*I affirm: Resolved: The United States ought to extend to non-citizens accused of terrorism the same constitutional due process protections it grants to citizens.*

1. Aff gets RVI to avoid making T a no-risk issue; otherwise, negs would exploit the aff time skew and run blippy shells to skew my strategy. Also, the AC is always vulnerable to T since the NC is reactive and can run theory on any of my interps, so aff RVI is key to avoiding unnecessary theory. Further, aff RVI is necessary to resolve the theory debate; they claim that my practice has skewed substance too much to evaluate it, which means you can’t vote on it. If they don’t allow me to turn the theory shell with an RVI, then I can’t gain offense off the only layer left in the round. That makes theory itself abusive unless I can correct for it. Lastly, if the neg presents a better interp, don’t drop me; adopt theirs and drop my argument to avoid dropping me for marginal abuse on reasonable interps.

2. I have a massive time skew since I only get 4 minutes to answer a 7 minute NC and preempt 6 minutes of negative responses. Also, negs choose their framework and advocacy after hearing the aff, giving them every advantage in the framework and case debate. If there is no clear offense, presume aff since I accomplished everything the neg did in far less time and thus did the better debating.

3. Ought statements are evaluations of actions. Evaluations distinguish between good and bad, on the basis of features, and those features constitute our reasons. Having an obligation means that we have the best reason. If there were a better reason, then the obligation would instead apply to that action. All reasons to take or not take an action are evaluated comparatively on the basis of the strength of those reasons. Sufficient strength requires only that the reason be equal to the comparative reasons. If no valid justification exists, then all reasons are sufficient in comparison to the other equally invalid justifications. Therefore, any purported justification would constitute a sufficient reason. As you ought to do what you have sufficient reason to do, you ought to take the action.

4. The United Nations General Assembly defines terrorism as:  
1994 United Nations Declaration on Measures to Eliminate International Terrorism annex to UN General Assembly resolution 49/60 ,"Measures to Eliminate International Terrorism", of December 9, 1994, UN Doc. A/Res/60/49

"**Criminal acts intended** or calculated **to provoke a state of terror in the general public**, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, **whatever the considerations of a political**, philosophical, **[or] ideological**, racial, ethnic, religious or any other **nature that may be invoked to justify them.**" Prefer this definition since it conclusively interprets legal standards based on international consensus.

I value MORALITY, as “ought” indicates a moral obligation.

Chains of moral reasoning cannot reach valid conclusions without terminating in assertions, and these assertions define the axiomatic values we hold when forming further moral principles. Taylor:  
(Charles Taylor, “Bourdieu: Critical Perspectives”, 1993, pg. 46)

Wittgenstein shows that the **[a] subject** not only isn’t but **[cannot] be aware of** a whole host of issues which nevertheless have direct,l bearing on **the correct application of a rule.** Wittgenstein shows this by raising the possibilities of misunderstanding. **Some outsider**, unfamiliar with the way we do things, **might misunderstand what to us are** perfectly clear and **simple directions**. You want to get to town? Just **[such as] follow the arrow**s. But suppose that what seemed the natural way of following the arrow to him or her was to go in the direction of the feathers, not of the points? We can imagine a scenario: [but] there are no arrows in the outsider’s culture, but there is a kind of ray gun whose discharge fans out like the feathers on our arrows…From the intellectualist perspective, it must be that **somewhere in our mind,** consciously or unconsciously, **a premise has been laid down about how you follow arrows.** From another angle, Once we see the stranger’s mistake, we can explain what he or she ought to do. But if we can give an explanation, we must already have an explanation. SO the thought must reside somewhere in us that you follow arrows this way…There are an indefinite number of points at which, for a given explanation of a rule and a given run of paradigm cases, someone could nevertheless misunderstand, as our stranger did the injunction to follow the arrows. For instance, I might say that by “Moses” I mean the man who led the Israelites out of Egypt, but then my interlocutor might have trouble with the words “Egypt” and “Israelites”. Nor would **these questions would not come to an end when we get down to words like red, dark, sweet.** Nor would even mathematical explanation be proof against this danger…We recognize an obsession of the modern intellectual tradition, from Descartes. It didn’t see this as a problem, because it thought we could find such secure foundations, explanations in terms of features which were self-explanatory or self-authenticating. That’s why the imagined interlocutor placed his hopes in words like red, dark, sweet, **referring to** basic **empirical experiences on which we** can **ground everything else**. The force of Wittgenstein’s argument lies in its radical undercutting of any such foundationalism. Wittgenstein stresses the unarticulated—at some points even unarticulable—nature of this understanding. **Obeying a rule is a practice**”. **Giving reasons for** one’s practice in **following a rule has to come to an end**. “[as] **One’s reasons will soon give out. And then one shall act**, without reasons”. Or later, “If I have exhausted my justifications I have reached bedrock, and my spade is turned. Then I am inclined to say: **‘[and say] This is simply what I do”.**

