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## Relations/RoL Impact Is New

### Contention 1- Rule of Law

#### Afghanistan is adopting detention policies modeled off US law- this makes instability inevitable

Rodgers 12 (Chris Rogers is a human rights lawyer for the Open Society Foundations specializing in human rights and conflict in Afghanistan and Pakistan, May 14, “Karzai's bid for a dictatorial detention law”, http://afpak.foreignpolicy.com/posts/2012/05/14/karzais\_bid\_for\_a\_dictatorial\_detention\_law)

As part of the agreement to transfer control of Bagram, the Afghan government is creating the authority to hold individuals without charge or trial for an indefinite period of time on security grounds-a power it has never before said it needed. While such "administrative detention" regimes are permissible under the laws of war, this new detention power is being established in order to hand over a U.S. detention facility, not because changes in the conflict have convinced Afghan officials that it is necessary. A surge in U.S. detention operations like night raids has driven the prison population to over 3,000 detainees, most of whom the United States lacks evidence against for prosecution under Afghans law. Because the Afghan constitution, like the United States', protects individuals from being detained without charge or trial, the Afghan government needs a new detention law, which is now being modeled on deeply problematic U.S. detention policies and practices. As a result, Bagram's real legacy may be the establishment of a detention regime that will be ripe for abuse in a country with pervasive corruption and weak rule of law. Despite potentially far-reaching consequences, the development of this new detention power has been hidden from public view. When I met with leading Afghan lawyers and civil society organizations in Kabul several weeks ago, few knew that the government was proposing to create a new, non-criminal detention regime. Their reaction was disbelief and dismay. None had even seen a copy of the proposed regime, which the Afghan government has not made public and is trying to adopt by presidential fiat. The Open Society Foundations recently obtained a copy of the proposed detention regime, and after review, we have found what it details deeply troubling. The proposed changes leave open critical questions about the nature and scope of this proposed detention regime, which if left unanswered make it ripe for abuse. Who can be held in administrative detention and for how long? Where will it apply? When will the government cease to have this power? How will the government ensure it will not be abused to imprison the innocent or suppress political opposition? Most alarming is the failure to address the serious, long-term risks posed by such a regime. From apartheid South Africa to modern day China, administrative detention regimes adopted on security grounds have too often been used as tools of repression. In Egypt, the former government used administrative detention for decades to commit gross human rights violations and suppress political opposition, relying on a state of emergency declared in 1958, and nominally lifted only after last year's revolution. Across the border in Pakistan, the draconian Frontier Crimes Regulations are another stark reminder of the long, dark shadow that such legal regimes can cast. The ongoing imposition of these British, colonial-era laws, which among other things legalize collective punishment and detention without trial, are cited by many as a key driver of the rise of militancy in the tribal areas of Pakistan. But there is still time for the United States to avoid this legacy in Afghanistan. If the Afghan government cannot be dissuaded from adopting an administrative detention regime, then the United States should urge the Afghan government to include provisions that limit its scope and reduce its vulnerability to abuse. First, a ‘sunset' provision should be adopted, which would impose a time limit on such powers, or require an act by the Afghan Parliament to extend their duration. Second, the regime should be limited to individuals currently held by the United States at Bagram prison. There is no clear reason why the handover of Bagram detainees requires the creation of a nation-wide administrative detention regime. More generally, the scope of who can be detained must be clearly defined and limited. Third, detainees must have right to counsel as well as access to the evidence used against them in order to have a meaningful opportunity to challenge their detention-a fundamental right in international law. At present it seems the government will follow the well-documented due process shortfalls of the U.S. model. The United States and its Afghan partners must be honest about the serious, long-term risks of establishing an administrative detention regime in Afghanistan-particularly one that lacks clear limits and is democratically unaccountable. Protection from arbitrary or unlawful deprivation of life or liberty is at the constitutional core of the United States, and is essential to lasting stability and security in Afghanistan. Living up to the President's promise of responsibly ending the war in Afghanistan requires defending, not betraying this principle.

#### Detention policy has prevented rule of law restoration in Afghanistan- judicial modeling makes US action key

ICG 10 (International Crisis Group, November 17, “REFORMING AFGHANISTAN’S BROKEN JUDICIARY”, http://www.crisisgroup.org/~/media/Files/asia/south-asia/afghanistan/195%20Reforming%20Afghanistans%20Broken%20Judiciary.ashx)

U.S. detention policy has frequently been cited by Afghan and international legal experts as one of the chief obstacles to restoring balance to the Afghan justice system and citizens’ faith in the rule of law.233 The operation of parallel U.S.-controlled prisons has been problematic from the start. Thousands of Afghans have been detained since the start of Operation Enduring Freedom in 2001 without recourse to trial or the means to challenge their detention. Abuse of prisoners at the U.S.-run Bagram Theatre Internment Facility in the early years of its operation under the Bush administration has been well documented, including the use of harsh interrogation techniques that resulted in the deaths of two Afghans.234 Extrajudicial detentions at Bagram have eroded support for foreign troops and for many Afghans – Pashtuns in particular – stand as a symbol of oppression. Like its sister facility at the U.S. military base in Guantanamo, Cuba, the Bagram prison has provided much grist for Taliban propaganda mills.235 U.S. officials under the Obama administration appear to have begun to recognise that extrajudicial detentions have negatively impacted Afghan perceptions of the rule of law. In January 2009, the U.S. government announced plans to close the facility at Guantanamo and to re-evaluate its detainee programs overall. A U.S. federal district court ruling in April 2009 concluding that non-Afghan detainees held at the Bagram facility have a right to challenge their detention in American courts has hastened the need to find solutions to the legal conundrum posed by the extrajudicial status of prisoners at Bagram.236 In September 2009, the U.S. Department of Defense adopted a new framework for evaluating the status of detainees in U.S. facilities in Afghanistan. Responsibility for detainee policy and operations now falls to Task Force 435, an interagency unit under joint military-civilian leadership whose mission is to bring detention and rule of law practices in line with U.S. strategic goals in Afghanistan. The old Bagram facility has since been replaced by the more modern Detention Facility in Parwan (DFIP), which opened in 2009 at the edge of the Bagram military base. Under this new policy, new detainee review board (DRB) procedures were adopted to bring detention practices in Afghanistan more in line with U.S. and international law. They replaced the Unlawful Enemy Combatant Review Boards, which had been generally deemed inadequate because they afforded detainees few, if any, opportunities to challenge their arrest or to review evidence in cases brought against them in closed hearings. Under the new procedures, a military panel determines if a detainee has been properly captured and poses a future threat to the Afghan government or international security forces. Although the U.S. government is careful not to characterise the proceedings as legal or adversarial in the sense that a trial might be, detainees are allowed to some extent to present their version of events with the help of a U.S.-assigned “personal representative”. Hundreds of detainees have had their cases reviewed since the new review procedures were adopted and a number have been released because of insufficient evidence that they posed a threat to the Afghan government.237 These new guidelines are an important step forward, but they are far from replicating internationally recognised fair trial standards. A number of other actions must be taken to make U.S. detention policy more transparent, humane and fair and to bring it in line with international law. Specifically, U.S. investigation and intelligence gathering standards must be improved and the review board process must incorporate a more vigorous mechanism that allows detainees to review and challenge evidence brought against them, including measures for classified evidence. Transition to Afghan control of specially designated detainees will also necessitate a re-evaluation of classification procedures both at the point of capture and across agencies – both Afghan and U.S. The current process of declassifying information is far too cumbersome and there is a demand for greater clarity on the rules of transfer of information from coalition and Afghan sources to Afghan government sources.238 Changes in declassification policy will necessitate a serious review of current Afghan law and investigative practices and procedures employed by the Afghan National Directorate of Security and other security organs. In January 2010, the U.S. and Afghan government signed a memorandum of understanding calling for the DFIP to pass from U.S. to Afghan control in July 2011. By that time, review proceedings should be conducted entirely by Afghan judges and prosecutors; an Afghan judge in the Parwan provincial courts has already reviewed a number of detainee cases.239 The U.S. has set up a rule of law centre at the new facility with a view to training Afghan legal professionals to build cases against the roughly 1,100 detainees housed at the prison. The training and transition are important first steps toward dismantling the parallel legal systems that have co-existed uneasily in Afghanistan since the start of the U.S. military engagement. The transition could entail some tricky procedural challenges in terms of potential conflicts between Afghan courts and U.S. military authorities over the danger posed by “highrisk” detainees.240 This and other issues should be clarified before the transition in 2011.

#### Starting with US policy is key- it will restore credibility in our system and allows us to improve the Afghani justice system

Eviatar 12 (Daphne Eviatar Law and Security Program Human Rights First, 1-9, “The Latest Skirmish in Afghanistan: Hate to Say We Told You So”, http://www.humanrightsfirst.org/2012/01/09/the-latest-skirmish-in-afghanistan-hate-to-say-we-told-you-so/)

Responsibility begins with due process. As we wrote in our report in May, based on our observations of the hearings given to detainees at the U.S.-run detention facility at Bagram: “the current system of administrative hearings provided by the U.S. military fails to provide detainees with an adequate opportunity to defend themselves against charges that they are collaborating with insurgents and present a threat to U.S. forces.” As a result, the U.S. hearings “fall short of minimum standards of due process required by international law.” For President Karzai, that’s an argument that the U.S. should immediately turn the thousands of detainees it’s holding over to the government of Afghanistan. But that would do little to solve the problem. TheUnited Nations reported in October that Afghanistan’s intelligence service systematically tortures detainees during interrogations. The U.S. government cannot hand prisoners over to the Afghans if they’re likely to be tortured, according to its obligations under international law. And unfortunately, as we also noted in our report, the Afghan justice system, although improving with the growing introduction of defense lawyers, is still hardly a model of due process. Still, unlike the United States, at least Afghan law does not permit detention without criminal charge, trial and conviction. The United States hasn’t exactly proven itself the best model for the Afghan justice system. Restoring U.S. credibility is going to be key to our ability to withdraw from Afghanistan without it becoming a future threat to U.S. national security. The U.S. government can’t credibly insist that the Afghans improve their justice system and treatment of detainees if the U.S. military doesn’t first get its own detention house in order. Whether for the sake of international law, U.S. credibility, or merely to improve relations with the Karzai government, upon which U.S. withdrawal from Afghanistan depends, the U.S. military needs to start providing real justice to the thousands of prisoners in its custody.

