## 2AC

### Case

#### US can’t outsource detention

Benjamin Wittes 10, editor in chief of Lawfare and a Senior Fellow in Governance Studies at the Brookings Institution, “Detention and Denial–From the Introduction”, December 30, http://www.lawfareblog.com/2010/12/detention-and-denial-from-the-introduction/

But in keeping our detentions out of sight, the United States has a big problem that Europe does not have: We don’t have an America that can both do our dirty work and absorb our simultaneous criticism to ease our own consciences. While we can pawn off some detainees on local proxies, there is no extrinsic power whose detention needs entirely subsume our own and who therefore will serve all of our detention needs so that we don’t have to—even while we complain about it in public. Europe can have a no-detention policy because it knows that the United States will pick up the slack. Nobody, however, will pick up enough of our slack to allow us the same luxury. We can minimize detention. Through a combination of prosecution, release, proxies, and Predator attacks, we can keep the number of detainees small, at least for now. But at the end of the day, the United States cannot avoid detention entirely, not even under the Obama administration. The Obama administration itself has come to understand that. To protect U.S. security and the security of its allies, the United States simply has to maintain some detention capacity in a world that doesn’t believe in the project of detention anymore.

#### Rendition now is exaggerated---Obama’s different from Bush practice

Steve Vladeck 13, Professor of Law at American U Washington College of Law, “False Continuity Continued: Today’s WaPo on “Renditions” Under the Obama Administration”, January 2, <http://www.lawfareblog.com/2013/01/false-continuity-continued-todays-wapo-on-renditions-under-the-obama-administration/>

Under the snazzy headline “Renditions continue under Obama, despite due-process concerns,” today’s Washington Post has a long article on the overseas arrest, detention, and subsequent criminal indictment in New York (civilian) federal court of three “European men with Somali roots.” The article claims (with emphasis added) that:¶ The men are the latest example of how the Obama administration has embraced rendition — the practice of holding and interrogating terrorism suspects in other countries without due process — despite widespread condemnation of the tactic in the years after the Sept. 11, 2001, attacks.¶ Leaving aside the merits of the case the article describes, the article itself struck me as problematic in two distinct respects:¶ First, even if what happened in this case was “rendition” (which is debatable), it’s a far cry from “extraordinary rendition,” pursuant to which various terrorism suspects (e.g., Maher Arar, Khaled El-Masri, etc.) were illegally sent by the United States to third-party countries where they could be interrogated (and tortured) in a manner that would have been unlawful if conducted by U.S. officials. There are no allegations in this case that the detainees were mistreated in Djibouti, other than the un-elaborated claim that they were interrogated “without due process” (more on that shortly). Nor is there any claim that either the initial arrest or the subsequent transfer in this case were themselves illegal. Just so we’re all clear, the Bush Administration practice that was so controversial (and so widely condemned) was not rendition as such, but rendition to torture–intentionally sending detainees to countries where they could and would be subjected to far harsher interrogation techniques, and without any opportunity to contest whether they were even who the government thought they were. To my mind, it is irresponsible (and patently inaccurate) to cast what appears to have happened in this case as “continu[ing]” the controversial counter-terrorism policies of the Bush Administration; it is equating apples to oranges in a context in which nuance matters, and thereby minimizing exactly what was so problematic about “extraordinary rendition” during the Bush years.¶ Second, as for the claim that the detainees were interrogated without “due process,” that’s a serious concern, but it, too, is not immediately obvious. The question is whether these detainees even had due process rights to invoke in a foreign interrogation. That, in turn, depends upon two distinct issues: (1) Whether the Due Process Clause could ever apply to the interrogation of non-citizens overseas (I think it could; plenty of others don’t); and (2) even if it does, whether the interrogation was a “joint venture” for purposes of the Miranda doctrine (i.e., whether U.S. officials were sufficiently involved in the interrogation to trigger constitutional constraints). In Abu Ali, for example, the Fourth Circuit held that U.S. participation in a Saudi interrogation of a U.S. citizen terrorism suspect was not a joint venture based on the facts of that case, and so Miranda and its concomitant due process protections did not apply. Whether the interrogation in this case was a joint venture depends entirely on the degree of the United States’ involvement in the interrogation, which just isn’t clear from the article.¶ There’s more to say about all of these topics; for now, suffice it to say that this is an interesting and important story with a terribly unfortunate framing. Whatever the right answers are for how the U.S. government should act in cases like these, it’s just irresponsible to equate these facts, however implicitly, with the facts of cases like Arar and El-Masri.

#### Warming is real and anthropogenic---prefer data including 2012 numbers

Sato et al 13 Makiko Sato is affiliated with the NASA Goddard Institute for Space Studies and the Center for Climate Systems Research at Columbia University. AND Hansen, James E. Hansen heads the NASA Goddard Institute for Space Studies in New York City. He is also an adjunct professor in the Department of Earth and Environmental Sciences at Columbia University. Hansen is best known for his research in the field of climatology. In 1988, Hansen’s testimony before the US Senate was featured on the front page of the New York Times and helped raise broad awareness of global warming. Hansen’s work has inspired scientists and activists around the world to fight for climate change solutions. In recent years, Hansen has become an activist for action to mitigate the effects of climate change, which on several occasions has led to his arrest. In 2009 his book, [Storms of My Grandchildren: The Truth About the Coming Climate Catastrophe and Our Last Chance to Save Humanity](http://www.amazon.com/Storms-My-Grandchildren-Catastrophe-Humanity/dp/B004A14W0E/ref=sr_1_1?s=books&ie=UTF8&qid=1301427631&sr=1-1) was published.Global Temperature Update Through 2012 15 January 2013 J. Hansen, M. Sato, R. Ruedy, http://www.columbia.edu/~jeh1/mailings/2013/20130115\_Temperature2012.pdf

