Martin Luther King's dream that his children "will one day live in a nation where they will not be judged by the color of their skin but by the content of their character."266 To the race-crits, this integrationist goal of color-blind constitutionalism is not just naive or preinature. 2"7 In Neil Gotanda's words, it "supports the supremacy of white interests and must therefore be regarded as racist." !08 Unlike King, who saw affirmative action as a color-conscious means to a more inclusive, integrated nation ,"9 race-crits consider affirmative action an end in itself, more akin to an award of permanent damages than transitional assistance:270 To the race-crits, any doctrine that gets in the way of that end, including egalitarian colorblindness, is ipso facto "racist." 271

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Critical race theory's failure to address the difficulties of administering a reparations-based, "equality of result!' system leaves one with the impression that either they really are not. serious, or their invocation of "equality" is little more than an assertion of group interests. Indeed, the more pessimistic race-crits, like Derrick Bell, would be happiest if social reformers jettisoned the goal of "equality" altogether, because that goal "merely perpetuates our disempowerment."291 Illegal doctrine is to be judged solely by how it advances the interest of racial minorities, the race-crits implicitly dismiss any vision of equality that could aid other disadvantaged groups, or that could treat disadvantaged members of the racial majority with equal concern and respect.29' To the race-crits, the proper inquiry is not how the law lives up to aspirations or principles, but how it serves the interests of a constituen cy.297

In this respect, the race-crits are more political advocates than legal scholars.2"8 There is, of course, nothing wrong with being an advocate, and disadvantaged people certainly need advocates. But legal theories—the principles and ideas that guide the determination of legal outcomes—must transcend mere factional interests if they are to aid minorities. They must win the majority's acquiescence, if not its active support. So far, race-crits have not provided such a theory. CRT is only "scholarly resistance" that lives within, and indeed depends upon, the liberal legal order. 2"" Without liberalism to "critique," critical race theory would have little meaning. In the end, critical race theory could no more supplant liberalism than the mission statement of a political action committee could replace the Constitution.

#### Reform the state solves their turns—rejection fails

Habermas 98 [Jürgen Habermas teaches philosophy at the University of Frankfurt, “The European Nation-State: On the Past and Future of Sovereignty and Citizenship,” Public Culture10(2): 397–416]

Talk of overcoming the nation-state is ambiguous. On one reading—let us call it the postmodern—the end of the nation-state also marks the end of the project of civic autonomy, which, on this view, has in any case hopelessly overdrawn its credit. According to the other, nondefeatist reading, the project of a society that is capable of learning and of consciously shaping itself through its political will is still viable even after the demise of a world of nation-states. The dispute concerns the normative self-understanding of the democratic constitutional state. Can we still identify with it in an era of globalization, or must we renounce it as a cherished, though obsolete, relic of the old Europe? If not only the nation-state has run its course but along with it all forms of political integration, then individual citizens are abandoned to a world of anonymously interconnected networks in which they must choose between systemicallygenerated options in accordance with their preferences. In this postpolitical world, the multinational corporation becomes the model for all conduct. The impotence of a normatively guided politics in the face of an increasingly independent global economic system appears, from a systems-theoretical perspective at any rate, only as a special case of a more general development. Its vanishing point is a completely decentered world society that splinters into a disordered mass of self-reproducing and self-steering functional systems. Like Hobbesian individuals in the state of nature, these systems form environments for one another. They no longer speak a common language. Lacking a universe of intersubjectively shared meanings, they merely observe one another and behave toward one another in accordance with imperatives of self-preservation. J. M. Guéhenno depicts this anonymous world from the perspective of individual citizens who have become detached from the obsolete solidarity of democratic communities and must now orient themselves in the chaotic bustle of mutually adapting functional systems. These “new” human beings have sloughed off the illusory self-understanding of modernity. The neoliberal