#### Judicial action is key to international credibility and restoring the rule of law

Hecht, 05 (Daryl, Judge for the Iowa Court of Appeals, 50 S.D. L. REV. 78, lexis)  
Americans proclaim with some justification that liberty and human rights are among the crown jewels of their national identity. Claiming the status of human rights watchdogs around the globe, representatives of the United States government commonly criticize human rights failures of other nations. If such criticism is to be taken seriously and carry force abroad when well-founded, the United States government must heed its own admonitions. It should accord due process not only to all persons detained within its borders but also to those it imprisons offshore at locations under the exclusive control of the United States. Affirmation by federal courts of the liberty interests of alien prisoners imprisoned on Guantanamo would give important symbolic assurance to citizens of the United States, foreign nationals, friends, and foes that liberty is a cherished universal human right that does not persist or perish according to technicalities such as geographic boundaries. As they clarify the nature and extent of process due the Guantanamo prisoners, federal courts will consider the Eisentrager Court's concerns about the prospect that thorough judicial review might disrupt war efforts. [288](https://www.lexis.com/research/retrieve?_m=938acabc8d208f2c7d5fa60db492ee72&docnum=98&_fmtstr=FULL&_startdoc=51&wchp=dGLbVzb-zSkAt&_md5=eeae0c139818f7b3acae88f6aed6f150&focBudTerms=supreme%20court%20should%20w/30%20guantanamo%20and%20deference%20and%20date%3E2001&focBudSel=all#n288) The realities [\*111] of war may justify reasonable restriction of the process available to prisoners of war during times of armed conflict and justify some judicial deference allowing the executive to conduct military campaigns with a minimum of distraction. However, the risk that the war effort will be disrupted by judicial or administrative review of the grounds for detention are diminished in these cases because the prison is distant from the present theaters of war. Modern technology will facilitate the presentation of evidence at remote sites in ways not contemplated by the Court in the Eisentrager era and will render unpersuasive many of the Executive's war-powers arguments against meaningful judicial review. The recent commencement of administrative hearings conducted by the Combatant Status Review Tribunals and the discharge of some of the Guantanamo prisoners are positive developments. It remains to be seen whether federal courts will conclude these administrative tribunals within the Executive branch allow for meaningful review of the prisoners' status. Although passage of the Military Tribunals Act of 2003 would, especially with suggested amendments, alleviate many of the most egregious legal infirmities associated with the ongoing detention of uncharged prisoners, a timely legislative solution to the problem through the action of the political branches of government is unlikely. The best and perhaps only prospect for meaningful protection of the uncharged detainees' rights against indefinite imprisonment lies in the litigation pending in federal courts. The remaining uncharged prisoners have languished too long in prison without charge or access to counsel, and the courts must be vigilant to prevent the continuation of arbitrary detentions in violation of international humanitarian and human rights principles. Alien prisoners ought not be disqualified from fundamental constitutional protections solely as a consequence of the government's choice of an off-shore location for their confinement. If deprivation of aliens' property interests may legally be imposed within the United States only in conformity with due process principles, the liberty interests of aliens held on Guantanamo should receive no less protection against state action. It should be understood that arguments in favor of meaningful review of the status of the Guantanamo prisoners is not an argument for the immediate release of all aliens imprisoned on Guantanamo. The evidence presented in habeas proceedings or in fair administrative tribunal hearings may establish reasonable grounds to believe some petitioners are properly designated and detained as enemy combatants. Under international humanitarian law, they may be detained during the conflict, but it seems evident that the GPW did not contemplate perpetual imprisonment without charge during an interminable war. [289](https://www.lexis.com/research/retrieve?_m=938acabc8d208f2c7d5fa60db492ee72&docnum=98&_fmtstr=FULL&_startdoc=51&wchp=dGLbVzb-zSkAt&_md5=eeae0c139818f7b3acae88f6aed6f150&focBudTerms=supreme%20court%20should%20w/30%20guantanamo%20and%20deference%20and%20date%3E2001&focBudSel=all#n289) The [\*112] evidence offered in a meaningful review process may support war crimes charges against some of the prisoners who will be tried before military commissions under the regulations adopted by the Department of Defense. If the evidence establishes that still other prisoners have, as they allege, been improvidently incarcerated, they should be promptly discharged. In Korematsu v. United States, [290](https://www.lexis.com/research/retrieve?_m=938acabc8d208f2c7d5fa60db492ee72&docnum=98&_fmtstr=FULL&_startdoc=51&wchp=dGLbVzb-zSkAt&_md5=eeae0c139818f7b3acae88f6aed6f150&focBudTerms=supreme%20court%20should%20w/30%20guantanamo%20and%20deference%20and%20date%3E2001&focBudSel=all#n290) the Court deferred during a declared war to the Executive's decision to evacuate persons of Japanese ancestry from locations on the west coast and relocate them in internment camps without the benefit of charges or hearings. That decision has since been widely criticized, and at least one member of the Court later publicly regretted his vote to defer to the military's judgment of necessity. [291](https://www.lexis.com/research/retrieve?_m=938acabc8d208f2c7d5fa60db492ee72&docnum=98&_fmtstr=FULL&_startdoc=51&wchp=dGLbVzb-zSkAt&_md5=eeae0c139818f7b3acae88f6aed6f150&focBudTerms=supreme%20court%20should%20w/30%20guantanamo%20and%20deference%20and%20date%3E2001&focBudSel=all#n291) In 1976, as part of the celebration of the Bicentennial of the Constitution, President Gerald Ford issued a proclamation acknowledging that the internment of the Japanese Americans, many of whom were citizens, during World War II was wrong and calling upon the United States to "resolve that this kind of action shall never again be repeated." [292](https://www.lexis.com/research/retrieve?_m=938acabc8d208f2c7d5fa60db492ee72&docnum=98&_fmtstr=FULL&_startdoc=51&wchp=dGLbVzb-zSkAt&_md5=eeae0c139818f7b3acae88f6aed6f150&focBudTerms=supreme%20court%20should%20w/30%20guantanamo%20and%20deference%20and%20date%3E2001&focBudSel=all#n292) Federal courts now have the opportunity to revisit the appropriate balance between precious civil liberties and measures properly taken in furtherance of national security during times of crisis. As the proper balance is recalibrated to fit the circumstances presented in the Guantanamo litigation, the courts can interrupt the "all too easy slide from a case of genuine military necessity ... to one where the threat is not critical and the power [sought to be exercised is] either dubious or nonexistent." [293](https://www.lexis.com/research/retrieve?_m=938acabc8d208f2c7d5fa60db492ee72&docnum=98&_fmtstr=FULL&_startdoc=51&wchp=dGLbVzb-zSkAt&_md5=eeae0c139818f7b3acae88f6aed6f150&focBudTerms=supreme%20court%20should%20w/30%20guantanamo%20and%20deference%20and%20date%3E2001&focBudSel=all#n293)If the Guantanamo litigation forces meaningful review of the prisoners' status, it will advance the rule of law and model a fundamental principle of international leadership. "If the UnitedStates represents values that others want to follow, it will cost us less to lead." [294](https://www.lexis.com/research/retrieve?_m=938acabc8d208f2c7d5fa60db492ee72&docnum=98&_fmtstr=FULL&_startdoc=51&wchp=dGLbVzb-zSkAt&_md5=eeae0c139818f7b3acae88f6aed6f150&focBudTerms=supreme%20court%20should%20w/30%20guantanamo%20and%20deference%20and%20date%3E2001&focBudSel=all#n294) There is, of course, no doubt that the United States has the military power to ignore the prisoners' liberty interests and continue to hold them indefinitely without charge. But the raw power to maintain the status quo provides no legal justification consistent with reason, fundamental human rights, and principles of limited government for doing so.

#### Only restoring confidence in their judiciary system can make our withdrawal successful

ICG 10 (International Crisis Group, November 17, “REFORMING AFGHANISTAN’S BROKEN JUDICIARY”, http://www.crisisgroup.org/~/media/Files/asia/south-asia/afghanistan/195%20Reforming%20Afghanistans%20Broken%20Judiciary.ashx)

A substantial course correction is needed to restore the rule of law in Afghanistan. Protecting citizens from crime and abuses of the law is elemental to state legitimacy. Most Afghans do not enjoy such protections and their access to justice institutions is extremely limited. As a result, appeal to the harsh justice of the Taliban has become increasingly prevalent. In those rare instances when Afghans do appeal to the courts for redress, they find uneducated judges on the bench and underpaid prosecutors looking for bribes. Few judicial officials have obtained enough education and experience to efficiently execute their duties to uphold and enforce the law. Endemic problems with communications, transport, infrastructure and lack of electricity mean that it is likely that the Afghan justice system will remain dysfunctional for some time to come. Restoring public confidence in the judiciary is critical to a successful counter-insurgency strategy. The deep-seated corruption and high levels of dysfunction within justice institutions have driven a wedge between the government and the people. The insurgency is likely to widen further if Kabul does not move more swiftly to remove barriers to reform. The first order of business must be to develop a multi-year plan aimed at comprehensive training and education for every judge and prosecutor who enters the system. Pay-and-rank reform must be implemented in the attorney general’s office without further delay. Building human capacity is essential to changing the system. Protecting that capacity, and providing real security for judges, prosecutors and other judicial staff is crucial to sustaining the system as a whole. The international community and the Afghan government need to work together more closely to identify ways to strengthen justice institutions. A key part of any such effort will necessarily involve a comprehensive assessment of the current judicial infrastructure on a province-byprovince basis with a view to scrutinising everything from caseloads to personnel performance. This must be done regularly to ensure that programming and funding for judicial reform remains dynamic and responsive to real needs. More emphasis must be placed on public education about how the system works and where there are challenges. Transparency must be the rule of thumb for both the government and the international community when it comes to publishing information about judicial institutions. Little will change without more public dialogue about how to improve the justice system. The distortions created in the justice system by lack of due process and arbitrary detentions under both Afghan institutions and the U.S. military are highly problematic. Until there is a substantial change in U.S. policy that provides for the transparent application of justice and fair trials for detainees, the insurgency will always be able to challenge the validity of the international community’s claim that it is genuinely interested in the restoration of the rule of law. If the international community is serious about this claim, then more must be done to ensure that the transition from U.S. to Afghan control of detention facilities is smooth, transparent and adheres to international law.

#### Unsuccessful drawdown makes nuclear war inevitable

Cronin 13 (Audrey Kurth Cronin is Professor of Public Policy at George Mason University and author of How Terrorism Ends and Great Power Politics and the Struggle over Austria. Thinking Long on Afghanistan: Could it be Neutralized? Center for Strategic and International Studies The Washington Quarterly • 36:1 pp. 55\_72<http://dx.doi.org/10.1080/0163660X.2013.751650>)

With ISAF withdrawal inevitable, a sea change is already underway: the question is whether the United States will be ahead of the curve or behind it. Under current circumstances, key actions within Afghanistan by any one state are perceived to have a deleterious effect on the interests of other competing states, so the only feasible solution is to discourage all of them from interfering in a neutralized state. As the United States draws down over the next two years, yielding to regional anarchy would be irresponsible. Allowing neighbors to rely on bilateral measures, jockey for relative position, and pursue conflicting national interests without regard for dangerous regional dynamics will result in a repeat of the pattern that has played out in Afghanistan for the past thirty years\_/except this time the outcome could be not just terrorism but nuclear war.

#### **Great powers will get involved- Afghanistan stability is the key internal link**

Blank 12 (Stephen Blank¶ Strategic Studies Institute, US Army War College- he studies this stuff, January 27, “Whither the new great game in Central Asia?”, pdf)

Although many scholars dislike the term “great game”¶ or “new great game” because to them these terms smack of¶ echoes of the imperial rivalry of the nineteenth and¶ twentieth centuries; the point of the term “new great¶ game” is precisely that we have surmounted the era and¶ what we see now is something entirely different. This¶ difference does not, however, mean that we have seen the¶ end of policies resembling those of the age of imperialism.¶ First, there is an enormous competition among the US,¶ Russia, India, and China for military bases in Central Asia.¶ All of these states either have bases, have had bases, or have¶ sought bases in Central Asia in the last decade and the¶ growth of the CSTO eloquently testifies to the continuation¶ of the military dimension in the great powers’ search for¶ security in Central Asia. The different factor today is that¶ local governments of their own accord are actively soliciting¶ US military involvement if not that of Russia and China¶ for the reasons outlined above (Kucera, 2011a).¶ Similarly we see what amounts to naked land grabs by¶ the great powers, albeit on a relatively small scale in Central¶ Asia. For example, Tajikistan has been induced to surrender¶ to China 1100 square miles (2000 ha of land) to Chinese¶ farmers. Allegedly this “rectification” of the borders¶ ensures Tajikistan’s inviolability of its borders, definitively¶ solves its border problems with China, and ensures its¶ stability “for decades to come.” (Laruelle & Peyrouse, 2011c)¶ But that statement implies that without this agreement¶ Tajikistan’s security vis-à-vis China would have been¶ questioned if not at risk. And the further details of this¶ agreement indicate the visible presence of Chinese power¶ in Dushanbe’s decision-making.¶ This agreement, allegedly based on a prior accord¶ between the two governments in 2002 that was ratified¶ again in 2010 cedes about 1000 square km in the Pamir¶ Mountains to China, about 1 percent of Tajikistan, albeit¶ a sparsely settled area (Singh, 2011; Pannier, 2011a, 2011b).¶ Tajikistan’s government hailed this as a victory because¶ China had actually claimed some 28,000 km and settled for¶ only about 3.5 percent of its claims. Moreover, Shukhrob¶ Sharipov, Director of the Presidential Center for Strategic¶ Studies, argued that, “If we hadn’t decided to transfer the¶ land (at this time), we would not have been able to resist¶ China’s pressure” (Pannier, 2011a, 2011b). This remark¶ basically sums up the nature of Central Asian states’ relationship¶ to China.¶ This agreement clearly also conformed to the pattern we¶ have seen in China’s earlier expansionist activities vis-à-vis¶ Kazakhstan and Kyrgyzstan. Worse yet, the raw material¶ resources in the land ceded by Tajikistan allegedly equals¶ the entire Chinese investment in Tajikistan to date. Thus¶ China has allegedly recouped its investment at no cost to¶ itself and has both the land and its resources as well as¶ maintaining its investments and penetration of Tajikistan¶ (Singh, 2011). On the other hand, these deals triggered¶ a strong political backlash in all three countries against¶ China and its perceived intentions. Perhaps Tajikistan’s¶ backlash was triggered more by the fact that between 1500¶ and 2000 Chinese farmers will settle another 2000 ha of¶ land beyond the border agreement (Pannier, 2011a, 2011b).¶ According to the opposition Tajikistan is becoming¶ increasingly economically dependent on China due to its¶ large investment in the area and this causes great resentment.¶ Attacks on Chinese workers in other countries also¶ testifies to this backlash across Central Asia.¶ At the same time, we might also point to the following¶ likely developments in what presently constitutes the great¶ power rivalry for influence in Central Asia. In the current¶ configuration it is not only the great powers: US, Russia,¶ China, India, and the EU who are pursuing influence, access,¶ and leverage in Central Asia, indeed, middle ranking¶ powers: Pakistan and Iran are clearly enhancing their¶ efforts to improve relations with all the actors in Central¶ Asia as are South Korea and Japan in order to obtain¶ economic-political and possibly even strategic benefits.¶ Third, beyond these aforementioned trends, regional¶ actors like Kazakhstan and Uzbekistan have already begun¶ to take actions to shape their security environment as their¶ power and wealth grows and second, in the expectation of¶ both the US withdrawal and concurrently intensified Sino-¶ Russian pressure upon them and rivalry with each other for¶ precedence in Central Asia. Indeed, we even find Uzbekistan¶ and Kazakhstan thinking of projecting their influence¶ and power into neighboring Central Asian states like¶ Kyrgyzstan either through investments as in Kazakhstan’s¶ case or in more direct military threats and interference in¶ other states’ economic activity as we often see with Uzbekistan¶ (Weitz, 2008b). But we also find that on occasion, e.g.¶ during the Kyrgyz revolution of 2010, these two governments¶ engaged each other in substantive disussions about¶ possible reactions and power projection into Kyrgyzstan.¶ Fourth, international financial institutions (IFI) like the¶ Asian Development Bank, the World Bank, the UN and its¶ agencies like the UN Development Program (UNDP), are¶ also heavily involved in major projects and policies here.¶ Finally, and perhaps most important, as a mark of distinction¶ from the imperial past, each of the Central Asian states¶ is now a fully empowered (at least formally) state and¶ sovereign foreign policy actor. Consequently each one is¶ conducting its own version, insofar as possible, of a multivector¶ or more accurately balancing approach attempting¶ to balance all the multiple external sources of benefits to¶ them to enhance their domestic stability.¶ Therefore, based on the foregoing we can point to¶ certain likely developments regarding interstate rivalry¶ and especially great or major power rivalry and competition¶ in Central Asia for the foreseeable future. First, because the effort to define and gain control over Central Asia or at¶ least gain lasting influence over it coincides with the¶ escalation of the war in Afghanistan since 2008 the stakes¶ involved in the effort to direct the destiny of Central Asia¶ Central Asia have grown. Though the following assertion by¶ Ahmed Rashid may somewhat exaggerate the importance¶ of these stakes, from the standpoint of regional governments¶ this is actually an understatement because they¶ believe their fate is linked with that of Afghanistan. Thus¶ Rashid writes that,¶ The consequences of state failure in any single country¶ are unimaginable. At stake in Afghanistan is not just the¶ future of President Hamid Karzai and the Afghan people¶ yearning for stability, development, and education but¶ also the entire global alliance that is trying to keep¶ Afghanistan together. At stake are the futures of the¶ United Nations, the North Atlantic Treaty Organization¶ (NATO), the European Union, and of course America’s¶ own power and prestige. It is difficult to imagine how¶ NATO could survive as the West’s leading alliance if the¶ Taliban are not defeated in Afghanistan or if Bin Laden¶ remains at large indefinitely.(Rashid, 2009, p. xxxix)¶ Those stakes also involve the other states of Central Asia¶ as well since it is widely believed that a Taliban victory in¶ Afghanistan makes them a prime target for insurgency in¶ the future. Especially in the light of fears for the stability of¶ the Karzai government and the overall region in the light of¶ a US withdrawal, every state, large or small, is jockeying for¶ greater capability and power in the region and some, like¶ Uzbekistan, clearly expect both to have to project power¶ and that they will be asked to project power to neighbors to¶ preserve stability in the area after 2014. Second, as Emelian¶ Kavalski has observed, the nature of what we call the “new¶ great game,” the proliferation of actors in a continuous¶ multi-dimensional struggle for influence in Central Asia¶ precludes any one actor obtaining previous levels of¶ imperial or neo-imperial domination, though Russia still¶ tries for it, and has led to a situation where, given the¶ concurrent proliferation of actors and agents operating in¶ Central Asia,¶ The simultaneity of these two dynamics reveals that the¶ agency of external actors is distinguished not by an¶ imperial desire for the control of territory, but by the¶ establishment of ‘niches of influence.’ Consequently, the¶ notion of the ‘new great game’ comes to characterize the¶ dynamics of processing, selection and internalization of¶ some externally promoted ideas and not others. (Rashid,¶ 2009, p. xxxix).¶ Third, in view of the impending US military withdrawal¶ ssit is not clear that Washington, confronted by wrenching¶ fiscal stresses, either has the vision or the means to develop¶ or implement a coherent post-Afghanistan Central Asian¶ strategy, a vacuum could well develop there with regard to¶ the US position that will inevitably be filled by other actors.¶ Certainly there is no sign yet of what will replace the US¶ military presence after 2014 and no sign of a formal¶ document worked out with Afghanistan that delineates the¶ extent to which a US presence in the region will look like. In¶ the absence of such a policy statement every regional actor¶ is hedging its bets and preparing for the worst in the future,¶ a trend that most likely means intensified competition¶ among the great, regional, and local powers for influence in¶ Central Asia.¶

