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### Contention 1- Legitimacy

#### Guantanamo closure is inevitable- detainees will get transferred to the US

Herb 14 (Jeremy- Defense reporter for The Hill, citing Clifford Sloan the State Depart. Envoy for closing gitmo, 1/3, “Envoy confident Gitmo will be closed”, http://thehill.com/blogs/defcon-hill/policy-strategy/194361-gitmo-envoy-confident-prison-will-be-closed)

The man in charge of closing the U.S. detention center in Guantánamo Bay, Cuba, says he has no doubt it will be shuttered.¶ Clifford Sloan, the State Department’s envoy in charge of closing Guantánamo Bay, said in an interview on PBS “Newshour” Thursday evening that he believed the obstacles to closing the prison — including moving detainees to the U.S. for trial — could be overcome.¶ “I am absolutely convinced that we are going to close the Guantánamo facility,” Sloan said.¶ “We are going to close the Guantánamo detention facility. I have no doubt about that. And President Obama is very strongly committed to that,” he said.¶ The Obama administration has picked up the pace of transferring detainees from Guantánamo in recent months, with nine detainees transferred in December.¶ Those transfers included the final three ethnic Chinese Uyghurs at Guantánamo, who were sent to Slovakia earlier this week.¶ Sloan said that the pace of transfers could pick up in 2014 as well, as the newly signed National Defense Authorization Act (NDAA) loosened the restrictions on sending detainees to foreign countries.¶ Of the 155 remaining detainees at Guantánamo, 76 have been cleared for release.¶ “The law will be different in 2014 — I think that is going to help us very much in moving forward with the transfers,” Sloan said. “We feel very strongly there is a new air of possibility on moving forward on closing the Guantánamo detention facility. That is what we are focused on.”¶ Sloan, along with his Pentagon counterpart Paul Lewis, were appointed by Obama this year to jumpstart the administration’s efforts to close Guantánamo.¶ Obama renewed his pledge — one of this first he made when he took office — during a national security speech in May, and the transfers resumed later in the year to end a two-year gap between transfers.¶ There are still significant obstacles to closing Guantánamo, most notably the restriction on moving detainees to U.S. soil. In the compromise NDAA bill that Obama signed last month, the U.S. restrictions remained in place. ¶ The administration backed away from efforts to try alleged 9/11 mastermind Khalid Sheikh Mohammed in federal court during Obama’s first term, and a military tribunal for Mohammed and four others is in the pretrial phase at Guantánamo.¶ Sloan said he thought the ban on U.S. transfers could be lifted so Guantánamo detainees could be tried in the federal court system.¶ “I think you are seeing a new recognition across the spectrum that it's time to move on; it is time to put this problem before us,” he said.

#### Unfortunately- failure to apply the conventions erodes our court’s credibility

Gruber, 11 (Aya- Professor of Law, University of Colorado Law School, 1/1, “An Unintended Casualty of the War on Terror”, http://scholarworks.gsu.edu/gsulr/vol27/iss2/12/)

As the dust of the Bush administration's war on terror settles, casualties are starting to appear on the legal battlefield. The United States' human rights reputation and the Supreme Court's international influence lay wounded in the wake of U.S. policies that flouted international law by advocating torture, suborning indefinite detention, and erecting irregular tribunals. Through declining citation, the courts of the world are telling the Supreme Court that if it does not respect international and foreign law, international and foreign courts will not respect it. Some might object that the Supreme Court should not be lumped with the Bush administration because in fact it handed down several opinions setting limitations on the administration's treatment of terror detainees. While these cases, notably Hamdan v. Rumsfeld, set forth domestic law limitations, their conspicuous effort to avoid giving the Geneva Conventions the force of law served to confirm world opinion that the Supreme Court is "out of step." This Essay demonstrates how the Court's avoidance of the treaty status issue in Hamdan not only contributed to the perception of American legal exceptionalism but also paved the way for the single most anti- international opinion in Supreme Court history, Medellin v. Texas. In Medellin, the Supreme Court adopted a legal stance that creates near impassable barriers to the domestic enforcement of treaties. Nonetheless, as President Obama ruminates on maintaining military tribunals and courts brace for another round of terrorism cases, the Supreme Court may yet have a chance to narrow the reach of Medellin, confirm the enforceability of the Geneva Conventions, and restore its international influence. The United States' war on terror has produced a lesser-discussed but very important casualty: the international reputation of the Supreme Court. Today, many scholars both within and outside the United States note the dwindling influence of the U.S. Supreme Court, as evidenced by declining worldwide citation. On September 17, 2008, the front page of the New York Times declared, "U.S. Court Is Now Guiding Fewer Nations." n1 The article observes that citations to the Canadian Supreme Court and European Court of Justice are on an upswing, especially in cases involving human rights, while, according to Professor Anne Marie Slaughter, "We are losing one of the greatest bully pulpits we have ever had." n2 The bottom line is that much of today's world views U.S. Supreme Court opinion as antiquated and out-of-step with modern constructions of global rights and obligations. n3 To be sure, several aspects of American legal practice garnered international disfavor even before the September 11 attacks, notably the nation's continued legal support for the death penalty. n4 Subsequently, the war on terror and its concurrent destruction of civil liberties, embrace of torture and indefinite detention, and contempt for international humanitarian law cemented the widespread view of America as the prototypical abuser of human rights rather than guarantor. n5 In short, the courts of the world are [\*301] saying that if the U.S. does not respect international and foreign law, international and foreign courts will not respect the U.S. n6 As President Obama recedes from his initial stance against ad hoc military justice n7 and federal courts prepare for another round of military tribunal challenges, n8 we should remain poignantly focused on the reputational damage caused by the Bush administration's "cowboy adventure into totalitarianism," n9 which was permitted to push forward even by "liberal" "obstructionist" Supreme Court decisions. n10 As we move into a new era of international relations and (hopefully) respect for human rights, the time is ripe to learn some lessons about what was and what was not decided in the Supreme Court terrorism cases. This Essay highlights how an unfortunate misstep in the seemingly internationalist Hamdan v. Rumsfeld n11 decision paved the way for a jurisprudence of hostility toward international law. In this way, progressive Justices actually became complicit in the legal isolationist ideology so prevalent during the Bush era, which led the courts of the world to abandon the Supreme Court. [\*302] I. A Globalist Court in an Age of Nationalism There can be little dispute that during the Bush administration years, especially those immediately following September 11, internationalism fell out of popular and political favor. Guantanamo, renditions, torture, and the unilateral invasion of Iraq served as stark examples of the United States' go-it-alone mentality regarding human rights and humanitarian law. This attitude was arguably a continuation of the administration's pre-September 11 "exceptionalist" n12 approach to human rights. n13 Foreign jurists and human rights supporters had already been shocked at President Bush's "unsigning" of the Rome Statute, thereby withdrawing support for the International Criminal Court, n14 and the United States' refusal to participate in international environmental regulation. n15 Of course, after September 11, as isolationist sentiment rose, America's acceptance of international law further decreased. Indeed, many Americans, including important legal actors, openly express contempt for international law and legal institutions. n16 In this view, international human rights law is a dirty phrase synonymous with loss of American sovereignty and radical liberal ideology. n17 Following September 11, isolationist sentiment intensified as society became increasingly averse to international law, foreign values, and [\*303] even foreigners. n18 Today, conservatives warn against the corrupting influence of foreign practices and characterize international law as a product of "elite" law professors who are not representative of the nation's views. n19 The body of international scholars has been described by even prominent law professors as either "feather boa-wearing" n20 liberal snobs intent on imposing patrician continental norms on ordinary American folk, n21 or worse, terrorism sympathizers. n22 One professor characterized the Supreme Court's citation of foreign and international sources as a product of "aristocratic" global "bonding" sessions at "Lake Como or the South of France." n23 However, if the executive's actions and public opinion confirmed to the world that the United States disdains international law, what about actions of the Supreme Court itself? In the early part of the decade it appeared that an emerging globalist Supreme Court attitude could provide a much-needed foil to the existence and perception of American legal exceptionalism. n24 Justices Breyer, Ginsburg, and former Justice O'Connor vocally extolled the importance of [\*304] international and comparative law in domestic constitutional jurisprudence. n25 In the 2003 decision Lawrence v. Texas, the Court cited international norms as part of its analysis striking down anti-sodomy laws. n26 In 2005, the Court took up the hotly-contested issue of the juvenile death penalty in Roper v. Simmons. n27 In a move that many conservatives saw, and continue to see, as an all-out assault on American values and sovereignty, the Court cited international sentiment as "confirmation" of its formal conclusion that putting juveniles to death is cruel and unusual. n28 Many, like Justice Ginsburg, believed that the Court's "'island' or 'lone ranger' mentality [was] beginning to change." n29 The Supreme Court was in the midst of a modest revolution, inching towards globalization despite great internal conflict n30 and external controversy. n31 At the same time, the Court was asked to [\*305] assess the parameters of the Bush administration's war on terror. Here, political sides had been quickly drawn regarding constitutional restraints on executive war- making power, n32 with conservatives generally arguing for unfettered or near limitless executive authority and liberals favoring significant congressional and judicial oversight. n33 Lurking in the substrata of the various civil liberties-versus-national security debates was a bubbling political polarization over the enforceability of international law. The Geneva Conventions n34 were arguably the greatest threat to the Bush administration's ability to wage the war on terror in any manner it saw fit, even greater than the Constitution. There is very little language in the Constitution regarding presidential war power, and the principle that during war the President can bypass other constitutional provisions is largely a creature of expert commentary and sparse case law. n35 Because the "law of war" is therefore extra-constitutional, it provided the Supreme Court a virtual tabula rasa [\*306] legal regime on which to scrawl its limitations (or non-limitations). n36 Thus, the Bush administration could reasonably hope to exploit the atmosphere of fear and hysteria surrounding September 11 in favor of an expansive judicial reading of constitutional war power. n37 By contrast, the Geneva Conventions lay out with clarity and great specificity how governments must treat prisoners of war, civilians, and others during times of armed conflict. n38 The treaty accordingly represented a significant potential restraint on how the Bush administration could treat detained Afghan and al Qaeda fighters. From the beginning, the Bush administration pursued a policy of "lawyering" the Conventions n39 and setting forth numerous textual arguments, from specious to plausible, as to why they do not apply to the Guantanamo detainees. n40 It was obviously important for public relations reasons that the administration find a way to convince the [\*307] public that it was in compliance with the Conventions, n41 but in the legal arena the administration advanced an argument for the wholesale jettisoning of the Geneva Conventions in domestic courts: "Non-self-execution." The administration claimed simply that as non-self-executing treaties, the Geneva Conventions could not be enforced by individuals in U.S. courts. n42 In turn, the formerly legalistic question of treaty execution became as highly politicized as the civil liberties-versus-national security debate. Of course, the question of treaty execution long predated the war on terror. The status of treaties is mentioned in the very text of the Constitution, in the Supremacy Clause, which declares that "all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." n43 During the early years of our republic, the fact of treaty supremacy was relatively apolitical and apparently accepted. n44 The period immediately following World War II saw a flurry of international legal activity and thrust the question of treaty supremacy into the foreground. n45 Since that time, there has been steadily growing hostility in certain legal, academic, and political circles to the concept that treaties created in part or whole by "foreign entities" are binding [\*308] domestic law. n46 Although a topic of moderate activity in lower courts, until the last few years the Supreme Court had said very little on the issue and had not adopted the position that treaties are generally non-self- executing. n47 It was upon this historical, political, and legal background that the Supreme Court rendered its 2006 decision in Hamdan v. Rumsfeld, invalidating Bush's military tribunals because they violated the Uniform Code of Military Justice (UCMJ). n48 The decision caused a feeling that can be fairly characterized as jubilation among progressives and internationalists. n49 Yale Law School dean and international lawyer Harold Koh declared that the Hamdan case "finally beg[a]n the much-needed process of turning the legal world right-side up again." n50 International law scholar George Fletcher dubbed Hamdan a new beginning for international law in the United States. n51 Perhaps, however, internationalists were advancing a premature "mission accomplished" declaration. Upon further examination, the Hamdan majority opinion is remarkable in its [\*309] judicial restraint. Although it invalidated Bush's tribunals, it did so on the narrow ground that they violate the UCMJ, a domestic statute that was about to be superseded by the Military Commissions Act (MCA). n52 Hamdan did not pronounce any significant constitutional limitations on presidential war power, n53 nor did it reach the overriding foreign relations question of treaty execution. n54 Hamdan indeed would have been one of the greatest internationalist victories had the Supreme Court been willing, after nearly fifty years of silence, to recognize the force of international law in the face of decades of growing post-World War II isolationism that pinnacled after September 11. Unfortunately, the Court appeared to fear weighing in on the issue and went to great lengths to stay mute on whether the Geneva Conventions constitute valid domestic law. The Hamdan majority's refusal to comment on the status of the Conventions left open a dangerous door for a divided Court, now politically polarized over the treaty execution issue, to finally adopt an isolationist stance toward treaty execution. This is the precise door the Court walked through with its March 25, 2008 decision, Medellin v. Texas. n55 What started out as fear of international human rights law in Hamdan went to loathing in Medellin, as the Court for the first time formally sanctioned the United States' ability to double deal in international relations. n56 But before discussing Medellin, two [\*310] preliminary questions call for examination. First, what is the status of treaties in U.S. domestic law? Second, why was Hamdan's approach to the Geneva Conventions harmful to the Supreme Court's international reputation?