inspiration of this Hellenistic vision is all too clear. The autonomy of the citizen is unceremoniously stripped of the moral components of democratic self-determination and pared back to private autonomy: “Like the Roman citizen of the time of Caracalla, the citizen of the imperial age of the networks deﬁnes himself less and less by his participation in the exercise of sovereignty and more and more by the possibility he has to act in a framework in which the procedures obey clear and predictable rules. . . . It matters little whether a norm is imposed by a private enterprise or by a committee of bureaucrats. It is no longer the expression of sovereignty but simply something that reduces uncertainties, a means of lowering the cost of transactions, of increasing transparency.”11Through a perverse play on Hegel’s polemic against the administrative state (Not- und Verstandesstaat), the democratic state is replaced by a “state of law deprived of all philosophical reference to natural law, reduced to an ensemble of rules with no other basis than the daily administered proof of its smooth functioning.”12 Norms that are both effective andresponsive to expectations of popular sovereignty and human rights are replaced—under the guise of a “logic of networks”—by the invisible hand of supposedly spontaneously regulated processes of the global economy. However, these mechanisms, which are insensitive to external costs, do not exactly inspire conﬁdence. This is true at any rate of the two best-known examples of global self-regulation. The “balance of powers” on which the international system was based for three hundred years collapsed between the First and Second World Wars, if not before. Without an international court and a supranational sanctioning power, international law could not be invoked and enforced like state law. However, conventional morality and the “ethics” of dynastic relations ensured a certain level of normative regulation of warfare. In the twentieth century, total war has destroyed even this weak normative framework. The advanced state of weapons technology, the arms buildup, and the spread of weapons of mass destruction have made abundantly clear the risks inherent in this anarchy of powers unregulated by any invisible hand.13The founding of the League of Nations was the ﬁrst attempt at least to domesticate the unpredictable dynamic of power relations within a collective security system. With the foundation of the United Nations, a second attempt was made to set up supranational political agencies responsible for instituting peace on a global scale. With the end of the bipolar balance of terror, the prospect of a “global domestic politics” (Carl Friedrich von Weizsäcker) seems to have opened up, in spite of all the setbacks in the ﬁeld of international human rights and security policy. The failure of the anarchistic balance of power has at least made evident the desirability of political interventions and arrangements. Similar observations hold true for the other prime example of spontaneous self-regulation. Obviously, even the global market cannot be managed exclusively by the World Bank and the International Monetary Fund if the asymmetrical interdependence between the OECD countries and the marginalized countries that have not yet developed self-sustaining economies is to be overcome. The conclusion reached by the recent U.N. global summit on social problems in Copenhagen is unsettling. There is a lack of competent agencies on the international level which would have the power to agree on the necessary arrangements, procedures, and political frameworks. Not only the disparities between north and south call for such cooperation but also the drop in standards of living in the wealthy North Atlantic countries, where social policies restricted to the nation-state are powerless to deal with the effects of lower wages on globalized and rapidly expanding labor markets. The lack of supranational agencies is especially acute when it comes to dealing with the ecological problems that were addressed from a global perspective at the Earth Summit in Rio. A more peaceful and just political and economic world order is unthinkable without international institutions capable of taking initiatives, and above all without harmony among the continental regimes that are today just emerging, and without the kind of policies that could only be carried out under pressure from a mobilized global civil society. This tends to support the competing reading according to which the nationstate should be “**transformed” rather than abolished**. But could its normative content then be preserved, too? The optimistic vision of supranational agencies that would empower the United Nations and its regional organizations to institute a new political and economic world order is clouded by the troubling question of whether democratic opinion- and will-formation could ever achieve a binding force that extends beyond the level of the nation-state.