### Contention 2- Geneva Credibility

#### US human rights promotion inevitable- but the double standard created by Guantanamo prevents that promotion from being credible

Hidayat 8/21 (Syarif- editor of the Mi’raj News Agency, 2013, “GITMO PRISON SHOWS THE US HYPOCRISY AND DOUBLE STANDARDS ON HUMAN RIGHTS”, http://mirajnews.com/en/article/opinion/7121-gitmo-prison-shows-the-us-hypocrisy-and-double-standards-on-human-rights.html)

The double standards of the renowned world preacher of human rights and the hypocrisy of US imperialism’s pretense of promoting human rights on the world arena is demonstrated in Washington’s decision to maintain Guantanamo prison and torture camps. President Barack Obama had decided to give $50 million to keep Guantanamo open indefinitely in a gross violation of his election promise. President Obama promised to close Guantanamo as part of his election campaign in 2008. Islamic community leaders in the UK and the US urge Obama to stop force-feeding Gitmo detainees during Ramadan.¶ “Anywhere that human rights are under threat, the United States will proudly stand up, unabashedly, and continue to promote greater freedom, greater openness, and greater opportunity for all people. And that means speaking up when those rights are imperiled. It means providing support and training to those who are risking their lives every day so that their children can enjoy more freedom. It means engaging governments at the highest levels and pushing them to live up to their obligations to do right by their people.” - Secretary of State John Kerry, April 2013.¶ Every year, the U.S. State Department releases a report on the status of human rights in countries around the world. Every year, one country is notably missing from this report — the United States.¶ “Our world is complex and increasingly influenced by non-state actors – brave civil society activists and advocates, but also violent extremists, transnational criminals, and other malevolent actors. In those places where human rights and fundamental freedoms are denied, it is far easier for these negative destabilizing influences to take hold, threatening international stability and our own national security.”¶ “It is in our interest to promote the universal rights of all persons. Governments that respect human rights are more peaceful and more prosperous. They are better neighbors, stronger allies, and better economic partners. Governments that enforce safe workplaces, prohibit exploitative child and forced labor, and educate their citizens create a more level playing field and broader customer base for the global marketplace. Conversely, governments that threaten regional and global peace, from Iran to North Korea, are also egregious human rights abusers, with citizens trapped in the grip of domestic repression, economic deprivation, and international isolation.” ¶ “The United States stands with people and governments that aspire to freedom and democracy, mindful from our own experience that the work of building a more perfect union – a sustainable and durable democracy – will never be complete. As part of this commitment, we advocate around the world for governments to adopt policies and practices that respect human rights regardless of ethnicity, religion, gender, race, sexual orientation, or disability; that allow for and honor the results of free and fair elections; that ensure safe and healthy workplaces; and that respect peaceful protests and other forms of dissent. The United States continues to speak out unequivocally on behalf of the fundamental dignity and equality of all persons.” - Secretary of State John F. Kerry's Preface on the Department of State’s Country Reports on Human Rights Practices for 2012.¶ The international organization Human Rights Watch has said that the US is “hypocritical” when it criticizes other countries for violating human rights, because the situation in the US itself is far from perfect. Deputy Director of the Europe and Central Asia Division of Human Rights Watch Rachel Denber criticized Obama’s administration for not investigating into cases of torture in prisons under Bush the junior and in Guantanamo prison. America’s human rights hypocrisy: The human rights record of the United States was put under an international microscope, as the UN Human Rights Council issued 228 recommendations on how Washington can address violations. America has long been the self appointed global leader on human rights, pointing out the shortcomings of others. But now the tables have turned. According to the United Nations Human Rights Council, incidents of injustice are taking place on US soil.¶ The point was made in Geneva, Switzerland at the Human Rights Council’s first comprehensive review of Washington’s record. The council released a Universal Periodic Review Tuesday, listing 228 recommendations on how the US can do better. “Close Guantanamo and secret detention centers throughout the world, punish those people who torture, disappear and execute detainees arbitrarily,” said Venezuelan delegate German Mundarain Hernan. The US has dismissed many recommendations calling them political provocations by hostile countries.¶ Yet even America’s allies are highlighting grave flaws. France and Ireland are demanding Obama follow through on the promise to close Guantanamo Bay. Britain, Belgium and dozens of others have called on the US to abolish the death penalty. For many, it’s the ultimate hypocrisy. How can a state with roughly 3,000 people on death row lecture the world about humanity? Many say the prime example is Mumia abu Jamal, viewed by some as America’s very own political prisoner.¶ “The United States, the perpetrator of gross human right violations is using human rights as a political football against its enemies. Its enemies are not enemies because they violate human rights necessarily, but because the US wants to change the government in their country,” said Brian Becker, Director of A.N.S.W.E.R Coalition in Washington, DC. The country often criticizing adversaries like Syria, Iran and North Korea for oppressing its citizens, is now faced with defending domestic practices like indefinite detention, poor prison conditions, and racial profiling.¶

#### Applying the conventions to detention policy is key to human rights 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 human rights frameworks solve conflict escalation

Burke-White 4 (William W., Lecturer in Public and International Affairs and Senior Special Assistant to the Dean, Woodrow Wilson School of Public and International Affairs, Princeton University The Harvard Environmental Law Review Spring, 2004 LN,<https://www.law.upenn.edu/cf/faculty/wburkewh/workingpapers/17HarvHumRtsJ249(2004).pdf>)

This Article presents a strategic--as opposed to ideological or normative--argument that the promotion of human rights should be given a more prominent place in U.S. foreign policy. It does so by suggesting a correlation between the domestic human rights practices of states and their propensity to engage in aggressive international conduct. Among the chief threats to U.S. national security are acts of aggression by other states. Aggressive acts of war may directly endanger the United States, as did the Japanese bombing of Pearl Harbor in 1941, or they may require U.S. military action overseas, as in Kuwait fifty years later. Evidence from the post-Cold War period [\*250] indicates that states that systematically abuse their own citizens' human rights are also those most likely to engage in aggression. To the degree that improvements in various states' human rights records decrease the likelihood of aggressive war, a foreign policy informed by human rights can significantly enhance U.S. and global security.¶ Since 1990, a state's domestic human rights policy appears to be a telling indicator of that state's propensity to engage in international aggression. A central element of U.S. foreign policy has long been the preservation of peace and the prevention of such acts of aggression. n2 If the correlation discussed herein is accurate, it provides U.S. policymakers with a powerful new tool to enhance national security through the promotion of human rights. A strategic linkage between national security and human rights would result in a number of important policy modifications. First, it changes the prioritization of those countries U.S. policymakers have identified as presenting the greatest concern. Second, it alters some of the policy prescriptions for such states. Third, it offers states a means of signaling benign international intent through the improvement of their domestic human rights records. Fourth, it provides a way for a current government to prevent future governments from aggressive international behavior through the institutionalization of human rights protections. Fifth, it addresses the particular threat of human rights abusing states obtaining weapons of mass destruction (WMD). Finally, it offers a mechanism for U.S.-U.N. cooperation on human rights issues.

#### Independently- affirming the conventions solves terror, human trafficking, and eco-degradation

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.

#### Human trafficking destabilizes the Balkans

Kaldor 08 Mary Kaldor is Professor of Global Governance and Director of the Civil Society and Human Security Research Unit at the London School of Economics. The Balkans-Caucasus tangle: states and citizens MARY KALDOR , 9 January 2008 http://www.opendemocracy.net/article/democracy\_power/balkans\_caucasus\_tangle

There is a real risk of spreading destabilisation in the Balkans and the Caucasus. The criminal/nationalist entrepreneurs who profited from the wars in the 1990s were never properly dealt with. On the contrary, they have been nurtured by the combination of nationalist governments, high unemployment and lawlessness. Governments in the region - in Bosnia-Herzegovina, Serbia, Macedonia, Albania or Georgia, for example - are not simply (as the jargon has it) "weak states"; their weakness is sustained by what some have described as shadow networks of transnational crime and extremist ideologies. There has been an expansion of human-trafficking, money-laundering, and the smuggling of cigarettes, alcohol, drugs, and weapons over the last decade - **much of it to satisfy** European and **American markets** - and all in the face of international agreements, aid programmes and the presence of foreign troops and agencies.

#### Great power war

Paris ‘2 [Roland Paris, Assistant Professor of Political Science and International Affairs at University of Colorado, Political Science Quarterly, Volume 117, Issue 3, Fall, Proquest]

Nevertheless, the phrase "powderkeg in the Balkans" would have carried historical significance for listeners who possessed even a casual knowledge of European history. Since the early part of the twentieth century, when instability in the Balkans drew in the great powers and provided the spark that ignited World War I, the region has been **widely known as a powderkeg**. In 1947, for instance, members of the International Court of Justice noted that the Balkans had been "so often described as the `powder-keg' of Europe."51 Today, the term continues to be attached to the region's politics, conjuring up memories of the origins of World War I.  The meaning of the powderkeg metaphor is straightforward: the Balkans **can explode at any time**, and the **resulting conflagration** can **spread to the rest of Europe;** preventing such an explosion is vital to the continent's, and perhaps even to American, security. When Clinton described Kosovo as a powderkeg, he warned that the Kosovo conflict might spill over not only to surrounding Balkan states, but **to Europe as a whole**; and he insinuated that the United States could be compelled to fight in such a pan-European conflict, just as it did in World Wars I and II. "

#### Environmental degradation risks extinction

Coyne and Hoekstra 7 (Jerry and Hopi, \*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.

### Plan

#### Plan: The United States federal judiciary should restrict the authority of the President of the United States to indefinitely detain without the Third Geneva Conventions Article Five rights.

### Contention 3 Solvency

#### Supreme Court action and application of the convention is key- solves congressional 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.