Justifications for our moral beliefs must arise from social consensus as it is the only coherent way to resolve the infinite regress of asking for reasons for following rules. Moral rules are adapted links between society’s perceptions and its consequent judgments. Taylor 2:

**The connections which form our background are** just de facto links, **not susceptible of any justification.** For instance, **justifications are simply imposed by our society; we are conditioned to make them.** They become “automatic,” which is why the question never arises. The view that society imposes these limits is the heart of Kripke’s interpretation of Wittgenstein. Or else they can perhaps be considered as “wired in.” **It’s just a fact about us that we react this way, as it is that we blink when something approaches our eyes, and no justification is in order**…It is his insistence that **as following rules is a social practice**. Granted, this also fits, perhaps, with Kripke’s version of the first view. But I think that, in reality, this connection of background with society reflections an alternative vision, which has jumped altogether outside the old monological outlook which dominates the epistemological tradition. Whatever Wittgenstein thought, this second view seems to me to be right. What the first cannot account for is the fact that **we do give explanations, that we can often articulate** reasons **when challenged. [For example] Following arrows towards the point is an arbitrarily imposed connection**; **it** that **makes sense, granted the way [society has decided] arrows move**. What we need to do is follow a hint from Wittgenstein and attempt to give an account of the background as understanding, **which [in turn] places [the arrow] in social space.**

Misunderstandings of morality can only be reconciled through mutual agreements regulating behavior and synthesizing pluralistic sets of knowledge into one coherent guide for action. This necessitates a contractual view of morality because the only way to reconcile different perceptions is through moral rules based on the unity of people under mutually agreed upon principles. Kelsen:  
**Kelsen** (Hans Kelsen, Absolutism and Relativism in Philosophy and Politics, The American Political Science Review, Vol. 42, No. 5 (Oct., 1948), pp. 906-914)

**The subjectivistic character of the relativistic theory of knowledge** involves two perils. The one is a paradoxical solipsism; that is, the assumption that the ego as the subject of knowledge is the only existent reality. Such assumption **would involve a relativistic epistemology in a self-contradiction. For if the ego is the only existent reality, it 'must be an absolute reality.** The other danger is a no less paradoxical pluralism. Since the world exists only in the knowledge of the subject, according to this view, the ego is, so to speak, the center of his own world. **If**, however, **the existence of many egos must be admitted,** the consequence seems to be inevitable that **there are as many worlds as there are knowing subjects. Philosophical relativism** deliberately **avoids** solipsism as well as **pluralism**. Taking into consideration-as true relativism-the mutual relation among the various subjects of knowledge, this theory **[and] compensates its inability to secure the objective existence of the one and same world for all subjects by the assumption that the** individuals, as **subjects of knowledge**, **are equal**. This assumption implies that also the various processes of cognition in the minds of the subjects are equal, and thus the further assumption becomes possible that **the objects of knowledge**, as the results of these individual processes, **are in conformity with one another, an assumption confirmed by the external behavior of** the **individuals.**