Summary. Global surface temperature in 2012 was +0.56°C (1°F) warmer than the 1951-1980 base period average, despite much of the year being affected by a strong La Nina. Global temperature thus continues at a high level that is sufficient to cause a substantial increase in the frequency of extreme warm anomalies. The 5-year mean global temperature has been flat for a decade, which we interpret as a combination of natural variability and a slowdown in the growth rate of the net climate forcing. An update through 2012 of our global analysis1 (Fig. 1) reveals 2012 as having practically the same temperature as 2011, significantly lower than the maximum reached in 2010. These short-term global fluctuations are associated principally with natural oscillations of tropical Pacific sea surface temperatures summarized in the Nino index in the lower part of the figure. 2012 is nominally the 9th warmest year, but it is indistinguishable in rank with several other years, as shown by the error estimate for comparing nearby years. Note that the 10 warmest years in the record all occurred since 1998. The long-term warming trend, including continual warming since the mid-1970s, has been conclusively associated with the predominant global climate forcing, human-made greenhouse gases2, which began to grow substantially early in the 20th century. The approximate stand-still of global temperature during 1940-1975 is generally attributed to an approximate balance of aerosol cooling and greenhouse gas warming during a period of rapid growth of fossil fuel use with little control on particulate air pollution, but satisfactory quantitative interpretation has been impossible because of the absence of adequate aerosol measurements3,4. Below we discuss the contributions to temperature change in the past decade from stochastic (unforced) climate variability and from climate forcings. Fig. 1. Global surface temperature anomalies relative to 1951-1980. The Nino index is based on the detrended temperature in the Nino 3.4 area in the eastern tropical Pacific5. Green triangles mark the times of volcanic eruptions that produced an extensive stratospheric aerosol layer. Blue vertical bars are estimates of the 95% confidence interval for comparisons of nearby years. 2 Fig. 2. Annual and seasonal temperature anomalies relative to 1951-1980 base period. Dec-Jan-Feb map employs December 2011 data, while the annual map is for calendar year 2012. The most extreme temperature anomalies in 2012, exceeding 2.5°C (4.5°F) on annual mean, occurred in the Arctic and in the middle of North America (Fig. 2). The large springtime heat anomaly in North America dried out the soil in a large part of the United States, thus leaving little soil moisture to provide evaporative cooling in the summer. The summer temperature anomaly was smaller than in the prior two seasons, but summer temperature variability is smaller than in the other seasons, so the 2012 summer anomaly was also unusually large as described in NOAA reports6. 3 Fig. 3. Frequency of occurrence of local June-July-August temperature anomalies (relative to 1951-1980 mean) for Northern Hemisphere land in units of local standard deviation (horizontal axis). Temperature anomalies in 1951-1980 match closely the normal distribution (green curve), which is used to define cold (blue), typical (white) and hot (red) seasons, each with probability 33.3%. Lower graphs use only a subset of stations (1886 of 6147) that were present throughout recent decades as well as the base period. The New Climate Dice. The high current global temperature is sufficient to have a noticeable effect on the frequency of occurrence of extreme warm anomalies. The left-most "bell curve" in Fig. 3 is the frequency distribution of summer-average temperature anomalies during the base period 1951-1980, in units of the local standard deviation1 of seasonal-average temperature. The observational data show that the frequency of unusually warm anomalies has been increasing decade by decade over the past three decades. Perhaps the most important change is the emergence of extremely hot outliers, defined as anomalies exceeding 3 standard deviations. Such extreme summer heat anomalies occurred in 2010 over a large region in Eastern Europe including Moscow, in 2011 in Oklahoma, Texas and Northern Mexico, and in 2012 in the United States in part of the central Rockies and Great Plains. The location of these extreme anomalies is dependent upon variable meteorological patterns, but the decade-by-decade movement of the bell curve to the right, and the emergence of an increased number of extreme warm anomalies, is an expression of increasing global warming. Some seasons continue to be unusually cool even by the standard of average 1951-1980 climate, but the "climate dice" are now sufficiently loaded that an observant person should notice that unusually warm seasons are occurring much more frequently than they did a few decades earlier. 1 The standard deviation is a measure of typical variability about the average. About two-thirds of the cases fall within 1 standard deviation of the average and about 95 percent fall within 2 standard deviations. 4 Fig. 4. Top: Solar irradiance from composite of several satellite-measured time series. Data through 2 February 2011 is from Frohlich and Lean (1998 and Physikalisch Meteorologisches Observatorium Davos, World Radiation Center). Update is from University of Colorado Solar Radiation & Climate Experiment normalized to match means over the final 12 months of the Frohlich and Lean data. Sunspot data from http://sidc.oma.be/sunspot-data/ Global Warming Standstill. The 5-year running mean of global temperature has been flat for the past decade. It should be noted that the "standstill" temperature is at a much higher level than existed at any year in the prior decade except for the single year 1998, which had the strongest El Nino of the century. However, the standstill has led to a widespread assertion that "global warming has stopped". Examination of this matter requires consideration of the principal climate forcing mechanisms that can drive climate change and the effects of stochastic (unforced) climate variability. The climate forcing most often cited as a likely natural cause of global temperature change is solar variability. The sun's irradiance began to be measured precisely from satellites in the late 1970s, thus quantifying well the variation of solar energy reaching Earth (Fig. 4). The irradiance change associated with the 10-13 year sunspot cycle is about 0.1%. Given the ~240 W/m2 of solar energy absorbed by Earth, this solar cycle variation is about 1/4 W/m2 averaged over the planet. Although it is too early to know whether the maximum of the present solar cycle has been reached, the recent prolonged solar minimum assures that there is a recent downward trend in decadal solar irradiance, which may be a decrease of the order of 0.1 W/m2. Although several hypotheses have been made for how the solar irradiance variations could be magnified by indirect effects, no convincing confirmation of indirect forcings has been found except for a very small amplifying effect via changes of stratospheric ozone. 2 A climate forcing is an imposed perturbation of the planet's energy balance that would tend to alter global temperature. 5 Fig. 5. Update7 of 5-year mean of the growth rate of climate forcing by well-mixed greenhouse gases; ozone and stratospheric water vapor, neither well-mixed nor well-measured, are not included. The largest climate forcing is caused by increasing greenhouse gases, principally CO2 (Fig. 5). The annual increment in the greenhouse gas forcing (Fig. 5) has declined from about 0.05 W/m2 in the 1980s to about 0.035 W/m2 in recent years8. The decline is primarily a consequence of successful phase-out of ozone-depleting gases and reduction of the growth rate of methane. Also, the airborne fraction of fossil fuel CO2 emissions has declined and the forcing per CO2 increment declines slowly as CO2 increases due to partial saturation of absorption bands, so the CO2 forcing growth rate has been steady despite the rapid growth of fossil fuel emissions. The second largest human-made forcing is probably atmospheric aerosols, although the aerosol forcing is extremely uncertain3,4. Our comparison of the various forcings (Fig. 6a) shows the aerosol forcing estimated by Hansen et al.9 up to 1990; for later dates it assumes that the aerosol forcing increment is half as large as the greenhouse gas forcing but opposite in sign. This aerosol forcing can be described as an educated guess. If the aerosol forcing has thusly become more negative in the past decade, the sum of the known climate forcings has little net change in the past few decades (Fig. 6b). The increased (negative) aerosol forcing is plausible, given the increased global use of coal during this period, but the indicated quantification is arbitrary, given the absence of aerosol measurements of the needed accuracy. Even if the aerosol forcing has remained unchanged in the past decade, the dashed line in Fig. 6b shows that the total climate forcing increased at a slower rate in the past decade than in the prior three decades. The slight growth in the past decade is due to a combination of factors: solar irradiance decline, slight increase of stratospheric aerosols, and the lower growth rate of greenhouse gas forcing compared with the 1970s and 1980s. A slower growth rate of the net climate forcing may have contributed to the standstill of global temperature in the past decade, but it cannot explain the standstill, because it is known that the planet has been out of energy balance, more energy coming in from the sun than energy being radiated to space.10 The planetary energy imbalance is due largely to the increase of climate forcings in prior decades and the great thermal inertia of the ocean. The more important factor in the standstill is probably unforced dynamical variability, essentially climatic "noise". 6 Fig. 6. Estimated climate forcings, with uncertainties that vary from small for well-mixed greenhouse gases to large for unmeasured tropsopheric aerosols. Forcings through 2003 (vertical line) are the same as used by Hansen et al. (2007), except the tropospheric aerosol forcing after 1990 is approximated as -0.5 times the GHG forcing. Aerosol forcing includes all aerosol effects, including indirect effects on clouds and snow albedo. GHGs include O3 and stratospheric H2O, in addition to well-mixed GHGs. Indeed, the current stand-still of the 5-year running mean global temperature may be largely a consequence of the fact that the first half of the past 10 years had predominately El Nino conditions, while the second half had predominately La Nina conditions (Nino index in Fig. 1). Comparing the global temperature at the time of the most recent three La Ninas (1999-2000, 2008, and 2011-2012), it is apparent that global temperature has continued to rise between recent years of comparable tropical temperature, indeed, at a rate of warming similar to that of the previous three decades. We conclude that background global warming is continuing, consistent with the known planetary energy imbalance, even though it is likely that the slowdown in climate forcing growth rate contributed to the recent apparent standstill in global temperature. Climate Change Expectations. It is relevant to comment on expectations about near-term climate change, especially because it seems likely that solar irradiance observations are in the process of confirming that solar irradiance has weakened modestly over the latest solar cycle. If solar irradiance were the dominant drive of climate change that most global warming contrarians believe, then a global cooling trend might be expected. On the contrary, however, the continuing planetary energy imbalance and the rapid increase of CO2 emissions from fossil fuel use assure that global warming will continue on decadal time scales. Moreover, our interpretation of the larger role of unforced variability in temperature change of the past decade, suggests that global temperature will rise significantly in the next few years as the tropics moves inevitably into the next El Nino phase.