#### Citations on article 3 and 75 should have triggered the link to your DA’s

Tony Ginsburg et al\* 9, law prof at Chicago, “brief of international law experts as amici curiae in support of petitioners”, <http://www.americanbar.org/content/dam/aba/publishing/preview/publiced_preview_briefs_pdfs_09_10_08_1234_PetitionerAmCuIntlLawExperts.authcheckdam.pdf>

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The law of war creates an independent legal obligation that the District Court be permitted to order Petitioners’ release. The law of war does not displace the obligations under the Covenant outlined above, but creates an additional international legal obligation on the United States to permit the District Court to order Petitioners’ release.10 Common Article 3 of the Geneva Conventions, which the United States has ratified, requires that detainees be treated humanely. This principle is appropriately interpreted in light of recognized customary international law that requires the release of detainees when the reason for their detention has ceased. In the case at hand, the District Court must have the authority to order the release of Petitioners, whose detention is unlawful and who pose no threat to the United States.¶ Article 3 of the Geneva Conventions – often called Common Article 3 because it appears in all four of the Geneva Conventions – requires that all persons taking no active part in the hostilities, including detainees, be “treated humanely.” Common Article 3, supra. In Hamdan v. Rumsfeld, 548 U.S. 557, 630 (2006), the Supreme Court held that Common Article 3 is legally binding on the United States and enforceable in U.S. courts.11 Common Article 3 provides that in a “conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum,” certain provisions. Common Article 3, supra. Among these provisions is the requirement that “[p]ersons taking no active part in the hostilities, including . . . those placed hors de combat by . . . detention . . . shall in all circumstances be treated humanely.” Id. (second emphasis added).¶ The obligation that detained civilians be “treated humanely” must be read in light of Article 75 of Protocol I to the Geneva Conventions, see Article 75, supra. Article 75, which is “indisputably part of the customary international law,” 548 U.S. at 634 (plurality opinion),12 provides that all detainees held in connection with armed conflict “shall be released with the minimum delay possible and in any event as soon as the circumstances justifying the arrest, detention or internment have ceased to exist.” Article 75, supra, § 3 (emphasis added).13¶ Although the United States has not ratified Protocol I, the Protocol’s status as customary international law renders it an appropriate interpretive tool for the Court. See Hamdan, 548 U.S. at 633 (plurality opinion) (noting that Common Article 3 “must be understood to incorporate at least the barest of those trial protections that have been recognized by customary international law,” many of which are “described in Article 75 of Protocol I”). Under Article 75, civilians initially detained because they were thought to pose a security risk must be released as soon as it is clear that they pose no such risk. This reading of Common Article 3 in light of Article 75 is consistent with the conclusions of a 2005 study on Customary International Humanitarian Law by the International Committee of the Red Cross, which concludes that as a matter of treaty law, “arbitrary deprivation of liberty is not compatible” with humane treatment under Common Article 3. See Int’l Comm. Red Cross, I Customary International Humanitarian Law 344 (Jean-Marie Henckaerts & Louise DoswaldBeck eds., 2007).¶ State Department Legal Advisers have repeatedly stated that the fundamental guarantees expressed in Article 75 are part of the law of war.14¶ While serving as Legal Adviser to President George W. Bush, William H. Taft, IV wrote that the “customary law notion of fundamental guarantees found more expansive expression in Article 75 of Additional Protocol I to the Geneva Conventions” and that the United States “does regard the provisions of Article 75 as an articulation of safeguards to which all persons in the hands of an enemy are entitled.” William H. Taft, IV, The Law of Armed Conflict After 9/11: Some Salient Features, 28 Yale J. Int’l L. 319, 321-22 (2003). His successor, John Bellinger, argued for a public statement recognizing Article 75 as customary international law binding on the United States, noting in the process that U.S. practice conforms to Article 75. See Letter from John B. Bellinger, III, Legal Adviser, Dep’t of State, to William J. Haynes, II, Gen. Counsel, Dep’t of Def. (Jan. 16, 2008) (on file with the Yale Law School Library). These Legal Advisers were reaffirming a position declared more than two decades ago under then-Deputy Legal Adviser Michael Matheson. See Michael J. Matheson, The United States Position on the Relation of Customary International Law to the 1977 Protocols Additional to the 1949 Geneva Conventions, 2 Am. U. J. Int’l L. & Pol’y 419, 427 (1987) (“We support in particular the fundamental guarantees contained in article 75. . . .”). It is therefore appropriate to interpret the binding legal obligations on the United States under Common Article 3 in light of Article 75’s obligation to release detainees as soon as the reason for their detention has ceased.¶ The United States’ obligation under Common Article 3 to ensure the courts have the authority to order release of detainees when there is no lawful basis for detention can be enforced by this Court through the habeas statute. Section 2241 expressly provides that habeas relief is available where detention is contrary to U.S. treaty obligations. 28 U.S.C. § 2241(c)(3) (2006) (noting that writ extends to prisoners held “in custody in violation of the Constitution or laws or treaties of the United States”); see Mali v. Keeper of the Common Jail, 120 U.S. 1, 17 (1887) (holding that because a “treaty is part of the supreme law of the United States,” the power to issue writs of habeas corpus applies to prisoners held in violation of treaties). At a minimum, Common Article 3 should be used to interpret the domestic habeas corpus statute. See Murray v. Schooner Charming Betsy, 6 U.S. (2 Cranch) 64, 118 (1804).

### Contention 4- Relations

#### Despite positive gains in relations during the Obama administration- detention policy disagreements risk collapsing US-EU counter terrorism operations

Archick 13 (Kristin- US government based Specialist in European Affairs providing a congressional report on US-EU counter-terrorism cooperation, May 21, “U.S.-EU Cooperation Against Terrorism”, http://www.fas.org/sgp/crs/row/RS22030.pdf)

U.S. and European officials alike maintain that the imperative to provide freedom and security at home should not come at the cost of sacrificing core principles with respect to civil liberties and upholding common standards on human rights. Nevertheless, the status and treatment of suspected terrorist detainees has often been a key point of U.S.-European tension. Especially during the former George W. Bush Administration, a number of U.S. policies were subject to widespread criticism in Europe; these included the U.S.-run detention facility at Guantánamo Bay, Cuba; U.S. plans to try enemy combatants before military commissions; and the use of “enhanced interrogation techniques.” The U.S. practice of “extraordinary rendition” (or extrajudicial transfer of individuals from one country to another, often for the purpose of interrogation) and the possible presence of CIA detention facilities in Europe also gripped European media attention and prompted numerous investigations by the European Parliament, national legislatures, and judicial bodies, among others. Some individuals held at Guantánamo and/or allegedly subject to U.S. rendition have been European citizens or residents. Many European leaders and analysts viewed these U.S. terrorist detainee and interrogation policies as being in breach of international and European law, and as degrading shared values regarding human rights and the treatment of prisoners. Moreover, they feared that such U.S. policies weakened U.S. and European efforts to win the battle for Muslim “hearts and minds,” considered by many to be a crucial element in countering terrorism. The Bush Administration, however, defended its detainee and rendition polices as important tools in the fight against terrorism, and vehemently denied allegations that such policies violated U.S. human rights commitments. The Bush Administration officials acknowledged European concerns about Guantánamo and sought agreements with foreign governments to accept some Guantánamo detainees, but maintained that certain prisoners were too dangerous to be released. U.S.-EU frictions over terrorist detainee policies have subsided to some degree since the start of the Obama Administration. EU and other European officials welcomed President Obama’s announcement in January 2009 that the United States intended to close the detention facility at Guantánamo within a year. They were also pleased with President Obama’s executive order banning torture and his initiative to review Bush Administration legal opinions regarding detention and interrogation methods. In March 2009, the U.S. State Department appointed a special envoy to work on closing the detention facility, tasked in particular with persuading countries in Europe and elsewhere to accept detainees cleared for release but who could not be repatriated to their country of origin for fear of torture or execution. Some EU members accepted small numbers of released detainees, but others declined. At the same time, the Obama Administration has faced significant challenges in its efforts to close Guantánamo. Some observers contend that U.S. officials have been frustrated by the reluctance of other countries, including some in Europe, to take in more detainees. Congressional opposition to elements of the Administration’s plan for closing Guantánamo, and certain restrictions imposed by Congress (including on the Administration’s ability to transfer detainees to other countries amid concerns that some released detainees were engaging in terrorist activity), have also presented obstacles. Consequently, the Obama Administration has not fulfilled its promise to shut down Guantánamo. The Administration asserts that it remains committed to closing the detention facility, but in March 2011, President Obama signed an executive order that in effect creates a formal system of indefinite detention for those detainees at Guantánamo not charged or convicted but deemed too dangerous to free. The Administration also announced in March 2011 an end to its two-year freeze on new military commission trials for Guantánamo detainees. In January 2013, the duties of the State Department’s special envoy were assumed by a different office; many observers have interpreted this latest move as signaling that the Administration recognizes that closing Guantánamo is unlikely in the near future. Press reports indicate that 166 detainees currently remain at Guantánamo.46 Some European policymakers continue to worry that as long as Guantánamo remains open, it helps serve as a recruiting tool for Al Qaeda and its affiliates. Some European officials have also voiced concern about those detainees at Guantánamo who have been on hunger strikes since February 2013, and recent clashes between prison guards and some detainees. In mid-April 2013, during a plenary session, the European Parliament discussed the current situation at Guantánamo; a number of MEPs representing several political groups introduced a joint resolution that expresses concern for those on hunger strike, calls upon the United States to close the Guantánamo detention facility, and recalls the willingness of EU member states to assist U.S. authorities in shutting down Guantánamo.47 Many Europeans also remain concerned about the past role of European governments in U.S. terrorist detainee policies and practices. In September 2012, the European Parliament passed a non-binding resolution (by 568 votes to 34, with 77 abstentions) calling upon EU member states to investigate whether CIA detention facilities had existed on their territories.48 The resolution urged Lithuania, Poland, and Romania in particular to open or resume independent investigations, and called on several other member states to fully disclose all relevant information related to suspected CIA flights on their territory.Meanwhile, some U.S. and European officials worry that allegations of U.S. wrongdoing and rendition-related criminal proceedings against CIA officers in some EU states (stemming from the Bush era) continue to cast a long shadow and could put vital U.S.-European intelligence cooperation against terrorism at risk.49

#### This spills over to other areas of cooperation- collapses the basis for relations

Smith 7 (JULIANNE, DIRECTOR AND SENIOR FELLOW, EUROPE PROGRAM, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES, April 17, “EXTRAORDINARY RENDITION IN U.S. COUNTERTERRORISM POLICY: THE IMPACT ON TRANSATLANTIC RELATIONS”, http://archives.republicans.foreignaffairs.house.gov/110/34712.pdf)

As a European analyst, who spends a considerable amount of time in Europe meeting with policymakers and addressing a variety of public audiences, I can confirm that the issue of extraordinary rendition, along with press revelations about secret prisons in Europe, have cast a rather dark shadow on our relationship with our European allies. While transatlantic intelligence and law enforcement cooperation does continue, European political leaders are coming under increasing pressure to distance themselves from the United States. Over time, I do believe that this could pose a threat to joint intelligence activity with our European allies. Now it is well known that America’s image in Europe has declined quite steadily over the last couple of years, and some of the reasons for that were cited earlier this afternoon, in part due to the decision of the United States to go to Iraq, human rights abuses at Abu Ghraib and allegations of torture at Guantanamo bay. But we seemed to move away from some of these dark days in the transatlantic relationship as we moved into 2005, as both sides of the Atlantic I think, both Europe and the United States, made a conscious effort to renew transatlantic ties. When it was alleged, however, later in 2005—at the end of 2005 that the United States was detaining top terror suspects in socalled ‘‘black sites’’ in eight countries and that the CIA was flying terror suspects between secret prisons and countries in the Middle East that have been known to torture detainees, the United States image in Europe took another dive. On the particular issues of rendition, as we have heard earlier, Europeans appear to have two primary concerns, one, Washington’s unwillingness to grant due process to terror suspects and, two, violation of suspects’ human rights during interrogation. Now the allegations that have been submitted and the resulting investigation by the European Parliament have in many ways in my mind confirmed Europeans’ worst fears. Many Europeans, particularly at the public level, believe that they have plenty of evidence right now to prove a long-suspected gap between United States stated policies and U.S. action. As a result, U.S. promises not to torture terror suspects and to uphold the fundamental pillars of international law are no longer seen as credible. The question is, does any of this matter? President Bush has noted on several occasions that making policy is not a popularity contest, and he is right about that. But when political leads in other countries start to feel that standing shoulder to shoulder with the United States is a political liability, I think that low favorability ratings can indeed hinder America’s ability to solve global challenges with its many partners and allies around the world; and I would cite a couple of reasons for this. First, as we have seen with the tensions over the issue of rendition, this particular issue has put unnecessary strain, in my mind, on what has been, in many cases, a very positive relationship. In fact, it is distracting the two sides from the core task at hand; and that is, of course, combating terrorism. Second, as I mentioned earlier, European political leaders are under pressure from their publics to keep the United States at arm’s length. I don’t know that this pressure will ever halt counterterrorism cooperation with our European allies in full or certainly not in the near term, but there are signs that negative public opinion is making it more difficult for our European allies to cooperate with the United States. One only has to look at the latest European responses to United States requests for more support in Afghanistan to find one such example. Finally, I would point out that the United States and Europe are facing a long list of challenges above and beyond terrorism, things like energy security, nonproliferation, brewing regional crises, Darfur; and the list goes on and on. In many of these areas, the United States are asking—we are asking Europe to do more. But differences in our counterterrorism relationship with Europe have affected our relationship at other levels. Again, negative public sentiment toward the United States will never succeed in halting our cooperation with Europe entirely, but it does make asking for greater European support in other areas that much more challenging. Just to conclude, I would point out—and I feel very strongly— that Europe is one of America’s most important partners in combating radical extremism, and there is certainly no shortage of success stories in the many things we have done together, particularly over the past 6 years in this area. But I do feel—again based on my experience traveling back and forth to Europe on a regular basis—that this relationship that we share is currently played with mistrust and divisions over strategy and tactics.

#### Only a ruling on the conventions solve- anything else maintains the perception of US isolationism

Gruber, 7

(Law Prof-Florida International, “Who’s Afraid of Geneva Law,” 39 Ariz. St. L.J. 1017, Winter, Lexis)

Internationalists and civil libertarians have widely praised Hamdi and Hamdan for creating a new era of rights, and at least one commentator has stated that the MCA, following Hamdan, "put the final nail in the coffin" of unbridled executive discretion. n447 Yet reports of the demise of executive overreaching and American isolationism are greatly exaggerated. To this day, the Guantanamodetentions continue, and the United States remains aconsistent subject of criticismfrom international actors, the press, and the public. A finding that the Geneva Conventions are self-executing, in addition to possibly affording real and effective relief to detainees who continue to be treated in inhumane ways, would truly set the United States on a path toward reversing the sad history of the last six years. It would permit the United States to step out of the dark era of Bricker, racism, and isolation into a new light of taking international law seriously. Holding the Geneva Conventions self-executing could demonstrate that the United States is a country of laws that can proudly occupy the position of aglobal defender of human rights. Unfortunately, although the Supreme Court was well poised to take up the issue of treaty self-execution, it did not do so, evidencing an unfortunate [\*1085] internalization of treaty law fear created by lower court activism and conservative scholarship. This fear is neither justified by the Supreme Courts' own history nor compelled by the structure of the Constitution. Because the modern self-execution doctrine, particularly the intent analysis, is essentially isolationist, the Court canonly be truly internationalistwhen it finally puts an end to recenttreaty law hostility. Consequently, now is not the time for civil libertarians and internationalists to be complacent. They must be vigilant in their advocacy of the rule of law and judicial review. If the Supreme Court is willing to once again exercise jurisdiction over cases like Hamdan, it may well have the opportunity to assess whether the procedures set forth in the MCA violate the Geneva Conventions. This time, the Court will not be able to avoid the issue of self-execution by relying on congressional intent. Thus, internationalists and civil libertarians yet have a role to play in urging the Supreme Court to be an international team player rather than a "lone ranger."