The state is defined by the obligations it has since the state is only formed present an agreement between governing and non-governing individuals. States are definitionally bound to adhere to their obligations since they are mechanisms which lack private wills. Ripstein:  
Arthur Ripstein, “Force and Freedom”, page 321

**The sovereign cannot exempt itself in pursuit of a private purpose because the sovereign is not a private actor; the sovereign is the omnilateral will, and its only purposes are those inherent in the idea of the original contract.** So **the sovereign has no discretion over the ends** that **it will pursue**, **and** so **does not have means in the way that a private person has means subject to his or her choice in setting and pursuing ends.** To fail to punish, then, would be to treat its coercive power as an instrument to be used for discretionary purposes, and so to do wrong in the highest degree by renouncing its own principle, even in the form of a single exception

Social consensus is expressed in the form of contractual agreements. Agents ought to uphold contracts to respect the worth of the other agents who have invested their trust in the agreement. Ripstein 2:  
(Ripstein, Arthur, University of Toronto Law Professor. Kant on Law and Justice. Pg. 14)

**A contract is** not understood as a narrow special case of the more general moral obligation of promise keeping14, but as **a** specifically **legal institution [that] govern[s] the transfer of rights**.15 **[The government] transfer[s] [its] powers** to you, **for [its] powers include** both my ability to do certain tasks, such as cutting your lawn, or paying you a sum of money, and my **legal powers to do things**, such as transferring piece of property to you. **If [it] fail[s] to perform as required, [it] wrong[s] you in** pretty much **the same way as I would** have wronged you **had I given** you **something**, either as a gift or in exchange for something else, **and then taken it back.** In a contract, I have given you that thing, as a matter of right, and so if I fail to deliver, I wrong you in the way I would if I took it back. **In cases of contract, one** person **has the use of the other's powers,** as specified by their agreement, **without having possession of the other** person.

Contracts preclude the normativity of other ethical theories. Only contracts dictate action without begging the question of why actors ought to comply since they brought the expectations upon themselves and can’t justify disobeying. Also, questioning an agent’s motives for consenting to a contract does not deny the validity of the agreement but rather appeals to non-contractual moral theories, which is circular. Contractual agreements are justified because the maxim “violate contractual agreements” cannot guide action. Accepting this maxim would prevent anyone from making promises with others, because these promises could be broken at any time.

Thus, the standard is ABIDING BY STATE CONTRACTS.

There are two forms of contractual obligations states must obey: international and domestic. Domestic contracts derive the state’s composition and give states the authority to form further obligations. International contracts are these further obligations: those that are formed between multiple states and regulate interstate action. States ought to act according to international contracts since the development of international law mirrors the process states use to justify their domestic authority. Respecting international contracts best represents the democratic development of moral norms. Kelsen 2:

This assumption implies that also the various processes of cognition in the minds of the subjects are equal, and thus the further assumption becomes possible that the objects of knowledge, as the results of these individual processes, are in conformity with one another, an assumption confirmed by the external behavior of the individuals. Diametrically opposed to this absolutistic theory of the state is the one which conceives of **the state [is]** as **a specific relation among individuals, established by a legal order** or, what amounts to the same, **as a community of human beings constituted by** this order, **the national legal order.** **In rejecting** the **sovereignty dogma**, this relativistic doctrine considers **the state [is] subject,** **together with all the other states, to the international legal order.** In their subjection to international law,all states are equal and members of the international community constituted by international law. According to this view, **the state is** certainly **a legal authority**; **but not a supreme authority, since it is** essentially **under the authority of international law.** But **this law is created, in a** thoroughly **democratic way**, by custom and treaties, that is, **by the cooperation of the states subjected to it. As a legal community,** **the state exists together with all the other states** within the international community **under international law**, just as private corporations exist within the state under national law. **Thus the state represents** only **an intermediate stage between the international community and the** various **legal communities established under the state in accordance with its national law.**

If international law is incapable of guiding state action, then state morality must collapse into following only domestic contracts since they determine the most basic guides for state action as per Ripstein.

Subpoint A is the ICCPR.

