## 1AC

### 1AC – Terrorism

#### Advantage 1 is Terrorism –

#### Top UN officials concede – the risk of a nuclear terrorist attack is high

Sturdee, AFP, 7-1 [Simon, “UN atomic agency sounds warning on 'nuclear terrorism'”, Fox News, 7-1-13,

<http://www.foxnews.com/world/2013/07/01/un-atomic-agency-sounds-warning-on-nuclear-terrorism/>, RSR]

VIENNA (AFP) – The head of the UN atomic agency warned Monday against complacency in preventing "nuclear terrorism", saying progress in recent years should not lull the world into a false sense of security.¶ "Much has been achieved in the past decade," Yukiya Amano of the International Atomic Energy Agency told a gathering in Vienna of some 1,200 delegates from around 110 states including 35 ministers to review progress on the issue.¶ "Many countries have taken effective measures to prevent theft, sabotage, unauthorised access, illegal transfer, or other malicious acts involving nuclear or other radioactive material. Security has been improved at many facilities containing such material."¶ Partly as a result, he said, "there has not been a terrorist attack involving nuclear or other radioactive material."¶ "But this must not lull us into a false sense of security. If a 'dirty bomb' is detonated in a major city, or sabotage occurs at a nuclear facility, the consequences could be devastating.¶ "Nuclear terrorism" comprises three main risks: an atomic bomb, a "dirty bomb" -- conventional explosion spreading radioactive material -- and an attack on a nuclear plant.¶ The first, using weapons-grade uranium or plutonium, is generally seen as "low probability, high consequence" -- very difficult to pull off but for a determined group of extremists, not impossible.¶ There are hundreds of tonnes of weapons-usable plutonium and uranium -- a grapefruit-sized amount is enough for a crude nuclear weapon that would fit in a van -- around the world.¶ A "dirty bomb" -- a "radiological dispersal device" or RDD -- is much easier but would be hugely less lethal. But it might still cause mass panic.¶ "If the Boston marathon bombing (in April this year) had been an RDD, the trauma would be lasting a whole lot longer," Sharon Squassoni from the Center for Strategic and International Studies (CSIS) told AFP.¶ Last year alone, the IAEA recorded 17 cases of illegal possession and attempts to sell nuclear materials and 24 incidents of theft or loss. And it says this is the "tip of the iceberg".¶ Many cases have involved former parts of the Soviet Union, for example Chechnya, Georgia and Moldova -- where in 2011 several people were arrested trying to sell weapons-grade uranium -- but not only.¶ Nuclear materials that could be used in a "dirty bomb" are also used in hospitals, factories and university campuses and are therefore seen as easy to steal.¶

#### Nuclear terrorism causes global nuclear escalation – national retaliation goes global

Morgan, Professor of Foreign Studies at Hankuk University, ‘9 (Dennis Ray, December, “World on fire: two scenarios of the destruction of human civilization and possible extinction of the human race” Futures, Vol 41 Issue 10, p 683-693, ScienceDirect)

In a remarkable website on nuclear war, Carol Moore asks the question "Is Nuclear War Inevitable??" [10].4 In Section 1, Moore points out what most terrorists obviously already know about the nuclear tensions between powerful countries. No doubt, they've figured out that the best way to escalate these tensions into nuclear war is to set off a nuclear exchange. As Moore points out, all that militant terrorists would have to do is get their hands on one small nuclear bomb and explode it on either Moscow or Israel. Because of the Russian "dead hand" system, "where regional nuclear commanders would be given full powers should Moscow be destroyed," it is likely that any attack would be blamed on the United States" [10]. Israeli leaders and Zionist supporters have, likewise, stated for years that if Israel were to suffer a nuclear attack, whether from terrorists or a nation state, it would retaliate with the suicidal "Samson option" against all major Muslim cities in the Middle East. Furthermore, the Israeli Samson option would also include attacks on Russia and even "anti-Semitic" European cities [10]. In that case, of course, Russia would retaliate, and the U.S. would then retaliate against Russia. China would probably be involved as well, as thousands, if not tens of thousands, of nuclear warheads, many of them much more powerful than those used at Hiroshima and Nagasaki, would rain upon most of the major cities in the Northern Hemisphere. Afterwards, for years to come, massive radioactive clouds would drift throughout the Earth in the nuclear fallout, bringing death or else radiation disease that would be genetically transmitted to future generations in a nuclear winter that could last as long as a 100 years, taking a savage toll upon the environment and fragile ecosphere as well.

#### Risk of terror only goes one way – comparative studies prove that indefinite detention can only increase terrorism, not prevent it.

Roberts, Associate Professor of Philosophy at East Carolina University, ‘11

[Rodney, “Utilitarianism and the Morality of Indefinite Detention”, Criminal Justice Ethics, Vol. 30, No. 1, RSR]

Finally, ‘‘there is no evidence that¶ preventive detention works. Comparative studies of terrorism stretching back more than 20 years have¶ concluded that draconian measures\*¶ such as prolonged detention without¶ trial\*are not proven to reduce violence, and can actually be counterproductive.’’¶ 30 Since it may contribute¶ to the ‘‘underlying factors [that] are¶ fueling the spread of the jihadist movement,’’ namely, ‘‘injustice and fear of¶ Western domination, leading to anger,¶ humiliation, and a sense of powerlessness,’’ there is a sense in which¶ indefinite detention can be selfdefeating\*it may increase the likelihood of future attacks.31

#### We’ll isolate 3 internal links –

#### Scenario 1 is Resentment –

#### Current trial process breeds distrust with local populations and causes resentment – that kills effective counter-terror operations

Hathaway Et. Al, 2013, (Oona Hathaway is the Gerard C. and Bernice Latrobe Smith Professor of International Law, Yale Law School. Samuel Adelsberg, Spencer Amdur, and Freya Pitts are J.D. candidates at Yale Law School. Philip Levitz and Sirine Shebaya received their J.D.s from Yale Law School in 2012. We are grateful for the assistance of Julia Spiegel, Haley Nix, Celia Choy, Samir Deger-Sen, John Paredes, and Sally Pei. “The Power To Detain: Detention of Terrorism Suspects After 9/11” The Yale Journal of International Law. Lexis Nexis. Winter, 2013.)

2. Legitimacy Federal courts are also generally considered more legitimate than military commissions. The stringent procedural protections reduce the risk of error and generate trust and legitimacy. 245 The federal courts, for example, provide more robust hearsay protections than the commissions. 246 In addition, jurors are [\*165] ordinary citizens, not U.S. military personnel. Indeed, some of the weakest procedural protections in the military commission system have been successfully challenged as unconstitutional. 247 Congress and the Executive have responded to these legal challenges - and to criticism of the commissions from around the globe - by significantly strengthening the commissions' procedural protections. Yet the remaining gaps - along with what many regard as a tainted history - continue to raise doubts about the fairness and legitimacy of the commissions. The current commissions, moreover, have been active for only a short period - too brief a period for doubts to be confirmed or put to rest. 248 Federal criminal procedure, on the other hand, is well-established and widely regarded as legitimate. Legitimacy of the trial process is important not only to the individuals charged but also to the fight against terrorism. As several successful habeas corpus petitions have demonstrated, insufficient procedural protections create a real danger of erroneous imprisonment for extended periods. 249 Such errors can generate resentment and distrust of the United States that undermine the effectiveness of counterterrorism efforts. Indeed, evidence suggests that populations are more likely to cooperate in policing when they believe they have been treated fairly. 250 The understanding that a more legitimate detention regime will be a more effective one is reflected in recent statements from the Department of Defense and the White House. 251

#### Cooperation increases legitimacy of US action and solves the root cause of terrorism – comparatively outweighs military responses

Picco et. Al, 6 **–** (Giandomenico Picco Chairman and Chief Executive, Graham E. Fuller Adjunct Professor of History, Simon Fraser University, Alistair Millar Director, Center on Global Counter-Terrorism Cooperation, Robert Trager Assistant Professor of Political Science, University of California Los Angeles, Dessislava P. Zagorcheva Ph.D. Candidate, Columbia University, Panel Discussion with Stanley Foundation, “Effective Counterterrorism in a Globalized World:

Reclaiming the Edge of Legitimacy,” <http://secure.stanleyfoundation.org/registration/securityconference/panels/counterterrorism.php>)

Tactical terrorists use violence to achieve a specific political (usually local) goal and are willing to negotiate with their announced enemy. They usually have a political wing along with their military one, which signals that the group can be negotiated with and that it has the potential to transform into a more political and social force. Strategic terrorists in contrast are not too concerned with politics and are instead in a state of perpetual global war against perpetual enemies. They reject all other opinions and believe they have a monopoly on truth. Negotiation with such a group is impossible. The goal of an effective counterterrorism strategy would be to fracture the alliances that global/strategic groups have with local/tactical ones. This could be done by deterring the local/tactical ones from aiding and operating with Al Qaeda types. Making sure the cost of cooperating with Al Qaeda might include the loss of a local group's political objective is one way to create that fracture. The importance of multilateral institutions was highlighted in the session. Working multilaterally ensures that the United States' actions acquire a certain legitimacy, gets the level of cooperation and involvement from other countries, and facilitates operational factors (such as information sharing and the creation of internationally sanctioned standards). Ultimately, there is no military solution to the terrorist threat as such movements do not constitute a state or have a localized army that can be destroyed. It is instead a war for "hearts and minds." When dealing with a globalized threat such as terrorism, which crosses all borders, we need to work globally in cooperation with others to address its root issues.

#### Empirics prove – backlash from local populations over indefinite detention increases the threat of terrorism.

Tyler, et al, ’10 [Tom (Macklin Fleming Professor of Law and Professor of Psychology at Yale Law School); Stephen Schulhofer (Robert B. McKay Professor of Law at New York University School of Law); and Aziz Z. Huq (Assistant Professor of Law and Herbert and Marjorie Fried Teaching Scholar at the University of Chicago School of Law), “Legitimacy and Deterrence Effects in¶ Counterterrorism Policing: A Study of Muslim¶ Americans”, Law and Society Review, RSR]

A countervailing view in the terrorism literature, however,¶ warns of the potential of intrusive measures to stimulate terrorist¶ recruitment and ideological estrangement in the targeted communities (Donohue 2008) or to prompt law-abiding individuals to¶ withhold cooperation out of fear that suspicions, if reported, will¶ trigger overreaction and unjust treatment of innocents (as can¶ occur with ordinary crime; see Sherman 1993). A recent study of¶ Britain’s antiterror campaign in Northern Ireland (LaFree et al.¶ 2009) provides empirical conﬁrmation of this risk. These authors¶ identiﬁed six highly visible British interventions aimed at reducing¶ terrorist violence in Northern Ireland from the 1970s on, and they¶ assessed whether each intervention diminished subsequent attacks¶ or instead increased the frequency or intensity of terrorism. One of¶ the six measures, a highly intrusive military maneuver, did have a¶ deterrence effect. But two others had no statistically signiﬁcant¶ impact, suggesting that any deterrence gains were overwhelmed¶ by backlash effects. More tellingly, two of the intrusive new deterrence-based policies resulted in signiﬁcant increasesin violence¶ (also see Lum, Kennedy, et al. 2006). LaFree et al. (2009) hypothesize that erroneous arrests and the¶ adoption of internment without trial contributed to this backlash¶ effect by undermining the legitimacy of British antiterrorism¶ efforts. Several studies conducted in Iraq have also found that¶ perceived injustice on the part of U.S. forces is a strong predictor of¶ support for resistance among Iraqis (Fischer et al. 2008; Harb et al.¶ 2006). As LaFree and Ackerman observe: ‘‘To the extent that government-based counterterrorism strategies outrage participants or¶ energize a base of potential supporters, such strategies may¶ increase the likelihood of further terrorist strikes’’ (2009:15).¶ Because of this, government management of terrorist threats may¶ be as important as terrorism itself in determining future levels of¶ violence (Kilcullen 2009; McCauley 2006; Sharp 1973).

#### Scenario 2 is Intelligence –

#### Indefinite detention destroys intel sharing with Europe

Hathaway, et al, ’13 Oona (Gerard C. and Bernice Latrobe Smith Professor of International Law, Yale Law School); Samuel Adelsberg (J.D. candidate at Yale Law School); Spencer Amdur (J.D. candidate at Yale Law School); Freya Pitts (J.D. candidate at Yale Law School); Philip Levitz (J.D. from Yale Law School); and Sirine Shebaya (J.D. from Yale Law School), “The Power To Detain: Detention of Terrorism Suspects After 9/11”, The Yale Journal of International Law, Vol. 38, 2013, RSR]

Many key U.S. allies have been unwilling to cooperate in cases involving ¶ law-of-war detention or prosecution but have cooperated in criminal prosecutions. In fact, many U.S. extradition treaties, including those with allies ¶ such as India and Germany, forbid extradition when the defendant will not be ¶ tried in a criminal court.252 This issue has played out in practice several times. ¶ An al-Shabaab operative was extradited from the Netherlands only after ¶ assurances from the United States that he would be prosecuted in criminal ¶ court.253 Two similar cases arose in 2007.254 In perhaps the most striking ¶ example, five terrorism suspects—including Abu Hamza al-Masr, who is ¶ accused of providing material support to al-Qaeda by trying to set up a training ¶ camp in Oregon and of organizing support for the Taliban in Afghanistan—¶ were extradited to the United States by the United Kingdom in October ¶ 2012.255 The extradition was made on the express condition that they would be ¶ tried in civilian federal criminal courts rather than in the military ¶ commissions.256 And, indeed, both the European Court of Human Rights and the British courts allowed the extradition to proceed actions offered by the U.S. federal criminal justice system and finding they ¶ fully met all relevant standards.257 An insistence on using military commissions ¶ may thus hinder extradition and other kinds of international prosecutorial ¶ cooperation, such as the sharing of testimony and evidence.