#### Concessions to Europe are key to solidify relations, failure to account for their beliefs and European public opinion collapses cooperation- that turns every major impact

Stivachtis 10 (Dr. Yannis- Director of International Studies Program @ Virginia Polytechnic Institute  Professor of Poli Sci @ Virginia Polytechnic Institute & Ph.D. in Politics & International Relations from Lancaster University, THE IMPERATIVE FOR TRANSATLANTIC COOPERATION,” <http://www.rieas.gr/research-areas/global-issues/transatlantic-studies/78.html>)

There is no doubt that US-European relations are in a period of transition, and that the stresses and strains of globalization are increasing both the number and the seriousness of the challenges that confront transatlantic relations. The events of 9/11 and the Iraq War have added significantly to these stresses and strains. At the same time, international terrorism, the nuclearization of North Korea and especially Iran, the proliferation of weapons of mass destruction (WMD), the transformation of Russia into a stable and cooperative member of the international community, the growing power of China, the political and economic transformation and integration of the Caucasian and Central Asian states, the integration and stabilization of the Balkan countries, the promotion of peace and stability in the Middle East, poverty, climate change, AIDS and other emergent problems and situations require further cooperation among countries at the regional, global and institutional levels. Therefore, cooperation between the U.S. and Europe is more imperative than ever to deal effectively with these problems. It is fair to say that the challenges of crafting a new relationship between the U.S. and the EU as well as between the U.S. and NATO are more regional than global, but the implications of success or failure will be global. The transatlantic relationship is still in crisis, despite efforts to improve it since the Iraq War. This is not to say that differences between the two sides of the Atlantic did not exist before the war. Actually, post-1945 relations between Europe and the U.S. were fraught with disagreements and never free of crisis since the Suez crisis of 1956. Moreover, despite trans-Atlantic proclamations of solidarity in the aftermath of 9/11, the U.S. and Europe parted ways on issues from global warming and biotechnology to peacekeeping and national missile defense. Questions such as, the future role of NATO and its relationship to the common European Security and Defense policy (ESDP), or what constitutes terrorism and what the rights of captured suspected terrorists are, have been added to the list of US-European disagreements. There are two reasons for concern regarding the transatlantic rift. First, if European leaders conclude that Europe must become counterweight to the U.S., rather than a partner, it will be difficult to engage in the kind of open search for a common ground than an elective partnership requires. Second, there is a risk that public opinion in both the U.S. and Europe will make it difficult even for leaders who want to forge a new relationship to make the necessary accommodations. If both sides would actively work to heal the breach, a new opportunity could be created. A vibrant transatlantic partnership remains a real possibility, but only if both sides make the necessary political commitment. There are strong reasons to believe that the security challenges facing the U.S. and Europe are more shared than divergent. The most dramatic case is terrorism. Closely related is the common interest in halting the spread of weapons of mass destruction and the nuclearization of Iran and North Korea. This commonality of threats is clearly perceived by publics on both sides of the Atlantic. Actually, Americans and Europeans see eye to eye on more issues than one would expect from reading newspapers and magazines. But while elites on both sides of the Atlantic bemoan a largely illusory gap over the use of military force, biotechnology, and global warming, surveys of American and European public opinion highlight sharp differences over global leadership, defense spending, and the Middle East that threaten the future of the last century’s most successful alliance. There are other important, shared interests as well. The transformation of Russia into a stable cooperative member of the international community is a priority both for the U.S. and Europe. They also have an interest in promoting a stable regime in Ukraine. It is necessary for the U.S. and EU to form a united front to meet these challenges because first, there is a risk that dangerous materials related to WMD will fall into the wrong hands; and second, the spread of conflict along those countries’ periphery could destabilize neighboring countries and provide safe havens for terrorists and other international criminal organizations. Likewise, in the Caucasus and Central Asia both sides share a stake in promoting political and economic transformation and integrating these states into larger communities such as the OSCE. This would also minimize the risk of instability spreading and prevent those countries of becoming havens for international terrorists and criminals. Similarly, there is a common interest in integrating the Balkans politically and economically. Dealing with Iran, Iraq, Lebanon, and the Israeli-Palestinian conflict as well as other political issues in the Middle East are also of a great concern for both sides although the U.S. plays a dominant role in the region. Finally, US-European cooperation will be more effective in dealing with the rising power of China through engagement but also containment. The post Iraq War realities have shown that it is no longer simply a question of adapting transatlantic institutions to new realities. The changing structure of relations between the U.S. and Europe implies that a new basis for the relationship must be found if transatlantic cooperation and partnership is to continue. The future course of relations will be determined above all by U.S. policy towards Europe and the Atlantic Alliance. Wise policy can help forge a new, more enduring strategic partnership, through which the two sides of the Atlantic cooperate in meeting the many major challenges and opportunities of the evolving world together. But a policy that takes Europe for granted and routinely ignores or even belittles European concerns, may force Europe to conclude that the costs of continued alliance outweigh its benefits. There is no doubt that the U.S. and Europe have considerable potential to pursue common security interests. Several key steps must be taken to make this potential a reality. First, it is critical to avoid the trap of ‘division of labor’ in the security realm, which could be devastating for the prospects of future cooperation. Second, and closely related to avoiding division of labor as a matter of policy, is the crucial necessity for Europe to develop at least some ‘high-end’ military capabilities to allow European forces to operate effectively with the U.S. Third, is the need for both the U.S. and Europe to enhance their ability to contribute to peacekeeping and post-conflict stabilization and reconstruction. Fourth, is the importance of preserving consensus at the heart of alliance decision-making. Some have argued that with the expansion of NATO, the time has come to reconsider the consensus role. One way to increase efficiency without destroying consensus would be to strengthen the role of the Secretary General in managing the internal and administrative affairs of the alliance, while reserving policy for the member states. Fifth is the need to make further progress on linking and de-conflicting NATO and EU capabilities. Sixth is the need for enhanced transatlantic defense industrial cooperation. Seventh, one future pillar for transatlantic cooperation is to strengthen US-European coordination in building the infrastructure of global governance through strengthening institutions such as the UN and its specialized agencies, the World Bank, the IFM, G-8, OECD and regional development banks. Finally, cooperation can also be achieved in strengthening the global economic infrastructure, sustaining the global ecosystem, and combating terrorism and international crime. To translate the potential of the transatlantic relationship into a more positive reality will require two kinds of development. First, the EU itself must take further steps to institutionalize its own capacity to act in these areas. Foreign policy and especially defense policy remain the areas where the future of a ‘European’ voice is most uncertain. Second, the U.S. and Europe need to establish more formal, effective mechanisms for consultation and even decision-making. The restoration of transatlantic relations requires policies and actions that governments on both sides of the Atlantic should simultaneously adopt and not only a unilateral change of course. Developing a new, sustainable transatlantic relationship requires a series of deliberate decisions from both the U.S. and EU if a partnership of choice and not necessity is to be established. For the U.S., this means avoiding the temptation, offered by unprecedented strength, to go it alone in pursuit of narrowly defined national interests. For the EU, the new partnership requires a willingness to accept that the EU plays a uniquely valuable role as a leader in a world where power still matters, and that a commitment to a rule-based international order does not obviate the need to act decisively against those who do not share that vision.

#### Those impact scenarios go nuclear- and relations also solve terrorism

Brzezinski ‘3 (Zbigniew Brzezinski, former national security advisor to the president, “Hegemonic quicksand,” National Interest Winter, 2003)