Article 7 of the ICCPR prohibits torture and other forms of cruel and unusual punishment, mirroring the Eighth Amendment of the US Constitution. The article reads: **No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.** Roberts:  
The American Value of Fear and the Indefinite Detention of Terrorist Suspects Author(s): Rodney C. Roberts Reviewed work(s): Source: Public Affairs Quarterly, Vol. 21, No. 4 (Oct., 2007), pp. 405-419 Published by: University of Illinois Press on behalf of North American Philosophical Publications Stable URL: http://www.jstor.org/stable/40441497 .]

The idea of **trying to gain information from** the **prisoners by** way of **interrogation** raises a serious concern. Interrogating individuals in an attempt to prevent terrorist attacks is a far more serious matter than interrogating petty criminals. Given the force of the desire for human intelligence in light of the potential harm of future attacks, it makes sense to be concerned that these men might be **[relies on] torture**d in order **to secure** the **necessary information.** Section 3 of the President's order states that any individual subject to it shall be, inter alia, "treated humanely" and "afforded adequate food, drinking water, shelter, clothing, and medical treatment."29 But in spite of the government's claim that "it has abided by international conventions barring torture, and that detainees at Guantánamo and elsewhere have been treated humanely," **the U.S. has violated Article 7 of the ICCPR**.30 This portion of the ICCPR **[that] "absolutely prohibits torture," and carries "an obligation from which no derogation may be made even in** the context of a **national emergency** **so severe as to threaten the life of the nation."**31 The prison- ers allege that (inter alia) they have been beaten, deprived of food and water for days, tortured in other countries and at U.S. military instillations outside of the U.S. prior to being brought to Guantánamo, held for periods exceeding a year in solitary confinement, and raped.32

Federal courts solve. Elsea:  
“Comparison of Rights in Military Commission Trials and Trials in Federal Criminal Court,” Jennifer Elsea, Legislative Attorney. Congressional Research Service. May 9th, 2012. <http://www.fas.org/sgp/crs/natsec/R40932.pdf>

**Incriminating statements made by [a] defendant under duress** or without prior Miranda warning **are inadmissible as evidence of guilt in a** criminal **[federal] trial.** Miranda v. Arizona, 384 U.S. 436 (1966). **Before a jury is allowed to hear** evidence of **a defendant’s confession, the court must determine that it was voluntarily given.** 18 U.S.C. § 3501.

Article 14 of the ICCPR mirrors the US Bill of Rights, guaranteeing noncitizens due process protections equal to those for citizens. The article reads:  
Full Text of the International Covenant on Civil and Political Rights, http://www2.ohchr.org/english/law/ccpr.htm

1. **All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him**, or of his rights and obligations in a suit at law, **everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal** established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children. 2. **Everyone** charged with a criminal offence **shall have the right to be presumed innocent until proved guilty** according to law. 3. **In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:** (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (c) **To be tried without undue delay**; (d) **To** be tried in his presence, and to **defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right;** and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it; (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court; (g) **Not to be compelled to testify against himself or to confess guilt.** 4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation. 5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law. 6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him. 7. **No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted** in accordance with the law and penal procedure of each country.

US commitment to I law is key to solving global scenarios for extinction. IEER:  
Institute for Energy and Environmental Research and the Lawyers Committee on Nuclear Policy. Rule of Power or Rule of Law? An Assessment of U.S. Policies and Actions Regarding Security-Related Treaties. May 2002. <http://www.ieer.org/reports/treaties/execsumm.pdf>