### CP- Exec commissions

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

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

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

#### Future presidents prevent solvency

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

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

#### Seen as ineffective

Jessie Blackbourn 12, Postdoctoral Research Fellow on the Australian Research Council Laureate Fellowship: Anti-Terror Laws and the Democratic Challenge Project in the Gilbert + Tobin Centre of Public Law, PhD from Queen’s University Belfast, Dec 30 2012, “Evaluating the Independent Reviewer of Terrorism Legislation,” Parliamentary Affairs, accessed through Oxford Journals

Lord Carlile of Berriew Q.C. was the UK government's first independent reviewer of terrorism legislation (Blunkett, 2001). He held the position until February 2011. In many respects his tenure was defined by the first post-9/11 decade, which included a shift in the government's counter-terrorism focus towards the enactment of a variety of new anti-terrorism and immigration laws. Lord Carlile was initially tasked only with carrying out the annual review of the Terrorism Act 2000 (Blunkett, 2001). This role was expanded to include the review of new laws and matters arising out of the use of those laws (Anderson, 2012). The office of the independent reviewer of terrorism legislation therefore played an important part in the oversight of the UK's anti-terrorism legislation. However, whilst there is a growing body of research on the process of juridification in the field of anti-terrorism legislation (Tomkins, 2007; Ewing and Tham, 2008; Silverstein, 2009; Davis, 2010) and on the role of parliamentary (Whitaker, 2006; Shephard, 2009; Tomkins, 2011), committee (Shephard, 2009; Tolley, 2009) and judicial (Hanlon, 2007; Kavanagh, 2009) scrutiny of those laws, there has been only very limited academic critique of the independent reviewer (Lynch, 2012, pp. 72–76). As one of the key mechanisms for reviewing the UK's extensive regime of anti-terrorism laws, this is surprising. It is also concerning. There are two reasons for this: first, Lord Carlile has been criticised for offering only weak and ineffective scrutiny of the UK's anti-terrorism laws (Bunglawala, 2007; Lynch and McGarrity, 2010, p. 107); secondly, the office of the independent reviewer has been considered a model for other jurisdictions (Roach, 2007; Forcese, 2008). This article therefore makes a modest contribution to starting a debate on the impact of the office of the independent reviewer through an evaluation of Lord Carlile's tenure.

#### UK proves the reviewer gets ignored

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The above analysis reveals some evidence to suggest that the government favoured the opinions of the independent reviewer over those of the JCHR and the courts. Lord Carlile made eight recommendations in total, seven of which were accepted by the government and only one rejected. In contrast, the government accepted only two of the JCHR's recommendations and rejected six. The courts fared a little more evenly, with two recommendations accepted and two rejected. These results offer only a simplistic numerical reading of the analysis. If the types of recommendations made by the independent reviewer, the JCHR and the courts are analysed, then a slightly different picture emerges. Lord Carlile typically made minor recommendations on narrow, practical details, or offered suggestions in line with existing government policy. The JCHR tended to recommend substantial changes to the law, including repealing the lengthy pre-charge detention provisions. Recommendations can then be broken down into two categories: those that proposed significant changes to the pre-charge detention regime;2 and those that recommended the status quo.3¶ Of Lord Carlile's eight recommendations, only one proposed change and seven advised maintaining the status quo. Those seven which recommended the status quo were the ones accepted by the government. In contrast, the JCHR made two recommendations advocating the status quo; both were accepted by the government. In contrast, the government rejected the JCHR's six recommendations that proposed changes to the regime. The government responded favourably to the two court recommendations that favoured the status quo, and unfavourably to the two that proposed change.¶ It appears that it is not necessarily the person reviewing the laws that is the most significant driver in the government's decision to accept a recommendation, but the content of that recommendation. If this is the case then it has serious ramifications for the UK's system of reviewing its anti-terrorism laws. If it is only recommendations that propose doing nothing, or very little, that receive positive responses from the government, then the actual positive impact of engaging an office of the independent reviewer of terrorism legislation becomes negligible. If the government is able to ignore proposals that recommend change, then there is only a limited utility to the critique offered by the JCHR and the courts. The end result is an independent reviewer who is listened to by the government when recommendations endorse government policy, but is ignored when change is promoted, and a parliamentary committee and court system that is ignored almost completely when it proposes substantial change to the laws. This cannot be considered a form of effective scrutiny and oversight.¶ 3. Conclusion¶ This article has assessed the review of the UK's pre-charge detention regime by Lord Carlile (the former independent reviewer of terrorism legislation), the JCHR and the courts. It has found that in general, the independent reviewer's recommendations were favoured by the government over those of the JCHR and the courts. However, it has also questioned the nature of those recommendations. The article has suggested that it has been the reports that have proposed recommendations in line with existing government counter-terrorism policy that have been accepted by the government, irrespective of who has suggested them. By direct contrast, recommendations that proposed significant (or even minor) change to the laws have been rejected.¶ In this case study of the review of the UK's pre-charge detention regime, it is clear that the government has not been particularly influenced by external reviewing bodies. There are other factors that play an important role in the government's decision to amend the laws, including legislative sunset clauses, manifesto pledges and changes in government. In fact, the most recent significant change to the UK's anti-terror pre-charge detention regime—its reduction to 14 days following the change in government in 2010—was brought about not because it was recommended by a reviewer, but because it was part of the new coalition government's counter-terrorism policy.¶ This particular case study of pre-charge detention offers a peculiarly pessimistic view of the influence of independent review of anti-terrorism legislation on government policy. However, it is just one case study. Further analysis of other aspects of the UK's anti-terrorism regime might reveal a different picture. For example, an analysis of the court's judgements in control order proceedings would reveal a much greater involvement in influencing change in the government's anti-terrorism policy in this particular area. More work therefore needs to be done to see whether this pessimism is endemic, or if the lack of influence of external review on the UK's pre-charge detention regime is an anomaly.