#### The impact is sustainable rule of law promotion- only maintaining court credibility solves

Scharf 9 (Michael P. Scharf et al., Counsel of Record, Brief of the Public International Law & Policy Group as Amicus Curiae in Support of the Petitioners, Jamal Kiyemba, et. Al., v. Barack H. Obama, et al., SCOTUS, No. 08-1234, 12—09, p. 3-8.)

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

**A strong judiciary is key**

**Kalb 13** [Summer, 2013; Johanna Kalb is an Associate Professor of Law, Loyola University New Orleans College of Law, “The Judicial Role in New Democracies: A Strategic Account of Comparative Citation”, 38 Yale J. Int'l L. 423]

The role of the judiciary in transitional regimes has received increasing attention in the last few decades based largely on two historical developments. First, constitutionalism and judicial review have become increasingly pervasive attributes of late twentieth-century political transitions, which has increased the predominance of the judicial role in most new democratic regimes. Second, a growing number of countries that once held democratic elections **have regressed into authoritarian or semi-authoritarian rule** n38 or have simply failed to move beyond the thin electoral definition of democracy. n39 In this historical context, scholars have turned their focus to the role that courts can play in helping to consolidate or solidify the post-election transition to a democratic order. A. Diagonal Accountability According to Juan J. Linz and Alfred Stepan, democratic consolidation is complete when a government comes to power that is the direct result of a free and popular vote, when this government de facto has the authority to generate new policies, and [\*431] when the executive, legislative, and judicial power generated by the new democracy does not have to share power with other bodies de jure. n40 As is now widely acknowledged, the project of democratic consolidation is inhibited by accountability failures in political institutions. In other words, democracy stalls n41 or collapses because institutional weaknesses undermine the processes by which governmental actors are held responsible for performing their appropriate functions. Courts can aid in democratic consolidation by **reinforcing constitutional structures of accountability** across a number of different planes. First, a credible and autonomous judiciary may serve as an important mechanism of horizontal accountability. "In institutionalized democracies, accountability runs ... horizontally across a network of relatively autonomous powers (i.e. other institutions) that can call into question, and eventually punish, improper ways of discharging the responsibility of a given official." n42 Given the primacy of judicial review in most new regimes, **courts are well positioned to ensure that other governmental actors are subject to the constraints of the law**. An effective judiciary may thus be **a key institutional actor in preventing the reconsolidation of power** in the executive that has characterized so many nations in transition. n43 Courts also play a role in vertical accountability, which can be understood to characterize the relationship between the citizenry and the national government. In introducing this concept, Guillermo O'Donnell focuses on the methods by which nonstate actors in media and civil society can continue to hold state actors to account through regular election, social mobilization, and media oversight. n44 An effective judiciary **can protect and enable these processes of vertical accountability** by ensuring governmental respect for the individual rights that underlie them - for example, by ensuring access to the voting booth and protecting freedom of speech and association. [\*432] While O'Donnell's vertical axis ended with the national government, in the democracies of the last fifty years, the notion of vertical accountability arguably extends further to characterize the relationship between the domestic population, the national government, and the international community, which includes international courts, the governments of other nations, and international NGOs. Most recent democratic transitions were in fact driven by pressures from both internal and external constituencies, sometimes in concert. n45 For example, "few would question the central role played by occupation forces in fostering democratic government in Germany and Japan after World War II," while "the American security umbrella played a similar facilitating function for democracy in South Korea, and Taiwan." n46 In recent decades, international sanctions have helped to force internal political change (perhaps most notably in South Africa), while "the export of election monitoring technologies such as parallel vote tabulation and exit polls played a crucial role in bringing down Augusto Pinochet in Chile in 1988, unseating Slobodan Milo<hac s>evic in Serbia in 2000, and sparking the Orange Revolution in 2004." n47 In each of these cases, donor funding has helped to generate and preserve a global web of civil society groups, which has helped to inspire and operationalize the indispensable efforts of domestic advocates during transitions. n48 Moreover, even long after the formal democratic transition has occurred, new governments, particularly in the economically underdeveloped countries of the Global South, continue to confront pressures from the international community to maintain systems of democratic governance, to protect and promote human rights, and to facilitate economic integration. Thus, governmental actions during the transitional period and beyond are under increased levels of scrutiny from both vertical and horizontal audiences, which can mobilize each other in support of accountability at the national level. The judiciary can also play a role in mediating these relationships by **protecting the domestic rights that enable these transnational connections** - by protecting access to the Internet and to international travel, for example. The ongoing activity along both of the axes creates the opportunity for the judiciary to engage in what we may describe as "diagonal accountability." n49 In modern [\*433] regimes in transition, the judiciary must be responsive to activities on both the vertical and horizontal axes. The challenge is in satisfying these different audiences that are sometimes in harmony and sometimes in conflict. The courts, given their responsibility for preserving the possible channels of horizontal and vertical accountability, **are uniquely positioned to manage this overlap** and can mobilize one axis "diagonally" in support of promoting accountability along the other. Courts may draw on international support "vertically" to protect against encroachment from the other branches "horizontally" - for example, by reaching out to influential international institutions to put pressure on the president to comply with judicial orders limiting executive authority. Alternatively, courts may be well positioned to safeguard the authority of other domestic institutions along the horizontal axis by acting as a site of resistance against coercive international pressures - for example, by striking down as unconstitutional domestically unpopular legislation forced on the elected branches by international actors.

#### Credible rule of law promotion prevents conflict escalation

Kersch 6 [2006, Ken I. Kersch, Assistant Professor of Politics, Princeton University. B.A., Williams; J.D., Northwestern; Ph.D., Cornell. Thanks to the Social Philosophy and Policy Center at Bowling Green State University, where I was a visiting research scholar in the fall of 2005, and to the organizers of, and my fellow participants in, the Albany Law School Symposium, Albany Law School, “The Supreme Court and international relations theory.”, http://www.thefreelibrary.com/The+Supreme+Court+and+international+relations+theory.-a0151714294]

Liberal theories of international relations hold that international peace and prosperity are advanced to the degree that the world’s sovereign states converge on the model of government anchored in the twin commitment to democracy and the rule of law.52 Liberal “democratic peace” theorists hold that liberal democratic states anchored in rule of law commitments are less aggressive and more transparent than other types of states.53 When compared with non-liberal states, they are thus much better at cooperating with one another in the international arena.54 Because they share a market-oriented economic model, moreover, international relations liberals believe that liberal states hewing to the rule of law will become increasingly interdependent economically.55 As they do so, they will come to share a common set of interests and ideas, which also enhances the likelihood of cooperation.56 Many foreign policy liberals—sometimes referred to as “liberal internationalists”—emphasize the role that effective multilateral institutions, designed by a club or community of liberal-democratic states, play in facilitating that cooperation and in anchoring a peaceful and prosperous liberal world order.57 The liberal foreign policy outlook is moralized, evolutionary, and progressive. Unlike realists, who make no real distinctions between democratic and non-democratic states in their analysis of international affairs, liberals take a clear normative position in favor of democracy and the rule of law.58 Liberals envisage the spread of liberal democracy around the world, and they seek to advance the world down that path.59 Part of advancing the cause of liberal peace and prosperity involves encouraging the spread of liberal democratic institutions within nations where they are currently absent or weak.60 Furthermore, although not all liberals are institutionalists, most liberals believe that effective multilateral institutions play an important role in encouraging those developments.61 To be sure, problems of inequities in power between stronger and weaker states will exist, inevitably, within a liberal framework.62 “But international institutions can nonetheless help coordinate outcomes that are in the long-term mutual interest of both the hegemon and the weaker states.”63 Many foreign policy liberals have emphasized the importance of the judiciary in helping to bring about an increasingly liberal world order. To be sure, the importance of an independent judiciary to the establishment of the rule of law within sovereign states has long been at the core of liberal theory.64 Foreign policy liberalism, however, commonly emphasizes the role that judicial globalization can play in promoting democratic rule of law values throughout the world.65 Post-communist and post-colonial developing states commonly have weak commitments to and little experience with liberal democracy, and with living according to the rule of law, as enforced by a (relatively) apolitical, independent judiciary.66 In these emerging liberal democracies, judges are often subjected to intense political pressures.67 International and transnational support can be a life-line for these judges. It can encourage their professionalization, enhance their prestige and reputations, and draw unfavorable attention to efforts to challenge their independence.68 In some cases, support from foreign and international sources may represent the most important hope that these judges can maintain any sort of institutional power—a power essential to the establishment within the developing sovereign state of a liberal democratic regime, the establishment of which liberal theorists assume to be in the best interests of both that state and the wider world community.69 Looked at from this liberal international relations perspective, judicial globalization seems an unalloyed good. To many, it will appear to be an imperative.70 When judges from well-established, advanced western democracies enter into conversations with their counterparts in emerging liberal democracies, they help enhance the status and prestige of judges from these countries. This is not, from the perspective of either side, an affront to the sovereignty of the developing nation, or to the independence of its judiciary. It is a win-win situation which actually strengthens the authority of the judiciary in the developing state.71 In doing so, it works to strengthen the authority of the liberal constitutional state itself. Viewed in this way, judicial globalization is a way of strengthening national sovereignty, not limiting it: it is part of a state-building initiative in a broader, liberal international order.72 A liberal foreign policy outlook will look favorably on travel by domestic judges to conferences abroad (and here in the United States) where judges from around the world can meet and talk.73 It will not view these conferences as “junkets” or pointless “hobnobbing.” These meetings may very well encourage judges from around the world to increasingly cite foreign precedent in arriving at their decisions. Judges in emerging democracies will use these foreign precedents to help shore up their domestic status and independence. They will also avail themselves of these precedents to lend authority to basic, liberal rule-of-law values for which, given their relative youth, there is little useful history to appeal to within their domestic constitutional systems. Judges in established democracies, on the other hand, can do their part to enhance the status and authority of independent judiciaries in these emerging liberal democratic states by showing, in their own rulings, that they read and respect the rulings of these fledgling foreign judges and their courts (even if they do not follow those rulings as binding precedent).74 They can do so by according these judges and courts some form of co-equal status in transnational “court to court” conversations.75 It is worth noting that mainstream liberal international relations scholars are increasingly referring to the liberal democratic international order (both as it is moving today, and indeed, as read backward to the post-War order embodied in the international institutions and arrangements of NATO, Bretton Woods, the International Monetary Fund, the World Bank, and others) as a “constitutional order,” and, in some cases, as a “world constitution.”76 No less a figure than Justice Breyer—in a classic articulation of a liberal foreign policy vision—has suggested that one of the primary questions for American judges in the future will involve precisely the question of how to integrate the domestic constitutional order with the emerging international one.77 If they look at judicial globalization from within a liberal foreign policy framework (whether or not they have read any actual academic articles on liberal theories of foreign policy), criticisms of “foreign influences” on these judges, and of their “globe-trotting” will fall on deaf ears. They will be heard as empty ranting by those who don’t really understand the role of the judge in the post-1989 world. These judges will not understand themselves to be undermining American sovereignty domestically by alluding to foreign practices and precedents. And they will not understand themselves as (in other than a relatively small-time and benign way) as undermining the sovereignty of other nations. They will see the pay-off-to-benefit ratio of simply talking to other judges across borders, and to citing and alluding to foreign preferences (when appropriate, and in non-binding ways) as high. They will, moreover, see themselves as making a small and modest contribution to progress around the world, with progress defined in a way that is thoroughly consistent with the core commitments of American values and American constitutionalism. And they will be spurred on by a sense that the progress they are witnessing (and, they hope, participating in) will prove of epochal historical significance. Even if they are criticized for it in the short-term, these liberal internationalist judges will have a vision of the future which suggests that, ultimately, their actions will be vindicated by history. The liberal foreign policy outlook will thus fortify them against contemporary criticism.