The evolution of international law since World War II is largely a response to the demands of states and individuals living with**in a global society with a deeply integrated world economy.** In this global society, **the repercussions of** **the** **actions** **of states**, non-state actors, and individuals **are not confined within borders, whether we look to greenhouse gas[,]** accumulations, **nuclear testing,** the danger of **accidental nuclear war, or the** vast **massacre**s **of civilians** that have taken place over the course of the last hundred years and still continue. **Multilateral agreements** increasingly have been a primary instrument employed by states to meet extremely serious challenges of this kind, for several reasons. They clearly and publicly embody a set of universally applicable expectations, including prohibited and required practices and policies. In other words, they **articulate global norms, such as** the protection of human rights and **the prohibitions of genocide and use of** **weapons of mass destruction.** **They establish predictability and accountability** in addressing a given issue. States are able to accumulate expertise and confidence by participating in the structured system offered by a treaty. However, influential U.S. policymakers are resistant to the idea of a treaty-based international legal system because they fear infringement on U.S. sovereignty and they claim to lack confidence in compliance and enforcement mechanisms. This approach has dangerous practical27 implications for international cooperation and compliance with norms. U.S. treaty partners do not enter into treaties expecting that they are only political commitments by the United States that can be overridden based on U.S. interests. **When a powerful** and influential **state like the U**nited **S**tates is seen to **treat[s] its legal obligations as a matter of convenience or** of **national interest** alone**,** **other states will see this as** a **justification to** relax or **withdraw from their** own **commitments.** If the United States wants to require another state to live up to its treaty obligations, it may find that the state has followed the U.S. example and opted out of compliance.

Subpoint B is the Constitution.

The US is constitutionally bound to grant non-citizens due process by the Fifth and Fourteenth Amendments. Gutfeld:  
Gutfeld, Rose. “THE US CONSTITUTION AND THE RIGHTS OF NON-CITIZENS.” Ford Foundation Report (Independent Nonprofit Organization). Fall 2003. <http://www.freerepublic.com/focus/fr/1005311/posts>