#### European intelligence cooperation is key to create a global framework to solve terrorism

Pleschinger, 11 – (Stefanie, graduate of the International Relations Masters program at Yale University, “Allied Against Terror:

Transatlantic Intelligence

Cooperation,” http://yalejournal.org/wp-content/uploads/2011/01/062106pleschinger.pdf)

Disagreements between EU member state governments and the United States also negatively affect direct EU-U.S. cooperation. Fundamental divergences regarding counterterrorism methods, U.S. preventive action in Iraq, compliance with international law, and strategies for democracy promotion might increasingly estrange the transatlantic partners and hinder the advancement of intelligence cooperation. Because of different domestic experiences with war and terrorism, dissimilarities also exist in the perception of the threat of terrorism. The United States views terrorism as an external threat, while for the European Union it has historically been a danger from inside its borders. Consequently, incompatible approaches toward combating terrorism have developed on both sides of the Atlantic. Whereas the United States believes that military means must be employed abroad to successfully wage the “war on terrorism,” the European Union remains convinced that the rule of law, economic development, and human rights enforcement provide solutions to the problem of terrorism. U.S. authorities believe that the Europeans do not take terrorism as seriously, while Europeans strongly disapprove of U.S. practices in Guantanamo and Abu Ghraib. However, the European Union and United States ultimately depend on each other in combating terrorism, and thus, it is imperative to build a firewall between the daily conduct of intelligence cooperation and potential political disagreements in order to preserve a strong partnership that will succeed in the global fight against terrorism. 29 The scale of the recently thwarted terrorist plot aimed at transatlantic flights departing from London exemplifies the threatening nature of global terror - ism. 30 It has also demonstrated the crucial need to establish a cooperative international intelligence community capable of countering terrorist acts inspired by extreme fundamentalism and potentially plotted by anyone, including European citizens living inconspicuously in the suburbs of metro - politan cities. Transatlantic intelligence cooperation could form the backbone of an international counterterrorism network if both sides of the Atlantic shift their intelligence cooperation to an interregional level where the inter - national community could potentially contribute. The prerequisite for effec - tive transatlantic intelligence cooperation is a European intelligence network that synchronizes cross-border and cross-agency intelligence services and that strengthens relationships between EU intelligence institutions and their counterparts in the United States. The challenges to the development of a European intelligence service and supranational transatlantic intelligence cooperation are rooted in political, cultural, and historical issues that will require patience and trust among EU member states and in the transatlan - tic relationship. The history of European integration and EU-U.S. relations shows a steady trend toward increased collaboration under the pressures of globalization. However, the immediate threat of global terrorism will require closer cooperation at an accelerated pace

#### UK terror threat high – intelligence cooperation is key

Lister et al, 9/26 (Paul, Tim, and Nic, “Evidence suggests that Al-Shabaab is shifting focus to ‘soft’ targets” CNN. http://www.cnn.com/2013/09/26/world/london-bombing-plot-qaeda/index.html

(CNN) -- "Our objectives are to strike London with low-cost operations that would cause a heavy blow amongst the hierarchy and Jewish communities, using attacks similar to the tactics used by our brothers in Mumbai."¶ Those are the opening words of a document found on the body of al Qaeda's top East Africa operative when he was killed two years ago.¶ And the plans uncovered in the document are now even more interesting and relevant in light of the attack on the shopping center in Nairobi, Kenya.¶ Among the targets identified: the famous Eton College, the five-star Dorchester and Ritz hotels, and the Jewish neighborhood of Golders Green in north London.¶ The Word document, written in English, which CNN understands was stored on a thumb drive, was found when Fazul Abdullah Mohammed -- architect of the U.S. Embassy bombings in Nairobi and in Dar es Salaam, Tanzania, in 1998 -- was killed at a government checkpoint in the Somali capital, Mogadishu, one night in June 2011. Its contents were first reported by Michelle Shephard of the Toronto Star, who provided the document to CNN.¶ Read the document here on The Toronto Star¶ Richard Barrett, the former head of counterterrorism for MI6, told CNN that while the plans were "pretty aspirational" they were found on "a very determined and extremely able operator who could convert plans to reality" and were seen as a "significant warning" by Western intelligence agencies.¶ It's not clear whether Mohammed wrote or had approved of the plan. Its style and content suggest that it may have been a "pitch" to him by another al Qaeda operative. Shephard says that it may have been written by a British jihadist in East Africa.¶ But after the Nairobi attack by the Somali jihadist group Al-Shabaab and other al Qaeda documents seen by CNN, it is further evidence that replicating the 2008 Mumbai, India, attacks has become a major priority for the terror group, aiming at "soft" targets such as hotels, shopping malls, resorts or even cruise ships.¶ Barrett told CNN that the attack plans discovered in Mogadishu will now be seen in a more concerning light by Western intelligence agencies though "it is open to doubt" that Al-Shabaab would currently have the capability to carry out such an attack in the UK.¶ In a message to affiliates earlier this month, al Qaeda leader Ayman al-Zawahiri called for "taking the citizens of the countries that are participating in the invasion of Muslim countries as hostages so that our prisoners may be freed in exchange."¶ Attacking Eton College, where members of the royal family and British aristocracy are educated, would "strike a heavy blow at the 'who's who' of the political and business world," the document said.¶ "As we know the average English man is envious of the rich and has no ties to the upper class. This attack will totally infuriate the government/royalty but will not have such an impact on the masses," it reasoned.¶ As for the planned attack on either the Ritz or the Dorchester hotels -- which the author envisaged being carried out on "New Year's, Valentine's Day or even Hanukkah" -- there were further similarities to the attacks in Mumbai and Nairobi.¶ "We plan to book in advance and take plenty of petrol with the brother, then set the 1st 2nd and 3rd floor on fire using petrol and igniting using petrol bombs ... while we block the stairs so no-one can run down by blocking the staircase with furniture."¶ The author envisaged using Western recruits to carry out the attack, including British militants who had joined jihadist ranks in Somalia and people put forward by Al-Shabaab.¶ "For this mission we can use our own people or the harakah (Al-Shabaab) can supply suitable candidates or we would need instant access to all British muhajireen (jihadist emigrants)" the writer said.¶ "Each martyrdom seeker will be trained in Somalia preferably for 2 months ... the brothers will be pushed through many battles to see how they react under pressure and they will be analysed to see if they can keep their composure."¶ The training outlined in the document is a chilling precursor to the planning involved in the Nairobi attack.¶ The brothers "will be trained how to raid a house, clear rooms and gather all hostages in one room also how to use a human shield while shooting and moving through a building," it says.¶ "Reconnaissance will cover how to gather suitable information on the target, for example where are the nearest police stations, what times is the area most crowded, when are best times to attack, are there any armed guards, are they prepared for an attack, best way to enter building," it continues.¶ The Al-Shabaab attack in Nairobi closely mirrored the Mumbai attacks, in which members of the Pakistani group Lashkar-e-Tayyiba, a terrorist outfit affiliated with al Qaeda, seized hotels and a Jewish center and held out against Indian security forces for three days. More than 160 people were killed.¶ The similarities are striking:¶ • The targets were "soft" -- not military or government facilities, and therefore more easily penetrated;¶ • They were also enclosed, making it more difficult for security forces to flush out the assailants;¶ • A similar number of attackers -- about 10 -- was involved, and they used multiple entrance points;¶ • Both attacks were low-tech, involving automatic weapons and hand grenades, at the opposite end of the terror spectrum from the 9/11 attacks;¶ • Both involved a significant amount of preparation.¶ • They were in major cities, in places that attracted foreigners, and especially Westerners, and they focused on neighboring countries regarded as hostile. The Pakistani group attacked Indian targets; the Al-Shabaab cell attacked a Kenyan landmark in retaliation for Kenya's incursion into and occupation of southern Somalia;¶ • Israeli or Jewish interests were part of the targeting matrix;¶ • The attacks were geared to gaining maximum publicity.¶ Bergen: Are mass murderers using Twitter as a tool?¶ Resemblance to plans for European, U.S. strikes¶ Similar priorities appeared to have influenced another senior al Qaeda planner, Younis al Mauretani, who orchestrated a plan to hit Europe with a series of strikes, including Mumbai-style gun attacks. The discovery of the plans led to the United States issuing an unprecedented warning to its citizens in Europe in October 2010.¶ Western counterterrorism officials told CNN that al Qaeda at the time also envisaged hitting the United States with coordinated gun and hostage attacks. When U.S. Navy SEALs raided Osama bin Laden's compound in Abbottabad, Pakistan, they retrieved a letter Mauretani had written to bin Laden in March 2010 outlining attack plans. "After we hit Europe we will hit America," it said.¶ According to Swedish counterterrorism officials, in December 2010, a Swedish al Qaeda cell attempted to put part of the "Mumbai-style" plot into operation by driving to Denmark with a submachine gun, a silencer, several dozen 9 mm submachine gun cartridges, and plastic wrist straps to handcuff hostages. Their target was the Jyllands-Posten newspaper in Copenhagen, one of the newspapers that published controversial cartoons of the Prophet Mohammed. They were arrested once they reached the Danish capital. Security services believe the plan was to try to take up to 200 journalists hostage at the newspaper and execute many of them, a Swedish counterterrorism source told CNN.¶ Who is Al- Shabaab?¶ In May 2011, German police discovered a thumb drive hidden in the underpants of a terrorist suspect who was being questioned in Berlin. Encrypted deep inside a pornographic video called "Kick Ass" and a file marked "Sexy Tanja" was an internal al Qaeda document called "Future Works," which discussed seizing cruise ships and executing passengers, and carrying out attacks in Europe similar to the Mumbai attacks. Counterterrorism sources say another of the documents recovered contained notes in German, written at a training camp, on taking and executing hostages, putting the attack on camera and sending the video to al Qaeda so it could be used as propaganda.¶ U.S. intelligence sources told CNN last year that the documents, which included an internal report on terrorist plots that al Qaeda had orchestrated against the UK, were "pure gold."¶ While "Future Works" did not include dates, places or specific plans, it appears to have been a brainstorming exercise to seize the initiative and return al Qaeda to front-page news around the world.

#### Scenario 3 is Extradition –

#### Allies won’t extradite terror suspects to the US over due process concerns – destroys intel gathering and causes suspects to be released – plan is key

Kris, 2011 (David, Assistant Attorney General for National Security at the U.S. Department of Justice from March 2009 to March 2011 “Law Enforcement as a Counter Terrorism Tool” 6/15/2011 acc at http://jnslp.com//wp-content/uploads/2011/06/01\_David-Kris.pdf

Finally, the criminal justice system may help us obtain important¶ cooperation from other countries. That cooperation may be necessary if we¶ want to detain suspected terrorists or otherwise accomplish our national¶ security objectives. Our federal courts are well-respected internationally.¶ There are well-established, formal legal mechanisms that allow the transfer¶ of terrorism suspects to the United States for trial in federal court, and for¶ the provision of information to assist in law enforcement investigations –¶ i.e., extradition and mutual legal assistance treaties (MLATs). Our allies¶ around the world are comfortable with these mechanisms, as well as with¶ more informal procedures that are often used to provide assistance to the¶ United States in law enforcement matters, whether relating to terrorism or¶ other types of cases. Such cooperation can be critical to the success of a¶ prosecution, and in some cases can be the only way in which we will gain¶ custody of a suspected terrorist who has broken our laws.184¶ In contrast, many of our key allies around the world are not willing to¶ cooperate with or support our efforts to hold suspected terrorists in law of¶ war detention or to prosecute them in military commissions. While we hope that over time they will grow more supportive of these legal¶ mechanisms, at present many countries would not extradite individuals to¶ the United States for military commission proceedings or law of war¶ detention. Indeed, some of our extradition treaties explicitly forbid¶ extradition to the United States where the person will be tried in a forum¶ other than a criminal court. For example, our treaties with Germany¶ (Article 13)185 and with Sweden (Article V(3))186 expressly forbid extradition¶ when the defendant will be tried in an “extraordinary” court, and the¶ understanding of the Indian government pursuant to its treaty with the¶ United States is that extradition is available only for proceedings under the¶ ordinary criminal laws of the requesting state.187 More generally, the¶ doctrine of dual criminality – under which extradition is available only for¶ offenses made criminal in both countries – and the relatively common¶ exclusion of extradition for military offenses not also punishable in civilian¶ court may also limit extradition outside the criminal justice system.188 Apart¶ from extradition, even where we already have the terrorist in custody, many¶ countries will not provide testimony, other information, or assistance in¶ support of law of war detention or a military prosecution, either as a matter¶ of national public policy or under other provisions of some of our¶ MLATs.18 These concerns are not hypothetical. During the last Administration,¶ the United States was obliged to give assurances against the use of military¶ commissions in order to obtain extradition of several terrorism suspects to¶ the United States.190 There are a number of terror suspects currently in foreign custody who likely would not be extradited to the United States by foreign nations if they faced military tribunals.191 In some of these cases, it might be necessary for the foreign nation to release these suspects if they cannot be extradited because they do not face charges pending in the¶ foreign nation.