**Empirical analysis proves democratic governance prevents conflicts**

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Drawing from the **empirical literature**, this paper identifies two **underlying pathways** through which state governance systems help to build peace. These are: State capacity. If states lack the ability to execute their policy goals or to maintain security and public order in the face of potentially violent groups, **armed conflict is more likely**. State capacity refers to two significant aspects: security capacity and social capacity. Security capacity includes the ability to control territory and resist armed incursion from other states and nonstate actors. Social capacity includes the ability to provide social services and public goods. Institutional qxuality. Research suggests that not all governance systems are equally effective or capable of supporting peace. Governance systems are seen as **more credible** and **legitimate**, and are better at **supporting peace**, when they are characterized by inclusiveness, representativeness, transparency, and accountability. In particular, systems allowing citizens to voice concerns, participate politically, and hold elected leaders accountable are more stable and better able to avoid armed conflict. Both dimensions—state capacity and quality—are **crucial** to the **prevention of armed conflict** and are the focus of part one of this paper. Part two of the paper focuses on democracy as the most common way of structuring state government to allow for inclusive systems while maintaining state capacity. The two parts summarize **important research findings** on the features of governance that are most **strongly associated** with prospects for peace. Our analysis, based on an **extensive review of empirical literature**, seeks to identify the specific dimensions of governance that are most strongly associated with peace. We show evidence of a **direct link** between peace and a state’s capacity to both exert control over its territory and provide a full range of social services through effective governance institutions. We apply a governance framework to examine three major factors associated with the outbreak of war—border disputes, ethnic conflict, and dependence on commodity exports—and emphasize the importance of inclusive and representative governance structures for the prevention of armed conflict.

#### Autocratic regimes are gaining momentum now, restraints on the executive are key to prevent democratic backsliding

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

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

#### Democratic backsliding causes great power war

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

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

### Contention 2- Geneva

#### The courts failure to apply Geneva to detention policy has eviscerated the conventions credibility

Gruber 11 (Aya- Professor of Law, University of Colorado Law School, 1/1, “An Unintended Casualty of the War on Terror”, http://scholarworks.gsu.edu/gsulr/vol27/iss2/12/)

As President Obama inches ever closer to embracing the “twilight zone” model of terrorism law, it would be wise to keep in mind the reputational harm the Bush administration’s war on terror caused the United States. One human rights advocate warned the Obama administration, “The results of the cases [tried in military commissions] will be suspect around the world. It is a tragic mistake to continue them.”200 More than just a source of embarrassment, there are real consequences to America’s sullied international reputation. Our experiments with “alternative” military justice not only affect our high court’s world influence, they operatively prevent the United States from assuming a leadership role in defining and defending international human rights. For example, in 2007, the Chinese government responded to the U.S. State Department’s annual human rights report by stating that America had no standing to comment on others’ human rights violations given its conduct of the war on terror. Specifically, the Chinese characterized the United States as “pointing the finger” at other nations while ignoring its “flagrant record of violating the Geneva Convention.”201 Supreme Court validation of treaty law would no doubt help repair the international reputation of the United States.202 The lesson here is about fear and missed opportunity. Guantánamo stands as a stark reminder of the great importance of international humanitarian law during times of crisis. The Geneva Conventions were the very barrier between terrorism detainees and a government regime singularly committed to national security through any means possible. Unfortunately, when international law mattered most, even the liberal Supreme Court justices avoided cementing its legal status. By contrast, Medellín, a convicted murderer, was apparently afforded the full panoply of constitutional protections, and in all likelihood, his inability to confer with consular officials did not prejudice his case. Much less was at stake, and those on the Supreme Court critical of humanitarian law impediments to waging the war on terror could fashion anti-internationalist rules with little public fanfare or liberal resistance. Consequently, although Hamdan will likely go down in history as evidence of the Court’s willingness to protect individual rights in the face of massive public fear and executive pressure, it also represents a failure to truly support the comprehensive international regime governing war-time detention, a regime in which the United States long ago vowed to participate. But all may not be lost. The Supreme Court might have another chance to rule on the status of the Geneva Conventions, and Medellín leaves some wiggle room on self-execution. If the Supreme Court is once again to be a beacon of judicial light, it must move beyond the xenophobic exceptionalism of the Bricker past and embrace the straightforward and fair principle that signed and ratified treaties are the law of the land.

#### Credible US lead of Geneva key to prevent hotspot escalation

Koh 4, dean of Yale Law School and professor of international agreement, 9/20/2004

(Harold, “On America's Double Standard,” http://prospect.org/article/americas-double-standard)

When the United States holds Taliban detainees at Guantanamo Bay, Cuba, without Geneva Convention hearings, then decries the failure of others to accord Geneva Convention protections to their American prisoners, it supports a double standard. When George W. Bush tries to “unsign” the International Criminal Court (ICC) treaty that Bill Clinton signed in 2000, yet expects other nations to honor signed treaties, he does the same. When U.S. courts ignore an International Court of Justice decision enjoining American execution of foreign nationals, even as we demand that other countries obey international adjudications that favor American interests, the United States is using its vast power and wealth to promote a double standard. In these and other instances, the United States proposes that a different rule should apply to itself than to the rest of the world. U.S. officials say that they must act to protect our security and to avoid unacceptable constraints on national prerogative. But to win the illusion of unfettered sovereignty, they are actually undermining America's capacity to participate in international affairs. Over the past two centuries, the United States has become party not just to a few treaties but to a global network of closely interconnected treaties enmeshed in multiple frameworks of international institutions. Unilateral administration decisions to bend or break one treaty commitment thus rarely end the matter; rather, they usually trigger vicious cycles of treaty violation. Repeated insistence on a double standard creates the damaging impression of a United States contemptuous of both its treaty obligations and its treaty partners, even as America tries to mobilize those same partners to help it solve problems it simply cannot solve alone -- most obviously, the war against global terrorism, but also the postwar construction of Iraq, the Middle East crisis, and the renewed nuclear militarization of North Korea. \* \* \* Historically, American administrations have tended to distance and distinguish themselves from the rest of the international community; human-rights advocates have often condemned this “American exceptionalism.” But while the promotion of double standards is indeed corrosive, not all forms of exceptional American behavior are equally harmful. America's distinctive rights culture, for example, sometimes sets it apart. Due to our particular history, some human rights, such as the norm of nondiscrimination based on race or First Amendment protections for speech and religion, have received far greater emphasis and judicial protection in the United States than in Europe. But our distinctive rights culture is not fundamentally inconsistent with universal human-rights values. Nor is America genuinely exceptional because it sometimes uses different labels to describe synonymous concepts. When I appeared before the UN Committee Against Torture in Geneva, Switzerland, to defend the first U.S. report on U.S. compliance with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, I was asked the reasonable question of why the United States does not “maintain a single, comprehensive collation of statistics regarding incidents of torture and cruel, inhuman or degrading treatment or punishment,” a universally understood concept. My answer, in effect, was that we applied different labels, not different standards. The myriad bureaucracies of the federal government, the 50 states, and the territories did gather statistics regarding torture and cruel, inhuman, or degrading treatment, but we called that practice different things, including “cruel and unusual punishment,” “police brutality,” “section 1983 actions,” applications of the exclusionary rule, violations of civil rights under color of state law, and the like. Refusing to accept the internationally accepted term reflected national quirkiness, somewhat akin to our continuing use of feet and inches rather than the metric system. A third form of American exceptionalism, our penchant for non-ratification (or ratification with reservations) of international treaties, is more problematic -- but for the United States, not for the world. For example, it is a huge embarrassment that only two nations in the world -- the United States and Somalia, which until recently did not have an organized government -- have not ratified the international Convention on the Rights of the Child. But this is largely our loss. In no small part because of its promiscuous failure to ratify a convention with which it actually complies in most respects, the United States rarely gets enough credit for the large-scale moral and financial support that it actually gives to children's rights around the world. In my view, by far the most dangerous and destructive form of American exceptionalism is the assertion of double standards. For by embracing double standards, the United States invariably ends up not on the higher rung but on the lower rung with horrid bedfellows -- for example, such countries as Iran, Nigeria, and Saudi Arabia, the only other nations that have not in practice either abolished or declared a moratorium on the imposition of the death penalty on juvenile offenders. This appearance of hypocrisy sharply weakens America's claim to lead globally through moral authority. More important, by opposing global rules in order to loosen them for our purposes, the United States can end up -- as it has done with the Geneva Conventions -- undermining the legitimacy of the rules themselves, just when we need them most.