### Flex DA

#### \*Oversight doesn’t determine flexibility---tech, elusive enemies and personnel outweigh

Stephen Holmes 9, Walter E. Meyer Professor of Law, New York University School of Law, “The Brennan Center Jorde Symposium on Constitutional Law: In Case of Emergency: Misunderstanding Tradeoffs in the War on Terror”, April, California Law Review, 97 Calif. L. Rev. 301, Lexis

Even if the promoters of unfettered executive power were justified in associating legal rules with ineffectiveness during emergencies, their single-minded obsession with circumventing America's allegedly "super-legalistic culture" n33 would need explaining. Let us stipulate, for the sake of argument, that civil liberties, due process, treaty obligations, and constitutional checks and balances make national-security crises somewhat harder to manage. If so, they would still rank quite low among the many factors that render the terrorist threat a serious one. None of them rivals in importance the extraordinary vulnerabilities created by technological advances, especially the proliferation of compact weapons of extraordinary destructiveness, in the context of globalized communication, transportation, and banking. None of them compares to a shadowy, dispersed, and elusive enemy that cannot be effectively deterred. And none of them is as constraining as the scarcity of linguistically and culturally knowledgeable personnel and other vital national-security assets, including satellite coverage of battle zones, which the government must allocate in some rational way in response to an obscure, evolving, multidimensional, and basically immeasurable threat.¶ The curious belief that laws written for normal times are especially important obstacles to defeating the terrorist enemy is based less on evidence and argument than on a hydraulic reading of the liberty-security relationship. One particular implication of the hydraulic model probably explains the psychological appeal of a metaphor that is patently inadequate descriptively: if the main thing preventing us from defeating the enemy is "too much law," then the pathway to national security is easy to find; all we need to do is to discard [\*318] the quaint legalisms that needlessly tie the executive's hands. That this comforting inference is the fruit of wishful thinking is the least that might be said.

#### \*Preserving the judicial right to due process enhances productive executive flex—unrestrained flex is worse for decision making

Stephen Holmes 9, Walter E. Meyer Professor of Law, New York University School of Law, “The Brennan Center Jorde Symposium on Constitutional Law: In Case of Emergency: Misunderstanding Tradeoffs in the War on Terror”, April, California Law Review, 97 Calif. L. Rev. 301, Lexis

In the face of an unprecedented national-security threat, individual rights, far from invariably interfering with the effectiveness of the executive branch, may sometimes serve a vitally pragmatic function. Those who deny this possibility, in principle, misunderstand due process as a rigid restraint. Laws that discipline executive decision making should not be understood as laying down sharp lines between the permitted and the forbidden. Besides being a personal liberty, a suspect's right to challenge the evidence against him is simultaneously a duty of the government to provide a plausible rationale for its requests to apply coercive force. A right that is enforceable against the government is best understood not as a rigid limit, therefore, but as a rebuttable presumption. In this framework, rights demarcate provisional no-go zones into which government entry is prohibited unless and until an adequate justification can be given for government action. If the executive branch violates a right that it is usually required to respect, it has to give a reason why.¶ This is how legal rights contribute to a democratic culture of justification. A private right is neither a non-negotiable value nor an insurmountable barrier, but rather a trip-wire and a demand for government explanation of its actions. The rights of the accused are therefore the obligations of the prosecution. Before criminally punishing an individual, the executive must give reasons why such punishment is deserved before a judicial tribunal that can refuse consent. Here lies the difference between a constitutional executive and an absolute monarch: the former must give reasons for his actions, while the latter can simply announce tel est mon plaisir. n72¶ For analogous reasons, it is one-sided and even obscurantist to describe habeas corpus, on balance, as a gratuitous hindrance to effectiveness in counterterrorism. It can occasionally involve risks, but habeas does not "tie the government's hands." Like the traditional charge-or-release rule, habeas simply forces the executive to give plausible reasons for its actions. Such a right is a spur, therefore, not a rein. It may sometimes appear to be a roadblock, [\*333] obstructing effective action, but it is also an incentive to take reasonable care, aimed at increasing the likelihood of intelligent decision making even under enormous pressure and time constraints. Abolishing such incentives will not guarantee intelligent, focused, and effective government action.¶ Advocates of executive discretion in the war on terror are perfectly right to point out that legal restrictions on the executive can occasionally impede effective action. But their analysis is one-sided and too narrowly focused; they need to add that the absence of legal restrictions on the executive, in turn, can encourage irresponsible, profligate, and self-defeating choices. The genuine challenge of counterterrorism is to balance the two symmetrical risks, not to pretend that following rules is risky while circumventing rules is not.¶ An administration that is legally exempted from providing reasons for its actions also has a weak incentive to develop and implement a coherent overall policy. One reason why the United States was able to treat various terrorist suspects in its custody (Salim Ahmed Hamdan, Yaser Hamdi, David Hicks, John Walker Lindh, Khaled al-Masri, Zacarias Moussaoui, Jose Padilla, and Mohammad al-Qahtani) in incomprehensibly erratic and inconsistent ways may have been that it was never forced to explain publicly, or perhaps even behind closed doors, exactly what it was doing. The Bush administration also allocated scarce resources behind a veil of national-security secrecy - that is, without having to explain the security-security tradeoffs it was making. The outcomes, as they have gradually come to light, do not look even vaguely pragmatic.¶ That violations of personal liberty can, under some conditions, severely damage national security is also relevant to the dispute about trying terrorist suspects before Article III courts (or before ordinary military courts-martial). That national security could be damaged by open trials has been frequently alleged. And the possibility cannot be ruled out. But advocates of executive discretion rarely mention the potential damage to national security of closed or partially closed trials and the potential strategic benefits of open and visibly fair trials. This is unfortunate because a fully public trial of mass murdering zealots, using visibly fair procedures, would provide an exceptional opportunity to rivet the attention of the world on the heinous acts and twisted mentality of the jihadists; this is something that no procedure that looks rigged, where Muslim defendants appear in any way railroaded, can possibly do.¶ Transparent judicial procedures, although they may be costly along some dimensions, can also help convince domestic and foreign onlookers that decisions of guilt and innocence are being made responsibly, not arbitrarily. They can vindicate tough counterterrorism policies and refute the allegation that authorities are exaggerating the threat to national security. Public willingness to cooperate with counterterrorism efforts depends on public confidence in the essential fairness of law-enforcement authorities. n73 Such [\*334] confidence is especially vital for managing a threat, such as Islamist terrorists with access to WMD, that is likely to endure for decades, if not longer.¶ Even more, the transcripts of past public trials of Islamic terrorists have provided a trove of open-source and relatively reliable information that independent scholars and analysts have used to help the country make sense of the motives and operational techniques of the enemy. Many dots will remain unconnected if such information is reserved for the exclusive perusal of a few individuals with high security clearances operating in isolation from outside criticism.¶ Yes, wholly public trials may possibly expose the sources and methods of U.S. counterterrorism agencies. n74 But the alternative, trials conducted on the basis of undisclosed information, will likely cause equivalent damage, due to the perverse incentives that they engender. Once again, the tacit tradeoff here involves security versus security. One predictable motive for reluctance to hold a trial in open court might be the embarrassing untrustworthiness of sources and shoddiness of investigative methods. Expecting a closed trial, in effect, investigators and prosecutors have a much weaker incentive to take reasonable care to ferret out reliable information and to use dependable techniques for ascertaining the facts. This is how executive discretion can erode executive professionalism. If terrorism investigators and prosecutors fail to take reasonable care, they will then need secrecy not for the respectable reason that secrecy protects security, but for the discreditable reason that secrecy conceals the illicit shortcuts of investigators who are subjectively convinced, on no compelling grounds, that their guesses and hunches are always totally right. Those who imagine the possible security benefits of such deviations from ordinary standards of due process are not completely mistaken. They have simply over-generalized a partial perspective, unjustifiably ignoring the equally likely possibility of security losses.¶ Subjectively, without any doubt, a president and his entourage can experience congressional and judicial oversight as an annoying hindrance to free and "flexible" action, just as a prosecutor can experience independent trial judges, discovery rules, defense attorneys, and public trials as obstacles to putting away "obviously guilty" suspects. But rules can be subjectively experienced as disabling restraints when, on balance, they actually serve to facilitate adaptation to reality. That is how shield laws and whistleblower laws ideally function, for example. n75 Double-blind tests, as mentioned earlier, work [\*335] in a similar way, allowing the system of scientific research to make progress and adapt to reality, even if individual researchers feel to some extent hemmed in by the system's constraints.¶ The executive branch's obligation to give reasons for its actions is built into the American legal system, both at the micro-level of criminal trials and at the macro-level of checks and balances. To hinder the fatal slide from flexibility to arbitrariness, from expediency to recklessness, the U.S. legal and constitutional system requires the executive branch to test the factual premises of the use of force in some sort of adversarial process. This is the most important way in which due process can enhance governmental performance.¶ To illustrate how some form of adversarial process might have been useful in the war on terror, we need only consider the possibility that either a serious congressional inquiry before going to war in Iraq or a semi-public trial of Khalid Sheikh Mohammed would have discredited the myth of an Osama-Saddam connection, one of the principal delusions that pumped up public support for a misbegotten war.¶ And what were the consequences of brushing aside the presumption of innocence and worries about mistaken identity at Guantanamo Bay, where hundreds of detainees have now spent seven years in administrative detention without the detaining authority having to explain why? By failing to provide even perfunctory individualized hearings, that is, by failing to select with minimal care among individuals delivered for a fee to the American authorities in Afghanistan and elsewhere, the U.S. government (I exaggerate to make my point) sent the first 700 "stunt doubles" who came into its custody to the detention-and-interrogation center in Cuba, thereby misspending our scarce interrogation capacities on individuals of minimal or no intelligence value. n76 And Guantanamo is not the only situation in which jettisoning traditional rules for presumed tactical gains has proved strategically self-defeating.¶ As Shakespeare's Iago and Othello memorably illustrate, pre-constitutional and therefore legally unconstrained power wielders are notoriously vulnerable to being manipulated by disinformation. Today's advocates of a "monarchical" swelling of presidential discretion tend to underestimate this particular cost of acting with excessive secrecy and [\*336] dispatch. n77 Besides contracting individual rights, a loosening of evidentiary standards can simultaneously harm national security by encouraging liars to clog the system with disinformation and false leads and discouraging honest people from reporting what they observe. If authorities begin shipping suspects to prison camps, where they are held incommunicado, without double-checking the alleged evidence, they unwittingly create incentives for malicious or self-serving witnesses to swarm out of the woodwork. (Call this "the elasticity of supply" of informants with hidden agendas.) Contrariwise, well-intentioned people will hesitate to communicate their observations of suspicious activity next door, lest an innocent neighbor be incarcerated for years on the basis of misperceptions that could easily have been dispelled in court.