#### European safe havens are the most likely avenue for WMD terrorism

Ferguson, 4 - scientist-in-residence based in the Washington DC office of the Center for Nonproliferation Studies, Monterey Institute of International Studies (Charles, “The threat of nuclear terrorism in Europe” 2/6, <http://www.eurozine.com/articles/2004-06-02-ferguson-en.html>)

While most terrorist groups are not motivated to unleash nuclear terror, at least one terrorist network - al Qaeda - has expressed strong interest in acquiring weapons of mass destruction. Al Qaeda operatives and their brethren in like-minded organizations have spread their web across numerous countries. According to a January report by The Observer , Islamic militants have built up an extensive network in Europe since 11 September 2001, using Great Britain as a logistical hub and nerve center. In recent years, Islamic extremists have expanded eastward into Bulgaria, the Czech Republic, Poland, and Romania. Terrorist cells have become rooted in Austria, France, and Germany and have recruited new members in these and other countries. Intelligence officials have warned that labeling all of these groups as al Qaeda misses the complexity behind the terrorist network. While most of the cells follow a similar agenda as al Qaeda, few directly hold their allegiance to this organization. The current focus on Islamic extremist groups should not blind us from seeing other terrorist organizations that would covet nuclear means of destruction. For example, Aum Shinrikyo, an apocalyptic cult with no ties to Islamic extremism, sought out nuclear weapons and released deadly sarin gas in a 1995 chemical attack in the Tokyo subway system. Despite the growth of terrorist cells in Europe, one must not assume that they will ultimately go nuclear. Climbing the escalation ladder to acts of nuclear terror requires leaping over several barriers. Regardless of the nuclear terror act under consideration, the terrorist group must be motivated to conduct extreme levels of violence and to venture into unconventional methods of attack. While a terrorist organization with a well-defined constituency would most likely not want to alienate its constituency with a nuclear act, groups that have weak or non-existent ties to constituencies would not face as many moral or political constraints. For example, the Chechen rebels, a national-separatist group, depend strongly on their supporters within Chechnya. In contrast, the character and agenda of al Qaeda, a political-religious terrorist network, make this organization apparently less concerned about directly harming constituents. The final barriers for a terrorist group to cross are technical in nature. The group would have to acquire the nuclear assets. If the group decided to attack a nuclear power plant, it would have to identify a vulnerable nuclear facility. The organization would have to develop or hire the skills needed to build and detonate a weapon or to sabotage a nuclear facility. Finally, the group would have to be able to deliver the attack without being detected during the development or completion phase. Vulnerable Nuclear and Radiological Assets in Europe Tactical nuclear weapons: Though intact nuclear weapons tend to be well-guarded, some are more susceptible than others to falling into the hands of terrorists. Most experts believe that portable so-called tactical nuclear weapons (TNWs) are more vulnerable to terrorist seizure than are strategic nuclear weapons. TNWs are designed for nuclear-war fighting or battlefield use. As such, they tend to be more portable than their strategic cousins. In Europe, concerns over loose nuclear weapons have focused on the thousands of Russian TNWs that are in various physical conditions and under varying security storage and use. The United States also maintains about 150-180 TNWs in about six NATO countries. While European politicians want to keep the issue of NATO's nuclear weapons out of public view, they need to take steps to reassure Russia that nuclear arms will not be deployed in new NATO-member states. This confidence building measure could serve as a way toward achieving more openness about how to improve the security of Russian TNWs. Uranium: Of the two types of weapons-usable nuclear material, highly enriched uranium (HEU) poses the greatest concern, because it can be used in the simplest nuclear bomb - a gun-type device - to produce a high-yield explosion. Most weapons experts agree that a well-funded terrorist group could build a gun-type bomb, which simply slams two pieces of HEU together inside a gun barrel. The major barrier to stopping construction of such a device is access to HEU. Research sites in Bulgaria, the Czech Republic, Hungary, Poland, Romania, and Yugoslavia have HEU, supplied mostly from Russia. Over the past several years, experts have warned that HEU from these sites could find its way to terrorists. The December 1994 seizure of almost three kilograms of weapons-usable HEU in the Czech Republic highlighted this danger. Since the fall of the Soviet Union, there have been many incidents of illicit trafficking of nuclear and radiological materials in Central and Eastern Europe and the newly independent states. Many more incidents could be happening than are being detected. Fortunately, efforts to secure and repatriate HEU from vulnerable sites in this region have begun. Since the summer of 2002, the United States, Russia, the International Atomic Energy Agency (IAEA), partner governments, and non-governmental organizations, such as the Nuclear Threat Initiative, have conducted three successful missions - Belgrade, Romania and Bulgaria - to secure HEU at research sites and to repatriate it to Russia. But more needs to be done, since about 20 additional research sites, each containing enough Russian-origin HEU for at least one bomb, still exist. Some of these sites are located in Central and Eastern Europe. Radiation: Within the past few years, the European Union has commissioned two studies to determine the effectiveness of the existing regulatory practices concerning the life cycle of radioactive sources. The first study examined the controls within the EU itself and found that radioactive materials management varied across the EU. The report underscored the risk posed by some 30,000 disused sources that are in danger of becoming orphaned, that is, of falling outside of regulatory controls. On the heels of that study, the EU investigated the regulatory practices in the Czech Republic, Estonia, Hungary, Poland, and Slovenia, states that were being considered for early admission to the EU. The EU study concluded that these states have regulatory controls that meet the general standards found throughout the EU. While the results of these pre-11 September reports are by and large encouraging, it should be noted that they focused on safety considerations and did not examine details of security procedures. Nuclear power plants: Well-designed nuclear power plants employ defense-in-depth safety features. To release radioactivity from a nuclear plant, terrorists would have to destroy or disable multiple safety systems. Unfortunately, Central and Eastern Europe contain many Soviet-designed nuclear power plants that do not meet Western safety standards. For example, early Soviet-designed models lack an adequate emergency core cooling system and containment structure, and have an inadequate fire protection system. Such reactors operate in Bulgaria, Slovenia, the Czech Republic, Hungary and Slovakia and Lithuania. While these reactors have engendered discussion regarding safety and security, attacks and sabotage against research centers - where security procedures tend to be less rigorous than at commercial plants - have been overlooked. Many research reactors are located at universities in or near major urban areas. While the inventory of radioactivity in a typical research reactor pales in comparison to the large quantities of lethal fission products within a commercial reactor, release of radioactivity from research sites could suit nuclear terrorists' purposes.

### 1AC – Credibility

#### Advantage 2 is Credibility –

#### Current handling of trials threatens to destroy the transatlantic alliance – specifically harms military cooperation with Germany and Britain.

Parker ‘12 Tom Parker, formerly policy director for Terrorism, Counterterrorism and Human Rights at Amnesty International USA. He is also a former officer in the British Security Service, “U.S. Tactics Threaten NATO” 9-17-12, <http://nationalinterest.org/commentary/us-tactics-threaten-nato-7461>, 8-03-13

A growing chasm in operational practice is opening up between the United States and its allies in NATO. This rift is putting the Atlantic alliance at risk. Yet no one in Washington seems to be paying attention.The escalating use of unmanned aerial vehicles to strike terrorist suspects in an increasing number of operational environments from the Arabian Peninsula to Southeast Asia, coupled with the continued use of military commissions and indefinite detention, is driving a wedge between the United States and its allies. Attitudes across the Atlantic are hardening fast. This isn’t knee-jerk, man-on-the-street anti-Americanism. European governments that have tried to turn a blind eye to U.S. counterterrorism practices over the past decade are now forced to pay attention by their own courts, which will restrict cooperation in the future.As recently as last month, the German federal prosecutor’s office opened a probe into the October 2010 killing of a German national identified only as “Buenyamin E.” in a U.S. drone strike in Pakistan. There are at least four other similar cases involving German nationals and several reported strikes involving legal residents of the United Kingdom.In March, Polish prosecutors charged the former head of Polish intelligence, Zbigniew Siemiatkowski, with “unlawfully depriving prisoners of the their liberty” because of the alleged role he played in helping to establish a CIA secret prison in northeastern Poland in 2002–2003.Last December, British Special Forces ran afoul of the UK courts for informally transferring two Al Qaeda suspects detained in Iraq, Yunus Rahmatullah and Amanatullah Ali, to U.S. forces. The British government has been instructed to recover the men from U.S. custody or face legal sanctions that could result in two senior ministers being sent to prison. Perhaps the most dramatic example illustrating the gap that has opened up between the United States and its European allies concerns the 2009 in absentia conviction of twenty-three U.S. agents in an Italian court for the role they played in the extraordinary rendition of radical Imam Hassan Mustafa Osama Nasr from Milan to Cairo.Britain, Poland, Italy and Germany are among America’s closest military partners. Troops from all four countries are currently serving alongside U.S. forces in Afghanistan, but they are now operating within a very different set of constraints than their U.S. counterparts.The European Court of Human Rights established its jurisdiction over stabilization operations in Iraq, and by implication its writ extends to Afghanistan as well. The British government has lost a series of cases before the court relating to its operations in southern Iraq. This means that concepts such as the right to life, protection from arbitrary punishment, remedy and due process apply in areas under the effective control of European forces. Furthermore, the possibility that intelligence provided by any of America’s European allies could be used to target a terrorism suspect in Somalia or the Philippines for a lethal drone strike now raises serious criminal liability issues for the Europeans. The United States conducts such operations under the legal theory that it is in an international armed conflict with Al Qaeda and its affiliates that can be pursued anywhere on the globe where armed force may be required. But not one other member of NATO shares this legal analysis, which flies in the face of established international legal norms. The United States may have taken issue with the traditional idea that wars are fought between states and not between states and criminal gangs, but its allies have not.The heads of Britain’s foreign and domestic intelligence services have been surprisingly open about the “inhibitions” that this growing divergence has caused the transatlantic special relationship, telling Parliament that it has become an obstacle to intelligence sharing. European attitudes are not going to change—the European Court of Human Rights is now deeply embedded in European life, and individual European governments cannot escape its oversight no matter how well disposed they are to assist the United States.The United States has bet heavily on the efficacy of a new array of counterterrorism powers as the answer to Al Qaeda. In doing so it has evolved a concept of operations that has much more in common with the approach to terrorist threats taken by Israel and Russia than by its European partners. There has been little consideration of the wider strategic cost of these tactics, even as the Obama administration doubles down and extends their use. Meanwhile, some of America’s oldest and closest allies are beginning to place more and more constraints on working with U.S. forces. NATO cannot conduct military operations under two competing legal regimes for long. Something has to give—and it may just be the Atlantic alliance.

#### Lack of trials destroys US credibility the MOST – legitimacy is key because terrorism is not a conventional threat

Welsh ’11 David Welsh, J.D. from the University of Utah. He is currently a doctoral student in the Eller School of Business at the University of Arizona where his research focuses on organizational fairness and ethics, “Procedural Justice Post-9/11: The Effects of Procedurally Unfair Treatment of Detainees on Perceptions of Global Legitimacy”, 9 U.N.H. L. Rev. 261, March 2011, Lexis

The Global War on Terror n1 has been ideologically framed as a struggle between the principles of freedom and democracy on the one hand and tyranny and extremism on the other. n2 Although this war has arguably led to a short-term disruption of terrorist threats such as al-Qaeda, it has also damaged America's image both at home and abroad. n3 Throughout the world, there is a growing consensus that America has "a lack of credibility as a fair and just world leader." n4 The perceived legitimacy of the United States in the War on Terror is critical because terrorism is not a conventional threat that can surrender or can be defeated in the traditional sense. Instead, this battle can only be won through legitimizing the rule of law and undermining the use of terror as a means of political influence. n5 Although a variety of political, economic, and security policies have negatively impacted the perceived legitimacy of the United States, one of the most damaging has been the detention, treatment, and trial (or in many cases the lack thereof) of suspected terrorists. While many scholars have raised constitutional questions about the [\*263] legality of U.S. detention procedures, n6 this article offers a psychological perspective of legitimacy in the context of detention.

#### Legislation is key to persuade allies – AUMF proves

Chesney et al 13 Robert Chesney, American lawyer and Professor of Law at Texas School of Law, Jack Goldsmith, Matthew Waxman, Benjamin Wittes, Real Clear Politics, 2-25, http://www.realclearpolitics.com/articles/2013/02/25/is\_the\_war\_on\_terror\_lawful\_117146.html

Third are the international costs of a renewed AUMF. This is a complex issue. As a general matter a renewed and clarified AUMF – especially one that (as we propose below) articulates the U.S. view of international law – would contribute to the development of opinio juris under customary international law. So too would the reaction to the new AUMF. That reaction depends on the details of the legislation. To the extent that the legislation is seen as constraining the president in meaningful ways and in hewing to accepted international law, it would be viewed in a positive light internationally. To the extent that it is seen as making permanent an indefinite and geographically limitless war or in stretching international law, it would be viewed in a negative light internationally among NGOs and allied governments. And of course both reactions are likely to some degree. The attempt to mitigate a negative reception abroad (and, in some quarters, at home), is one reason why we recommend below that any statutory reform in this area should emphasize compliance with jus in bello and jus ad bellum as well as the limited rather than unlimited nature of the authorization (conceptually and temporally). We recognize that the United States’ interpretation of some international law self-defense and law-of-war authorities is broader than our allies’ interpretation; legislating such limitations thus will not end debate. Nevertheless, acknowledging clearly that U.S. operations are to be conducted within, rather than beyond, traditional legal frameworks is an important step in mitigating friction with our allies, and prudent use of these legal authorities will be important in persuading allies that the U.S. position is a reasonable one.