**The Supreme Court** has **ruled**, as recently as 2001, **in Zadvydas v. Davis**, involving the detention of foreign nationals ordered deported but whose country will not accept them, **that due process applies to all persons in the U**nited **S**tates**, whether citizens or foreign nationals.** Our courts have not unfortunately always lived up to the promise of the Constitution. The Court has sometimes allowed the government to take measures against foreign nationals that it presumably would not accept toward citizens. This year, for example, in Demore v. Kim, a case challenging the automatic detention of so-called "criminal aliens," the Court for the first time upheld a statute mandating preventive detention without any individualized showing of danger to the community or flight risk, and did so explicitly by reasoning that the government has greater leeway vis-à-vis foreign nationals. But that makes no sense. Foreign nationals have just as strong an interest in not being locked up unnecessarily as citizens do, and the government's interests in preventive detention are identical with respect to citizens and foreign nationals. Isn't such a double standard effective in terms of boosting security? Putting aside their morality or legality, these double standards are also counterproductive as a security matter, because they alienate the very communities that we need to be working with most if we are going to find the few al Qaeda operatives out there. We have reason to believe that they're likely to be Arab or Muslim. That's not a stereotype, that's based on intelligence about the membership of al Qaeda. But there are millions and millions of Arabs and Muslims in the U.S. It seems to me that if you treat the entire community as suspect by virtue of where they come from or what religion they practice, then you're going to alienate that community and make it less likely that you will have the kind of positive relationships that would lead to good and useful information that helps us identify actual terrorists. When other nations see us imposing on their citizens burdens we are not willing to tolerate ourselves, we forfeit the legitimacy of the struggle against terrorism, and make it less likely that we will obtain the cooperation we need from those countries. In addition, we contribute to anti-American sentiment, which has never been higher than it is today. That cannot be good for our long-term interests, and it plays right into the hands of the terrorists' recruitment propaganda. Can you give examples from cases you are handling of the government's disregard for the rights of immigrants and foreign nationals? Rabih Haddad is a Muslim cleric in Ann Arbor who was arrested and tried in secret after September 11. With the law firm of Arnold & Porter and the Center for Constitutional Rights, we obtained a ruling that his secret hearing violated his due process rights. Haddad was deported in July when his immigration appeals ran out. I also was co-counsel with the American Civil Liberties Union in a First Amendment challenge by New Jersey newspapers to the same policy. We won in district court, but lost before a divided court of appeals, and the Supreme Court denied review. In Brooklyn, I'm working with the Center for Constitutional Rights in a class action lawsuit on behalf of Arab, Muslim and South Asian immigration detainees picked up and held under abusive conditions for long periods of time in New York and New Jersey, ostensibly in connection with the September 11 investigation. In that case, Turkmen v. Ashcroft, some of our clients were picked up on pretextual immigration charges, but then held for as long as six months after their immigration cases had been fully resolved, so that the F.B.I. could keep them locked up while it investigated them. In each case, the government has exploited immigration law for purposes it was not designed to serve, violated the most basic due process rights and treated individuals in ways that it could never get away with had they been citizens. Why has there been relatively little public outcry in this country against the ways the government has treated foreigners and immigrants? If Americans think their own rights are safe and we can target foreigners without implicating ourselves, then Americans don't believe they have a reason to protest. Our rights are secure, and our security is secure. It's unfortunate, but I think that is much of what is going on here. In contrast, strong protest has been heard over measures that actually apply to American citizens. Take, for example, the proposal to have a national ID card; the Justice Department's Operation TIPS, which would have created an army of 11 million citizen spies to spy on each other and provide information to the government; and the Total Information Awareness Program, a massive data mining system. All of those proposals, which would have had substantial effects on the privacy rights of all Americans, generated significant objections in Congress and were killed or substantially delayed. Even the measures against foreign nationals have not gone uncriticized. In particular, significant dissenting voices have been raised by such groups as Amnesty International, the Center for Constitutional Rights, the American Immigration Lawyers' Association, the A.C.L.U., Human Rights Watch, and the American-Arab Anti-Discrimination Committee. But if you're looking for broad political opposition, you generally won't find it where the government targets foreign nationals. Katherine Lambert In his new book, David Cole explains how, after September 11, 2001, the U.S. government's treatment of Arab and Muslim immigrants has not only denied many their rights but hindered national security. Last June, the Bush administration issued guidelines banning the use of race or ethnicity in routine investigations but allowing such practices to continue in narrow circumstances involving terrorism or national security. Does such a policy make sense? If you're talking about the use of race as an identifying factor in trying to capture a suspect, then I don't consider that to be profiling. So if there's a report that two Italian men in their 40's just robbed a bank, and the police go looking at Italian men in their 40's and don't look at African-American women in their 60's, they're taking race into account there. They're not doing it in a way that is based on stereotypes and generalizations, but rather based on specific identification. I think that's appropriate before and after September 11. What's not justified is using race as a generalization in deciding whom to stop or whom to target with law enforcement resources, this kind of broad presumption that a foreign national, simply because he is coming from a country that's predominantly Arab or Muslim, ought to be suspect. How does the government's treatment of foreigners since September 11 conform to the historical pattern of how it has treated foreigners during other crises? Much of my book argues that there's a recurring pattern of targeting foreign nationals in times of national security crisis. It goes back to the Alien and Sedition Acts of 1798, which were targeted at French and Irish immigrants who were considered to be rabble-rousers. The first federal law targeting subversive speech was a 1903 immigration law. The first guilt-by-association provisions were enacted in 1917, again in the immigration law, and made it a deportable offense to be a member of anarchist or communist parties. Those laws became the basis of the Palmer raids of 1919-1920, which were a response to a series of terrorist bombings in the United States. The federal government went out and exploited immigration law—not to identify and lock up and punish the bombers, but instead to lock up several thousand foreign nationals on pretextual immigration charges and political association charges. Ultimately hundreds were deported—again, not for their involvement in the bombings, but for their political associations. But what I also show in the book is that historically or inevitably, government officials grow accustomed to exercising these broad authorities and seek out ways to extend them to U.S. citizens. 