#### CIPA solves---it’s never failed

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

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

#### Long sentences incentivize cooperation from suspects---causes effective intelligence gathering

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

In all federal criminal cases, defendants who plead guilty prior to trial may be granted limited leniency under the Guidelines, and the harsh penalties meted out by federal courts following conviction on terrorism-related charges provide additional incentive for defendants to choose to plead guilty. Defendants who plead guilty in advance of trial are granted a two to three level reduction in their offense level guidelines in recognition of their acceptance of responsibility. See U.S.S.G. §3E1.1. In addition, the Guidelines provide an even greater incentive for defendants who agree to forego trial and cooperate with the government by providing information and intelligence to law enforcement. Under the Guidelines, the court may, on the motion of the government, depart from the Guidelines range for a defendant who has “provided substantial assistance in the investigation of another person who has committed an offense.” U.S.S.G. §5K1.1. 323 Moreover, a cooperating defendant may also avoid mandatory minimum sentences imposed by statute. See id. ; 18 U.S.C. § 3553(e). The prospect of lengthy sentences of incarceration often motivates defendants with valuable information about criminal conduct to cooperate with the government in hopes of leniency.¶ In practice, the government wields considerable control over the cooperation process. A defendant commences the cooperation process by meeting with the government in private—accompanied, of course, by his counsel. In this session, known as a “proffer,” the defendant typically must confess first to his own criminal conduct and provide the government with information about the criminal conduct of others. The government typically takes the information provided by the defendant in these proffer sessions and attempts through its own investigation to verify the defendant’s truthfulness and the utility of the information provided. ¶ Usually after multiple proffers, if the government is satisfied with the defendant’s truthfulness regarding his own criminal conduct and the conduct of others, the government enters into a written cooperation agreement with the defendant. The government requires the defendant to forego his right to trial and plead guilty to many or all of the crimes that he admitted during his proffer sessions. 324 The defendant is required as a part of this cooperation agreement to continue to cooperate with the government, truthfully respond to its inquiries and, if asked, testify truthfully in court against other defendants. In exchange, the government agrees to make a motion under Guidelines § 5K1.1 to inform the court of the defendant’s cooperation at sentencing, a motion that permits the court under the Guidelines to reduce the defendant’s sentence. 325 This letter is commonly known in criminal justice circles as a “5K1 Letter,” after the Guidelines section upon which it is based. 326 Armed with the 5K1 letter, the judge has absolute discretion to grant the defendant a sentence reduction if the judge deems it appropriate after measuring the defendant’s cooperation, irrespective of the Guidelines range normally applicable to the defendant’s criminal culpability.¶ The cooperation process has proven historically to be one of the government’s most powerful tools in gathering intelligence. In many instances, it is only through the narrative of a cooperating defendant—a true insider speaking with first-hand knowledge—that law enforcement can fully decode criminal conspiracies and effectively prosecute other wrongdoers. Indeed, the government recognizes that cultivating cooperation pleas is an effective intelligence gathering tool for all types of criminal investigations, including significant terrorist cases. In a webpage devoted to “Waging the War on Terror,” the Department of Justice touts that it is “gathering information by leveraging criminal charges and long prison sentences.” Website, U.S. Dept’t of Justice, Waging the War on Terror. 327 According to the site, individuals pleading guilty in exchange for shorter sentences “have provided critical intelligence about al-Qaida and other terrorist groups, safehouses, training camps, recruitment, and tactics in the United States, and the operations of those terrorists who mean to do Americans harm.” Id.¶ Although opinions differ, some experienced lawyers believe that defendants in terrorism cases are no less likely to cooperate than other defendants charged with serious offenses. One widely publicized example is Yahya Goba, one of six defendants indicted in the Lackawanna Six case. Goba pled guilty in March 2003 to providing material support to al Qaeda, in violation of 18 U.S. C. § 2339B, in connection with his attendance at an al Qaeda training camp in Afghanistan. See Plea Agreement, United States v. Goba , No. 02-00214 (W.D.N.Y. Mar. 25, 2003) (Dkt . No. 113); Change of Plea, Goba (W.D.N.Y. Mar. 25, 2003) (Dkt. No. 116); Press Release, U.S. Dep’t of Justice, Defendant Yahya Goba Pleads Guilty to Providing Material Support to Al Qaeda (March 25, 2003). 328 As part of the plea agreement, Goba pled to conduct, and agreed to a Guidelines calculation, that would have resulted in a sentence under the Guidelines of 188 to 235 months. See Plea Agreement at 6-8, Goba (W.D.N.Y. Mar. 25, 2003) (Dkt. No. 113). After pleading guilty to a violation of 18 U.S.C. § 2339B , Goba was sentenced to 120 months in prison. See id. at 1-2; Judgment as to Yahya Goba, Goba (W.D.N.Y. Dec. 22, 2003) (Dkt. No. 224). 329