#### Britain and Germany are critical to NATO’s success and American engagement

Aronsson and Keller, 2012 (Lisa is a Transatlantic Security Studies, Royal United Services Institute and Patrick is a coordinator at the Royal United Services Institute for Defence and Security Studies and the Konrad-Adenauer-Stiftung, “British-German Defense Co-Operation in NATO” May 2012. Konrad Adenauer Stiftunt, RUSI Institute. Web, Acc at http://www.rusi.org/downloads/assets/OP\_201205\_Aronsson\_and\_Keller.pdf

NATO is central to both British and German defence policy planning and is the primary forum for consultations on European defence issues largely because of the American commitment to NATO and because of the American presence in Europe over the past six decades. Both London and Berlin have special relationships of their own with the United States. Both have historically committed to the US as a security partner and the US in turn has provided leadership, commitment and resources to help them to achieve their strategic goals. For the Federal Republic of Germany, the US supported its integration into NATO and the European institutions, which enabled it to recover, grow and prosper peacefully after the Second World War. Those institutions also enabled Germany to re-unify after the Cold War and emerge as Europe’s economic powerhouse. The UK, on the other hand, positioned itself as a transatlantic bridge in security and defence. The US recognised the strategic role it could fill mid-Atlantic and as a permanent member of the UN Security Council. The US also valued the military contributions London was able to make to American-led operations. The UK has emerged as Europe’s most powerful military after the Cold War, and that reinforced its close strategic ties with the US.¶ America’s commitment to Europe has served both British and German interests, but its presence in Europe is changing rapidly, challenging both to respond. Washington’s geographic re-balancing towards Asia and the greater Middle East may not lead to a trend away from Europe or undermine Article V, but it will have consequences for NATO, and for Germany and the UK more specifically. The new strategy will challenge Allies in their decisions on resource allocation, geographic focus and political attention. It is in the best interests of the UK and Germany to keep the US engaged in a meaningful way, and to keep NATO relevant to American concerns not only in Europe but in the Middle East and further afield. Massive increases in the American defence budget since the late 1990s had subsidised NATO, but imminent downsizing after nearly two decades of American war-fighting will challenge Allies to re-think their roles and commitments within NATO, and the UK and Germany to re-think their defence relationships with the US. It is no longer feasible for Germany to shy away from responsibility for European defence and security, and London’s military power will no longer suffice to secure influence in Washington if NATO capabilities decline. America expects Germany to deliver leadership on European security, and it expects London to hold onto its ambition to shape global affairs in partnership with the US.

#### First impact is soft power –

#### Transatlantic cohesion is key to solve every scenario for extinction

Hamilton et al 09 (Daniel, lead author, Director of the Center for Transatlantic Relations at SAIS, Charles Barry, Hans Binnendijk, Stephen Flanagan, Julianne Smith, James, Townsend, Feb 2009, "Alliance Reborn: An Atlantic Compact for the 21st Century" The Washington NATO Project, Atlantic Counsel) transatlantic.sais-jhu.edu/sebin/i/y/nato\_report\_final.pdf

\*\*This card edited to remove gendered language\*\*

It is urgent that we renew and reform the transatlantic partnership, for the world we have known is fading. A new world is rising, uncertain, indeterminate, yet forming fast. There is much that is positive about this transformation. For the first time in human history, most people on this planet live under governments of their own choosing. Revolutions in science, technology, transportation and communications are improving lives and freeing minds. A rising global middle class is creating major new opportunities. More people have been lifted out of poverty in the last twenty years than in all of human history. The Great Powers are at peace. Overall, more people in more parts of the world have benefitted from these dramatic changes. Gains have not been shared evenly, however. For too many, change has simply meant disruption and uncertainty. Around the world there is great concern about the impact of corrosive regional, ethnic, and religious conflicts; the rise of terrorism and organized crime; migration flows provoked by poverty, population growth, environmental change or insecurity; the accelerating proliferation of mass destruction capacities; the spread of pandemics; increasing resource scarcity, particularly energy and water; environmental degradation and the effects of climate change. Moreover, the potential of our young century has been stunted by the deepest recession in generations. While the U.S. and Europe still account for more than 60 percent of the global economy, the financial crisis and attendant recession have greatly damaged Western capacities. In 2009, for the first time in history, the world's emerging economies are forecast to provide 100 percent of global economic growth. Within the next 10-15 years, they are expected to generate more than half of the world’s output. Yet they too have been hurt by the financial crisis. Developing countries have seen foreign capital dry up, export markets shrivel, and currencies, banks and stock markets weaken. Despite the global downturn, growing connections between continents will continue to exert a powerful influence on the evolving international order. Globalization has brought large gains in terms of trade and inflows of capital, greater technological diffusion and higher economic growth. But it has not brought geopolitics or ideological struggles to an end. Rather, darker forces, including terrorism, organized crime, and radical ideologies— particularly the jihadist vision of ridding the Muslim world of Western influence, corrupt regimes, and restoring the Caliphate—will continue to exacerbate regional tensions and transnational threats and fuel competition and instability. Moreover, the technology and knowledge to make and deliver agents of mass destruction is proliferating among some of the most ruthless factions and regimes on earth. The ability of individuals and groups to employ destructive power will continue, as governments struggle to meet the challenge of stateless networks that move freely across borders. The world’s most devastating agent of mass destruction – infectious disease – is moving from the hands of Mother Nature to the hands of [hu]man[s]. Stunning scientific advances are enhancing biology’s dual-use potential for beneficence or malevolence. Biological techniques available today permit rapid synthesis of large viruses from non-living parts. This will help researchers seeking new drugs and vaccines. But it also puts the synthesis of viruses such as smallpox within the reach of thousands of laboratories worldwide. The age of engineered biological weapons is neither science fiction nor suspense thriller. It is here, today. The world is on the cusp of exponential change in the power of bioagents and their accessibility to state and non-state actors. The absence of available medical countermeasures (medicines, vaccines and diagnostic tests) and the inadequacies of health information and distribution systems will limit most nations’ capacities to deal with large-scale epidemics. Current systems to manage epidemics were stretched to the limit by SARS and other natural outbreaks, and are wholly inadequate for the unique challenges of bioterrorism. Efforts to adopt nuclear nonproliferation regimes to the biological realm have been fraught with difficulties and are of questionable merit. While most threats to peace and stability today remain regionally rooted, in an increasingly interconnected world conflicts that once might have remained local disputes can now have global impact. In this context, problems of governance have become a central national security dilemma. Unstable and ungoverned regions of the world, or governance that breaks when challenged, pose dangers for neighbors and can become the setting for broader problems of terrorism, migration, poverty and despair. The broader Middle East, stretching to southwest Asia, remains the region of the world where unsettled relationships, religious and territorial conflicts, impoverished societies, fragile and intolerant regimes and deadly combinations of technology and terror brew and bubble on top of one vast energy field upon which global prosperity depends. Choices made here could determine the shape of the 21st century – whether agents of mass destruction will be unleashed upon mass populations; whether the oil and gas fields of the Caucasus and Central Asia can become reliable energy sources; whether catastrophic terrorism can be prevented; whether Russia’s borderlands can become stable and secure democracies; whether Israel and its neighbors can live in peace; whether millions of people can be lifted from pervasive poverty and hopelessness; and whether the great religions of the world can flourish together. A number of significant, interrelated trends will continue to affect alliance security: Sunni-Shia conflicts and Islamist violence; Israeli-Palestinian tensions; Iraq’s precarious transition as U.S. and coalition forces withdraw; Iranian efforts to assert regional influence and develop nuclear weapons; and sustained insurgencies in Afghanistan and Pakistan that offer safe harbor to terrorists. Central Asia has become a focal point for competition over energy resources, and Russia and China could intensify their efforts to gain influence in the region. Leadership transition will test key regional powers, and could trigger regime failure and instability, opening doors to clan, tribal, and regional rivalries that may transcend state borders and lead to turmoil and violence. Significant and protracted instability could become the defining characteristic of Central Asia, including failed and failing states; radical Islamic movements; organized crime; and trafficking in weapons, WMD materials, and narcotics. Rising China, India and Indonesia will reshape power dynamics in Asia and beyond. Japan remains a major world player, but domestic political differences have prevented it from shouldering additional burdens to enhance global security commensurate with its position. China is on track to become the world’s second largest economy, the world’s largest importer of resources, the world’s biggest polluter, and a leading military power. Yet it faces significant domestic challenges, including environmental degradation, AIDS, and the prospect of wider social unrest if economic growth falters or problems in governance, social welfare, and regional development cannot be overcome. India is likely to continue to enjoy economic growth, develop its military, and seek to establish itself as a major independent power, even as rivalry persists with Pakistan. Burgeoning Indonesia is grappling with secessionist challenges and the spread of Islamist fundamentalism. An unpredictable North Korea will require significant international attention. Sub-Saharan Africa continues to be a major global supplier of oil, gas, and other commodities, yet remains vulnerable to HIV/AIDS, economic disruption, population stresses, civil conflict, corruption and failed governance. Many states lack the capacity to break up terror cells, thwart trafficking in arms, drugs or people, or provide domestic security. The Darfur crisis is a tragic reminder of the potential for local strife to affect millions. While Africans are assuming more of their own security responsibilities, Europeans and Americans are called to provide emergency assistance, deploy and train peacekeepers, and mediate disputes. Despite the rise of Brazil and broadening commercial relations with Asia and Europe, Latin America has yet to add its potential to broader transatlantic partnership. Some areas in this region continue to be among the most violent in the world, due to the activities of drug trafficking organizations, criminal cartels, and persistent weaknesses in governance and the rule of law. Resource issues are gaining in prominence as energy, water, and food pressures grow. The concentration of energy resources under state control and/or in regions of instability, together with rapidly changing resource distribution patterns, increasing demand and decreasing reserves will continue to challenge all consuming countries. Lack of access to stable water supplies is reaching critical proportions, particularly for agriculture, and rapid urbanization is exacerbating the problem. The World Bank estimates that demand for food will rise by 50 percent by 2030.4 Climate change is expected to exacerbate resource scarcities, prompting greater humanitarian crises, large-scale migration of people, instability, and conflict. Although the impact of climate change will vary, a number of regions are already suffering harmful effects, particularly water scarcity, storm intensity and loss of agricultural production. The International Panel on Climate Change (IPCC) estimates that by 2020, up to 250 million Africans could face starvation and malnutrition due to lack of fresh water supplies, lower crop yields, and drought. The IPCC also warns that mega-delta regions throughout Asia will face huge geopolitical challenges from climate-induced migration. One immediate strategic consequence of climate change is likely to be an ice-free summertime Arctic within the next few years, which will open up vast energy and mineral resources yet pose considerable environmental, legal and geostrategic challenges. The U.S. Geological Survey estimates that at least 25 percent of the world’s remaining oil and gas resources lie north of the Arctic Circle. Although the circumpolar states share a common interest in addressing environmental vulnerabilities as they exploit these resources, unresolved jurisdictional claims could result in greater tensions. Moreover, a host of new players could join the mix, since world shipping could also be transformed: the Northern Sea Route between the North Atlantic and the North Pacific is about 5,000 nautical miles shorter – a week’s sailing time -- than a trip via the Suez Canal. The new world rising underscores how the challenges facing Europeans and Americans have changed since the end of the Cold War. We are accustomed to associating historic change with significant dates and catalytic events. Even today, the fall of the Berlin Wall on November 9, 1989 remains the most potent symbol of the attraction and power of open societies. Yet when walls come down for families and friends they also can come down for hatred, prejudice and new forms of competition. There is no more vivid example than the tragic attacks of September 11, 2001.5 The changes we are experiencing today are no less historic. They are perhaps less vivid in the popular mind because they cannot be tied to one symbolic event but emanate from the billions of individual decisions made around the globe every day. Yet the consequences of those choices are no less dramatic for our welfare. We no longer face a singular threat to our mutual security, nor can we afford to subsume diverse dangers under simplistic slogans such as the Global War on Terror. We still face the potential for conflict between major states. We will perhaps always face the menace of terrorism. But today, a host of unorthodox challenges also demand our urgent attention. Two broad themes emerge from our assessment. First, the global has become local. Our well-being is increasingly influenced by flows of people, money and weapons, goods and services, technology, toxins and terror, drugs and disease. We characterize these phenomena as "global," but their impact is local. They are unprecedented in their range, scope and speed. They offer untold opportunities and terrible dangers. They are impersonal forces with very personal consequences. As a result, “human” security has become integral to “national” security. The networked nature of modern societies should prompt reconsideration of what, exactly, needs protecting in today’s world. Traditional strategies focused on securing territory. Yet what do cyber hackers, energy cartels and al-Qaeda have in common? They are networks that prey on other networks - the interconnected arteries and nodes of vulnerability that accompany the free flow of people, ideas, energy, money, goods and services, and the complex interdependent systems on which free societies depend. It is our complete reliance on such networks, matched with their susceptibility to catastrophic disruption, that make them such tempting targets. In the 21st century, we are called to protect our connectedness, not just our territory.6 A transformative approach to security should supplement the traditional focus on the security of territory with more energetic efforts to protect the critical functions of societies, and the manifold connections those societies have with others. Second, the local has become global. For many of our citizens the new world has meant disruption and insecurity. They worry that a job gained abroad means a job lost at home, that their hard-won prosperity could simply slip away. They are anxious about the pace of global change, about their livelihoods, about their future. They worry that their way of life is at the mercy of distant events. These concerns are real, widespread, and legitimate. Yet domestic renewal cannot come at the expense of our international engagement. The affairs of the world have become too deeply entrenched in our domestic lives for us to ignore global developments while we concentrate on problems at home. Domestic renewal, in fact, requires our active international engagement – together. Some argue that with the Cold War over and new powers rising, the transatlantic partnership has had its day, that the values and interests of Europeans and Americans have diverged, and that many of our institutions are of little relevance to today’s global challenges. We disagree. Our partnership remains as vital as in the past, but now we must focus on a new agenda. The new world rising offers us both necessity and opportunity to reposition our partnership to meet 21st century challenges, and to improve the institutions and tools at our disposal. In recent years, Europeans and Americans have differed on the nature of some of these challenges and how best to confront them. Differences of perspective and policy can be powerful. But the history of European-American relations has often been the history of difference. Merely asserting difference or reciting lists of tough issues does not make the case for estrangement. It makes the case for better leadership. Moreover, that which has driven us apart has rarely overshadowed that which keeps us together: basic principles of democracy, liberty, human rights, nondiscrimination and the rule of law; mutual peace and security; open, rules-based markets; and an open door to those who choose to abide by these principles and add their strength to ours -- all underpinned by deep security and economic linkages and an intensity of cooperation without parallel anywhere on earth. At times, each side of the Atlantic has honored these principles in the breach. Our achievements do not always match our aspirations. But the common body of accumulated principles, norms, rules and procedures we have built and accumulated together – in essence, an acquis Atlantique -- affirms the basic expectations we have for ourselves and for each other.7 It offers a unique foundation to build upon. For sixty years this foundation has made the transatlantic relationship the world’s transformative partnership. North America’s relationship with Europe enables each of us to achieve goals together that neither can alone – for ourselves and for the world. This still distinguishes our relationship: when we agree, we are usually the core of any effective global coalition. When we disagree, no global coalition is likely to be very effective. In short, transatlantic partnership remains indispensable if we are to tackle effectively the challenges we face. But unless we address the deep changes that have altered the context of our relationship, and unless we develop common strategies to advance the broadened range of interests we share, we are less likely to harness transatlantic potential to our wider goals and more likely to hold each other back.