'When other nations see us imposing on their citizens burdens we are not willing to tolerate ourselves, we forfeit the legitimacy of the struggle against terrorism, and make it less likely that we will obtain the cooperation we need from those countries.' Are there examples of that happening now? I think one example is this whole use of military custody, of holding enemy combatants, as the government is doing in Guantánamo Bay. The government is asserting the power to hold these people indefinitely, incommunicado, without any kind of a hearing to determine whether they are in fact combatants. This was initially defended on the ground that these people we're holding are foreigners. They're not on U.S. soil. They don't have the same constitutional rights that we do. Then we discovered that one of the people there was probably a U.S. citizen, Yasser Hamdi. Then José Padilla, another U.S. citizen, who was suspected of plotting to detonate a dirty bomb, was arrested in O'Hare airport. In these cases, we have extended the concept of military justice to U.S. citizens, and we're holding them just as we're holding the people in Guantánamo, without charges, without a hearing, incommunicado, indefinitely, on the President's say-so that they are enemy combatants. Another example is the criminalization of what the government calls material support for terrorist organizations. This is a practice that was introduced, again through the immigration law, against foreign nationals, but has now become part of the criminal law, and applies to both U.S. citizens and foreign nationals. It criminalizes any support of any blacklisted terrorist organization without regard to whether one's support actually had any connection whatsoever to terrorist activity that the group undertakes. I represent a human rights organization in Los Angeles in a lawsuit challenging this statute. The group, the Humanitarian Law Project, has been providing human rights advocacy training and peacemaking negotiation training to the Kurdistan Workers Party in Turkey, which is essentially the political representative of the Kurdish population in Turkey. They've been doing so because they view the Kurds as a discriminated-against and abused minority in Turkey and want to encourage peaceful ways to resolve the conflict between Turkey and the Kurds. Yet once the material support statute was enacted in 1996 and the U.S. State Department designated the Kurdistan Workers Party as a terrorist organization in 1997, it became a crime for this human rights group to continue to provide human rights advocacy training to the organization. 'Unlike in prior crises, there is today a significant civil society presence speaking out for those without a voice in the political process. And those voices, over the long run, will make a difference and probably already have.' How has the judiciary responded in cases involving the civil liberties of noncitizens? I think the judiciary's response has been mixed. Historically courts are not effective protectors of liberty in times of crisis. In World War I, the Supreme Court upheld the criminalization of antiwar speech. In World War II, the Supreme Court upheld the internment of Japanese-Americans. In the cold war, the court permitted guilt by association to go on essentially until [Sen. Joseph] McCarthy was censured. The majority of decisions thus far in the current crisis have ruled in favor of the government. Courts have upheld the secrecy of immigration proceedings, upheld secret arrests, have refused to even question the detention of the people in Guantánamo Bay, and have upheld the detention of Yasir Hamdi as an enemy combatant. But a surprising number of courts have ruled against the government. We've had courts rule that trying immigrants in secret violates the Constitution; that holding immigrants after an immigration judge has ordered their release, simply because the prosecutor wants to keep them in detention, is unconstitutional; that arresting individuals in secret violated the Freedom of Information Act; that using the material witness law to hold people who are actually cooperating with the government is a violation of the material witness law; that criminalizing the provision of "personnel" and "training" to terrorist organizations violates due process; that locking up a foreign national without charges for 19 days violates federal law; and that a citizen held as an enemy combatant must be given access to a lawyer. The government has appealed most of these rulings. The F.O.I.A. ruling was overturned on appeal, and appeals courts have divided on the constitutionality of secret immigration trials, but the bottom line is that there have been more adverse decisions against the government and for civil liberties than one might expect in the early phase of a national security crisis. Given the courts' past record, I'd say they have done better this time around than in prior crises. What has been most disturbing and most admirable about the government's approach to fighting terrorism since September 11? To me, the most disturbing aspect has been the failure to confront the hard choices presented by balancing liberty and security, and the consistent cheating on that balance by targeting the most vulnerable among us—foreign nationals without a voice in the political process. The most admirable thing about America's response has been the robust dissent that has been voiced, and tolerated, with respect to these measures. Unlike in prior crises, there is today a significant civil society presence speaking out for those without a voice in the political process. And those voices, over the long run, will make a difference and probably already have. Safeguarding Liberty Protecting the human rights of migrants and refugees has been an aim of the Ford Foundation since the 1950's, when it first began to make grants in response to worldwide migration flows. In the United States, these issues have taken on increasing importance since the attacks of September 11, 2001, as government officials have strived to enhance national security. Support for Prof. David Cole's book represents one of several grants made to safeguard human rights and civil liberties of non-U.S. citizens and to inform policy makers and the public about these issues. An excerpt from Chapter 14, "The Bill of Rights as Human Rights," in Enemy Aliens: Double Standards and Constitutional Freedoms in the War on Terrorism The Constitution does distinguish in some respects between the rights of citizens and noncitizens: the right not to have one's vote discriminatorily denied and the right to run for federal elective office are expressly restricted to citizens. All other rights, however, are written without such a limitation. **The Fifth and Fourteenth Amendment due process and equal protection guarantees extend to all "persons." The rights attached to criminal trials**—including the right to a public trial, a trial by jury, the assistance of a lawyer, and the right to confront adverse witnesses—all **apply to "the accused."** **And** **both the First Amendment**'s protections of political and religious freedoms **and the Fourth Amendment**'s protection of privacy and liberty **apply to "the people."** **The fact that the Framers chose to limit to citizens only the rights to vote and to run for federal office indicates that they did not intend these other rights to be limited to citizens.** Accordingly, the Supreme Court has squarely stated that neither the First Amendment nor the Fifth Amendment "acknowledges any distinction between citizens and resident aliens." For more than a century, the Court has recognized that the Equal Protection Clause is "universal in [its] application to all persons within the territorial jurisdiction, without regard to differences of …nationality." The Court has repeatedly stated that "the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." **When noncitizens**, no matter what their status, **are tried for crimes, they are entitled to all of the rights that attach to the criminal process, without any distinction based on** their **nationality.**