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

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

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

### Politics

#### McConnell primary challenge will prevent a deal

FT 9/20, Stephanie Kirchgaessner- Financial Times, “Challenge to McConnell stymies deal on budget,” http://www.ft.com/cms/s/0/d2bb4f8c-21fd-11e3-9b55-00144feab7de.html#axzz2fUCcoopO

More significantly for the US economy and global markets, Mr McConnell’s political problems will make it more difficult for the White House to reach a deal to extend the nation’s debt limit. If no deal is reached by mid to late-October, it could lead to the first US debt default.¶ The high stakes were made clear on Friday when the Republican majority in the House of Representatives passed 230-189 a spending bill that would keep the government running until mid-December with one caveat: it would defund portions of the health reform law known as “Obamacare”.¶ The vote creates an impasse with no clear sign of a resolution given Democratic opposition to the defunding effort. Without a deal, the government will shut down on October 1.¶ The House proposal will be taken up next week by Democrats in the Senate, who are expected to send it back to the lower chamber after stripping out the defunding language. What happens next is unknown, and the uncertainty bodes badly for a separate fight over the debt ceiling increase. Conservative Republicans have said they will pass an increase only if it contains a one-year delay in a key provision of Obamacare. President Barack Obama has said he will not negotiate over the debt ceiling.¶ It is just the kind of quagmire that Mr McConnell has helped to defuse in the past.¶ The senator has never been an ally of Mr Obama. But his ultimately pragmatic nature, which reflects nearly three decades in the upper chamber of Congress, has made him an invaluable negotiating partner over the years.¶ It was Mr McConnell who clinched the deal with vice-president Joe Biden at the end of 2012 to avert the “fiscal cliff”. A year earlier, he was the senator who proposed the use of an arcane procedural mechanism to increase the debt ceiling without forcing Republicans to vote for it.¶ However, even as the lawmaker has touted his role in those deals and emphasised the important concessions he won on taxes and spending limits, he is nevertheless seen by conservative activists as a sellout.¶ “There is a conflict between his rhetoric and reality. He wants people to re-elect him because he has this power and the title, but he is not using it in a way that benefits them. These deals are very unpopular,” said Matt Hoskins, executive director of the Senate Conservatives Fund.¶ Now that the Kentucky lawmaker is engaged in a primary race against the largely unknown Matt Bevin – in which any co-operation with the White House will count against him among voters – it has put him “on the bench” for this round of fiscal fight.¶ “There was always a sense with McConnell of averting disaster. But you know now his focus is in Kentucky, not necessarily in pulling the Congress back from the brink the way he has in the last two big fights,” said Chris Krueger, an analyst at Guggenheim Securities.¶ Jennifer Duffy, of the Cook Political Report, added: “While McConnell may be inclined to be a dealmaker, I think getting a challenge from the right doesn’t give him a lot of incentive to be the dealmaker.”

#### Won’t pass---and Obama rhetoric makes the impact inevitable

Damian Paletta 9/18, WSJ reporter, “White House Shifts Debt-Ceiling Tone, Warning of Fiasco,” http://blogs.wsj.com/washwire/2013/09/18/white-house-shifts-debt-ceiling-tone-warning-of-fiasco/

In 2011, then-Treasury Secretary Timothy Geithner repeatedly brushed off questions about whether Congress would raise the debt ceiling. He wasn’t worried, he would tell audiences. Congress would raise it sooner or later.¶ This time, the White House and its allies are openly telling people they are worried.¶ On Tuesday morning, Treasury Secretary Jacob Lew told an audience in Washington that Congress’s lack of urgency on fiscal problems was making him “nervous” and “anxious.”¶ Mr. Lew has warned that if Congress doesn’t raise the debt ceiling by mid-October, the government would soon run out of cash to pay all of its bills. The government faced the same deadline pressure in August 2011 and narrowly averted blowing through the deadline.¶ Back then, Treasury was (publicly) denying at every opportunity that Congress wouldn’t raise the debt ceiling. Now, not so much.¶ Their strategy has shifted: instead of saying the government won’t pay its bills, they are saying if the government doesn’t pay its bills it will be the Republicans’ fault. (Republicans disagree, and say the White House needs to negotiate).¶ David Plouffe, a former top White House official who remains a close adviser to President Barack Obama, doubled down on the political messaging Tuesday night.¶ “Odds of shutdown and default rising as House GOP cowers to Team Cruz,” he tweeted, referring to Sen. Ted Cruz (R., Texas), who is pushing Republicans to band together and force the government to cut the funding of Mr. Obama’s health-care law. “Tanking the economy preferable to standing up to delusion. SOS.”¶ The White House, by playing offense, faces some immediate risks. By talking up the prospects of a Washington fiscal crisis, it could spook investors and lead to all sorts of volatility. But it’s clear the White House has thrown out the 2011 playbook and are trying something new.

#### Obama leadership tanked by Fed fumbling – new nominee will fuel flames

Kevin Rafferty 9/20, professor at the Institute for Academic Initiatives, Osaka University, South China Morning Post, 2013, www.scmp.com/comment/insight-opinion/article/1313981/lack-leadership-fed-chairman-syria-show-obama-has-lost-his

US President Barack Obama, who came to office on a wave of enthusiasm and energy - promising a 21st-century vision of a rapidly changing world - has hit the hard brick wall of realpolitik and his own limitations.¶ He behaves as if he is lost: not merely has his vision disappeared in the fog of war, but he has little clue where he is going, and neither the American system nor his fellow Americans are helping him.¶ This was seen this week as Professor Larry Summers, Obama's candidate to take over from Ben Bernanke as chairman of the Federal Reserve, was ignominiously forced to withdraw, and Obama clearly reluctantly accepted that decision.¶ Opposition to Summers had been brewing for months in Obama's own Democratic Party and among left-wing critics hostile to Summers for his closeness to Wall Street and the so-called big "banksters".¶ The president has had months to think about the job and yet pointedly refused to make a choice when he might have guided the debate and pre-empted criticism. It was only after newspaper reports that Obama was about to nominate Summers - which provoked a hostile reaction in the markets - that Summers withdrew.¶ Obama displayed not only a lack of leadership but tin ears to what people are saying openly about his policies, and lack of them. But he compounded even this failure by saying he will wait longer before deciding who to nominate for the Fed.¶ Rumours are that another former treasury secretary, Timothy Geithner, may be in Obama's sights, even though Geithner has said he does not want the job. Geithner would attract the hostility of the same critics, who regard him as a "Summers lite". He is also seen as part of the gang of Robert Rubin who moved from being co-chairman of Goldman Sachs into Bill Clinton's White House, then to treasury secretary and out to be a director of Citigroup.¶ Whispers from the White House are that Obama does not want to be railroaded into choosing Janet Yellen, currently Bernanke's deputy, or that he wants someone with whom he feels comfortable, and he does not know Yellen.¶ The Fed chief should be independent of politics with a term that extends beyond the president's. It should not be a matter for the president's comfort, but who is best for the country, and it is inexcusable that Obama has not made it his business to get to know Yellen.¶ Obama's failure to articulate a vision for the future of the US and a road map to get there is one of the distressing features of his presidency. It has also got him into a fight with Congress over spending, which is likely to flare up again soon with renewed confrontation over the US debt ceiling and the budget.