#### Second impact is hard power –

#### Legitimacy makes deterrence effective

Welsh ’11 David Welsh, J.D. from the University of Utah. He is currently a doctoral student in the Eller School of Business at the University of Arizona where his research focuses on organizational fairness and ethics, “Procedural Justice Post-9/11: The Effects of Procedurally Unfair Treatment of Detainees on Perceptions of Global Legitimacy”, 9 U.N.H. L. Rev. 261, March 2011, Lexis

In February 2006, the United Nations Working Group on Arbitrary Detention spoke out against international law and human rights violations at Guantanamo Bay, stating that the facility should be closed "without further delay." [n46](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n46) This report paralleled earlier criticism from Amnesty International that Guantanamo Bay violates minimum standards for the treatment of individuals. [n47](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n47) In response, the United States has argued that detainees are not prisoners of war but are rather "unlawful combatants" who are not entitled to the protections of the Geneva Convention because they do not act in accordance with the accepted rules of war. [n48](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n48) Yet, regardless of the debatable legal merit of this argument, legitimacy is an "elusive quality" grounded in worldwide opinion that will not let the United States off the hook on a mere technicality when moral duties and international customs have been violated. [n49](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n49) In the next section, I discuss the importance of legitimacy and the ways in which it has been undermined by U.S. conduct in the War on Terror. By understanding what drives global perceptions of U.S. legitimacy, current detention policies and their ramifications can be more accurately assessed and restructured. IV. Legitimacy: The Critical Missing Element in the War on Terror In the context of the War on Terror, legitimacy is the critical missing element under the current U.S. detention regime. Legitimacy can be defined as "a psychological property of an authority, institution, or social arrangement that leads those connected to it to believe that it is appropriate, proper, and just." [n50](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n50) As far back as Plato and Aristotle, philosophers have recognized that influencing others merely through coercion and power is costly and inefficient. [n51](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n51) Today, empirical evidence suggests that legitimacy, rather than deterrence, is primarily what causes individuals to obey the law. [n52](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n52) Thus, while legal authorities may possess the immediate power to stop illegal action, long-term compliance requires that the general public perceives the law to be legitimate. [n53](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n53) Terrorism is primarily an ideological war that cannot be won by technology that is more sophisticated or increased military force. [n54](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n54) While nations combating terrorism must continue to address immediate threats by detaining suspected terrorists, they must also consider the prevention of future threats by analyzing how their policies are perceived by individuals throughout the world. Ultimately, in the War on Terror, "the benefits to be derived from maximizing legitimacy are too important to neglect." [n55](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n55) Over time, perceptions of legitimacy create a "reservoir of support" for an institution that goes beyond mere self-interest. [n56](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n56) In the context of government: Legitimacy is an endorphin of the democratic body politic; it is the substance that oils the machinery of democracy, reducing the friction that inevitably arises when people are not able to get everything they want from politics. Legitimacy is loyalty; it is a reservoir of goodwill that allows the institutions of government to go against what people may want at the moment without suffering debilitating consequences

#### The plan’s external oversight on detention maintains heg---legitimacy is the vital internal link to global stability

Robert Knowles 9, Acting Assistant Professor, New York University School of Law, Spring, “Article: American Hegemony and the Foreign Affairs Constitution”, 41 Ariz. St. L.J. 87, Lexis

The hegemonic model also reduces the need for executive branch flexibility, and the institutional competence terrain shifts toward the courts. The stability of the current U.S.-led international system depends on the ability of the U.S. to govern effectively. Effective governance depends on, among other things, predictability. n422 G. John Ikenberry analogizes America's hegemonic position to that of a "giant corporation" seeking foreign investors: "The rule of law and the institutions of policy making in a democracy are the political equivalent of corporate transparency and [\*155] accountability." n423 Stable interpretation of the law bolsters the stability of the system because other nations will know that they can rely on those interpretations and that there will be at least some degree of enforcement by the United States. At the same time, the separation of powers serves the global-governance function by reducing the ability of the executive branch to make "abrupt or aggressive moves toward other states." n424¶ The Bush Administration's detainee policy, for all of its virtues and faults, was an exceedingly aggressive departure from existing norms, and was therefore bound to generate intense controversy. It was formulated quickly, by a small group of policy-makers and legal advisors without consulting Congress and over the objections of even some within the executive branch. n425 Although the Administration invoked the law of armed conflict to justify its detention of enemy combatants, it did not seem to recognize limits imposed by that law. n426 Most significantly, it designed the detention scheme around interrogation rather than incapacitation and excluded the detainees from all legal protections of the Geneva Conventions. n427 It declared all detainees at Guantanamo to be "enemy combatants" without establishing a regularized process for making an individual determination for each detainee. n428 And when it established the military commissions, also without consulting Congress, the Administration denied defendants important procedural protections. n429¶ In an anarchic world characterized by great power conflict, one could make the argument that the executive branch requires maximum flexibility to defeat the enemy, who may not adhere to international law. Indeed, the precedents relied on most heavily by the Administration in the enemy combatant cases date from the 1930s and 1940s - a period when the international system was radically unstable, and the United States was one of several great powers vying for advantage. n430 But during that time, the executive branch faced much more exogenous pressure from other great powers to comply with international law in the treatment of captured enemies. If the United States strayed too far from established norms, it would risk retaliation upon its own soldiers or other consequences from [\*156] powerful rivals. Today, there are no such constraints: enemies such as al Qaeda are not great powers and are not likely to obey international law anyway. Instead, the danger is that American rule-breaking will set a pattern of rule-breaking for the world, leading to instability. n431 America's military predominance enables it to set the rules of the game. When the U.S. breaks its own rules, it loses legitimacy.¶ The Supreme Court's response to the detainee policy enabled the U.S. government as a whole to hew more closely to established procedures and norms, and to regularize the process for departing from them. After Hamdi, n432 the Department of Defense established a process, the CSRTs, for making an individual determination about the enemy combatant status of all detainees at Guantanamo. After the Court recognized habeas jurisdiction at Guantanamo, Congress passed the DTA, n433 establishing direct judicial review of CSRT determinations in lieu of habeas. Similarly, after the Court declared the military commissions unlawful in Hamdan, n434 this forced the Administration to seek congressional approval for commissions that restored some of the rights afforded at courts martial. n435 In Boumediene, the Court rejected the executive branch's foreign policy arguments, and bucked Congress as well, to restore the norm of habeas review. n436¶ Throughout this enemy combatant litigation, it has been the courts' relative insulation from politics that has enabled them to take the long view. In contrast, the President's (and Congress's) responsiveness to political concerns in the wake of 9/11 has encouraged them to depart from established norms for the nation's perceived short-term advantage, even at the expense of the nation's long-term interests. n437 As Derek Jinks and Neal Katyal have observed, "treaties are part of [a] system of time-tested standards, and this feature makes the wisdom of their judicial interpretation manifest." n438¶ At the same time, the enemy combatant cases make allowances for the executive branch's superior speed. The care that the Court took to limit the issues it decided in each case gave the executive branch plenty of time to [\*157] arrive at an effective detainee policy. n439 Hamdi, Rasul, and Boumediene recognized that the availability of habeas would depend on the distance from the battlefield and the length of detention. n440¶ The enemy combatant litigation also underscores the extent to which the classic realist assumptions about courts' legitimacy in foreign affairs have been turned on their head. In an anarchic world, legitimacy derives largely from brute force. The courts have no armies at their disposal and look weak when they issue decisions that cannot be enforced. n441 But in a hegemonic system, where governance depends on voluntary acquiescence, the courts have a greater role to play. Rather than hobbling the exercise of foreign policy, the courts are a key form of "soft power." n442 As Justice Kennedy's majority opinion observed in Boumediene, courts can bestow external legitimacy on the acts of the political branches. n443 Acts having a basis in law are almost universally regarded as more legitimate than merely political acts. Most foreign policy experts believe that the Bush Administration's detention scheme "hurt America's image and standing in the world." n444 The restoration of habeas corpus in Boumediene may help begin to counteract this loss of prestige.¶ Finally, the enemy combatant cases are striking in that they embrace a role for representation-reinforcement in the international realm. n445 Although defenders of special deference acknowledge that courts' strengths lie in protecting the rights of minorities, it has been very difficult for courts to protect these rights in the face of exigencies asserted by the executive branch in foreign affairs matters. This is especially difficult when the minorities are alleged enemy aliens being held outside the sovereign territory of the United States in wartime. In the infamous Korematsu decision, another World War II-era case, the Court bowed to the President's factual assessment of the emergency justifying detention of U.S. citizens of Japanese ancestry living in the United States. n446 In Boumediene, the Court [\*158] pointedly declined to defer to the executive branch's factual assessments of military necessity. n447 The court may have recognized that a more aggressive role in protecting the rights of non-citizens was required by American hegemony. In fact, the arguments for deference with respect to the rights of non-citizens are even weaker because aliens lack a political constituency in the United States. n448 This outward-looking form of representation-reinforcement serves important functions. It strengthens the legitimacy of U.S. hegemony by establishing equality as a benchmark and reinforces the sense that our constitutional values reflect universal human rights. n449¶ Conclusion¶ When it comes to the constitutional regime of foreign affairs, geopolitics has always mattered. Understandings about America's role in the world have shaped foreign affairs doctrines. But the classic realist assumptions that support special deference do not reflect the world as it is today. A better, more realist, approach looks to the ways that the courts can reinforce and legitimize America's leadership role. The Supreme Court's rejection of the government's claimed exigencies in the enemy combatant cases strongly indicates that the Judiciary is becoming reconciled to the current world order and is asserting its prerogatives in response to the fewer constraints imposed on the executive branch. In other words, the courts are moving toward the hegemonic model. In the great dismal swamp that is the judicial treatment of foreign affairs, this transformation offers hope for clarity: the positive reality of the international system, despite terrorism and other serious challenges, permits the courts to reduce the "deference gap" between foreign and domestic cases.

#### Great power wars

BIW, 13 – (Stephen, Associate Professor of Government at Dartmouth College, John Ikenberry is the Albert G. Milbank Professor of Politics and International Affairs at Princeton University in the Department of Politics and the Woodrow Wilson School of Public and International Affairs, William C. Wohlforth is the Daniel Webster Professor in the Department of Government at Dartmouth College “Don’t Come Home America: The Case Against Retrenchment,” International Security, Vol. 37, No. 3 (Winter 2012/13), pp. 7–51)