FOR THE next several decades, the most volatile and dangerous region of the world--with the explosive potential to plunge the world into chaos--will be the crucial swathe of Eurasia between Europe and the Far East. Heavily inhabited by Muslims, we might term this crucial subregion of Eurasia the new "Global Balkans." (1) It is here that America could slide into a collision with the world of Islam while American-European policy differences could even cause the Atlantic Alliance to come unhinged. The two eventualities together could then put the prevailing American global hegemony at risk. At the outset, it is essential to recognize that the ferment within the Muslim world must be viewed primarily in a regional rather than a global perspective, and through a geopolitical rather than a theological prism. The world of Islam is disunited, both politically and religiously. It is politically unstable and militarily weak, and likely to remain so for some time. Hostility toward the United States, while pervasive in some Muslim countries, originates more from specific political grievances--such as Iranian nationalist resentment over the U.S. backing of the Shah, Arab animus stimulated by U.S. support for Israel or Pakistani feelings that the United States has been partial to India-than from a generalized religious bias. The complexity of the challenge America now confronts dwarfs what it faced half a century ago in Western Europe. At that time, Europe's dividing line on the Elbe River was the strategically critical frontline of maximum danger, with the daily possibility that a clash in Berlin could unleash a nuclear war with the Soviet Union. Nevertheless, the United States recognized the stakes involved and committed itself to the defense, pacification, reconstruction and revitalization of a viable European community. In doing so, America gained natural allies with shared values. Following the end of the Cold War, the United States led the transformation of NATO from a defense alliance into an enlarging security alliance--gaining an enthusiastic new ally, Poland--and it has supported the expansion of the European Union (EU). For at least a generation, the major task facing the United States in the effort to promote global security will be the pacification and then the cooperative organization of a region that contains the world's greatest concentration of political injustice, social deprivation, demographic congestion and potential for high-intensity violence. But the region also contains most of the world's oil and natural gas. In 2002, the area designated as the Global Balkans contained 68 percent of the world's proven oil reserves and 41 percent of the world's proven natural gas reserves; it accounted for 32 percent of world oil production and 15 percent of world natural gas production. In 2020, the area is projected to produce roughly 42 million barrels of oil per day--39 percent of the global production total (107.8 million barrels per day). Three key regions-Europe, the United States and the Far East--collectively are projected to consume 60 percent of that global production (16 percent, 25 percent and 19 percent, respectively). The combination of oil and volatility gives the United States no choice. America faces an awesome challenge in helping to sustain some degree of stability among precarious states inhabited by increasingly politically restless, socially aroused and religiously inflamed peoples. It must undertake an even more daunting enterprise than it did in Europe more than half a century ago, given a terrain that is culturally alien, politically turbulent and ethnically complex. In the past, this remote region could have been left to its own devices. Until the middle of the last century, most of it was dominated by imperial and colonial powers. Today, to ignore its problems and underestimate its potential for global disruption would be tantamount to declaring an open season for intensifying regional violence, region-wide contamination by terrorist groups and the competitive proliferation of weaponry of mass destruction. The United States thus faces a task of monumental scope and complexity. There are no self-evident answers to such basic questions as how and with whom America should be engaged in helping to stabilize the area, pacify it and eventually cooperatively organize it. Past remedies tested in Europe--like the Marshall Plan or NATO, both of which exploited an underlying transatlantic political-cultural solidarity--do not quite fit a region still rent by historical hatreds and cultural diversity. Nationalism in the region is still at an earlier and more emotional stage than it was in war-weary Europe (exhausted by two massive European civil wars fought within just three decades), and it is fueled by religious passions reminiscent of Europe's Catholic-Protestant forty-year war of almost four centuries ago. Furthermore, the area contains no natural allies bonded to America by history and culture, such as existed in Europe with Great Britain, France, Germany and, lately, even Poland. In essence, America has to navigate in uncertain and badly charted waters, setting its own course, making differentiated accommodations while not letting any one regional power dictate its direction and priorities. To Whom Can America Turn? TO BE SURE, several states in the area are often mentioned as America's potential key partners in reshaping the Global Balkans: Turkey, Israel, India and--on the region's periphery--Russia. Unfortunately, every one of them suffers serious handicaps in its capability to contribute to regional stability or has goals of its own that collide with America's wider interests in the region. Turkey has been America's ally for half a century. It earned America's trust and gratitude by its direct participation in the Korean War. It has proven to be NATO's solid and reliable southern anchor. With the fall of the Soviet Union, it became active in helping both Georgia and Azerbaijan consolidate their new independence, and it energetically promoted itself as a relevant model of political development and social modernization for those Central Asian states whose people largely fall within the radius of the Turkic cultural and linguistic traditions. In that respect, Turkey's significant strategic role has been complementary to America's policy of reinforcing the new independence of the region's post-Soviet states. Turkey's regional role, however, is limited by two major offsetting considerations stemming from its internal problems. The first pertains to the still uncertain status of Ataturk's legacy: Will Turkey succeed in transforming itself into a secular European state even though its population is overwhelmingly Muslim? That has been its goal since Ataturk set his reforms in motion in the early 1920s. Turkey has made remarkable progress since then, but to this day its future membership in the European Union (which it actively seeks) remains in doubt. If the EU were to close its doors to Turkey, the potential for an Islamic political-religious revival and consequently for Turkey's dramatic (and probably turbulent) international reorientation should not be underestimated. The Europeans have reluctantly favored Turkey's inclusion in the European Union, largely in order to avoid a serious regression in the country's political development. European leaders recognize that the transformation of Turkey from a state guided by Ataturk's vision of a European-type society into an increasingly theocratic Islamic one would adversely affect Europe's security. That consideration, however, is contested by the view, shared by many Europeans, that the construction of Europe should be based on its common Christian heritage. It is likely, therefore, that the European Union will delay for as long as it can a clear-cut commitment to open its doors to Turkey--but that prospect in turn will breed Turkish resentments, increasing the risks that Turkey might evolve into a resentful Islamic state, with potentially dire consequences for southeastern Europe. (2) The other major liability limiting Turkey's role is the Kurdistan issue. A significant proportion of Turkey's population of 70 million is composed of Kurds. The actual number is contested, as is the nature of the Turkish Kurds' national identity. The official Turkish view is that the Kurds in Turkey number no more than 10 million, and that they are essentially Turks. Kurdish nationalists claim a population of 20 million, which they say aspires to live in an independent Kurdistan that would unite all the Kurds (claimed to number 25-35 million) currently living under Turkish, Syrian, Iraqi and Iranian domination. Whatever the actual facts, the Kurdish ethnic problem and the potential Islamic religious issue tend to make Turkey-- notwithstanding its constructive role as a regional model--also very much a part of the region's basic dilemmas. Israel is another seemingly obvious candidate for the status of a pre-eminent regional ally. As a democracy as well as a cultural kin, it enjoys America's automatic affinity, not to mention intense political and financial support from the Jewish community in America. Initially a haven for the victims of the Holocaust, it enjoys American sympathy. As the object of Arab hostility, it triggered American preference for the underdog. It has been America's favorite client state since approximately the mid-1960s and has been the recipient of unprecedented American financial assistance ($80 billion since 1974). It has benefited from almost solitary American protection against UN disapprobation or sanctions. As the dominant military power in the Middle East, Israel has the potential, in the event of a major regional crisis, not only to be America's military base but also to make a significant contribution to any required U.S. military engagement. Yet American and Israeli interests in the region are not entirely congruent. America has major strategic and economic interests in the Middle East that are dictated by the region's vast energy supplies. Not only does America benefit economically from the relatively low costs of Middle Eastern oil, but America's security role in the region gives it indirect but politically critical leverage on the European and Asian economies that are also dependent on energy exports from the region. Hence good relations with Saudi Arabia and the United Arab Emirates--and their continued security reliance on America--is in the U.S. national interest. From Israel's standpoint, however, the resulting American-Arab ties are disadvantageous: they not only limit the degree to which the United States is prepared to back Israel's territorial aspirations, they also stimulate American sensitivity to Arab grievances against Israel. Among those grievances, the Palestinian issue is foremost. That the final status of the Palestinian people remains unresolved more than 35 years after Israel occupied the Gaza Strip and the West Bank--irrespective of whose fault that actually may be--intensifies and, in Arab eyes, legitimates the widespread Muslim hostility toward Israel. (3) It also perpetuates in the Arab mind the notion that Israel is an alien and temporary colonial imposition on the region. To the extent that the Arabs perceive America as sponsoring Israeli repression of the Palestinians, America's ability to pacify anti-American passions in the region is constrained. That impedes any joint and constructive American-Israeli initiative to promote multilateral political or economic cooperation in the region, and it limits any significant U.S. regional reliance on Israel's military potential. Since September 11, the notion of India as America's strategic regional partner has come to the forefront. India's credentials seem at least as credible as Turkey's or Israel's. Its sheer size and power make it regionally influential, while its democratic credentials make it ideologically attractive. It has managed to preserve its democracy since its inception as an independent state more than half a century ago. It has done so despite widespread poverty and social inequality, and despite considerable ethnic and religious diversity in a predominantly Hindu but formally secular state. India's prolonged conflict with its Islamic neighbor, Pakistan, involving violent confrontations with guerrillas and terrorist actions in Kashmir by Muslim extremists benefiting from Pakistan's benevolence, made India particularly eager to declare itself after September 11 as co-engaged with the United States in the war on terrorism. Nonetheless, any U.S.-Indian alliance in the region is likely to be limited in scope. Two major obstacles stand in the way. The first pertains to India's religious, ethnic and linguistic mosaic. Although India has striven to make its 1 billion culturally diverse people into a unified nation, it remains basically a Hindu state semi-encircled by Muslim neighbors while containing within its borders a large and potentially alienated Muslim minority of somewhere between 120-140 million. Here, religion and nationalism could inflame each other on a grand scale. So far, India has been remarkably successful in maintaining a common state structure and a democratic system--but much of its population has been essentially politically passive and (especially in the rural areas) illiterate. The risk is that a progressive rise in political consciousness and activism could be expressed through intensified ethnic and religious collisions. The recent rise in the political consciousness of both India's Hindu majority and its Muslim minority could jeopardize India's communal coexistence. Internal strains and frictions could become particularly difficult to contain if the war on terrorism were defined as primarily a struggle against Islam, which is how the more radical of the Hindu politicians tend to present it. Secondly, India's external concerns are focused on its neighbors, Pakistan and China. The former is seen not only as the main source of the continued conflict in Kashmir but ultimately--with Pakistan's national identity rooted in religious affirmation--as the very negation of India's self-definition. Pakistan's close ties to China intensify this sense of threat, given that India and China are unavoidable rivals for geopolitical primacy in Asia. Indian sensitivities are still rankled by the military defeat inflicted upon it by China in 1962, in the short but intense border clash that left China in possession of the disputed Aksai Chin territory. The United States cannot back India against either Pakistan or China without paying a prohibitive strategic price elsewhere: in Afghanistan if it were to opt against Pakistan, and in the Far East if it allied itself against China. These internal as well as external factors constrain the degree to which the United States can rely on India as an ally in any longer-term effort to foster--let alone impose--greater stability in the Global Balkans. Finally, there is the question of the degree to which Russia can become America's major strategic partner in coping with Eurasian regional turmoil. Russia clearly has the means and experience to be of help in such an effort. Although Russia, unlike the other contenders, is no longer truly part of the region--Russian colonial domination of Central Asia being a thing of the past--Moscow nevertheless exercises considerable influence on all of the countries to its immediate south, has close ties to India and Iran and contains some 15-20 million Muslims within its own territory. At the same time, Russia has come to see its Muslim neighbors as the source of a potentially explosive political and demographic threat, and the Russian political elite are increasingly susceptible to anti-Islamic religious and racist appeals. In these circumstances, the Kremlin eagerly seized upon the events of September 11 as an opportunity to engage America against Islam in the name of the "war on terrorism." Yet, as a potential partner, Russia is also handicapped by its past, even its very recent past. Afghanistan was devastated by a decade-long war waged by Russia, Chechnya is on the brink of genocidal extinction, and the newly independent Central Asian states increasingly define their modern history as a struggle for emancipation from Russian colonialism. With such historical resentments still vibrant in the region, and with increasingly frequent signals that Russia's current priority is to link itself with the West, Russia is being perceived in the region more and more as a former European colonial power and less and less as a Eurasian kin. Russia's present inability to offer much in the way of a social example also limits its role in any American-led international partnership for the purpose of stabilizing, developing and eventually democratizing the region. Ultimately, America can look to only one genuine partner in coping with the Global Balkans: Europe. Although it will need the help of leading East Asian states like Japan and China--and Japan will provide some, though limited, material assistance and some peacekeeping forces--neither is likely at this stage to become heavily engaged. Only Europe, increasingly organized as the European Union and militarily integrated through NATO, has the potential capability in the political, military and economic realms to pursue jointly with America the task of engaging the various Eurasian peoples--on a differentiated and flexible basis--in the promotion of regional stability and of progressively widening trans-Eurasian cooperation. And a supranational European Union linked to America would be less suspect in the region as a returning colonialist bent on consolidating or regaining its special economic interests.

# 2AC

## Afghanistan

### 2AC NATO Mod

#### Blank says early withdrawal crushes NATO- causes great power war

Brzezinski ‘9 (Zbigniew Brzezinski, U.S. National Security Adviser from 1977 to 1981. His most recent book is Second Chance: Three Presidents and the Crisis of American Superpower, September 2009 - October 2009, (Foreign Affairs, SECTION: Pg. 2 Vol. 88 No. 5, HEADLINE: An Agenda for NATO Subtitle: Toward a Global Security Web, p. Lexis, 2009)

ADJUSTING TO A TRANSFORMED WORLD And yet, it is fair to ask: Is NATO living up to its extraordinary potential? NATO today is without a doubt the most powerful military and political alliance in the world. Its 28 members come from the globe's two most productive, technologically advanced, socially modern, economically prosperous, and politically democratic regions. Its member states' 900 million people account for only 13 percent of the world's population but 45 percent of global GDP. NATO's potential is not primarily military. Although NATO is a collective-security alliance, its actual military power comes predominantly from the United States, and that reality is not likely to change anytime soon. NATO's real power derives from the fact that it combines the United States' military capabilities and economic power with Europe's collective political and economic weight (and occasionally some limited European military forces). Together, that combination makes NATO globally significant. It must therefore remain sensitive to the importance of safeguarding the geopolitical bond between the United States and Europe as it addresses new tasks. The basic challenge that NATO now confronts is that there are historically unprecedented risks to global security. Today's world is threatened neither by the militant fanaticism of a territorially rapacious nationalist state nor by the coercive aspiration of a globally pretentious ideology embraced by an expansive imperial power. The paradox of our time is that the world, increasingly connected and economically interdependent for the first time in its entire history, is experiencing intensifying popular unrest made all the more menacing by the growing accessibility of weapons of mass destruction -- not just to states but also, potentially, to extremist religious and political movements. Yet there is no effective global security mechanism for coping with the growing threat of violent political chaos stemming from humanity's recent political awakening. The three great political contests of the twentieth century (the two world wars and the Cold War) accelerated the political awakening of mankind, which was initially unleashed in Europe by the French Revolution. Within a century of that revolution, spontaneous populist political activism had spread from Europe to East Asia. On their return home after World Wars I and II, the South Asians and the North Africans who had been conscripted by the British and French imperial armies propagated a new awareness of anticolonial nationalist and religious political identity among hitherto passive and pliant populations. The spread of literacy during the twentieth century and the wide-ranging impact of radio, television, and the Internet accelerated and intensified this mass global political awakening. In its early stages, such new political awareness tends to be expressed as a fanatical embrace of the most extreme ethnic or fundamentalist religious passions, with beliefs and resentments universalized in Manichaean categories. Unfortunately, in significant parts of the developing world, bitter memories of European colonialism and of more recent U.S. intrusion have given such newly aroused passions a distinctively anti-Western cast. Today, the most acute example of this phenomenon is found in an area that stretches from Egypt to India. This area, inhabited by more than 500 million politically and religiously aroused peoples, is where NATO is becoming more deeply embroiled. Additionally complicating is the fact that the dramatic rise of China and India and the quick recovery of Japan within the last 50 years have signaled that the global center of political and economic gravity is shifting away from the North Atlantic toward Asia and the Pacific. And of the currently leading global powers -- the United States, the EU, China, Japan, Russia, and India -- at least two, or perhaps even three, are revisionist in their orientation. Whether they are "rising peacefully" (a self-confident China), truculently (an imperially nostalgic Russia) or boastfully (an assertive India, despite its internal multiethnic and religious vulnerabilities), they all desire a change in the global pecking order. The future conduct of and relationship among these three still relatively cautious revisionist powers will further intensify the strategic uncertainty. Visible on the horizon but not as powerful are the emerging regional rebels, with some of them defiantly reaching for nuclear weapons. North Korea has openly flouted the international community by producing (apparently successfully) its own nuclear weapons -- and also by profiting from their dissemination. At some point, its unpredictability could precipitate the first use of nuclear weapons in anger since 1945. Iran, in contrast, has proclaimed that its nuclear program is entirely for peaceful purposes but so far has been unwilling to consider consensual arrangements with the international community that would provide credible assurances regarding these intentions. In nuclear-armed Pakistan, an extremist anti-Western religious movement is threatening the country's political stability. These changes together reflect the waning of the post-World War II global hierarchy and the simultaneous dispersal of global power. Unfortunately, U.S. leadership in recent years unintentionally, but most unwisely, contributed to the currently threatening state of affairs. The combination of Washington's arrogant unilateralism in Iraq and its demagogic Islamophobic sloganeering weakened the unity of NATO and focused aroused Muslim resentments on the United States and the West more generally

### 2AC T-Prohibition

#### We meet-

**1) Indefinite detention means holding without a trail- we end that**

US LEGAL 13 (<http://definitions.uslegal.com/i/indefinite-detention/>, “Indefinite Detention”)

Indefinite detention is the practice of detaining an arrested person by a national government or law enforcement agency without a trial. It may be made by the home country or by a foreign nation. Indefinite detention is a controversial practice, especially in situations where the detention is by a foreign nation. It is controversial because it seema to violate many national and international laws. It also violates human rights laws.

#### 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.").

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

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

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

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

## Con-Con

### 2AC State

#### SCOTUS has to lead

Gruber, 11

(Law Prof-University of Colorado, “An Unintended Casualty of the War on Terror,” 27 Ga. St. U.L. Rev. 299)

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?

#### SCOTUS would have to review the CP- either the CP links to the net-benefit, or the CP is struck down and doesn’t solve- durable fiat only applies to the agency taking action

Howell 5 (William G. Howell, Associate Prof Gov Dep @ Harvard 2005 (Unilateral Powers: A Brief Overview; Presidential Studies Quarterly, Vol. 35, Issue: 3, Pg 417)

Plainly, presidents cannot institute every aspect of their policy agenda by decree. The checks and balances that define our system of governance are alive, though not always well, when presidents contemplate unilateral action. Should the president proceed without statutory or constitutional authority, the courts stand to overturn his actions, just as Congress can amend them, cut funding for their operations, or eliminate them outright. (4) Even in those moments when presidential power reaches its zenith--namely, during times of national crisis--judicial and congressional prerogatives may be asserted (Howell and Pevehouse 2005, forthcoming; Kriner, forthcoming; Lindsay 1995, 2003; and see Fisher's contribution to this volume). In 2004, as the nation braced itself for another domestic terrorist attack and images of car bombings and suicide missions filled the evening news, the courts extended new protections to citizens deemed enemy combatants by the president, (5) as well as noncitizens held in protective custody abroad. (6) And while Congress, as of this writing, continues to authorize as much funding for the Iraq occupation as Bush requests, members have imposed increasing numbers of restrictions on how the money is to be spent.