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#### Due process and criminal justice is the only way to solve

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4. Standing with Muslims against the “War on Terror”¶ In this chapter, I have demonstrated that:¶ The overriding motive for Bush’s ‘‘war on terror’’ is to secure control over the Middle East and Central Asia for U.S. oil, military, and corporate interests.¶ Bush’s handlers have been planning imperial conquest of the world since the Soviet Union collapsed in 1989.¶ From the evidence here and elsewhere, it is difficult to draw another conclusion than that Bush’s associates organized the 9-11 attacks to kick start popular support for this war. They have continued to justify the ‘‘war on terror’’ by claiming that Muslim terrorists pose an immanent danger to Americans.¶ In fact, however, terrorism actually poses minimal risk to Americans.¶ The ‘‘war on terror’’ is a concept modeled on Israel’s assaults on Palestinians to provide a cover for campaigns of territorial conquest.¶ Far from being ‘‘under attack,’’ America has pre-emptively attacked and conquered two sovereign states, and is threatening military domination of the entire world.¶ In other words, Bush’s ‘‘war on terror’’ is a massive con job, perpetrated by a few oil and military elites, at the expense of Muslims particularly, but threatening the security and well-being of virtually everyone on the planet.¶ An immensely wealthy and powerful republic has been hijacked by a small cabal of individuals...The American people have...been deliberately lied to, their interests cynically misrepresented and misreported, the real aims and intentons of this private war of Bush the son and his junta concealed with complete arrogance." (Said, 2003)¶ Thomas Donnelly, author of the RAD blueprint for Bush’s ‘‘war on terror,’’ recently reaffirmed the neo-conservative commitment, not to protect Americans from ‘‘terrorism,’’ but to conquer the world.¶ This war, properly understood, is a struggle to build a [new] ... order throughout the ‘‘greater Middle East,’’ that giant swath of the planet that extends from West Africa to Southeast Asia. ...Operation Iraqi Freedom represented the first step in a generational commitment to Iraq, but also the commitment of many generations to transforming the greater Middle East....The vision of the Bush Doctrine is hugely ambitious; in embracing this great vision, the United States must obligate the resources and create the institutions necessary to realize it." (Donnelly, 2004, pp. ix, 111)¶ 4.1. ‘‘Either you are with us, or you are with the Terrorists’’¶ Fear and hatred of a scapegoated ‘‘enemy’’ are powerful tools by which despots confuse people into believing that their oppressors are their salvation. Just as anti-Semitism served to divide and silence progressive German movements in the early Nazi era, Islamophobia is dividing and silencing us now. No one wants to associate with “terrorists”, much less be labelled and persecuted as one. Many progressive Western people fear and despise “fundmentalist” Muslims, and thereby fall into the trap of allying themselves with, or at least not opposing, Islamophobic laws and practices in the name of opposing “terrorism”. They thereby collude in undercutting the fabric of rights, due process, and equality on which they too depend.¶ The Bush Doctrine rhetoric has succeeded in convincing most white Americans that “terrorists” pose a serious threat to their personal safety, and that the “war on terror” is necessary to protect them. Islamophobic language and values have seeped into the fiber of our daily lives. Bookstores now have “terrorism” sections, displaying some of the 5,036 mostly new books on the topic.15 Several U.S. colleges and universities now offer degrees in “homeland security.” Media images of “Arab extremists” have become routine.¶ Most Americans now believe that “terrorism” is such a big problem, that they should pay with their taxes, their freedoms, their decimated public services, and their children’s lives. In the summer of 2005, polls found that 79 percent of Americans believed that “the threat of terrorism against the U.S.” has increased or stayed about the same (Polling Report.com, 2005). Seventy-six percent thought “Osama bin Laden himself is currently planning a significant terrorist attack against the United States,” and 64 percent supported the Patriot Act. Sixty-four percent would be “willing to give up some of [their] personal freedom in order to reduce the threat of terrorism” (PollingReport.com, 2005). Almost half of all Americans “believe the U.S. government should restrict the civil liberties of Muslim-Americans” (Dean, 2005). In the wake of Hurricane Katrina and shocking revelations of torture at Abu Ghraib prison, however, popular support for the “war on terror” plummetted. In November, 2005, 55 percent of Americans disapproved of the way Bush is “dealing with the war on terrorism” (PollingReport.com, 2005).¶ 4.2. Which Side are you on?¶ Before 9-11, the anti-globalization movement had been rapidly gaining influence and unity worldwide. Opposition to U.S.-dominated institutions like the World Bank, the International Monetary Fund, the G-8, NATO and APEC, had succeeded in disrupting and exposing several of their gatherings. And in their place, the World Social Forum and other progressive people’s movements were demonstrating that indeed there are excellent alternatives to globalization and corporate rule.¶ The 9-11 “attacks” and the “war on terror” derailed these hopeful movements and imposed crippling constraints on dissent, democracy, and national sovereignty. Under cover of Islamophobic targetting of Muslims, the U.S. is waging war on all movements for social justice both domestically and internationally, using its new post 9-11 legislative powers and bloated military and policing budgets. Domestically, the Bush administration is attacking democracy, abortion rights, the judiciary, environmental protections, social security, public education, women’s rights, union rights, and civil rights (Dorhrn, 2003). Internationally, it pressures other nations to enact similar “anti-terror” laws and policies, as well as demanding that they open their economies to full U.S. corporate rule.¶ As Bernadette Dorhn points out: “The result is a chilling effect. That is to say, people around the targets back away, get silent, don’t stand up when they see the cost of simply expressing your opinion or even making a joke, let alone publicly objecting to what’s going on” (2003).¶ Many progressive groups oppose Islamophobia and support Muslim victims of U.S. and Israeli assaults. These include civil liberties associations, Amnesty International, Human Rights Watch, anti-Zionist Jewish and Christian groups, unions, peace groups, and student organizations like the Canadian Federation of Students. Secular, Jewish, and Christian groups have formed alliances with Palestinians and Iraqis in oppostion to the Israeli occupation of the West Bank. In the U.S. the Center for Constitutional Rights works to end arbitrary detention of Muslim detainees in Guantanamo Bay and elsewhere. In Canada, the Campaign to Stop Secret Trials in Canada has mobilized broad support for Muslim detainees and their rights.¶ However, even these groups have not dared to challenge the Islamophobic base of the “anti-terror” legislation, for fear of being called pro-terrorist. They are thereby left arguing that the particular individuals for whom they advocate aren’t terrorists, while implicitly condoning the myth that “real” terrorists are lurking in the shadows. But under the Bush Doctrine, all Muslims are presumed to be either current or potential terrorists, and their civil liberties have been sacrificed in the name of “national security”.¶ To defeat the Bush plot for world control, we will need to challenge Islamophobic fear of “terrorists”, to assert clearly that there is little substantive terrorist threat. What terrorism there is could better be addressed through criminal justice systems and international law. More importantly we need to insist that the U.S. desist from both overt preemptive wars and covert state-financed terrorism. The actual security of both Americans and all other people will be best served by ending the occupations of the West Bank, Iraq, and Afghanistan, and recognizing the right of all nations to self-determination (including oil policies). We need to stand in solidarity with all Muslims, regardless of their religious beliefs. At this juncture, Islamophobia is the key barrier to effective mobilization against the Bush regime.

#### Academic, institutions-based debate regarding war powers is critical to check excessive presidential authority---college students key

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

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