#### EPA regs cause firestorm against Obama

WT 9/20 -- Washington Times, EPA coal rules tighter than expected, will fuel backlash in Congress, 2013, Ben Wolfgang, www.washingtontimes.com/news/2013/sep/20/epa-coal-rules-tighter-expected-will-fuel-backlash/

The Environmental Protection Agency’s dramatic new power plant emissions standards already have touched off a firestorm within the coal industry and on Capitol Hill, with top Republicans promising to fight tooth-and-nail against President Obama’s climate-change agenda.¶ The EPA, the leading actor in the White House’s ambitious global-warming initiative, released the limits on Friday. Hopes that they’d be much less stringent than previous proposals proved to be misplaced.¶ Coal-state lawmakers from both parties are promising to push back.¶ “The president is leading a war on coal and what that really means for Kentucky families is a war on jobs. And the announcement by the EPA is another back door attempt by President Obama to fulfill his long-term commitment to shut down our nation’s coal mines,” said Senate Minority Leader Mitch McConnell, Kentucky Republican.

#### GOP ripping Obama for Putin diplomacy

FN 9/19 -- Fox News, Associated Press Contributed, Boehner blasts Obama for bargaining with Putin, not Congress ahead of budget vote, 2013, www.foxnews.com/politics/2013/09/19/white-house-threatens-to-veto-de-fund-obamacare-bill/

House Speaker John Boehner ripped President Obama for negotiating with Vladimir Putin while giving congressional Republicans the cold shoulder, as he and his rank-and-file prepared for a potentially bruising showdown over ObamaCare. ¶ The Capitol Hill air was filled with recriminations on Thursday, as Republican and Democratic leaders accused each other of flirting with a government shutdown. Boehner has teed up a vote for Friday on a bill that would condition a stopgap spending measure on support for de-funding ObamaCare. ¶ President Obama and his allies say this is a formula for a government shutdown, since Democrats will not support the ObamaCare measure; and without a stopgap spending bill, funding for the government runs out by Oct. 1. ¶ Boehner kept a stiff upper lip in advance of the vote. Speaking to reporters, he chided Obama for recently negotiating with the president of Russia over Syria's chemical weapons while allegedly employing less diplomacy with Congress. ¶ "While the president is happy to negotiate with Vladimir Putin he won't engage with the Congress on a plan that deals with the deficits that threaten our economy," Boehner said. ¶ The White House escalated the fight on Thursday, formally threatening to veto the bill.

#### Syria spills over -- tanks Obama’s debt ceiling negotiating power

Ruth Marcus 9/20, columnist for The Washington Post, 2013, Obama's fumbling on Syria diminishes his power, [www.columbian.com/news/2013/sep/20/obamas-fumbling-on-syria-diminishes-his-power/](http://www.columbian.com/news/2013/sep/20/obamas-fumbling-on-syria-diminishes-his-power/)

Style points? Seriously? Style points? That's what President Barack Obama thinks the criticism of his zigzag Syria policy amounts to? As presidential spin, this is insulting. As presidential conviction — if this is what he really believes — it's scary.¶ Obama's dismissive remarks came in response to a question by ABC's George Stephanopoulos, who asked the president about criticisms of his approach as ad hoc, improvised and unsteady.¶ "Folks here in Washington like to grade on style," Obama sniffed. "And so had we rolled out something that was very smooth and disciplined and linear, they would have graded it well, even if it was a disastrous policy. We know that, 'cause that's exactly how they graded the Iraq War until it ended up blowing (up) in our face."¶ Indeed, Obama portrayed capital insiders' scorn as a badge of honor. "What it says is that I'm less concerned about style points; I'm much more concerned about getting the policy right," he continued, taking credit for Syria's having acknowledged its possession of chemical weapons and agreed to put them under international control. "That's my goal. And if that goal is achieved, then it sounds to me like we did something right."¶ See? All's well that ends well. Let the judges carp about whether the administration stuck the landing.¶ Except that this self-serving account omits two important facts. First, we're a long way from knowing that this episode has ended well. No one can rely on Russian promises and Syrian good will. This may well be a bullet only temporarily dodged, a pause in the crisis rather than a signpost of its solution. Even a successful outcome of a chemical weapons deal risks the perverse impact of further entrenching a regime that has murdered tens of thousands of its own people.¶ Second, presidential actions have ripples beyond ripples. Obama may have lucked — or his secretary of state accidentally may have stumbled — into an approach that averted the Perils of Pauline moment. But the indecision, the mind-changing, the lurching — and, note, Obama did not dispute such characterizations so much as dismiss them — have consequences.¶ Crucial time for Obama¶ "Style," as the president would have it, matters. Adversaries and allies, foreign and domestic, take a measure of the president's steel. They judge whether he can be trusted, whether he will back down, whether he has what it takes to lead the country and the world. I have not encountered a single person outside the White House in the last few weeks, Republican or Democrat, who has kind words for Obama's performance.**¶** This attitude is especially important because it arrives at such a dangerous moment for the country, with looming deadlines on government funding and the debt ceiling, and because it is amplified by presidential mishandling of other matters.¶ So Obama enters yet another treacherous period in a weakened state, with his political allies distrustful and his political opponents caught up in their own dysfunctionality. Machiavelli advised that it is better to be feared than loved; at the moment, in Congress, Obama is neither.

#### No PC -- divided Dems backlashing – laundry list

Bloomberg 9/17 -- Mike Dorning and Kathleen Hunter, 2013, Obama Rifts with Allies on Summers-Syria Limit Debt Dealing, www.bloomberg.com/news/2013-09-17/obama-s-summers-syria-rifts-with-allies-limit-room-on-debt-…

The backlash President Barack Obama faced from Democrats on both Syria and the prospect of Lawrence Summers leading the Federal Reserve underscore intraparty rifts that threaten to limit his room to strike budget and debt deals.¶ “There’s a large and growing portion of the Democratic Party that’s not in a compromising mood,” said William Galston, a former domestic policy adviser to President Bill Clinton.¶ Summers, one of Obama’s top economic advisers during the first two years of his presidency, withdrew from consideration for Fed chairman after a campaign against him led by Democratic senators who criticized his role in deregulating the financial industry during the 1990s.¶ That came just days after the Senate postponed deliberation on a request by Obama to authorize U.S. force in Syria, amid opposition from Democratic and Republican lawmakers wary of a new military action in the Middle East.¶ The two controversies raised “central issues” that divide Democrats at a time when the president needs unity to confront Republicans, Galston said. “The White House better make sure it and congressional Democrats are on the same page” as lawmakers face deadlines on government spending and raising the debt limit, he said.¶ Party Divisions¶ Senator Richard Durbin of Illinois, the chamber’s second-ranking Democrat, said today that Democrats are united with Obama on the need for a “clean” debt-ceiling increase. The anti-Summers movement reflected “strong feelings that many of us have” about making the Fed more responsive on issues such as income inequality, he said.¶ Republican leaders are dealing with their own divisions. House Speaker John Boehner, an Ohio Republican, had to pull back a vote last week on a plan to avoid a partial government shutdown in October after it became clear it couldn’t win enough support from members of his own party.¶ Congress and the Obama administration are facing fiscal decisions that include funding the government by Sept. 30 to avoid a federal shutdown and raising the nation’s $16.7 trillion debt ceiling. Boehner said in July that his party wouldn’t increase the borrowing limit “without real cuts in spending” that would further reduce the deficit. The administration insists it won’t negotiate on the debt ceiling.¶ Building Dissent¶ For Obama, the dissent on the left was already brewing before the Syria and Summers debates.¶ Congressional Democrats and union leaders accused him of being too eager to compromise with Republican demands to cut entitlement spending after he released a budget proposal that called for lower annual Social Security cost-of-living adjustments.¶ Some early Obama supporters also were disappointed that the president, who has relied on drone strikes to kill suspected terrorists and failed to close the detention center at Guantanamo Bay, Cuba, hadn’t moved far enough from George W. Bush’s policies on civil liberties and national security. The complaints grew louder after the disclosure of National Security Agency surveillance practices this year.¶ Obama, who earlier this year watched his gun-control legislation fail in the Senate partly because of defections by Democrats from Republican-leaning states, also is limited in his capacity to enlist public support to win over lawmakers.