### Crime

#### Applying international law, and their trail norms, is key to prevent transnational crime

Lichter 9 (Brian A., J.D. – Northwestern School of Law, “THE OFFENCES CLAUSE, DUE PROCESS, AND THE EXTRATERRITORIAL REACH OF FEDERAL CRIMINAL LAW IN NARCO-TERRORISM PROSECUTIONS,” Northwestern University Law Review, 103(4), http://www.law.northwestern.edu/lawreview/v103/n4/1929/lr103n4lichter.pdf)

The new narco-terrorism statute raises important constitutional issues that warrant further scholarly exploration. In a world of increasingly globalized crime, the constitutional rights of foreign nationals, the extraterritorial jurisdiction of federal courts, and Congress‘s power to legislate extraterritorially will become central questions within our constitutional framework. These issues, taken together, raise the broader question of the proper balance between individual liberties and national security interests in a post-9/11 world. This Comment argues that the government‘s power to proscribe narcoterrorism is broad. But while the Constitution should act as a shield for national interests rather than a sword in extraterritorial prosecutions, 207 the government‘s power is not—and cannot be—exercised without constraint. Although Congress‘s Offences Clause power is broad, it is not limitless. To check this broad power, the Executive is under no obligation to initiate § 960a prosecutions, particularly if a prosecution would pose thorny political and diplomatic questions. The Fifth Amendment‘s Due Process Clause also limits the extraterritorial reach of federal law. Although this Comment argues that due process does not require a territorial nexus, measuring due process pursuant to internationally accepted bases of jurisdiction in extraterritorial prosecutions is advantageous for policy reasons. Exercising jurisdiction in accordance with international law is politically beneficial because it demonstrates the United States‘ compliance with accepted norms and puts other countries on notice as to when the United States will likely assert jurisdiction. Moreover, international law, through protective jurisdiction, provides a tool by which federal courts can exercise jurisdiction over extraterritorial violations of nonperemptory norms. As this Comment suggests, this jurisdiction is a safety net that permits the U.S. government to protect its own security interests, along with those of allied governments, through the criminal law. In this way, § 960a can become a powerful prosecutorial tool in the fightagainst international crime.

#### Nuclear war

**Dobriansky, 1 -** Under Secretary for Global Affairs at the State Department (Paula, “The Explosive Growth of Globalized Crime,”http://www.iwar.org.uk/ecoespionage/resources/transnational-crime/gj01.htm

Certain types of international crime -- terrorism, human trafficking, drug trafficking, and contraband smuggling -- involve serious violence and physical harm. Other forms -- fraud, extortion, money laundering, bribery, economic espionage, intellectual property theft, and counterfeiting -- don't require guns to cause major damage. Moreover, the spread of information technology has created new categories of cybercrime.¶ For the United States, international crime poses threats on three broad, interrelated fronts. First, the impact is felt directly on the streets of American communities. Hundreds of thousands of individuals enter the U.S. illegally each year, and smuggling of drugs, firearms, stolen cars, child pornography, and other contraband occurs on a wide scale across our borders.¶ Second, the expansion of American business worldwide has opened new opportunities for foreign-based criminals. When an American enterprise abroad is victimized, the consequences may include the loss of profits, productivity, and jobs for Americans at home.¶ Third, international criminals engage in a variety of activities that pose a grave threat to the national security of the United States and the stability and values of the entire world community. Examples include the acquisition of weapons of mass destruction, trade in banned or dangerous substances, and trafficking in women and children. Corruption and the enormous flow of unregulated, crime-generated profits are serious threats to the stability of democratic institutions and free market economies around the world.

## K

### 2AC Alt Doesn’t Solve Aff

#### Alt doesn’t solve detention- engagement with international conventions is key

Jenks and Talbot-Jensen 11 (INDEFINITE DETENTION UNDER THE LAWS OF WAR Chris Jenks\* & Eric Talbot Jensen\*\* Lieutenant Colonel, U.S. Army Judge Advocate General's Corps. Presently serving as the Chief of the International Law Branch, Office of The Judge Advocate General, Washington D.C. The views expressed in this Article are those of the author and not The Judge Advocate General's Corps, the U.S. Army, or the Department of Defense. \*\* Visiting Assistant Professor, Fordham Law School. The authors wish to thank Sue Ann Johnson for her exceptional research and editing skills, and the organizers and attendees at both the 3rd Annual National Security Law Jtinior Faculty Workshop at the University of Texas School of Law, where we first discussed the ideas for this article, and the Stanford Law and Policy Review National Defense Symposium, where we first presented the finished product. STANFORD LAW & POLICY REVIEW [Vol. 22:1] Page Lexis)

Those who would deconstruct the law of war as applied to detention stemming from armed conflict with non state actors may achieve victory, but in an academic, and, practically speaking, pyrrhic sense. Arguing that the Geneva Conventions for Prisoners and Civilians do not, on their face, apply to members of al-Qaeda or the Taliban may be correct, and in more than one way. But in so arguing, the deconstructionist approach removes a large portion of intemationally recognized and accepted provisions for regulating detention associated with armed conflict—^the Geneva Conventions—^while leaving the underlying question of how to govern detention unanswered. At some point, even the deconstructionist must shift to positivism and propose an alternative, an alternative we submit would inevitably resemble that which is already extant in the law of war. Moreover, while there has been discussion about the strained application of the Geneva Conventions and Additional Protocols to states combating transnational terrorism, attempts at a new convention have gained little traction. Our approach is more an attempt at pragmatism than radicalism—there are individuals currently detained, purportedly indefinitely and under the law of war. Yet despite years of such detention, two administrations have provided little if any information on what exactly such detention means, how and by what it is govemed, and if and how it ends. Conflating aspects of internationally recognized law of war conventions allows for a transparent process that could be promulgated now. Whether for the up to fifty or so individuals currently detained at Guantanamo or for those who may be detained in the future, we posit that the law of war provides a legitimate model for indefinite detention. And, as the Walsh Report recognized,^' the longer detainees are held, the more concern for their individual situations must be given. We therefore analyze the complete protections provided by the law of war and advocate that all of them, over time and to varying degrees, be applied to the detainees in Guantanamo. In this way, detention under the laws of war can provide a humane system of indefinite detention that strikes the right balance between the security of the nation and the rights of individuals

#### Acting generates meaning

Todd May 5, philosophy prof at Clemson, “To change the world, to celebrate life”, Philosophy & Social Criticism, vol 31, nos 5–6, 517–531

What are we to make of these references? We can, to be sure, see the hand of Heidegger in themBut we may also, and for present purposes more relevantly, see an intersection with Foucault’s work on freedomThere is an ontology of freedom at work here, one that situates freedom not in the private reserve of an individual but in the unfinished character of any historical situationThere is more to our historical juncture, as there is to a painting, than appears to us on the surface of its visibilityThe trick is to recognize this, and to take advantage of it, not only with our thoughts but with our livesAnd that is why, in the end, there can be no such thing as a sad revolutionaryTo seek to change the world is to offer a new form of life-celebrationIt is to articulate a fresh way of being, which is at once a way of seeing, thinking, acting, and being acted uponIt is to fold Being once again upon itself, this time at a new point, to see what that might yieldThere is, as Foucault often reminds us, no guarantee that this fold will not itself turn out to contain the intolerableIn a complex world with which we are inescapably entwined, a world we cannot view from above or outside, there is no certainty about the results of our experimentsOur politics are constructed from the same vulnerability that is the stuff of our art and our daily practicesBut to refuse to experiment is to resign oneself to the intolerable; it is to abandon both the struggle to change the world and the opportunity to celebrate living within itAnd to seek one aspect without the other – life-celebration without world-changing, world-changing without life-celebration – is to refuse to acknowledge the chiasm of body and world that is the wellspring of bothIf we are to celebrate our lives, if we are to change our world, then perhaps the best place to begin to think is our bodies, which are the openings to celebration and to change, and perhaps the point at which the war within us that I spoke of earlier can be both waged and resolvedThat is the fragile beauty that, in their different ways, both MerleauPonty and Foucault have placed before usThe question before us is whether, in our lives and in our politics, we can be worthy of it.

#### Anxiety is vital to avert extinction

Mark **Shepard 7**, Anxiety - the ultimate survival tool!, Neuro Linguistic Programming Expert, http://www.scribd.com/doc/2050501/Anxiety-The-Ultimate-Survival-Skill)

Anxiety, The Ultimate Survival Skill ¶ As much pain and suffering that highly sensitive people go through because of our worry and **anxiety habits**, these are traits that **have** **ensured** humanity's survival since time immemorialWhat do I mean? First of all you have to understand that anxiety is a thought processIt is not a mental diseaseWhen you are anxious, what are you thinking about? What's great? What's wonderful? How everything is going to turn out better than you can possibly imagine? No! You are imagining the worst case scenarioAnxiety is thinking about what you do not want to have happenThink about it! Let's float back in time for a moment to One Gazillion B.CYou are hanging out with your hunter gatherer buddies and it's summer time...There's plenty to eat and it's warmAll of a sudden you have an anxious thoughtYou think of something unpleasant about the futureYou suddenly think of the coming..winter! You imagine digging through snow drifts scavenging for whatever scraps of food you can findYou imagine starvingYou imagine your children, hungry, cold, sickThat's anxietyThinking about what you do not want to have happenWhat it's supposed to do is trigger a resourceful responseIn this case, you come up with a brilliant ideaIn order to avoid starvation in the coming winter you start drying food and storing it in underground containersThinking about the cold, you come up with the idea that you can make warm clothingCome Fall you gladly trade that little summer loin cloth in for a nice woolly mammoth coatThus the first root cellar is born and the fur coat is invented, because of anxiety.¶ Your ability to think ahead and visualize bad things happening **enables you to plan ahead and take decisive action to create a different outcome**This planning for the winter results in your family and tribe surviving! Your children and their children pass along this anxiety geneThe "lug-heads" who don't have this ability perishSurvival is good, isn't it?¶ So those who were able to foreseethe future and imagine the worst were able to better plan and as a result create a better futureNowFast forward to todayI would be willing to bet that you've been using this wonderful imagination of yours to imagine the worstThe added factor here is that your unconscious mind does not know the difference between what is real and what is imagined, so when you imagine the worst, your body reacts as if that bad thing is really happeningThat releases all sorts of stress hormones and chemicals in your bodyThe point is to stop beating yourself up for having anxietyAnxiety is merely an excellent survival tool that's been pushed beyond its original purposeYou can reclaim it's usefulness by doing what ancient people didBecome aware of a possible negative outcome in the future and then take positive, decisive action to make sure something better happensIf it's something beyond your control, practice imagining it working out positively and see how that feels in your bodyFor example: if you are worried about your kids driving home from college in a snow storm imagine them arriving safely and sitting in front of the fire sipping hot cocoa.

## Clog

### 2AC Court Strip

#### Doesn’t turn the aff

Sager 81 (Lawrence Sager ’81Prof of Law, NYU 95 Harv. L. Rev. 17

Thus, Congress has chosen, and the Supreme Court accepted, a form for jurisdictional legislation that obscures the consti­tutional origin of the Court's jurisdiction. Congress acts as though it were giving the Court jurisdiction in measured stat­utory doses, and ordinarily the Court has no occasion to take umbrage at this pretense. But the self-executing, constitutional basis of the Court's jurisdiction is quite important. If Congress were to place an unconstitutional limitation on the Court's jurisdiction, the Court would strike down the offending limi­tation and proceed under its constitutional grant of jurisdic­tion. Nothing short of a constitutional amendment can rob the Court of this ability.

#### Court can limit frivolous takings claims

Rule 12 (Troy A. Rule, Associate Professor, University of Missouri School of Law, “AIRSPACE AND THE TAKINGS CLAUSE”, 90 Wash. U. L. Rev.\_(forthcoming 2012) http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2020667)

A New Avenue for Frivolous Takings Claims? One plausible criticism of this Article’s proposed takings rule is that some citizens might file meritless takings claims that misapply its government use standard, thereby impeding legitimate government activities.133 In their general capacity as landowners, government entities routinely enjoy views, sunlight, and other benefits of neighboring airspace kept open by conventional land use controls along with the rest of a jurisdiction’s landowners. Some claimants may try to argue that these incidental airspace uses satisfy the proposed rule’s government use requirement. Courts could deter most such abuses of the proposed rule by limiting the scope of “government use” under the rule to exclude incidental uses. Jed Rubenfeld aptly recognized the need to limit the meaning of “use” when 218 describing his “usings” test for regulatory takings. He advocated narrowing the meaning of “government use” to encompass only cases where “some productive attribute or capacity of private property is 219 exploited for state-dictated service.” Joseph Sax similarly argued that no compensation should be due when the “government profit[s] only as an incidental beneficiary of a rule enacted to resolve a controversy between 220 parties.” Exempting incidental government uses of restricted airspace would reduce the likelihood of frivolous claims under the proposed rule.