A core premise of deep engagement is that it prevents the emergence of a far more dangerous global security environment. For one thing, as noted above, the United States’ overseas presence gives it the leverage to restrain partners from taking provocative action. Perhaps more important, its core alliance commitments also deter states with aspirations to regional hegemony from contemplating expansion and make its partners more secure, reducing their incentive to adopt solutions to their security problems that threaten others and thus stoke security dilemmas. The contention that engaged U.S. power dampens the baleful effects of anarchy is consistent with influential variants of realist theory. Indeed, arguably the scariest portrayal of the war-prone world that would emerge absent the “American Pacifier” is provided in the works of John Mearsheimer, who forecasts dangerous multipolar regions replete with security competition, arms races, nuclear proliferation and associated preventive war temptations, regional rivalries, and even runs at regional hegemony and full-scale great power war. 72 How do retrenchment advocates, the bulk of whom are realists, discount this benefit? Their arguments are complicated, but two capture most of the variation: (1) U.S. security guarantees are not necessary to prevent dangerous rivalries and conflict in Eurasia; or (2) prevention of rivalry and conflict in Eurasia is not a U.S. interest. Each response is connected to a different theory or set of theories, which makes sense given that the whole debate hinges on a complex future counterfactual (what would happen to Eurasia’s security setting if the United States truly disengaged?). Although a certain answer is impossible, each of these responses is nonetheless a weaker argument for retrenchment than advocates acknowledge. The first response flows from defensive realism as well as other international relations theories that discount the conflict-generating potential of anarchy under contemporary conditions. 73 Defensive realists maintain that the high expected costs of territorial conquest, defense dominance, and an array of policies and practices that can be used credibly to signal benign intent, mean that Eurasia’s major states could manage regional multipolarity peacefully without the American pacifier. Retrenchment would be a bet on this scholarship, particularly in regions where the kinds of stabilizers that nonrealist theories point to—such as democratic governance or dense institutional linkages—are either absent or weakly present. There are three other major bodies of scholarship, however, that might give decisionmakers pause before making this bet. First is regional expertise. Needless to say, there is no consensus on the net security effects of U.S. withdrawal. Regarding each region, there are optimists and pessimists. Few experts expect a return of intense great power competition in a post-American Europe, but many doubt European governments will pay the political costs of increased EU defense cooperation and the budgetary costs of increasing military outlays. 74 The result might be a Europe that is incapable of securing itself from various threats that could be destabilizing within the region and beyond (e.g., a regional conflict akin to the 1990s Balkan wars), lacks capacity for global security missions in which U.S. leaders might want European participation, and is vulnerable to the influence of outside rising powers. What about the other parts of Eurasia where the United States has a substantial military presence? Regarding the Middle East, the balance begins to swing toward pessimists concerned that states currently backed by Washington— notably Israel, Egypt, and Saudi Arabia—might take actions upon U.S. retrenchment that would intensify security dilemmas. And concerning East Asia, pessimism regarding the region’s prospects without the American pacifier is pronounced. Arguably the principal concern expressed by area experts is that Japan and South Korea are likely to obtain a nuclear capacity and increase their military commitments, which could stoke a destabilizing reaction from China. It is notable that during the Cold War, both South Korea and Taiwan moved to obtain a nuclear weapons capacity and were only constrained from doing so by a still-engaged United States. 75 The second body of scholarship casting doubt on the bet on defensive realism’s sanguine portrayal is all of the research that undermines its conception of state preferences. Defensive realism’s optimism about what would happen if the United States retrenched is very much dependent on its particular—and highly restrictive—assumption about state preferences; once we relax this assumption, then much of its basis for optimism vanishes. Specifically, the prediction of post-American tranquility throughout Eurasia rests on the assumption that security is the only relevant state preference, with security defined narrowly in terms of protection from violent external attacks on the homeland. Under that assumption, the security problem is largely solved as soon as offense and defense are clearly distinguishable, and offense is extremely expensive relative to defense. Burgeoning research across the social and other sciences, however, undermines that core assumption: states have preferences not only for security but also for prestige, status, and other aims, and they engage in trade-offs among the various objectives. 76 In addition, they define security not just in terms of territorial protection but in view of many and varied milieu goals. It follows that even states that are relatively secure may nevertheless engage in highly competitive behavior. Empirical studies show that this is indeed sometimes the case. 77 In sum, a bet on a benign postretrenchment Eurasia is a bet that leaders of major countries will never allow these nonsecurity preferences to influence their strategic choices. To the degree that these bodies of scholarly knowledge have predictive leverage, U.S. retrenchment would result in a significant deterioration in the security environment in at least some of the world’s key regions. We have already mentioned the third, even more alarming body of scholarship. Offensive realism predicts that the withdrawal of the American pacifier will yield either a competitive regional multipolarity complete with associated insecurity, arms racing, crisis instability, nuclear proliferation, and the like, or bids for regional hegemony, which may be beyond the capacity of local great powers to contain (and which in any case would generate intensely competitive behavior, possibly including regional great power war). Hence it is unsurprising that retrenchment advocates are prone to focus on the second argument noted above: that avoiding wars and security dilemmas in the world’s core regions is not a U.S. national interest. Few doubt that the United States could survive the return of insecurity and conflict among Eurasian powers, but at what cost? Much of the work in this area has focused on the economic externalities of a renewed threat of insecurity and war, which we discuss below. Focusing on the pure security ramifications, there are two main reasons why decisionmakers may be rationally reluctant to run the retrenchment experiment. First, overall higher levels of conflict make the world a more dangerous place. Were Eurasia to return to higher levels of interstate military competition, one would see overall higher levels of military spending and innovation and a higher likelihood of competitive regional proxy wars and arming of client states—all of which would be concerning, in part because it would promote a faster diffusion of military power away from the United States. Greater regional insecurity could well feed proliferation cascades, as states such as Egypt, Japan, South Korea, Taiwan, and Saudi Arabia all might choose to create nuclear forces. 78 It is unlikely that proliferation decisions by any of these actors would be the end of the game: they would likely generate pressure locally for more proliferation. Following Kenneth Waltz, many retrenchment advocates are proliferation optimists, assuming that nuclear deterrence solves the security problem. 79 Usually carried out in dyadic terms, the debate over the stability of proliferation changes as the numbers go up. Proliferation optimism rests on assumptions of rationality and narrow security preferences. In social science, however, such assumptions are inevitably probabilistic. Optimists assume that most states are led by rational leaders, most will overcome organizational problems and resist the temptation to preempt before feared neighbors nuclearize, and most pursue only security and are risk averse. Confidence in such probabilistic assumptions declines if the world were to move from nine to twenty, thirty, or forty nuclear states. In addition, many of the other dangers noted by analysts who are concerned about the destabilizing effects of nuclear proliferation—including the risk of accidents and the prospects that some new nuclear powers will not have truly survivable forces—seem prone to go up as the number of nuclear powers grows. 80 Moreover, the risk of “unforeseen crisis dynamics” that could spin out of control is also higher as the number of nuclear powers increases. Finally, add to these concerns the enhanced danger of nuclear leakage, and a world with overall higher levels of security competition becomes yet more worrisome. The argument that maintaining Eurasian peace is not a U.S. interest faces a second problem. On widely accepted realist assumptions, acknowledging that U.S. engagement preserves peace dramatically narrows the difference between retrenchment and deep engagement. For many supporters of retrenchment, the optimal strategy for a power such as the United States, which has attained regional hegemony and is separated from other great powers by oceans, is offshore balancing: stay over the horizon and “pass the buck” to local powers to do the dangerous work of counterbalancing any local rising power. The United States should commit to onshore balancing only when local balancing is likely to fail and a great power appears to be a credible contender for regional hegemony, as in the cases of Germany, Japan, and the Soviet Union in the midtwentieth century. The problem is that China’s rise puts the possibility of its attaining regional hegemony on the table, at least in the medium to long term. As Mearsheimer notes, “The United States will have to play a key role in countering China, because its Asian neighbors are not strong enough to do it by themselves.” 81 Therefore, unless China’s rise stalls, “the United States is likely to act toward China similar to the way it behaved toward the Soviet Union during the Cold War.” 82 It follows that the United States should take no action that would compromise its capacity to move to onshore balancing in the future. It will need to maintain key alliance relationships in Asia as well as the formidably expensive military capacity to intervene there. The implication is to get out of Iraq and Afghanistan, reduce the presence in Europe, and pivot to Asia— just what the United States is doing. 83 In sum, the argument that U.S. security commitments are unnecessary for peace is countered by a lot of scholarship, including highly influential realist scholarship. In addition, the argument that Eurasian peace is unnecessary for U.S. security is weakened by the potential for a large number of nasty security consequences as well as the need to retain a latent onshore balancing capacity that dramatically reduces the savings retrenchment might bring. Moreover, switching between offshore and onshore balancing could well be difªcult. Bringing together the thrust of many of the arguments discussed so far underlines the degree to which the case for retrenchment misses the underlying logic of the deep engagement strategy. By supplying reassurance, deterrence, and active management, the United States lowers security competition in the world’s key regions, thereby preventing the emergence of a hothouse atmosphere for growing new military capabilities. Alliance ties dissuade partners from ramping up and also provide leverage to prevent military transfers to potential rivals. On top of all this, the United States’ formidable military machine may deter entry by potential rivals. Current great power military expenditures as a percentage of GDP are at historical lows, and thus far other major powers have shied away from seeking to match top-end U.S. military capabilities. In addition, they have so far been careful to avoid attracting the “focused enmity” of the United States. 84 All of the world’s most modern militaries are U.S. allies (America’s alliance system of more than sixty countries now accounts for some 80 percent of global military spending), and the gap between the U.S. military capability and that of potential rivals is by many measures growing rather than shrinking. 85

### 1AC – Plan

#### The United States federal government should grant existing Article III courts exclusive jurisdiction over the legal status of individuals indefinitely detained under the War Powers authority of the President of the United States.

### 1AC – Solvency

#### Contention 2 is Solvency

#### The US Court of Appeals decision in Al Maqeleh v. Gates created a legal black hole for detainees in an active theater of war

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Dilawar's horrific death was one of many prisoner abuses at Bagram Airfield since late 2001, thrusting the base into the national spotlight as the New York Times and other media outlets began to investigate the abuses at Bagram. 6 In the wake of this increased international scrutiny and the United States Supreme Court's decision opening federal courts to detainee habeas challenges from Guantanamo Bay Naval Base in Boumediene v. Bush, 7 detainees at Bagram filed habeas suits in federal court to seek release. 8 The United States District Court for the District of Columbia ("District Court") consolidated these cases into a single action, Al Maqaleh v. Gates, and held in August 2009 that the Bagram detainees could indeed seek habeas relief in domestic courts. 9 However, the United States Court of Appeals for the District of Columbia ("D.C. Circuit") reversed this decision in May 2010 because the detainees' location in an active "theater of war" precluded their access to federal courts under Boumediene. 10 The D.C. Circuit's reversal revealed a fundamental paradox in the government's approach to the Afghan conflict and the "war on terror." 11 Presidents Obama and Bush have insisted the nation cannot be at "war" with al Qaeda and therefore the protections of the Geneva Conventions and other international law [\*445] do not apply to nor protect captured persons. 12 When the Bagram detainees challenged the legality of their detentions, the D.C. Circuit deferred to the executive's judgment and denied habeas relief because Bagram was in an "active theater of war in a territory under neither the de facto nor the de jure sovereignty of the United States." 13 This paradox puts Bagram detainees in a legal "black hole" 14 where they cannot obtain relief through traditional military justice (like Geneva-governed military commissions) and domestic courts refuse to hear their habeas claims.

#### Obama’s speech has called on Congress to remove restrictions on detainment

Josh Rogin 13, senior correspondent for national security & politics for Newsweek and The Daily Beast, May 23, 2013, “How Obama Bungled the Guantánamo Closing” <http://www.thedailybeast.com/articles/2013/05/23/how-obama-bungled-the-guantanamo-closing.html>

.¶ Obama took that issue head-on Thursday when he called on Congress to remove restrictions on transferring prisoners to the U.S., announced the Defense Department will establish a domestic site for holding military commissions, defended the idea of trying alleged terrorists on U.S. soil, and lifted the ban on transferring Guantánamo prisoners to Yemen, which could greatly reduce the prisoner population in Guantánamo.¶ By announcing these steps, Obama is calling on the public to support his contention that the prison can be closed safely, in order to put pressure on Congress to change its tune, experts said.¶ “It looks like he’s learned some lessons from the last go-round,” said Ken Gude, chief of staff at the Center for American Progress, the think tank founded by former Clinton chief of staff John Podesta. “Starting by designating a site on a military base to hold commissions is a great first step. What is Congress going to say to the Defense Department? That it doesn’t think it can secure a U.S. military base inside the United States from potential attack by terrorists?”

#### Prosecution in federal courts solves best—multiple reasons, experts agree

Oona **Hathaway**, Professor, International Law, Yale Law School, Samuel Adelsberg, Spencer Amdur, Philip Levitz, Freya Pitts and Sirine Shebaya, “The Power to Detain: Detention of Terrorism Suspects after 9/11,” YALE JOURNAL OF INTERNATIONAL LAW v. 38, Winter 20**13**, p. 161-167.