#### These scenarios outweigh- escalation is guaranteed

Ratner, 8 (Law Prof-Michigan, “Think Again: Geneva Conventions,” 2/19, http://www.foreignpolicy.com/articles/2008/02/19/think\_again\_geneva\_conventions?page=0,6)

“No Nation Flouts the Geneva Conventions More than the United States” That’s absurd. When bullets start flying, rules get broken. The degree to which any army adheres to the Geneva Conventions is typically a product of its professionalism, training, and sense of ethics. On this score, U.S. compliance with the conventions has been admirable, far surpassing many countries and guerrilla armies that routinely ignore even the most basic provisions. The U.S. military takes great pride in teaching its soldiers civilized rules of war: to preserve military honor and discipline, lessen tensions with civilians, and strive to make a final peace more durable. Contrast that training with Eritrea or Ethiopia, states whose ill-trained forces committed numerous war crimes during their recent border war, or Guatemala, whose army and paramilitaries made a policy of killing civilians on an enormous scale during its long civil conflict. More importantly, the U.S. military cares passionately that other states and nonstate actors follow the same rules to which it adheres, because U.S. forces, who are deployed abroad in far greater numbers than troops from any other nation, are most likely to be harmed if the conventions are discarded. Career U.S. military commanders and lawyers have consistently opposed the various reinterpretations of the conventions by politically appointed lawyers in the Bush White House and Justice Department for precisely this reason. It is enormously important that the United States reaffirms its commitment to the conventions, for the sake of the country’s reputation and that of the conventions. Those who rely on the flawed logic that because al Qaeda does not treat the conventions seriously, neither should the United States fail to see not only the chaos the world will suffer in exchange for these rules; they also miss the fact that the United States will have traded basic rights and protections harshly learned through thousands of years of war for the nitpicking decisions of a small group of partisan lawyers huddled in secret. Rather than advancing U.S. interests by following an established standard of behavior in this new type of war, the United States—and any country that chooses to abandon these hard-won rules—risks basing its policies on narrow legalisms. In losing sight of the crucial protections of the conventions, the United States invites a world of wars in which laws disappear. And the horrors of such wars would far surpass anything the war on terror could ever deliver.

#### Credibility on detention solves terror and the environment

Wexler 8 (Lesley, Assistant Professor, Florida State University College of Law, “HUMAN RIGHTS IMPACT STATEMENTS: AN IMMIGRATION CASE STUDY,” 22 Geo. Immigr. L.J. 285, Lexis)

Enhancing our reputation for human rights compliance is especially important given current political realities. Many countries hold a declining opinion of the United States.53 The international community would welcome America’s affirmation of the continuing importance of human rights in the wake of many post-September 11th actions such as torture, extraordinary rendition, increased domestic surveillance, and harsher and more frequent detention of immigrants. Moreover, the international community would benefit from the assurance that the concept of “human rights” means more than a justification for regime change.54 American exceptionalism to human rights law angers our allies and complicates efforts to secure their cooperation.55 Not surprisingly, many countries view the United States’ silence about its own human rights failings as hypocritical.56 In particular, the international community strongly criticizes the State Department’s annual human rights reports for omitting an assessment of domestic performance as well as omitting “actions by governments taken at the request of the United States or with the expressed support of the United States . . . .”57 Human rights advocates suggest that U.S. leadership on human rights faces a severe credibility gap - for instance, other countries perceive the United States as a laggard on human rights treaty compliance in regards to migrants58 - but that repudiation of past abuses and momentum for policy changes could restore its leadership.59¶ As many have suggested, good international relations are vital to winning the War on Terror.60 Moreover, international cooperation is essential to address immigration related issues such as human trafficking. A visible commitment to migrants’ human rights might bolster the United States’ credibility when it seeks better treatment for the approximately 2 million American émigrés.61 Other international problems, such as climate change and related environmental issues, also require cooperation and leadership. An increased willingness to participate in global human rights discourse and demonstrate adherence to human rights treaties might enhance our ability to lead and participate in other arenas.

#### Terrorism leads to extinction

Hellman, 08 [Martin E. Hellman, emeritus prof of engineering @ Stanford, “Risk Analysis of Nuclear Deterrence” SPRING 2008 THE BENT OF TAU BETA PI, http://www.nuclearrisk.org/paper.pdf]

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

#### Risk of theft is high, and attack escalate quickly

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Hundreds of scientific papers and reports have been published on nuclear terrorism. International conferences have been held on this threat with participation of Russian organizations, including IMEMO and the Institute of U.S. and Canadian Studies. Recommendations on how to combat the threat have been issued by the International Luxembourg Forum on Preventing Nuclear Catastrophe, Pugwash Conferences on Science and World Affairs, Russian-American Elbe Group, and other organizations. The UN General Assembly adopted the International Convention for the Suppression of Acts of Nuclear Terrorism in 2005 and cooperation among intelligence services of leading states in this sphere is developing.¶ At the same time, these efforts fall short for a number of reasons, partly because various acts of nuclear terrorism are possible. Dispersal of radioactive material by detonation of conventional explosives (“dirty bombs”) is a method that is most accessible for terrorists. With the wide spread of radioactive sources, raw materials for such attacks have become much more accessible than weapons-useable nuclear material or nuclear weapons. The use of “dirty bombs” will not cause many immediate casualties, but it will result into long-term radioactive contamination, contributing to the spread of panic and socio-economic destabilization.¶ Severe consequences can be caused by sabotaging nuclear power plants, research reactors, and radioactive materials storage facilities. Large cities are especially vulnerable to such attacks. A large city may host dozens of research reactors with a nuclear power plant or a couple of spent nuclear fuel storage facilities and dozens of large radioactive materials storage facilities located nearby. The past few years have seen significant efforts made to enhance organizational and physical aspects of security at facilities, especially at nuclear power plants. Efforts have also been made to improve security culture. But these efforts do not preclude the possibility that well-trained terrorists may be able to penetrate nuclear facilities.¶ Some estimates show that sabotage of a research reactor in a metropolis may expose hundreds of thousands to high doses of radiation. A formidable part of the city would become uninhabitable for a long time.¶ Of all the scenarios, it is building an improvised nuclear device by terrorists that poses the maximum risk. There are no engineering problems that cannot be solved if terrorists decide to build a simple “gun-type” nuclear device. Information on the design of such devices, as well as implosion-type devices, is available in the public domain. It is the acquisition of weapons-grade uranium that presents the sole serious obstacle. Despite numerous preventive measures taken, we cannot rule out the possibility that such materials can be bought on the black market. Theft of weapons-grade uranium is also possible. Research reactor fuel is considered to be particularly vulnerable to theft, as it is scattered at sites in dozens of countries. There are about 100 research reactors in the world that run on weapons-grade uranium fuel, according to the International Atomic Energy Agency (IAEA).¶ A terrorist “gun-type” uranium bomb can have a yield of least 10-15 kt, which is comparable to the yield of the bomb dropped on Hiroshima. The explosion of such a bomb in a modern metropolis can kill and wound hundreds of thousands and cause serious economic damage. There will also be long-term sociopsychological and political consequences.¶ The vast majority of states have introduced unprecedented security and surveillance measures at transportation and other large-scale public facilities after the terrorist attacks in the United States, Great Britain, Italy, and other countries. These measures have proved burdensome for the countries’ populations, but the public has accepted them as necessary. A nuclear terrorist attack will make the public accept further measures meant to enhance control even if these measures significantly restrict the democratic liberties they are accustomed to. Authoritarian states could be expected to adopt even more restrictive measures.¶ If a nuclear terrorist act occurs, nations will delegate tens of thousands of their secret services’ best personnel to investigate and attribute the attack. Radical Islamist groups are among those capable of such an act. We can imagine what would happen if they do so, given the anti-Muslim sentiments and resentment that conventional terrorist attacks by Islamists have generated in developed democratic countries. Mass deportation of the non-indigenous population and severe sanctions would follow such an attack in what will cause violent protests in the Muslim world. Series of armed clashing terrorist attacks may follow. The prediction that Samuel Huntington has made in his book “The Clash of Civilizations and the Remaking of World Order” may come true. Huntington’s book clearly demonstrates that it is not Islamic extremists that are the cause of the Western world’s problems. Rather there is a deep, intractable conflict that is rooted in the fault lines that run between Islam and Christianity. This is especially dangerous for Russia because these fault lines run across its territory. To sum it up, the political leadership of Russia has every reason to revise its list of factors that could undermine strategic stability.  BMD does not deserve to be even last on that list because its effectiveness in repelling massive missile strikes will be extremely low. BMD systems can prove useful only if deployed to defend against launches of individual ballistic missiles or groups of such missiles. Prioritization of other destabilizing factors—that could affect global and regional stability—merits a separate study or studies. But even without them I can conclude that nuclear terrorism should be placed on top of the list. The threat of nuclear terrorism is real, and a successful nuclear terrorist attack would lead to a radical transformation of the global order.  All of the threats on the revised list must become a subject of thorough studies by experts. States need to work hard to forge a common understanding of these threats and develop a strategy to combat them.

#### Environmental degradation risks extinction

Coyne 7 (Jerry and Hopi Hoekstra , \*professor in the Department of Ecology and Evolution at the University of Chicago AND Associate Professor in the Department of Organismic and Evolutionary Biology at Harvard University, New Republic, “The Greatest Dying,” 9/24, http://www.truthout.org/article/jerry-coyne-and-hopi-e-hoekstra-the-greatest-dying)

But it isn't just the destruction of the rainforests that should trouble us. Healthy ecosystems the world over provide hidden services like waste disposal, nutrient cycling, soil formation, water purification, and oxygen production. Such services are best rendered by ecosystems that are diverse. Yet, through both intention and accident, humans have introduced exotic species that turn biodiversity into monoculture. Fast-growing zebra mussels, for example, have outcompeted more than 15 species of native mussels in North America's Great Lakes and have damaged harbors and water-treatment plants. Native prairies are becoming dominated by single species (often genetically homogenous) of corn or wheat. Thanks to these developments, soils will erode and become unproductive - which, along with temperature change, will diminish agricultural yields. Meanwhile, with increased pollution and runoff, as well as reduced forest cover, ecosystems will no longer be able to purify water; and a shortage of clean water spells disaster. In many ways, oceans are the most vulnerable areas of all. As overfishing eliminates major predators, while polluted and warming waters kill off phytoplankton, the intricate aquatic food web could collapse from both sides. Fish, on which so many humans depend, will be a fond memory. As phytoplankton vanish, so does the ability of the oceans to absorb carbon dioxide and produce oxygen. (Half of the oxygen we breathe is made by phytoplankton, with the rest coming from land plants.) Species extinction is also imperiling coral reefs - a major problem since these reefs have far more than recreational value: They provide tremendous amounts of food for human populations and buffer coastlines against erosion. In fact, the global value of "hidden" services provided by ecosystems - those services, like waste disposal, that aren't bought and sold in the marketplace - has been estimated to be as much as $50 trillion per year, roughly equal to the gross domestic product of all countries combined. And that doesn't include tangible goods like fish and timber. Life as we know it would be impossible if ecosystems collapsed. Yet that is where we're heading if species extinction continues at its current pace. Extinction also has a huge impact on medicine. Who really cares if, say, a worm in the remote swamps of French Guiana goes extinct? Well, those who suffer from cardiovascular disease. The recent discovery of a rare South American leech has led to the isolation of a powerful enzyme that, unlike other anticoagulants, not only prevents blood from clotting but also dissolves existing clots. And it's not just this one species of worm: Its wriggly relatives have evolved other biomedically valuable proteins, including antistatin (a potential anticancer agent), decorsin and ornatin (platelet aggregation inhibitors), and hirudin (another anticoagulant). Plants, too, are pharmaceutical gold mines. The bark of trees, for example, has given us quinine (the first cure for malaria), taxol (a drug highly effective against ovarian and breast cancer), and aspirin. More than a quarter of the medicines on our pharmacy shelves were originally derived from plants. The sap of the Madagascar periwinkle contains more than 70 useful alkaloids, including vincristine, a powerful anticancer drug that saved the life of one of our friends. Of the roughly 250,000 plant species on Earth, fewer than 5 percent have been screened for pharmaceutical properties. Who knows what life-saving drugs remain to be discovered? Given current extinction rates, it's estimated that we're losing one valuable drug every two years. Our arguments so far have tacitly assumed that species are worth saving only in proportion to their economic value and their effects on our quality of life, an attitude that is strongly ingrained, especially in Americans. That is why conservationists always base their case on an economic calculus. But we biologists know in our hearts that there are deeper and equally compelling reasons to worry about the loss of biodiversity: namely, simple morality and intellectual values that transcend pecuniary interests. What, for example, gives us the right to destroy other creatures? And what could be more thrilling than looking around us, seeing that we are surrounded by our evolutionary cousins, and realizing that we all got here by the same simple process of natural selection? To biologists, and potentially everyone else, apprehending the genetic kinship and common origin of all species is a spiritual experience - not necessarily religious, but spiritual nonetheless, for it stirs the soul. But, whether or not one is moved by such concerns, it is certain that our future is bleak if we do nothing to stem this sixth extinction. We are creating a world in which exotic diseases flourish but natural medicinal cures are lost; a world in which carbon waste accumulates while food sources dwindle; a world of sweltering heat, failing crops, and impure water. In the end, we must accept the possibility that we ourselves are not immune to extinction. Or, if we survive, perhaps only a few of us will remain, scratching out a grubby existence on a devastated planet. Global warming will seem like a secondary problem when humanity finally faces the consequences of what we have done to nature: not just another Great Dying, but perhaps the greatest dying of them all.