#### Empirically denied—it is IMPOSSIBLE to predict the impact on caseload

Stern, 2k3 (Toby, J.D. Candidate U Penn 2k4, “Federal Judges and Fearing the ‘Floodgates of Litigation’, 6 U. Pa. J. Const. L. 377)

One of the most easily identifiable problems with the floodgates argument is that it is rarely, if ever, followed by a true analysis of the potential litigation of which it speaks. That is, one response to a floodgates argument might be, "Are you sure that a contrary position would yield a flood of litigation?" [n182](http://www.lexisnexis.com.ezproxy.lib.ou.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1285372817216&returnToKey=20_T10196646091&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.57847.910722950815#n182) This criticism is frequently leveled against the floodgates argument, especially in the realm of tort litigation. [n183](http://www.lexisnexis.com.ezproxy.lib.ou.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1285372817216&returnToKey=20_T10196646091&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.57847.910722950815#n183) For example, as one commentator has argued: The "floodgates of litigation" argument has proven wrong time and again. The lifting of the "impact" rule in rewarding damages for mental anguish, allowing third parties to recover under contracts, and the recognition of the right to privacy, were all prophesied to overwhelm the courts with frivolous claims. They have not. [n184](http://www.lexisnexis.com.ezproxy.lib.ou.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1285372817216&returnToKey=20_T10196646091&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.57847.910722950815#n184) This argument, one should think, is relatively strong. While the floodgates argument is generally based on policy considerations, [n185](http://www.lexisnexis.com.ezproxy.lib.ou.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1285372817216&returnToKey=20_T10196646091&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.57847.910722950815#n185) policy arguments are rarely so indeterminate. While moral arguments are certainly not precise one cannot quantify, say, "fairness" or "justice" they are simply used differently. That is, when a judge says that a decision "promotes justice," [n186](http://www.lexisnexis.com.ezproxy.lib.ou.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1285372817216&returnToKey=20_T10196646091&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.57847.910722950815#n186) he or she is not speaking about a tangible, actual result. In contrast, when a judge expresses that a decision will open the floodgates of litigation, he or she is saying that there will be actual, cognizable caseload results from the decision. Given how often the floodgates do not open when we are warned that they will, [n187](http://www.lexisnexis.com.ezproxy.lib.ou.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1285372817216&returnToKey=20_T10196646091&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.57847.910722950815#n187) making the argument without a proper foundation is dangerous. While there certainly are situations in which a judge should consider the implications of a decision on his or her [\*404] caseload, [n188](http://www.lexisnexis.com.ezproxy.lib.ou.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1285372817216&returnToKey=20_T10196646091&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.57847.910722950815#n188) doing so without considering the factual bases of those implications is problematic. [n189](http://www.lexisnexis.com.ezproxy.lib.ou.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1285372817216&returnToKey=20_T10196646091&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.57847.910722950815#n189) And while uncertainty is an unavoidable part of the law, [n190](http://www.lexisnexis.com.ezproxy.lib.ou.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1285372817216&returnToKey=20_T10196646091&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.57847.910722950815#n190) the language with which the floodgates argument is regularly employed expresses anything but conjecture and uncertainty. The arguments are forceful; they are intended to conjure "images of a destructive, elemental force." [n191](http://www.lexisnexis.com.ezproxy.lib.ou.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1285372817216&returnToKey=20_T10196646091&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.57847.910722950815#n191) After all, as Judge Posner notes, "So irregular has been the growth of the caseloads of each of the three tiers of the federal judiciary in the past, and so many and poorly understood are the causes of changes in judicial caseloads, that it is impossible to make responsible predictions about future changes." [n192](http://www.lexisnexis.com.ezproxy.lib.ou.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1285372817216&returnToKey=20_T10196646091&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.57847.910722950815#n192) The failure of judges to recognize this limitation of the argument reduces the weight afforded theret

## Capital DA

### Thumpers

#### Finance reform decision triggers the court link- MASSIVE political implications

Cohen 1/1 (Andrew, the Atlantic. The Year Ahead in Court Battles <http://www.theatlantic.com/national/archive/2014/01/the-year-ahead-in-court-battles/282670/>)

Any day now, we could get a ruling from the justices in Washington in [McCutcheon v. Federal Election Commission](http://www.scotusblog.com/case-files/cases/mccutcheon-v-federal-election-commission/), the big campaign finance case that was argued in early October. The best bet you can make all year in the law is that the Court's conservatives will further limit the ability of federal officials to control the flow of money into and out of politics. McCutcheon may or may not end up being as much of a perversion of the first amendment as was the [Citizens United](http://www.law.cornell.edu/supct/html/08-205.ZS.html) decision nearly four years ago. But it will be close. And that will bring a new flood of money into the 2014 mid-term elections, the results of which, in the Senate at least, will impact the pace of President Obama's judicial confirmations.

#### NSA decisions thump- takes out deference links

Cohen 1/1 (Andrew, the Atlantic. The Year Ahead in Court Battles <http://www.theatlantic.com/national/archive/2014/01/the-year-ahead-in-court-battles/282670/>)

We now are geared up to spend 2014 watching the kabuki dance of federal appellate practice unfold over the legality of the NSA's bulk metadata telephony surveillance program. The D.C. Circuit Court of Appeals will evaluate [the work of](http://www.theatlantic.com/national/archive/2013/12/judges-ruling-could-jeopardize-nsa-surveillance/282409/)(Bush nominee) U.S. District Judge Richard Leon, who first declared the government spy program "likely unconstitutional." And the 2nd U.S. Circuit Court of Appeals, in New York, will evaluate [the work of](http://www.theatlantic.com/national/archive/2013/12/is-the-nsas-spying-constitutional-it-depends-which-judge-you-ask/282672/) (Clinton nominee) U.S. District Judge William Pauley who, with similar gusto, later declared the program both constitutional and necessary. Best guess? The two appeals courts will narrow the vast gulf between the two trial court rulings.

### Substance

#### Capital is bulletproof

Gibson 12 (James L. Gibson, Sidney W. Souers Professor of Government (Department of Political Science), Professor of African and African-American Studies, and Director of the Program on Citizenship and Democratic Values (Weidenbaum Center on the Economy, Government, and Public Policy) at Washington University in St. Louis; and Fellow at the Centre for Comparative and International Politics and Professor Extraordinary in Political Science at Stellenbosch University (South Africa), 7/15/12, “Public Reverence for the United States Supreme Court: Is the Court Invincible?”, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2107587>)

Political scientists and legal scholars continue to be obsessed with the so-called countermajoritarian dilemma created by the United States Supreme Court’s lack of accountability, particularly when coupled with its immense policy-making powers. Especially when the Supreme Court makes decisions that seem to fly in the face of public preferences—as in Kelo v. New London 1 and Citizens United v. Federal Election Commission 2—concerns about the function of the institution within American democracy sharpen. Indeed, some seem to believe that by making policies opposed by the majority of the American people the Court undermines its fundamental legitimacy, its most valuable political capital. The underlying assumption of these worries about the Supreme Court’s legitimacy is that dissatisfaction with the Court’s decisions leads to the withdrawal, or at least diminution, of support for the institution. So when the Court decides a high profile case like Citizens United in a widely unpopular direction, it is logical to assume that the Court’s legitimacy suffers. Again, the assumption is that legitimacy flows from pleasing decisions, but it is undermined by displeasing decisions. At least some empirical evidence directly contradicts this assumption. In what is perhaps the most salient and politically significant decision of the last few decades, the Supreme Court’s decision in Bush v. Gore 3 effectively awarded the presidency to George W. Bush. One might have expected that this decision would undermine the Court’s legitimacy, at least with Democrats and probably with African-Americans as well. Yet several empirical research projects have indicated that, if anything, the Court’s legitimacy was boosted by this decision, even among Democrats and African-Americans. 4 Bush v. Gore had great potential to chip away at the Court’s legitimacy—it was a deeply divided 5-4 decision; divided by the justices’ partisanships as well; it extended the Court’s authority into an area of law in which the Court had generally deferred to the states; the decision was severely criticized by some, with many in the legal academy describing the decision as a “self-inflicted wound”; 5 and, of course, it was a decision of immense political importance. If Bush v. Gore did not subtract from the Court’s institutional legitimacy, it is difficult to imagine less momentous decisions undermining judicial legitimacy. Political scientists have been studying the legitimacy of the Supreme Court for decades now, and several well-established empirical findings have emerged. The findings relevant to the countermajoritarian dilemma can be summarized in a series of nutshells: ● The Supreme Court is the most legitimate political institution within the contemporary United States. Numerous studies have shown that the American mass public extends great legitimacy to the Court; typically, Congress is depicted as being dramatically less legitimate than the Supreme Court. Indeed, some have gone so far as to describe the Supreme Court as “bulletproof,” and therefore able to get away with just about any ruling, no matter how unpopular. And indeed, the United States Supreme Court may be one of the most legitimate high courts in the world.

#### Turn popularity- The public overwhelming supports the aff

Greenwald 9 (Glenn- former Constitutional and civil rights litigator and is the author of three New York Times Bestselling books: two on the Bush administration's executive power and foreign policy abuses, and his latest book, With Liberty and Justice for Some, an indictment of America's two-tiered system of justice. Greenwald was named by The Atlantic as one of the 25 most influential political commentators in the nation. He is the recipient of the first annual I.F. Stone Award for Independent Journalism, and is the winner of the 2010 Online Journalism Association Award for his investigative work on the arrest and oppressive detention of Bradley Manning, citing NYT/CBS Poll, June 18, “Overwhelming majority oppose preventive detention without charges”, http://www.salon.com/2009/06/18/detention/)

A new NYT/CBS News poll just released today asked a question designed to test support for Obama’s proposal to indefinitely detain Guantanamo detainees without charges — and it found overwhelming opposition to that plan (click to enlarge): The view that detainees should be charged with crimes or released is often depicted as the fringe “Far Left” view. Like so many views that are similarly depicted, it is — in reality — the overwhelming consensus view among Americans (68%). As is so often the case, it is the view depicted as the Serious Centrist position — the U.S. should keep people in cages for as long as it wants without charging them with any crime — that is the fringe view held by only a small minority (24%). While some may express surprise at the outcome of this question, it really shouldn’t be surprising: Americans are taught from childhood that one of the primary distinctions between free countries and tyrannies is that, in the former, the state lacks the power to imprison people without charging and convicting them of a crime. Is it really that surprising that an overwhelming majority of Americans see such charge-free imprisonment as wrong even when it comes to Guantanamo detainees, probably the single most dehumanized group on the planet?

#### That’s key to court capital

Hoekstra 3 [Valerie J. Hoekstra, Associate Professor of Political Science at ASU, *Public Reactions to Supreme Court Decisions* Cambridge University Press 2003]

In some respects, comparisons with Congress or the presidency are neither appropriate nor fair. Unlike its democratically selected and accountable counterparts, the Supreme Court appears relatively isolated from and unconstrained by public opinion. Its members do not run for election, and once in office, they essentially serve for life. While this certainly places them in an enviable position, the justices must rely on public support for the implementation of their policies since they possess “neither the purse nor the sword.” The Court’s lack of many enforcement mechanisms makes public support even more essential to the Court than it is to the other institutions. This public support may generate an important source of political capital for the Court (Choper 1980).

#### Winners win

Little 00 (Laura, Professor of Law – Temple University, Beasley School of Law, November, 52 Hastings L.J. 47, Lexis)

Other scholars bolster Redish's position by pointing out that judicial review of both federalism and separation of powers questions presents something of a self-fulfilling prophesy. Through review of these sensitive issues of power, the judiciary bolsters its own position or amasses "political capital" and, thereby, legitimates its own power to engage in such review . 237 The judiciary has therefore established  [\*98]  itself as an effective watchdog to ensure that governmental structures are functioning appropriately. n237. Perry, supra note 11, at 57 (Supreme Court has "amassed a great deal of the political capital it now enjoys ... precisely by resolving problems arising under the doctrines of federalism and of the separation-of-powers "); see also Archibald Cox, The Role of the Supreme Court in American Government 30 (1972) (explaining that "history legitimated the power [of judicial review], and then habit took over to guide men's actions so long as the system worked well enough").

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## Court Capital

### Pak

**No chance that Pakistan will collapse**

**Bandow 09**- Senior Fellow @ Cato, former special assistant to Reagan (11/31/09, Doug, “Recognizing the Limits of American Power in Afghanistan,” Huffington Post, http://www.cato.org/pub\_display.php?pub\_id=10924)

From Pakistan's perspective, limiting the war on almost any terms would be better than prosecuting it for years, even to "victory," whatever that would mean. In fact, the least likely outcome is a takeover by widely unpopular Pakistani militants. The Pakistan military is the nation's strongest institution; while the army might not be able to rule alone, it can prevent any other force from ruling.

Indeed, Bennett Ramberg made the important point: "Pakistan, Iran and the former Soviet republics to the north have demonstrated a brutal capacity to suppress political violence to ensure survival. This suggests that even were Afghanistan to become a terrorist haven, the neighborhood can adapt and resist." The results might not be pretty, but the region would not descend into chaos. In contrast, warned Bacevich: "To risk the stability of that nuclear-armed state in the vain hope of salvaging Afghanistan would be a terrible mistake."

### Thumpers

#### Voter ID thumps

Cohen 1/1 (Andrew, the Atlantic. The Year Ahead in Court Battles <http://www.theatlantic.com/national/archive/2014/01/the-year-ahead-in-court-battles/282670/>)

The Supreme Court's [lamentable](http://www.supremecourt.gov/opinions/12pdf/12-96_6k47.pdf) decision in [Shelby County v. Holder](http://www.supremecourt.gov/opinions/12pdf/12-96_6k47.pdf) last June, the one that struck the "pre-clearance" provision from the Voting Rights Act, launched a new phase in the voting wars. In 2014, we'll begin to get clarity on what this new post-Shelby era looks like as voting advocates (and federal officials) seek to block enforcement of restrictive voting measures in states like [Texas](http://dfw.cbslocal.com/2013/11/15/texas-voter-id-case-gets-september-2014-trial-date/), [Pennsylvania](http://www.arkansasmatters.com/story/voter-id-law-rules-approved-aclu-promises-challenge/d/story/idNBnIC7WUuuTMltbe2zVA), [North Carolina](http://www.thenation.com/blog/177577/north-carolina-shows-why-voting-rights-act-still-needed), [Arkansas](http://www.arkansasmatters.com/story/voter-id-law-rules-approved-aclu-promises-challenge/d/story/idNBnIC7WUuuTMltbe2zVA), and [Wisconsin](http://www.jsonline.com/news/statepolitics/state-high-court-to-consider-two-voter-id-cases-b99146859z1-232689791.html). The September trial for the Texas ID law, in particular, bears watching. It is among the nation's most onerous and it potentially impacts the most voters. Which side wins these battles will help determine who can or cannot vote in the 2014 mid-terms—and beyond.