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

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

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

#### Global economy’s resilient---learned lessons from ‘08

Daniel W. Drezner 12, Professor, The Fletcher School of Law and Diplomacy, Tufts University, October 2012, “The Irony of Global Economic Governance: The System Worked,” <http://www.globaleconomicgovernance.org/wp-content/uploads/IR-Colloquium-MT12-Week-5_The-Irony-of-Global-Economic-Governance.pdf>

It is equally possible, however, that a renewed crisis would trigger a renewed surge in policy coordination. As John Ikenberry has observed, “the complex interdependence that is unleashed in an open and loosely rule-based order generates some expanding realms of exchange and investment that result in a growing array of firms, interest groups and other sorts of political stakeholders who seek to preserve the stability and openness of the system.”103 The post-2008 economic order has remained open, entrenching these interests even more across the globe. Despite uncertain times, the open economic system that has been in operation since 1945 does not appear to be closing anytime soon.

#### No econ decline war---best and most recent data

Daniel W. Drezner 12, Professor, The Fletcher School of Law and Diplomacy, Tufts University, October 2012, “The Irony of Global Economic Governance: The System Worked,” <http://www.globaleconomicgovernance.org/wp-content/uploads/IR-Colloquium-MT12-Week-5_The-Irony-of-Global-Economic-Governance.pdf>

The final outcome addresses a dog that hasn’t barked: the effect of the Great Recession on cross-border conflict and violence. During the initial stages of the crisis, multiple analysts asserted that the financial crisis would lead states to increase their use of force as a tool for staying in power.37 Whether through greater internal repression, diversionary wars, arms races, or a ratcheting up of great power conflict, there were genuine concerns that the global economic downturn would lead to an increase in conflict. Violence in the Middle East, border disputes in the South China Sea, and even the disruptions of the Occupy movement fuel impressions of surge in global public disorder. ¶ The aggregate data suggests otherwise, however. The Institute for Economics and Peace has constructed a “Global Peace Index” annually since 2007. A key conclusion they draw from the 2012 report is that “The average level of peacefulness in 2012 is approximately the same as it was in 2007.”38 Interstate violence in particular has declined since the start of the financial crisis – as have military expenditures in most sampled countries. Other studies confirm that the Great Recession has not triggered any increase in violent conflict; the secular decline in violence that started with the end of the Cold War has not been reversed.39 Rogers Brubaker concludes, “the crisis has not to date generated the surge in protectionist nationalism or ethnic exclusion that might have been expected.”40¶ None of these data suggest that the global economy is operating swimmingly. Growth remains unbalanced and fragile, and has clearly slowed in 2012. Transnational capital flows remain depressed compared to pre-crisis levels, primarily due to a drying up of cross-border interbank lending in Europe. Currency volatility remains an ongoing concern. Compared to the aftermath of other postwar recessions, growth in output, investment, and employment in the developed world have all lagged behind. But the Great Recession is not like other postwar recessions in either scope or kind; expecting a standard “V”-shaped recovery was unreasonable. One financial analyst characterized the post-2008 global economy as in a state of “contained depression.”41 The key word is “contained,” however. Given the severity, reach and depth of the 2008 financial crisis, the proper comparison is with Great Depression. And by that standard, the outcome variables look impressive. As Carmen Reinhart and Kenneth Rogoff concluded in This Time is Different: “that its macroeconomic outcome has been only the most severe global recession since World War II – and not even worse – must be regarded as fortunate.”42

#### Global economic institutions guarantee resiliency

Daniel W. Drezner 12, Professor, The Fletcher School of Law and Diplomacy, Tufts University, October 2012, “The Irony of Global Economic Governance: The System Worked,” <http://www.globaleconomicgovernance.org/wp-content/uploads/IR-Colloquium-MT12-Week-5_The-Irony-of-Global-Economic-Governance.pdf>

Prior to 2008, numerous foreign policy analysts had predicted a looming crisis in global economic governance. Analysts only reinforced this perception since the financial crisis, declaring that we live in a “G-Zero” world. This paper takes a closer look at the global response to the financial crisis. It reveals a more optimistic picture. Despite initial shocks that were actually more severe than the 1929 financial crisis, global economic governance structures responded quickly and robustly. Whether one measures results by economic outcomes, policy outputs, or institutional flexibility, global economic governance has displayed surprising resiliency since 2008. Multilateral economic institutions performed well in crisis situations to reinforce open economic policies, especially in contrast to the 1930s. While there are areas where governance has either faltered or failed, on the whole, the system has worked. Misperceptions about global economic governance persist because the Great Recession has disproportionately affected the core economies – and because the efficiency of past periods of global economic governance has been badly overestimated. Why the system has worked better than expected remains an open question. The rest of this paper explores the possible role that the distribution of power, the robustness of international regimes, and the resilience of economic ideas might have played.

#### Err aff---their authors exaggerate

Tom Raum 11, AP, “Record $14 trillion-plus debt weighs on Congress”, Jan 15, <http://www.mercurynews.com/news/ci_17108333?source=rss&nclick_check=1>

Democrats have use doomsday rhetoric about a looming government shutdown and comparing the U.S. plight to financial crises in Greece and Portugal. It's all a bit of a stretch. "We can't do as the Gingrich crowd did a few years ago, close the government," said Senate Majority Leader Harry Reid (D-Nev.), referring to government shutdowns in 1995 when Georgia Republican Newt Gingrich was House speaker. But those shutdowns had nothing to do with the debt limit. They were caused by failure of Congress to appropriate funds to keep federal agencies running. And there are many temporary ways around the debt limit. Hitting it does not automatically mean a default on existing debt. It only stops the government from new borrowing, forcing it to rely on other ways to finance its activities. In a 1995 debt-limit crisis, Treasury Secretary Robert Rubin borrowed $60 billion from federal pension funds to keep the government going. It wasn't popular, but it helped get the job done. A decade earlier, James Baker, President Ronald Reagan's treasury secretary, delayed payments to the Civil Service and Social Security trust funds and used other bookkeeping tricks to keep money in the federal till. Baker and Rubin "found money in pockets no one knew existed before," said former congressional budget analyst Stanley Collender. Collender, author of "Guide to the Federal Budget," cites a slew of other things the government can do to delay a crisis. They include leasing out government-owned properties, "the federal equivalent of renting out a room in your home," or slowing down payments to government contractors. Now partner-director of Qorvis Communications, a Washington consulting firm, Collender said such stopgap measures buy the White House time to resist GOP pressure for concessions. "My guess is they can go months after the debt ceiling is not raised and still be able to come up with the cash they need.