The United States is still actively engaged in hostilities with global terrorist organizations, but there are indications that "we're within reach of strategically defeating al-Qaeda." n227 This development, combined with the growing distance from the national trauma of September 11, has reinvigorated the debate surrounding the detention and prosecution of suspected terrorists both outside of and within the United States. Even though Congress has recently expanded military detention and prosecution, n228 prosecution in federal court offersseveral key advantagesover law-of-war detention, including predictability, legitimacy, greater cooperation by defendants and international partners, and flexibility. n229 These advantages have led a diverse set of actors - from current Department of Defense and counterterrorism officials, n230 to [\*162] former Bush Administration officials, n231 to the Washington Post editorial board n232 - to support the prosecution and detention of individuals through the federal courts, despite Congress's recently expressed preference for law-of-war detention. In some cases, prosecution in federal court is theonly availableoption for prosecuting an accused terrorist. Federal antiterrorism statutes are extensive and provide statutory authority to prosecute individuals who are part of or supporting terrorist groups without direct ties to forces associated with al-Qaeda or the Taliban (and therefore outside the scope of the 2001 AUMF or the NDAA), n233 and independently operating terrorists who are inspired by, but are not part of or associated with, al-Qaeda or the Taliban. n234 These statutes also reach persons or citizens who, because they are apprehended in the United States, cannot be tried under the MCA. The following sections discuss the contours and limitations of such criminal prosecution and detention in the terrorism context. Even where detention under the law of war is available, the criminal justice system offers some key advantages for the detention and prosecution of suspected terrorists**.** We thus aim here to offer a correction to the recent trend toward favoring law-of-war detention over criminal prosecution and detention. In the vast majority of cases, criminal prosecution and detention is the most effective and legitimate way to address the terrorist threat**.** A. The Advantages of Criminal Prosecution and Detention The least contested bases for detention authority in any context are post-conviction criminal detention and pre-verdict detention for those who pose a risk of flight. It is often assumed that such criminal detention is ill-suited to terrorists. However, with very little fanfare, federal district court dockets have been flush with terrorism cases over the past decade. Strikingly, efforts to measure the conviction rate in these cases place it between 86 and 91 percent**.** n235 Far from being ineffective, then, trying suspected terrorists in criminal courts is remarkably effective. It also offers the advantages of predictability, legitimacy, and strategic benefits in the fight against terrorism. **1.** Predictability Post-conviction detention of terrorists after prosecution in federal court provides predictability that is currently absent in the military commission system. Federaldistrict courts have years of experience trying complex cases and convicting dangerous criminals, including international terrorists, and the rules arewell established and understood. The current military commission system, on the other hand, is a comparatively untested adjudicatory regime. n236 As already noted, conviction rates in terrorism trials have been close to ninety percent since 2001, and those rates have remained steady in the face of large increases in the number of prosecutions. The military commissions, by contrast, have - as of this writing - convicted seven people since 2001, five of whom pled guilty. n237 Charges have been dropped against several defendants, n238 [\*164] and other defendants have been charged but not tried. n239 The commission procedures have been challenged at every stage, and it is unclear what final form they will ultimately take. Even their substantive jurisdiction remains unsettled. In October 2012, the Court of Appeals for the D.C. Circuit overturned Salim Hamdan's military commission conviction for providing material support to terrorism. n240 The Court held that the Military Commissions Act of 2006, which made material support for terrorism a war crime that could be prosecuted in the commissions, was not retroactively applicable to Hamdan's conduct prior to enactment of the statute. n241 Moreover, the Court explained that material support for terrorism was not a recognized war crime under international law. n242 As a result, his conviction for material support for terrorism in the commission could not stand. n243 It is uncertain how this will affect other trials of detainees, but this decision clearly illustrates the unsettled nature of the commissions. n244 **2.** Legitimacy Federal courts are also generally considered more legitimate than military commissions. The stringent procedural protections reduce the risk of error and generate trust and legitimacy. n245 The federal courts, for example, provide more robust hearsay protections than the commissions. n246 In addition, jurors are [\*165] ordinary citizens, not U.S. military personnel. Indeed, some of the weakest procedural protections in the military commission system have been successfully challenged as unconstitutional. n247 Congress and the Executive have responded to these legal challenges - and to criticism of the commissions from around the globe - by significantly strengthening the commissions' procedural protections. Yet theremaining gaps **-** along with what many regard as **a** tainted history **-** continue toraise doubts about the fairness and legitimacy of the commissions**.** The current commissions, moreover, have been active for only a short period - too brief a period for doubts to be confirmed or put to rest. n248 Federal criminal procedure, on the other hand, is well-established and widely regarded as legitimate. Legitimacy of the trial process is important not only to the individuals charged but also to the fight against terrorism**.** As several successful habeas corpus petitions have demonstrated, insufficient procedural protections create a real danger of erroneous imprisonment for extended periods. n249 Such errors can generateresentment and distrust of the United States that undermine the effectiveness of counterterrorism efforts. Indeed, evidence suggests that populations are more likely to cooperate in policing when they believe they have been treated fairly**.** n250 The understanding that a more legitimate detention regime will be a more effective one is reflected in recent statements from the Department of Defense and the White House. n251 **3.** Strategic Advantages There is clear evidence that other countries recognize and respond to the difference in legitimacy between civilian and military courts and that they are, indeed, more willing to cooperate with U.S. counterterrorism efforts when terrorism suspects are tried in the criminal justice system. Increased international cooperation is therefore another advantage of criminal prosecution.Many key U.S. allies have been unwilling to cooperate in cases involving law-of-war detention or prosecution but have cooperated in criminal [\*166] prosecutions. In fact, many U.S. extradition treaties, including those with allies such as India and Germany, forbid extradition when the defendant will not be tried in a criminal court. n252 This issue has played out in practice several times. An al-Shabaab operative was extradited from the Netherlands only after assurances from the United States that he would be prosecuted in criminal court. n253 Two similar cases arose in 2007. n254 In perhaps the most striking example, five terrorism suspects - including Abu Hamza al-Masr, who is accused of providing material support to al-Qaeda by trying to set up a training camp in Oregon and of organizing support for the Taliban in Afghanistan - were extradited to the United States by the United Kingdom in October 2012. n255 The extradition was made on the express condition that they would be tried in civilian federal criminal courts rather than in the military commissions. n256 And, indeed, both the European Court of Human Rights and the British courts allowed the extradition to proceed after assessing the protections offered by the U.S. federal criminal justice system and finding they fully met all relevant standards. n257 An insistence on using military commissions may thus hinder extradition and other kinds of international prosecutorial cooperation, such as the sharing of testimony and evidence. Finally, the criminal justice system is simply a more agile and versatile prosecution forum. Federal jurisdiction offers an extensive variety of antiterrorism statutes that can be marshaled to prosecute terrorist activity committed outside the **U**nited **S**tates, and subsequently to detain those who are convicted. n258 This greater variety of offenses - military commissions can only [\*167] punish an increasingly narrow set of traditional offenses against the laws of war n259 - offers prosecutorsimportant flexibility**.** For instance, it might be very difficult to prove al-Qaeda membership in an MCA prosecution or a law-of-war habeas proceeding; but if the defendant has received training at a terrorist camp or participated in a specific terrorist act, federal prosecutors may convict under various statutes tailored to more specific criminal behavior**.** n260 In addition, military commissions can no longer hear prosecutions for material support committed before 2006. n261 Due in part to the established track record of the federal courts, the federal criminal justice system also allows for more flexible interactions between prosecutors and defendants. Proffer and plea agreements are powerful incentives for defendants to cooperate, and often lead tovaluable intelligence-gathering**,** producing more intelligence over the course of prosecution. n262

**Comparatively, criminal courts better for legitimacy**

**Glazier 09** (David, Professor of Law, Loyola Law School, December 2009, "PLAYING BY THE RULES: COMBATING AL QAEDA WITHIN THE LAW OF WAR" William and Mary Law Review, Lexis)

Preventive detention of al Qaeda personnel should be lawful until the earlier of the time that they no longer pose an individual threat or the WAQT reaches an end. Nevertheless, detention based on a criminal conviction and sentence should be preferable for several reasons. First, "hard-core" individuals might remainwilling to use violenceagainst U.S. interests even after al Qaeda has ceased to exist as a recognizable entity or pose a credible threat**.** The sentence of a detainee convicted during an armed conflict is unaffected by the end of hostilities, n541 so trial for serious offenses can provide more reliable long-term incapacitation than mere preventive detention. Many Americans consider detainee living conditions mandated by the law of war too good for terrorists and strongly prefer actual [\*1045] imprisonment. n542 A guilty verdict also attaches substantial moral culpability to the detainee and may help bring closure to victims of terrorist violence. Conviction following a criminal trial meeting internationally recognized standards of justice should result in the widest possible acceptance of the validity of any detainee's continued detention**.** Criminal trials applying standard American constitutional criminal procedure standards should thus be employed whenever adequate admissible evidence exists to support a good faith conviction. Federal trials not only enjoy thegreatest legitimacy, but they also allow application of the broadest scope of possible charges, including specialized offenses such as providing material support to terrorism and the full range of inchoate offenses recognized under Anglo- American law. n543 Detainees classified as either civilians or unlawful combatants are subject to prosecution under the full scope of U.S. domestic criminal law, whereas those classified as lawful combatants should at least be subject to trial for violations of the War Crimes Act. n544 For those cases involving either offenses committed in captivity that are properly triable under the UCMJ, or any violations of the law of war that fall outside the scope of crimes triable under the War Crimes Act, trial by regularly convened generalcourts-martial should be used**.** n545 Contrary to frequent public assertions by officials who really should know better, n546 American military justice is no longer the "gold standard." A number of democracies have abolished separate military trials entirely, n547 whereas other heirs of the [\*1046] British military justice system, the U.K. and Canada, have had to eliminate the multiple roles still allowed the convening authority under U.S. practice. n548 Nevertheless, the fact that trials under national military justice arespecifically authorized by GenevaIII should effectively mute criticism of detainee trials by actual courts-martial**.** But the fact that U.S. military justice no longer measures up to the standards of other leading democracies highlights the desirability of trials by actual federal courts whenever possible. Although the MCA 2009 authorizes the President to try suspected terrorists before military commissions, nothing in the statute requires him to do so. n549 While their early history shows that military commissions can be used to provide "full and fair" trials, the history of their use in the "war on terror" is irreparably flawed, and they should be abandoned. The Executive Branch has all the authority necessary to try any person over whom statutory jurisdiction can be obtained, either by regular Article III courts or courts-martial.

#### The legislative process increases public awareness and debate which is key to resolving the contentious nature of Obama’s demands- even if stakeholders don’t agree with the proposal, the aff’s process ensures embrace, not backlash.

Sillivana, 2009 (Assistant Professor of Law, Paul M. Herbert Law Center, Louisiana State University.“Lincoln’s Constitutionalism in Time of War: Lessons for the War on Terror?” Article: “INTERNATIONAL LAW AND DOMESTIC LEGITIMACY: REMARKS PREPARED FOR LINCOLN’S CONSTITUTIONALISM IN TIME OF WAR: LESSONS FOR THE CURRENT WAR ON TERROR? Chapman Law Review. Spring 2009. Web, Acc 8/14/2013 at <http://www.chapmanlawreview.com/?p=1514>)

Moreover, the incorporation of international law does not preclude legislative override where necessary. The last-in-time doctrine enables the political branches to supersede international law through the passage of contradictory federal legislation.71 The formal incorporation of Congress through such a process fosters public debate both domestically and internationally, and also provides incentive for the legislature to come off the sideline to place preferred policies on solid legal footing. Regardless of its success or failure, the process of forming legislation and engaging in the political machinations that surround prospective legislation encourages a broader public dialogue as well as a focal \*502 point for discussion of policy issues upon which debate can unfold. The focal points of such debates tend to revolve around legislation that sparks the greatest public concern and reflects positions centered on popular understanding of the “most important” points surrounding the issue. Invitation for public debate in the policy-making process enables dissenting views to voice opinions and air grievances. More broadly, incorporating the public into the debate acts as a functional and productive way to curb the vitriol of dissent–which perceives itself as unduly marginalized and unjustly silenced in affecting the actions and direction of government. Public inclusion in the broader policy judgments of war and armed conflict not only enables public opinion an outlet and opportunity for enhanced focus but also encourages public investment in the policy outcome that is ultimately embraced at the conclusion of the process, even if that outcome reflects a decision against the passage of any legislation.

#### Restrictions inevitable---only a question of whether they are deliberate or haphazard

Benjamin Wittes 9, senior fellow and research director in public law at the Brookings Institution, is the author of Law and the Long War: The Future of Justice in the Age of Terror and is also a member of the Hoover Institution's Task Force on National Security and Law, “Legislating the War on Terror: An Agenda for Reform”, November 3, Book, p. 17

A new administration now confronts the same hard problems that plagued its ideologically opposite predecessor, and its very efforts to turn the page on the past make acute the problems of institutionalization. For while the new administration can promise to close the detention facility at Guantanamo Bay and can talk about its desire to prosecute suspects criminally, for example, it cannot so easily forswear noncriminal detention. While it can eschew the term "global war on terror," it cannot forswear those uses of force—Predator strikes, for example—that law enforcement powers would never countenance. Nor is it hastening to give back the surveillance powers that Congress finally gave the Bush administration. In other words, its very efforts to avoid the Bush administrations vocabulary have only emphasized the conflicts hybrid nature—indeed- emphasized that the United States is building something new here, not merely applying something old.¶ That point should not provoke controversy. The evidence that the United States is fumbling toward the creation of hybrid institutions to handle terrorism cases is everywhere around us. U.S. law, for example, now contemplates extensive- probing judicial review of detentions under the laws of war—a naked marriage of criminal justice and wartime traditions. It also contemplates warrantless wiretapping with judicial oversight of surveillance targeting procedures—thereby mingling the traditional judicial role in reviewing domestic surveillance with the vacuum cleaner-type acquisition of intelligence typical of overseas intelligence gathering. Slowly but surely, through an unpredictable combination of litigation, legislation, and evolutionary developments within executive branch policy, the nation is creating novel institutional arrangements to authorize and regulate the war on terror. The real question is not whether institutionalization will take place but whether it will take place deliberately or haphazardly, whether the United States will create through legislation the institutions with which it wishes to govern itself or whether it will allow an endless sequence of common law adjudications to shape them.¶ The authors of the chapters in this book disagree about a great many things. They span a considerable swath of the U.S. political spectrum, and they would no doubt object to some of one another's policy prescriptions. Indeed, some of the proposals are arguably inconsistent with one another, and it will be the very rare reader who reads this entire volume and wishes to see all of its ideas implemented in legislation. What binds these authors together is not the programmatic aspects of their policy prescriptions but the belief in the value of legislative action to help shape the contours of the continuing U.S. confrontation with terrorism. That is, the authors all believe that Congress has a significant role to play in the process of institutionalization—and they have all attempted to describe that role with reference to one of the policy areas over which Americans have sparred these past several years and will likely continue sparring over the next several years.

#### It’s a sequencing question- Congressional action to affirm international law provides the proper framework for legitimate executive action. Gitmo proves structural limitations are a prerequisite to executive action.