The ICC doesn’t have the jurisdiction to try terrorism cases. Proulx: **Proulx**, Vincent-Joel. “Rethinking the Jurisdiction of the International Criminal Court in the Post-September 11th Era: Should Acts of Terrorism Qualify as Crimes Against Humanity?” 2004.

**At the time of the Rome Conference, the proposal to include international terrorism under ICC jurisdiction as a crime against humanity met with** emphatic **disapproval. Fears that the politicization of the ICC could result from this proposal were influential**: **jurisdiction over international terrorism was never** explicitly **granted to the ICC.** **The American delegation firmly opposed the inclusion of terrorism in the treaty,** and remained a persistent objector. Many of the states that endorsed the inclusion of terrorism within the scope of the ICC are, in fact, plagued with constant, if not daily, acts of terrorism. 60 However, the position taken by the recalcitrant states is not wholly incongruent with jurisprudence dealing with terrorism.6" In fact, in a 1984 decision, **the Court of Appeals of the District of Columbia took the same line as the majority of states at the Rome Conference, rejecting the idea of universal jurisdiction over terrorism**. 62 The court focused the judgement around the premise that international consensus on the definition of international terrorism as a crime under customary law was lacking.63 Other common law and civil law jurisdictions have reached similar conclusions.64

The ICC doesn’t have the ability to enforce its decisions, so there’s no guarantee that convicted criminals will be punished for their offenses. Johnson:  
Johnson, Dick. “Faults of the International Criminal Court.” March 30, 2009.

The problem of the ICC's ability to enforce its jurisdiction on external bodies is another problem. **In the Rome Statute of the ICC, it does not indicate that the court has any police force or army. The fact is,** **the ICC does not have any** army or **enforcing mechanism**, making its ability to enforce its jurisdiction near impossible. Ultimately, this means that **countries that submit under its jurisdiction** will **have no reason to surrender to it.** In the event that a country commits a crime against humanity, they would have no fear because this ICC has no army or enforcing mechanisms. To put this entirely into perspective, **look to the 2009 example of the ICC indicting** Omar Hassin **al-Bashir** of Sudan **for atrocities in Darfur. Essentially, Bashir simply mocked the indictment and refused to surrender himself. Because the ICC has no army or** **police force, it won't be able to enforce its jurisdiction.**