#### Precautionary principle means any risk of this impact outweighs

Cerutti 7, Professor of Political Philosophy at the University of Florence, 2007  
(Furio Cerutti, “Global Challenges for Leviathan: A Political Philosophy of Nuclear Weapons and Global Warming.” Lexington Books. p. 31)

The second feature of the impasse is irreversibility, which is peculiar to the worst outcomes of global challenges and to some more ordinary issues of environmental policy as well, for example, the extinction of a species. We cannot completely undo the hole in the ozone layer (it will take decades to re­cover, even if we totally and immediately stop using chlorofluorocarbons); nor can we be confident that, after a large nuclear war, we would be able to reconstruct world society as we did after World War II. Not addressing the global challenges is not a risk that can be taken in the expectation that, if something goes wrong, we pay the price owed and go back to business as usual, or nearly as usual, as happened after Hiroshima and Chemobyl. The difference is-and this is the third aspect of the impasse-even greater, at least with regard to nuclear weapons: if something goes wrong, it could be not just "something," but everything and everyone that is doomed. Among the casualties there would probably be the very actor (humanity as a civilized species) who calculated and decided to take the risk (even if the calculation and decision were actually made by few leading members of our kind, a fact whose relevance we will soon assess). This is a circumstance that is not considered in any theory or philosophy of risk and is rather likely to outmaneuver this altogether. Whoever would counter this argument with reference to an established game like Russian roulette, should bear in mind that in this game 1. the player has something to gain, if s/he wins and does not lose her/his life (money, self-esteem, or social esteem because of her/his "courage"); 2. if s/he kills himself, s/he only kills her/himself and not others (a collective version of the game has not been proposed); 3. others (family, group) could even reap benefit from the money or the fame s/he may leave behind. None of these circumstances or opportunities apply to our risky game with lethal weapons. If we want to preserve our modem ability to rationally take risks, we should not deal with global and ultimate menaces as if they were risks to be taken. There is nothing to be gained by taking them. The unprecedented severity of the possible losses and the uncertainty in which these issues are enveloped request a different approach, which will be looked into in the last three chapters.

### Plan

#### Plan: The United States federal judiciary should restrict the authority of the President of the United States to indefinitely detain by ruling that Third Geneva Convention Article Five rights are self-executing for those combatants found in adherence to the Third Geneva Convention.

### Contention 3- Solvency

#### A selective interpretation is key- expansive interpretations anger our allies, and erode the credibility of the treaty

CSP 2 (Center for Security Policy, Excerpts from articles written by History Profs at Oxford & Sarah Lawrence and WSJ Editorial, Worried About Civilian Casualties in the War on Terror? Don’t Allow Terrorists to Masquerade as Non-Combattants, 2/13, http://www.centerforsecuritypolicy.org/2002/02/13/worried-about-civilian-casualties-in-the-war-on-terror-dont-allow-terrorists-to-masquerade-as-non-combattants-2/)

Fortunately, in recent days, two published items have helpfully clarified the compelling reasons for the U.Sgovernment to continue rejecting appeals to call the detainees POWsThe first is an excellent White Paper by the Foundation for Defense of Democracies co-authored by Andrew Apostolou, an historian at Oxford University, and Fredric Smoler, a professor of history at Sarah Lawrence CollegeThe second appeared as an editorial in the Wall Street Journal on 11 FebruaryBoth should be required reading for everyone participating in the debate over those incarcerated at GitmoExcerpts from The Geneva Convention Is Not a Suicide Pact by Andrew Apostolou and Fredric Smoler, Foundation for the Defense of Democracy Maintaining a strict distinction between lawful combatants (conscripts, professionals, militiamen and resistance fighters) and unlawful combatants (such as bandits and terrorists) not only protects the dignity of real soldiers, it safeguards civiliansBy defining who can be subject to violence and capture, the horror of war is, hopefully, focused away from civilians and limited to those willing put themselves in the line of fire, and seek no cover other than that acquired by military skill If we want soldiers to respect the lives of civilians and POWs, soldiers must be confident that civilians and prisoners will not attempt to kill them Civilians who abuse their non-combatant status are a threat not only to soldiers who abide by the rules, they endanger innocents everywhere by drastically eroding the legal and customary restraints on killing civiliansRestricting the use of arms to lawful combatants has been a way of limiting war’s savagery since at least the Middle AgesIn addition to the legal and military practicalities, there is an obvious moral danger in setting the precedent that captured terrorists are soldiers Not only does that elevate Mohammad Atta from a calculating murderer into a combatant, it puts the IRA, ETA and the Red Brigades on a par with the Marine Corps and the French ResistanceThe U.Sis trying hard to find the most humane way to wage, and win, this warThere is no precedent for this challenge and no perfect legal model that can be taken off the shelfYet it is precisely because the U.Stakes the Geneva Convention seriously, with both its protections for combatants and the line it draws between combatants and civilians, that the U.Sis being so careful in the use of the POW labelSome of the detainees may yet be termed POWs, but restricting the Geneva Convention’s protections to those who obey its rules is the only mechanism that can make the Geneva Convention enforceable Supreme Court Justice Robert Jackson once said that the U.S Constitution is not a suicide pact Neither is the Geneva Convention If well-meaning but misguided human rights activists turn the Geneva Convention into a terrorist’s charter and a civilian’s death warrant, the result will be that it will be universally ignored, with all that implies for the future of the international rule of law Geneva Conviction Review & Outlook The Wall Street Journal, 11 February 2002 If international human rights groups had the courage of their convictions, they’d applaud President Bush’s decision last week that the Geneva Convention applies to Taliban, but not al Qaeda, fighters captured by the U.SIn doing so, he is showing more respect for the Convention than his critics The core purpose of the Geneva Convention is to encourage the conduct of war in a way that minimizes violence to civiliansAnother aim is to encourage respect for basic human dignities — toward civilians, combatants and captivesYet another goal is to encourage warring powers to set up chains of command to ensure that combatants are held responsible for their actionsOne of the most important ways the Convention accomplishes these goals is to require that warring parties make a distinction between combatants and civiliansSoldiers are supposed to be subject to a chain of command, wear insignia and carry their arms openly; they are required to abide by the laws of war, which forbid attacks on civiliansIf they don’t, then they’re not soldiers; they are illegal combatants, not entitled to the protections of the Convention Breaking down this distinction — as the human rights groups wish to do — would have the effect of legitimatizing terrorists and giving them more incentives to hide among civilians and go after civilian targets.

#### Application of the conventions solves credibility, roadblocks and circumvention

Feldman 13 (Noah, professor of Constitutional and International Law at Harvard, “Obama Can Close Guantanamo: Here’s How,” Bloomberg, May 7, 2013, http://www.bloomberg.com/news/2013-05-07/obama-has-leverage-to-get-his-way-on-guantanamo.html)

To deepen the argument beyond executive power, the president is also in charge of foreign affairs. Keeping the detainees at Guantanamo is very costly to international relations, since most nations see the prison there as a reminder of the era of waterboarding and abuses at the Abu Ghraib prison in Iraq. Surely the president should be able to salvage the U.S.’s reputation without being held hostage by Congress?¶ The answer from Congress would have several elements. First, Congress has the power to enact a law defining who can come into the U.S., and the American public doesn’t want the detainees in the country either for trial or in a new Supermax facility. Second, Congress has the power to declare war and could conceivably assert that this should include the right to tell the president how to treat prisoners. Then there’s the power of the purse: Congress could make things difficult by declining to authorize funds for a sui table new stateside detention facility.¶ Faced with a standoff between two branches, the system allows an orderly answer: turning to the third branch, the courts, to resolve the conflict. Since 2003, the Supreme Court has taken an interest in Guantanamo, deciding on the statutory and constitutional rights extended there, and vetting procedures for detainee hearings and trials. Along the way, it has shown an equal-opportunity willingness to second-guess the executive -- as when President George W. Bush denied hearings to detainees -- and Congress, which passed a law denying habeas corpus to the prisoners.¶ How could the court get involved? The first step would be for the Obama administration to show some of the legal self-confidence it did in justifying drone strikes against U.S. citizens or in ignoring the War Powers Resolution in the Libya military intervention. Likewise, it could assert a right of control over where the detainees should be held. And if the president’s lawyers are worried about Bush-style assertions of plenary executive power (which, for the record, didn’t concern them when it came to drones or Libya), there is a path they could follow that would hew closer to their favored constitutional style.¶ Geneva Conventions¶ The reasoning could look like this: The president’s war power must be exercised pursuant to the laws of war embodied in the Geneva Conventions. And though Guantanamo once conformed to those laws -- as the administration asserted in 2009 -- it no longer does. The conditions are too makeshift to manage the continuing prisoner resistance, and indefinite detention in an indefinite war with no enemy capable of surrendering is pressing on the bounds of lawful POW detention.¶ Congress doesn’t have the authority to force the president to violate the laws of war. Yet by blocking Obama from closing Guantanamo, that is just what Congress is doing. What’s more, he has the inherent authority to ensure that we are complying with our treaty obligations.

#### Observer effect solves circumvention- this card assumes all your empirics and warrants

Deeks 10/21 (Ashley, Ashbley Deeks served as an attorney-adviser in the Office of the Legal Adviser at the U.S. Department of State. She worked on issues related to the law of armed conflict, including detention, the U.S. relationship with the International Committee of the Red Cross, conventional weapons, and the legal framework for the conflict with al-Qaeda. Courts Can Influence National Security Without Doing a Single Thing <http://www.newrepublic.com/article/115270/courts-influence-national-security-merely-watching>)

While courts rarely intervene directly in national security disputes, they nevertheless play a significant role in shaping Executive branch security policies. Let’s call this the “observer effect.” Physics teaches us that observing a particle alters how it behaves. Through psychology, we know that people act differently when they are aware that someone is watching them. In the national security context, the “observer effect” can be thought of as the impact on Executive policy-setting of pending or probable court consideration of a specific national security policy. The Executive’s awareness of likely judicial oversight over particular national security policies—an awareness that ebbs and flows—plays a significant role as a forcing mechanism. It drives the Executive to alter, disclose, and improve those policies before courts actually review them. Take, for example, U.S. detention policy in Afghanistan. After several detainees held by the United States asked U.S courts to review their detention, the Executive changed its policies to give detainees in Afghanistan a greater ability to appeal their detention—a change made in response to the pending litigation and in an effort to avoid an adverse decision by the court. The Government went on to win the litigation. A year later, the detainees re-filed their case, claiming that new facts had come to light. Just before the government’s brief was due in court, the process repeated itself, with the Obama Administration revealing another rule change that favored the petitioners. Exchanges between detainees and their personal representatives would be considered confidential, creating something akin to the attorney-client privilege. Thus we see the Executive shifting its policies in a more rights-protective direction without a court ordering it to do so.

# 2AC

## Case

### 2AC Drone Shift DA

#### Drone Shift Locked-In- false trade off

Jay Lefkowitz 13, senior lawyer and former domestic policy advisor to President George W. Bush and John O'Quinn, former DOJ official in the Bush administration, Financial Times, "Drones are no substitute for detention", March 4, www.ft.com/cms/s/0/dae6552c-84c2-11e2-891d-00144feabdc0.html#axzz2dZnIVyqb

Memo to all those critics of Guantánamo Bay: beware what you wish for. The nomination of John Brennan to head the CIA was put on hold, in no small part because of the growing debate over the use of drone strikes to kill suspected high-value al-Qaeda operatives and other alleged terrorists. President Barack Obama’s administration defends these strikes as “legal”, “ethical”, “wise” and even “humane”. Opponents characterise them as an aggrandisement of executive power in which the president becomes judge, jury and executioner. Sound familiar? It should – because it parallels the debate over the policy of detaining terrorist suspects at Guantánamo that punctuated most of George W. Bush’s time in office.¶ In the past four years, there has been a dramatic shift from detention to drone strikes as the tool of choice for removing al-Qaeda operatives from the field of battle. They have reportedly been used more than 300 times in Pakistan alone by the Obama administration, at least six times more than under Mr Bush. They inevitably come with collateral damage. Meanwhile, not one detainee has been transferred to Guantánamo, and the US has largely outsourced the running of the detention facility at Bagram air base to the Afghan government. Rather than capture enemies and collect valuable information, this administration prefers to pick them off. In short, every successful drone strike is another wasted intelligence-gathering opportunity.¶ Lost amid recent hysteria over the drone programme is the question of why – when detention produces little collateral damage – there appears to be little appetite for capturing and questioning suspects. The answer: it poses hard choices for an administration fearful of the criticism directed at its predecessors – one that in effect abandoned its efforts to close Guantánamo, and came round largely to defending Bush-era policies regarding detention, but only very reluctantly.¶ Detention requires the government to decide: when is a detainee no longer a threat? Should they be tried, and where? When, where and how can they can be repatriated? What intelligence can be shared with a court or opposing counsel? And, one of the hardest questions of all: what if you release a detainee and they take up arms again?¶ On top of that, it raises questions about intelligence-gathering, a primary mission at Guantánamo. Indeed, it has been widely reported that intelligence from detainees helped lead the US to Osama bin Laden. But how is it to be gathered? What techniques are permissible? Moreover, accusations of torture are easily made – it is literally part of the al-Qaeda play book to do so – but hard to debunk without compromising intelligence.¶ By contrast, drone strikes are easy. With a single key stroke, a suspected enemy is eliminated once and for all, with no fuss, no judicial second-guessing and no legions of lawyers poised to challenge detention. Indeed, one of the unintended consequences of the criticism of Guantánamo is to make drone strikes more attractive than detention for removing al-Qaeda operatives from the field of battle.¶ Yet, even as potential intelligence assets are bombed out of existence, the information trail from detainees captured 10 years ago grows cold. At the same time, al-Qaeda evolves and expands. What could we have learnt from even a handful of the high-value operatives killed in drone strikes?¶ We do not dispute that use of drones against al-Qaeda is a legitimate part of the president’s powers as commander-in-chief, and we have doubts about some proposals that purport to circumscribe that authority. But it is clear this administration is using them as a substitute for capture, detention and intelligence-gathering. The current debate highlights the need for Congress and the administration to refocus their efforts on developing a sensible, sustainable policy for detention of foreign enemy combatants – in which enemies are safely held far from US soil, intelligence is actively gathered and justice promptly administered through military courts – instead of taking the easy way out.

### 2AC AT: Rendition

#### Plan’s precedent solves—deference is the legal justification of rendition

Richards 06 [Nelson, JD Cand @ Berkeley, “The Bricker Amendment and Congress’s Failure to Check the Inflation of the Executive’s Foreign Affairs Powers,” 94 Calif. L. Rev. 175, January, LN//uwyo-ajl]

H. Jefferson Powell has posited that the Supreme Court has all but ceded the creation of a foreign affairs and national security legal framework to the OLC. Indeed, he goes so far as to assert that OLC legal opinions, not Supreme Court opinions, are the first sources the executive branch looks to when researching foreign affairs and national security law. Another set of John Yoo's writings support the validity of Powell's claim: the infamous memos declaring enemy combatants outside the protection of the Geneva Conventions. These, combined with the "Torture Memos," the expanding practice of "extraordinary rendition," and the current Administration's blase response to the Supreme Court's ruling that prisoners held at Guantanamo Bay are entitled to judicial access, have brought peculiar focus to the weight and seriousness of the OLC's legal authority. In the realm of foreign affairs, the Court has written off its obligation, claimed in Marbury, as the authoritative interpreter of the Constitution. While it may have reviewed some of the legal premises put forth in the above-mentioned OLC opinions, it has not curbed the OLC's claim to power over foreign affairs. The Court is more than capable of challenging the President. It has the power to send messages to the President, but it has done so only in two narrow contexts: when U.S. citizens are labeled enemy combatants (Hamdi v. Rumsfeld ) and when prisoners are held in U.S. facilities (Rasul v. Bush). The Hamdi and Rasul decisions, which amount to piecemeal restraints on the President's freedom to act, accord with the Court's general failure to check the executive's use of power abroad.

## T

### 2AC T-Treaties

#### We meet- Ruling on the Geneva Conventions is a restriction

Wolensky 9 (Spring, 2009¶ Chapman Law Review¶ 12 Chap. L. Rev. 721¶ LENGTH: 10495 words Comment: Discretionary Sentencing in Military Commissions: Why and How the Sentencing Guidelines in the Military Commissions Act Should be Changed\* \* This article was initially written and published when the state of military commissions were in flux. It reflects the events regarding military commissions up to and through April 2009. However, an important decision was made by President Obama in May of 2009. See William Glaberson, Obama Considers Allowing Please by 9/11 Suspects, N. Y. Times, June 6, 2009, at A1, A12. Obama decided to continue the use of military commissions under a new set of rules which provide more protections for detainees. Id. Due to the timing of publication, this decision is not incorporated in this article. Although Obama has decided to continue the military commissions, he has not finalized a set of rules. Id. This article serves as a recommendation for changes to the rules of the Military Commissions Act, which Congress and the Obama Administration should consider. NAME: Brian Wolensky\*\*)

One of the main treatises included in the Law of War is the Third Geneva Convention, which was enacted in 1949 to regulate the treatment of prisoners of war**.** [n31](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.719762.7040113385&target=results_DocumentContent&returnToKey=20_T17977639921&parent=docview&rand=1376739692140&reloadEntirePage=true#n31) The Law of War places restrictions on the way certain countries can act during times of war and the United States is bound by it when it establishes and uses military commissions. [n32](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.719762.7040113385&target=results_DocumentContent&returnToKey=20_T17977639921&parent=docview&rand=1376739692140&reloadEntirePage=true#n32)

#### Counter-interpretation- Judicial interpretation of treaty authority is the same as interpreting statutory authority

Morrison, professor of law at Minnesota, 2010

(Fred L., The Protection of Foreign Investment In The United States of America+, 58 Am. J. Comp. L. 437, Lexis)

**Treaties**, **like federal law**, **are** also **part of the supreme law of the land**. A formal treaty must be ratified with the advice and consent of two-thirds of the members of the Senate. n14 A treaty has the same status as a federal law, so a subsequently enacted federal law can supersede a treaty for domestic purposes, even though the treaty may still be binding as a matter of international law. n15 A properly ratified treaty can alter previous federal law and override state law, if it is self-executing. n16 The United States also enters into other international obligations called executive agreements. These instruments are either authorized by statute, n17 by the customary practice of the Congress, n18 or are based upon specific authorities expressly granted to the President by the Constitution. n19 They have essentially the same authority in domestic law as formal treaties. n20

Some treaties and executive agreements are, however, non-self-executing and do not become part of the domestic law of the United [\*440] States. Then a federal law must be adopted to implement them. n21 Whether a treaty is self-executing depends primarily on the language of the instrument and whether it can be implemented without providing further detail. n22 Thus a treaty that provided that "each High Contracting Party will pay the full market value of property taken" would be self-executing, while one that provided that "each High Contracting Party will enact legislation that will ensure the payment of full market value of property taken" would not be. n23 Similarly, a treatythat would require implementation by a court or agency would not be self-executing **until that court or agency was identified by statute**. In recent years the U.S. Supreme Court has found several international treaties not to be self-executing.

[NOTE: RELEVANT FOOTNOTES—]

n14. U.S. Const. art 2, § 2, cl. 2.

n15. See, Restatement of the Foreign Relations Law of the United States (third) § 115 (1987) (An act of Congress supersedes an earlier rule of international law or a provision of an international agreement as law of the United States if the purpose of the act is to supersede the earlier rule or provision is clear or if the act and the earlier rule or provision cannot be fairly reconciled.).

n16. According to the Supreme Court, **a** "**self executing treaty**" **needs** "**no domestic legislation**" **to** "**give it force of law in the U**nited **S**tates." Trans World Airlines, Inc. v. Franklin Mint Corp., 466 U.S. 243, 252 (1984). Chief Justice Marshall asserted that a self-executing **treaty** "**operates of itself**, **as** : **a rule for the Court**," "**equivalent to an act of the legislature**." Foster v. Neilson, 27 U.S. 253, 314 (1829).

n17. 1. U.S.C.A. § 112b (West 2009).

n18. Dames & Moore v. Regan, 453 U.S. 654 (1981).

n19. U.S. Const. art 2, § 2.

n20. See, e.g., Dames & Moore v. Regan, 453 US 654 (1981); U.S. v. Pink, 313 U.S. 203 (1942).

n21. Restatement of the Foreign Relations Law of the United States (third) § 111 ("Courts in the United States are bound to give effect to international law and to international agreements of the United States, except that a "non-self-executing" agreement will not be given effect as law in the absence of necessary implementation.").

n22. Medellin v. Texas, 128 S.Ct. 1346 (2008) ("**The interpretation of a treaty**, **like the interpretation of a statue**, begins with its text."); (**a treaty** is "equivalent to an act of the legislature," and hence self-executing, when it "**operates of itself without the aid of any legislative provision**.") (Citing Foster v. Neilson, 27 U.S. 253, 254 (1829).).

n23. Restatement (Third) of the Foreign Relations Law of the United States § 141 ("The United States and state A make a treaty providing that each of the parties shall take all necessary action to give full faith and credit to the final judgments rendered by courts in the other. On the basis of the 'necessary and proper' clause, the Congress has the power to enact legislation requiring federal and state courts to give full faith and credit to judgments of A.").

## Detainment

Legally wrong—not prisoners---means the CP doesn’t solve and is more confusing

Sullivan, 13

(NYT Ombuds, 4/12, ‘Targeted Killing,’ ‘Detainee’ and ‘Torture’: Why Language Choice Matters, http://publiceditor.blogs.nytimes.com/2013/04/12/targeted-killing-detainee-and-torture-why-language-choice-matters/)

And Gene Krzyzynski, a veteran copy editor at The Buffalo News and a longtime New York Times reader, objected to the continued use of the term “detainee” to describe suspected terrorists who are being held indefinitely at the United States naval base at Guantánamo Bay, calling it “accepting political spin at face value.” Mr. Krzyzynski wrote: To “detain” connotes brevity, as in, say, a traveler detained at a border or an airport for further Immigration, Customs, T.S.A. or similar questioning-searching-processing. I’d go as far as to call it language abuse in the context of Gitmo, especially for anyone who has a healthy respect for plain, clear English or who remembers “detention” in high school. “Prisoner” and its variants would be accurate, of course, given the unusually long time behind bars or in cages (historically unprecedented, actually, for any P.O.W.’s, if one accepts that we’re in a “war,” albeit undeclared by Congress). Seven years ago, the Pulitzer Prize-winning cartoonist Steve Breen of The San Diego Union-Tribune came up with what’s probably the most precise term of all: “infinitee.” I asked Mr. Shane, a national security reporter in the Washington bureau, and Philip B. Corbett, the associate managing editor for standards, to respond to some of these issues. Mr. Shane addressed Mr. Gort’s question on “targeted killings,” noting that editors and reporters have discussed it repeatedly. He wrote: “Assassination” is banned by executive order, but for decades that has been interpreted by successive administrations as prohibiting the killing of political figures, not suspected terrorists. Certainly most of those killed are not political figures, though arguably some might be. Were we to use “assassination” routinely about drone shots, it would suggest that the administration is deliberately violating the executive order, which is not the case. This administration, like others, just doesn’t think the executive order applies. (The same issue arose when Ronald Reagan bombed Libya, and Bill Clinton fired cruise missiles at Sudan and Afghanistan.) “Murder,” of course, is a specific crime described in United States law with a bunch of elements, including illegality, so it would certainly not be straight news reporting to say President Obama was “murdering” people. This leaves “targeted killing,” which I think is far from a euphemism. It denotes exactly what’s happening: American drone operators aim at people on the ground and fire missiles at them. I think it’s a pretty good term for what’s happening, if a bit clinical. Mr. Shane added that he had only one serious qualm about the term. That, he said, was expressed by an administration official: “It’s not the targeted killings I object to — it’s the untargeted killings.” The official “was talking about so-called ‘signature strikes’ that target suspected militants based on their appearance, location, weapons and so on, not their identities, which are unknown; and also about mistaken strikes that kill civilians.” On the matter of “detainee,” Mr. Corbett called it “a legitimate concern” and agreed that the term might not be ideal. **He said that it, not prisoner, was used because those being held “are in such an unusual situation – they are not serving a prison term, they are in an unusual status of limbo.”**

#### Its legally distinct in ILaw—key to ruling clarity

Hakimi, 9

(JD-University of Michgian, http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1123&context=articles)

In the parlance of the Geneva Conventions, the term "detention" has penal connotations. The Conventions use the term "internment" to refer to non-penal deprivations of liberty. See, e.g., Horst Fischer, Protection of Prisoners of War, in THE HANDBOOK OF HUMANITARIAN LAW IN ARMED CONFLICTS 321, 326 (Dieter Fleck ed., 1995).

#### Reps don’t shape reality --- we can make accurate observations about the world

Smolin 9 – David MSmolin, the Harwell GDavis Professor of Constitutional Law, Cumberland School of Law, Samford University, 2008/2009, “SYMPOSIUM: THE BABY MARKET: THE CIVIL WAR AS A WAR OF RELIGION: A CAUTIONARY TALE OF ENSLAVEMENT AND EMANCIPATION,” Cumberland Law Review, 39 CumbLRev187, plexis

While some perceive a disagreement among religious individuals, or among natural law adherents, as proof that there is no such thing as either religious truth or natural law, this is an odd inferenceWhen historians, scientists, and lawyers disagree about the facts, we do not infer that facts do not exist or are entirely arbitrary, relative, or subjectiveWhen lawyers, judges, and law professors disagree over the content of the law, we do not thereby come to believe that there is no such thing as law or that the content and interpretation of the law is entirely arbitrary, relative, or subjectiveThe insight that there are different ways to perceive an elephant, as the proverb about the blind men and the elephant teaches, does not mean that there is no elephant or that no "true" or "false" statements exist regarding the elephantn149 The fact that we are subjects does not require that truth be merely subjective, in the sense of being arbitrary and entirely created or altered at will; that we perceive as subjects does not negate the existence of that which we see. Reality has a way of hitting us in the face when we ignore or defy it, and this is true not only of car accidents, unhealthy eating habits, and poor financial choices, but also of an individual's or culture's fundamental moral choicesReligious disagreements, in short, do not disprove the existence of religious truth including religiously-based ethical truths.

### 2AC AT: Root Cause

#### No single cause of violence

Muro-Ruiz 2 (Diego, London School of Economics, “The Logic of Violence”, Politics, 22(2), p. 116)

Violence is, most of the time, a wilful choice, especially if it is made by an organisation. Individuals present the scholar with a more difficult case to argue for. Scholars of violence have now a wide variety of perspectives they can use – from sociology and political science, to psychology, psychiatry and even biology – and should escape easy judgements. However, the fundamental difficulty for all of us is the absence of a synthetic, general theory able of integrating less complete theories of violent behaviour. In the absence of such a general theory, researchers should bear in mind that violence is a complex and multifaceted phenomenon that resists mono-causal explanations. Future research on violence will have to take in account the variety of approaches, since they each offer some understanding of the logic of violence.

### 2AC AT: VTL

#### Value to life is inevitable, subjective, and they don’t control the link to it.

**Shermer, 8** –Michael, founder of the Skeptics Society and Editor of Skeptic Magazine, “"The Meaning of Life, the Universe, and Everything"”—Commencement Speech at Whittier College, 5/23/08 http://www.whittier.edu/News/Articles/2008CommencementSpeech.aspx

Purpose is personal, and there are countless activities people engage in to satisfy this deep-seated need.There are, however, a handful of powerful means by which we can bootstrap ourselves toward higher goals that have proven to be especially beneficial to both individuals and society. Science tells us that there are five things you can do to create meaning and purpose in your life. Here they are: 1. Love and family—the bonding and attachment to others increases one's sphere of moral inclusion to care about others as much as, if not more than, oneself. And here I shall take a moment to acknowledge the courage of the California State Supreme Court to increase the possibility of marital happiness to the tens of thousands of gays and lesbians in our state who wish to enjoy the same rights and liberties as everybody else. 2. Meaningful work and career—the sense of purpose derived from discovering one's passion for work drives people to achieve goals so far beyond the needs of themselves that they lift all of us to a higher plane, either directly through the benefits of the work, or indirectly through inspiration. And here let me shift my politics slightly rightward to tell you that not only is it okay to make a lot of money, it is a moral virtue to earn your way to wealth and prosperity, and that market capitalism—conjoined with liberal democracy—is the best hope for humanity's future that we have. 3. Recreation and play—it is vital to take time off from work, get away from the office, hang out with your friends, see new places, veg out, goof off, and explore new activities with no purpose other than their shear enjoyment. (In other words, build into your purpose no purpose at all.) 4. Social and political involvement—as a social primate species endowed by evolution with the moral emotions of guilt and pride, shame and joy, we have a social obligation to our local community and our larger society to participate in the process of determining how best we should live together, and a moral duty to reach out and help those in need. Research shows that those who do so are happier and more fulfilled people. 5. Transcendency and spirituality—a capacity unique to our species, as far as we can tell, that includes aesthetic appreciation, spiritual reflection, and transcendent contemplation through a variety of expressions such as art, music, dance, exercise, meditation, prayer, quiet contemplation, and religious revere, connecting us on the deepest level with that which is outside of ourselves.

## IRA CP

### AT: Endless War

#### No risk of endless warfare

Gray 7—Director of the Centre for Strategic Studies and Professor of International Relations and Strategic Studies at the University of Reading, graduate of the Universities of Manchester and Oxford, Founder and Senior Associate to the National Institute for Public Policy, formerly with the International Institute for Strategic Studies and the Hudson Institute (Colin, July, “The Implications of Preemptive and Preventive War Doctrines: A Reconsideration”, <http://www.ciaonet.org/wps/ssi10561/ssi10561.pdf>)

7. A policy that favors preventive warfare expresses a futile quest for absolute security. It could do so. Most controversial policies contain within them the possibility of misuse. In the hands of a paranoid or boundlessly ambitious political leader, prevention could be a policy for endless warfare. However, the American political system, with its checks and balances, was designed explicitly for the purpose of constraining the executive from excessive folly. Both the Vietnam and the contemporary Iraqi experiences reveal clearly that although the conduct of war is an executive prerogative, in practice that authority is disciplined by public attitudes. Clausewitz made this point superbly with his designation of the passion, the sentiments, of the people as a vital component of his trinitarian theory of war. 51 It is true to claim that power can be, and indeed is often, abused, both personally and nationally. It is possible that a state could acquire a taste for the apparent swift decisiveness of preventive warfare and overuse the option. One might argue that the easy success achieved against Taliban Afghanistan in 2001, provided fuel for the urge to seek a similarly rapid success against Saddam Hussein’s Iraq. In other words, the delights of military success can be habit forming. On balance, claim seven is not persuasive, though it certainly contains a germ of truth. A country with unmatched wealth and power, unused to physical insecurity at home—notwithstanding 42 years of nuclear danger, and a high level of gun crime—is vulnerable to demands for policies that supposedly can restore security. But we ought not to endorse the argument that the United States should eschew the preventive war option because it could lead to a futile, endless search for absolute security. One might as well argue that the United States should adopt a defense policy and develop capabilities shaped strictly for homeland security approached in a narrowly geographical sense. Since a president might misuse a military instrument that had a global reach, why not deny the White House even the possibility of such misuse? In other words, constrain policy ends by limiting policy’s military means. This argument has circulated for many decades and, it must be admitted, it does have a certain elementary logic. It is the opinion of this enquiry, however, that the claim that a policy which includes the preventive option might lead to a search for total security is **not at all convincing**. Of course, folly in high places is always possible, which is one of the many reasons why popular democracy is the superior form of government. It would be absurd to permit the fear of a futile and dangerous quest for absolute security to preclude prevention as a policy option. Despite its absurdity, this rhetorical charge against prevention is a stock favorite among prevention’s critics. It should be recognized and dismissed for what it is, a debating point with little pragmatic merit. And strategy, though not always policy, **must be nothing if not pragmatic**.

# 1AR

### Solve terror-drones

#### If they win drone shift, we solve the turn

**Anderson ’13** [Kenneth, professor of international law at American University and a member of the Task Force on National Security and Law at the Hoover Institution, “The Case for Drones,” Commentary135.6 (Jun 2013): 14-23, Proquest, online]

ARE DRONE TECHNOLOGY AND TARGETED KILLING really so strategically valuable? The answer depends in great part not on drone technology, but on the quality of the intelligence that leads to a particular target in the first place. The drone strike is the final kinetic act in a process of intelligence-gathering and analysis. The success- and it is remarkable success- of the CIA in disrupting al-Qaeda in Pakistan has come about not because of drones alone, but because the CIA managed to establish, over years of effort, its own ground-level, human-intelligence networks that have allowed it to identify targets independent of information fed to it by Pakistan's intelligence services. The quality of drone-targeted killing depends fundamentally on that intelligence, for a drone is not much use unless pointed toward surveillance of a particular village, area, or person.¶ It can be used for a different kind of targeting altogether: against groups of fighters with their weapons on trucks headed toward the Afghan border. But these so-called signature strikes are not, as sometimes represented, a relaxed form of targeted killing in which groups are crudely blown up because nothing is known about individual members. Intelligence assessments are made, including behavioral signatures such as organized groups of men carrying weapons, suggesting strongly that they are "hostile forces" (in the legal meaning of that term in the U.S. military's Standing Rules of Engagement). That is the norm in conventional war.¶ Targeted killing of high-value terrorist targets, by contrast, is the end result of a long, independent intelligence process. What the drone adds to that intelligence might be considerable, through its surveillance capabilities- but much of the drone's contribution will be tactical, providing intelligence that assists in the planning and execution of the strike itself, in order to pick the moment when there might be the fewest civilian casualties.¶ Nonetheless, in conjunction with high-quality intelligence, drone warfare offers an unparalleled means to strike directly at terrorist organizations without needing a conventional or counterinsurgency approach to reach terrorist groups in their safe havens. It offers an offensive capability, rather than simply defensive measures, such as homeland security alone. Drone warfare offers a raiding strategy directly against the terrorists and their leadership.¶ If one believes, as many of the critics of drone warfare do, that the proper strategies of counterterrorism are essentially defensive- including those that eschew the paradigm of armed conflict in favor of law enforcement and criminal law- then the strategic virtue of an offensive capability against the terrorists themselves will seem small. But that has not been American policy since 9/11, not under the Bush administration, not under the Obama administration- and not by the Congress of the United States, which has authorized hundreds of billions of dollars to fight the war on terror aggressively. The United States has used many offensive methods in the past dozen years: Regime change of states offering safe havens, counterinsurgency war, special operations, military and intelligence assistance to regimes battling our common enemies are examples of the methods that are just of military nature.¶ Drone warfare today is integrated with a much larger strategic counterterrorism target- one in which, as in Afghanistan in the late 1990s, radical Islamist groups seize governance of whole populations and territories and provide not only safe haven, but also an honored central role to transnational terrorist groups. This is what current conflicts in Yemen and Mali threaten, in counterterrorism terms, and why the United States, along with France and even the UN, has moved to intervene militarily. Drone warfare is just one element of overall strategy, but it has a clear utility in disrupting terrorist leadership. It makes the planning and execution of complex plots difficult if only because it is hard to plan for years down the road if you have some reason to think you will be struck down by a drone but have no idea when. The unpredictability and terrifying anticipation of sudden attack, which terrorists have acknowledged in communications, have a significant impact on planning and organizational effectiveness.

### 2AC Convictions Link

#### We’d convict them

Alexander 13 (Janet Cooper - Frederick I. Richman Professor of Law, Stanford Law School) 2013 “ THE LAW-FREE ZONE AND BACK AGAIN” 2013 U. Ill. L. Rev. 551, Lexis

The proponents of military commissions have insisted on them on the grounds that regular trials "won't work" because evidence obtained by coercion or torture is inadmissible, because juries are unpredictable, or because regular trials are not harsh enough or dignify terrorists too much by affording them the same rights as citizens. It is difficult to credit the arguments for using military commissions, and using them exclusively, for offenses that are also federal crimes. Hundreds of terrorism-related criminal convictions have been obtained in federal court, including well-known cases against John Walker Lindh, Zacharias Moussaoui, Richard Reid, Umar Farouk Abdulmutallab, and Ahmed Khalfan Ghailani, the latter of whom was convicted of the 1998 U.S. embassy bombings. Contrary to the fearmongering over the impossibility of bringing successful prosecutions in federal court because of difficulties with classified information, befuddled juries, or terrorist-sympathizing judges, from 2001 to 2009, the Justice Department brought roughly 850 terrorism-related prosecutions in federal court, obtaining 523 convictions. There was no need to invent and litigate new procedures for such cases.\\

#### Guantanamo doesn’t provide intel to stop terror but it does increase the chances of it

Greenberg 7 (Karen- Director of the Center on National Security and permanent member of the Council on Foreign Relations while Research for this article was contributed by Center on Law and Security Research Fellow Francesca Laguardia, February, “8 Reasons to Close GUANTANAMO NOW”, lexis)

#5 It undermines intelligence efforts Despite the tens of thousands of hours of interrogation that have taken place at Guantanamo, very little worthwhile intelligence has been extracted. What information is left is now five years old, and it is doubtful that any Guantanamo prisoner has knowledge of a ticking bomb or a current plot. And while the government maintains that detainees can provide a primer on jihad networks and al-Qaeda's strategic goals, at this point, the information is likely out of date. Besides, what can be extracted from individuals who, for the most part, were the wrong people to imprison in the first place. According to a report by Seton Hall School of Law, 86 percent of detainees were arrested by Pakistan or the Northern Alliance and "handed over to the United States at a time when the United States offered large bounties for capture of suspected enemies." Moreover, Guantanamo's very existence has alienated potential inside sources of information. Two years ago, at a Center on Law and Security conference in Florence, Italy, two of Europe's leading terrorism magistrates pointed out that attempts to infiltrate terrorist cells had become much more difficult in the wake of rising public anger over Guantanamo. #6 It creates new enemies Guantanamo has fomented that which it was created to combat -- anti-American extremism and jihad. Guantanamo is just the public face of a global network of "ghost prisons." According to Human Rights First (formerly the Lawyers' Committee for Human Rights), the United States has acknowledged 20 detention centers in Afghanistan, in addition to the bases at Bagram and Kandahar; as a prison near the Afghan borde

ases 2, 8, 12, 19, 23, 30, 42), all were nothing more than **wild fantasies,** far beyond the plotters’ capacities however much they may have been encouraged in some instances by FBI operatives. Indeed, in many of the cases, target selection is effectively a random process, lacking guile and careful planning. Often, it seems, targets have been chosen almost capriciously and simply for their convenience. For example, a would-be bomber targeted a mall in Rockford, Illinois, because it was nearby (case 21). Terrorist plotters in Los Angeles in 2005 drew up a list of targets that were all within a 20-mile radius of their shr in Kohat, Pakistan; and the al Jafr prison in Jordan. This suggests that Guantanamo may have been a smokescreen for more inhumane, less legal incarceration and interrogation practices elsewhere. According to Armando Spataro, a senior Italian prosecutor known for his work on global terrorism, Guantanamo and the U.S. renditions policy "is extremely damaging to all our efforts to integrate our Muslim communities." Muslims around the world are asking why there is so little international opposition to the U.S. policy of imprisonment without due process. The collateral damage of Guantanamo -- the incarceration of nearly 800 individuals who are denied legal rights, who regularly report being abused and who face a lifetime of imprisonment -- is incalculable. It breeds new angers and resentments, and thus new enemies.

### Drone Shift

#### No link uniqueness- we use drones when capturing is impossible now- and there wouldn’t be a shift

Chesney 11 (Robert- Charles I. Francis Professor in Law at the UT School of Law as well as a non-resident Senior Fellow at Brookings, "Examining the Evidence of a Detention-Drone Strike Tradeoff", October 17, www.lawfareblog.com/2011/10/examining-the-evidence-of-a-detention-drone-strike-tradeoff/)

Yesterday Jack linked to this piece by Noah Feldman, which among other things advances the argument that the Obama administration has resorted to drone strikes at least in part in order to avoid having to grapple with the legal and political problems associated with military detention: Guantanamo is still open, in part because Congress put obstacles in the way. Instead of detaining new terror suspects there, however, Obama vastly expanded the tactic of targeting them, with eight times more drone strikes in his first year than in all of Bush’s time in office. Is there truly a detention-drone strike tradeoff, such that the Obama administration favors killing rather than capturing? As an initial matter, the numbers quoted above aren’t correct according to the New America Foundation database of drone strikes in Pakistan, 2008 saw a total of 33 strikes, while in 2009 there were 53 (51 subsequent to President Obama’s inauguration). Of course, you can recapture something close to the same point conveyed in the quote by looking instead to the full number of strikes conducted under Bush and Obama, respectively. There were relatively few drone strikes prior to 2008, after all, while the numbers jump to 118 for 2010 and at least 60 this year (plus an emerging Yemen drone strike campaign). But what does all this really prove? Not much, I think. Most if not all of the difference in drone strike rates can be accounted for by specific policy decisions relating to the quantity of drones available for these missions, the locations in Pakistan where drones have been permitted to operate, and most notably whether drone strikes were conditioned on obtaining Pakistani permission. Here is how I summarize the matter in my forthcoming article on the legal consequences of the convergence of military and intelligence activities: According to an analysis published by the New America Foundation, two more drone strikes in Pakistan’s FATA region followed in 2005, with at least two more in 2006, four more in 2007, and four more in the first half of 2008.[1] The pattern was halting at best. Yet that soon changed. U.S. policy up to that point had been to obtain Pakistan’s consent for strikes,[2] and toward that end to provide the Pakistani government with advance notification of them.[3] But intelligence suggested that on some occasions “the Pakistanis would delay planned strikes in order to warn al Qaeda and the Afghan Taliban, whose fighters would then disperse.”[4] A former official explained that in this environment, it was rare to get permission and not have the target slip away: “If you had to ask for permission, you got one of three answers: either ‘No,’ or ‘We’re thinking about it,’ or ‘Oops, where did the target go?”[5] Declaring that he’d “had enough,” Bush in the summer of 2008 “ordered stepped-up Predator drone strikes on al Qaeda leaders and specific camps,” and specified that Pakistani officials going forward should receive only “‘concurrent notification’…meaning they learned of a strike as it was underway or, just to be sure, a few minutes after.”[6] Pakistani permission no longer was required.[7] The results were dramatic. The CIA conducted dozens of strikes in Pakistan over the remainder of 2008, vastly exceeding the number of strikes over the prior four years combined.[8] That pace continued in 2009, which eventually saw a total of 53 strikes.[9] And then, in 2010, the rate more than doubled, with 188 attacks (followed by 56 more as of late August 2011).[10] The further acceleration in 2010 appears to stem at least in part from a meeting in October 2009 during which President Obama granted a CIA request both for more drones and for permission to extend drone operations into areas of Pakistan’s FATA that previously had been off limits or at least discouraged.[11] There is an additional reason to doubt that the number of drone strikes tells us much about a potential detention/targeting tradeoff: most of these strikes involved circumstances in which there was no feasible option for capturing the target. These strikes are concentrated in the FATA region, after all. Having said all that: it does not follow that there is no detention-targeting tradeoff at work. I’m just saying that drone strikes in the FATA typically should not be understood in that way (though there might be limited exceptions where a capture raid could have been feasible). Where else to look, then, for evidence of a detention/targeting tradeoff? Bear in mind that it is not as if we can simply assume that the same number of targets emerge in the same locations and circumstances each year, enabling an apples-to-apples comparison. But set that aside. First, consider locations that (i) are outside Afghanistan (since we obviously still do conduct detention ops for new captures there) and (ii) entail host-state government control over the relevant territory plus a willingness either to enable us to conduct our own ops on their territory or to simply effectuate captures themselves and then turn the person(s) over to us. This is how most GTMO detainees captured outside Afghanistan ended up at GTMO. Think Bosnia with respect to the Boumediene petitioners, Pakistan’s non-FATA regions, and a variety of African and Asian states where such conditions obtained in years past. In such locations, we seem to be using neither drones nor detention. Rather, we either are relying on host-state intervention or we are limiting ourselves to surveillance. Very hard to know how much of each might be going on, of course. If it is occurring often, moreover, it might reflect a decline in host-state willingness to cooperate with us (in light of increased domestic and diplomatic pressure from being seen to be responsible for funneling someone into our hands, and the backdrop understanding that, in the age of wikileaks, we simply can’t promise credibly that such cooperation will be kept secret). In any event, this tradeoff is not about detention versus targeting, but something much more complex and difficult to measure.