Sillivana, 2009 (Assistant Professor of Law, Paul M. Herbert Law Center, Louisiana State University.“Lincoln’s Constitutionalism in Time of War: Lessons for the War on Terror?” Article: “INTERNATIONAL LAW AND DOMESTIC LEGITIMACY: REMARKS PREPARED FOR LINCOLN’S CONSTITUTIONALISM IN TIME OF WAR: LESSONS FOR THE CURRENT WAR ON TERROR? Chapman Law Review. Spring 2009. Web, Acc 8/14/2013 at <http://www.chapmanlawreview.com/?p=1514>)

B. Extra-Executive Structural Regulations¶ International law provides a substantive framework for many of the types of legal difficulties that occur frequently among nations but are typically under-examined in the domestic legal context. In such circumstances, international law can provide the structural design to move the executive toward consensus building through constraints that guard against the intrinsic temptation of the executive branch to maximize its own power at the potential cost of losing its credibility. Where norm vacuums exist in sorting out the law as a domestic matter, international law often provides a basic substantive framework around which more extensive law can be built domestically.¶ These structural and touchstone characteristics of international law assist the public in assessing, and accepting, final provisions of law carried out in policy. Specifically, incorporating international law in the domestic process (1) promotes international and domestic political dialogue; (2) encourages the executive branch to engage in formal and informal justification of its policies; and (3) incentivizes transparency through public disclosure.¶ The importance of structural limitations surrounding executive action is demonstrable in the discussion surrounding the treatment of prisoners at Guantanamo Bay. Addressing the issue of the standard of treatment of U.S. detainees, President Bush asserted that the U.S. would treat detainees “humanely \*503 and, to the extent appropriate and consistent with military necessity . . . .”72 The power of this statement as a force of legitimation, is compromised by the fact that “it was very vague, it was not effectively operationalized into concrete standards of conduct, and it left all of the hard issues about ‘humane’ and ‘appropriate’ treatment to the discretion of unknown officials.”73

#### Studies quantify a decline in American legitimacy due to indefinite detention policy

David Welsh, J.D. from the University of Utah. He is currently a doctoral student in the Eller School of Business at the University of Arizona where his research focuses on organizational fairness and ethics, “Procedural Justice Post-9/11: The Effects of Procedurally Unfair Treatment of Detainees on Perceptions of Global Legitimacy”, 9 U.N.H. L. Rev. 261, March 2011, Lexis

Similarly, the U.S. military puts itself in harm's way when it fails to follow international rules of war. "Guantanamo has become a liability. The real and perceived injustices occurring there have given our enemies an easy example of our failures and alleged ill intent," stated Homeland Security Committee member Rep. Jane Harman. [n169](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n169) The graphic beheading of U.S. citizen Nicholas Berg is one of many retaliatory attacks by terrorist groups in response to perceived abuses of their captured associates. [n170](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n170) Justified or not, terrorist groups often claim that immoral U.S. conduct has legitimized their actions. [n171](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n171)¶ One of the most heated debates about the treatment of detainees surrounds the use of torture and other methods of coercion to extract [\*289] information from detainees. President Obama's decision to ban certain types of torture, such as waterboarding, reflects his belief that the United States lost its "moral bearing" by utilizing such practices. [n172](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n172) Empirical evidence similarly reveals that America lost legitimacy through the torture of alleged terrorists. A 2006 poll of more than 27,000 individuals in twenty-five different countries indicated that 59% of respondents felt that clear rules against torture should be maintained, while 29% said governments should be allowed to use some degree of torture. [n173](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n173) Opposition to torture was strongest in Western Europe, Canada, and Australia, with approximately three-quarters of individuals in these regions opposing torture. [n174](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n174)¶ In contrast, the United States was more divided, as 58% of citizens opposed torture while 36% indicated that some degree of torture should be allowed. [n175](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n175) Going back to the earlier discussion about the tendency for governments to overreact during periods of crisis, it is interesting to note that countries that have experienced recent terrorist attacks or political violence are, on average, more willing to allow torture. [n176](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n176) Even though all twenty-five countries that participated in this survey are parties to the Geneva Convention, which forbids torture under Common Article 3 and the more recent Convention Against Torture, these findings provide evidence that nations are increasingly likely to jettison not only traditional rules of law but also ethical standards when under attack. [n177](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n177) Even as the debate over torture begins to wind down (now that the practice has been explicitly outlawed by President Obama), there remains an apprehension about the extent to which the "process is [\*290] the punishment" in the context of detentions. [n178](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n178) I borrow this phrase from Brenda Sims Blackwell and Clark D. Cunningham, who documented a number of criminal cases in which individuals spent up to twelve days in jail for minor offenses such as jaywalking before their cases could be resolved. [n179](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n179) However, this concept is magnified in the context of detentions. When an individual is taken from his or her homeland and placed in Guantanamo Bay for an indefinite period, the punishment, independent of ultimate guilt or innocence, has already begun. This is particularly salient because, as mentioned previously within the discussion of accuracy, U.S. detention procedures result in the roundup of a significant number of "innocent" individuals that is well in excess of those whom will ultimately be tried and convicted. Add potential mistreatment, coercion, and depravation, and suddenly the treatment of uncharged detainees looks worse than the lifestyle afforded many convicted criminals. In a legal system that presumes guilt, this outcome might be an acceptable reality. However, it stands in stark contrast to the constitutional notion of innocent until proven guilty.

#### Transatlantic cohesion is key to solve multiple nuclear threats

Anti-westernism

Religious extremism

Rising revisionist global wars

New nuclear states

Brzezinski ‘9 former U.S. National Security Adviser, 09 (Zbigniew, “An Agenda for NATO” Toward a Global Security Web September/October 2009),

NATO's potential is not primarily military. Although NATO is a collective-security alliance, its actual military power comes predominantly from the United States, and that reality is not likely to change anytime soon. NATO's real power derives from the fact that it combines the United States' military capabilities and economic power with Europe's collective political and economic weight (and occasionally some limited European military forces). Together, that combination makes NATO globally significant. It must therefore remain sensitive to the importance of safeguarding the geopolitical bond between the United States and Europe as it addresses new tasks. The basic challenge that NATO now confronts is that there are historically unprecedented risks to global security. Today's world is threatened neither by the militant fanaticism of a territorially rapacious nationalist state nor by the coercive aspiration of a globally pretentious ideology embraced by an expansive imperial power. The paradox of our time is that the world, increasingly connected and economically interdependent for the first time in its entire history, is experiencing intensifying popular unrest made all the more menacing by the growing accessibility of weapons of mass destruction -- not just to states but also, potentially, to extremist religious and political movements. Yet there is no effective global security mechanism for coping with the growing threat of violent political chaos stemming from humanity's recent political awakening. The three great political contests of the twentieth century (the two world wars and the Cold War) accelerated the political awakening of mankind, which was initially unleashed in Europe by the French Revolution. Within a century of that revolution, spontaneous populist political activism had spread from Europe to East Asia. On their return home after World Wars I and II, the South Asians and the North Africans who had been conscripted by the British and French imperial armies propagated a new awareness of anticolonial nationalist and religious political identity among hitherto passive and pliant populations. The spread of literacy during the twentieth century and the wide-ranging impact of radio, television, and the Internet accelerated and intensified this mass global political awakening. In its early stages, such new political awareness tends to be expressed as a fanatical embrace of the most extreme ethnic or fundamentalist religious passions, with beliefs and resentments universalized in Manichaean categories. Unfortunately, in significant parts of the developing world, bitter memories of European colonialism and of more recent U.S. intrusion have given such newly aroused passions a distinctively anti-Western cast. Today, the most acute example of this phenomenon is found in an area that stretches from Egypt to India. This area, inhabited by more than 500 million politically and religiously aroused peoples, is where NATO is becoming more deeply embroiled. Additionally complicating is the fact that the dramatic rise of China and India and the quick recovery of Japan within the last 50 years have signaled that the global center of political and economic gravity is shifting away from the North Atlantic toward Asia and the Pacific. And of the currently leading global powers -- the United States, the EU, China, Japan, Russia, and India -- at least two, or perhaps even three, are revisionist in their orientation. Whether they are "rising peacefully" (a self-confident China), truculently (an imperially nostalgic Russia) or boastfully (an assertive India, despite its internal multiethnic and religious vulnerabilities), they all desire a change in the global pecking order. The future conduct of and relationship among these three still relatively cautious revisionist powers will further intensify the strategic uncertainty. Visible on the horizon but not as powerful are the emerging regional rebels, with some of them defiantly reaching for nuclear weapons. North Korea has openly flouted the international community by producing (apparently successfully) its own nuclear weapons -- and also by profiting from their dissemination. At some point, its unpredictability could precipitate the first use of nuclear weapons in anger since 1945. Iran, in contrast, has proclaimed that its nuclear program is entirely for peaceful purposes but so far has been unwilling to consider consensual arrangements with the international community that would provide credible assurances regarding these intentions. In nuclear-armed Pakistan, an extremist anti-Western religious movement is threatening the country's political stability. These changes together reflect the waning of the post-World War II global hierarchy and the simultaneous dispersal of global power. Unfortunately, U.S. leadership in recent years unintentionally, but most unwisely, contributed to the currently threatening state of affairs. The combination of Washington's arrogant unilateralism in Iraq and its demagogic Islamophobic sloganeering weakened the unity of NATO and focused aroused Muslim resentments on the United States and the West more generally.

#### That’s key to solve extinction

Thomas P.M. Barnett 11 Former Senior Strategic Researcher and Professor in the Warfare Analysis & Research Department, Center for Naval Warfare Studies, U.S. Naval War College American military geostrategist and Chief Analyst at Wikistrat., worked as the Assistant for Strategic Futures in the Office of Force Transformation in the Department of Defense, “The New Rules: Leadership Fatigue Puts U.S., and Globalization, at Crossroads,” March 7 http://www.worldpoliticsreview.com/articles/8099/the-new-rules-leadership-fatigue-puts-u-s-and-globalization-at-crossroads

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

# 2AC

## Solvency

#### Ev says Libya and Syria and drones

#### No circumvention – the President would use the NSC

Harvey Rishikof 8, Professor of Law and Former Chair of the Department of National Security Strategy at the National War College and Kevin E Lunday, Captain and judge advocate in the US Coast Guard, "Due Process Is a Strategic Choice: Legitimacy and the Establishment of an Article III National Security Court", December 19, www.cwsl.edu/content/journals/Rishikof.pdf

The primary triggering mechanism for establishing NSC jurisdiction would fall within the discretion and control of the Attorney General. Through certification and charging provisions, the Attorney General could invoke NSC jurisdiction by certifying that persons in custody inside the United States are suspected of terrorist activity, or by charging persons in custody outside the United States with one or more specific terrorism offenses. However, the NSC would provide the government with a preferred venue to manage terrorism cases and proceedings, reducing the risk of the NSC being sidelined like the current ATRC.102 Further, the NSC could review challenges to the executive certification or charging decisions,103 transferring those cases in which the government has improperly attempted to employ the NSC for non-terrorism cases to the appropriate district court. This review power will reduce government incentives to dress up any case in terrorism clothing to obtain the advantages of the NSC procedures. The review power would not prevent the government from pursuing a terrorism matter in district court instead of the NSC. However, even without an executive action triggering NSC jurisdiction, if a district court determines that it is unable to adequately manage a terrorism case, it would be permitted to sua sponte transfer the case to NSC jurisdiction

#### Congress solves circumvention---raises political costs

Ilya **Somin 11**, Professor of Law at George Mason University School of Law, June 21 2011, “Obama, the OLC, and the Libya Intervention,” http://www.volokh.com/2011/06/21/obama-the-olc-and-the-libya-intervention/

But I am more skeptical than Balkin that illegal presidential action can be constrained through better consultation with legal experts within the executive branch. The fact is that the president can almost always find respectable lawyers within his administration who will tell him that any policy he really wants to undertake is constitutional. Despite the opposition of the OLC, Obama got the view he wanted from the White House Counsel and from State Department Legal Adviser Harold Koh. Bush, of course, got it from within the OLC itself, in the form of John Yoo’s “torture memo.” This isn’t just because administration lawyers want to tell their political masters what they want to hear. It also arises from the understandable fact that administrations tend to appoint people who share the president’s ideological agenda and approach to constitutional interpretation. By all accounts, John Yoo was and is a true believer in nearly unlimited wartime executive power. He wasn’t simply trying to please Bush or Dick Cheney.¶ Better and more thorough consultation with executive branch lawyers can prevent the president from undertaking actions that virtually all legal experts believe to be unconstitutional. But on the many disputed questions where there is no such consensus, the president will usually be able find administration lawyers who will tell him what he wants to hear. To his credit, Ackerman is aware of this possibility, and recommends a creative institutional fix in his recent book: a new quasi-independent tribunal for assessing constitutional issues within the executive branch. I am somewhat skeptical that his approach will work, and it may well require a constitutional amendment to enact. I may elaborate these points in a future post, if time permits.¶ Regardless, for the foreseeable future, the main constraints on unconstitutional presidential activity must come from outside the executive branch – that is, from Congress, the courts, and public opinion. These constraints are highly imperfect. But they do impose genuine costs on presidents who cross the line. Ackerman cites the Watergate scandal, Iran-Contra and the “torture memo” as examples of the sorts of abuses of executive power that need to be restricted. True enough. But it’s worth remembering that Nixon was forced to resign over Watergate, Reagan paid a high political price for Iran-Contra, and the torture memo was a public relations disaster for Bush, whose administration eventually ended up withdrawing it (thanks in large part to the efforts of Jack Goldsmith). On the other side of the ledger, Bill Clinton paid little price for waging an illegal war in Kosovo, though he avoided it in part by keeping that conflict short and limited. It remains to be seen whether President Obama will suffer any political damage over Libya.

#### President believes he is constrained by statute

Saikrishna Prakash 12**,** professor of law at the University of Virginia and Michael Ramsey, professor of law at San Diego, “The Goldilocks Executive” Feb, SSRN

We accept that the President’s lawyers search for legal arguments to justify presidential action, that they find the President’s policy preferences legal more often than they do not, and that the President sometimes disregards their conclusions. But the close attention the Executive pays to legal constraints suggests that the President (who, after all, is in a good position to know) believes himself constrained by law. Perhaps Posner and Vermeule believe that the President is mistaken. But we think, to the contrary, it represents the President’s recognition of the various constraints we have listed, and his appreciation that attempting to operate outside the bounds of law would trigger censure from Congress, courts, and the public.

## Terror

#### They don’t need much nuclear material, and neg evidence doesn’t assume DIRTY BOMBS

Dahl, 13 (Fredrik, “Governments warn about nuclear terror threat” Reuters. Web, Acc at http://www.reuters.com/article/2013/07/01/us-nuclear-security-idUSBRE96010E20130701)

An apple-sized amount of plutonium in a nuclear device and detonated in a highly populated area could instantly kill or wound hundreds of thousands of people, according to the Nuclear Security Governance Experts Group (NSGEG) lobby group.¶ But experts say a so-called "dirty bomb" is a more likely threat than a nuclear bomb. In a dirty bomb, conventional explosives are used to disperse radiation from a radioactive source, which can be found in hospitals or other places that are generally not very well protected.¶ More than a hundred incidents of thefts and other unauthorized activities involving nuclear and radioactive material are reported to the IAEA every year, Amano said.¶ "Some material goes missing and is never found," he said.¶ U.S. Energy Secretary Ernest Moniz said al Qaeda was still likely to be trying to obtain nuclear material for a weapon.¶ "Despite the strides we have made in dismantling core al Qaeda we should expect its adherents ... to continue trying to achieve their nuclear ambitions," he said.

#### Risk of nuclear terrorism is real and high now

Matthew, et al, 10/2/13 [ Bunn, Matthew, Valentin Kuznetsov, Martin B. Malin, Yuri Morozov, Simon Saradzhyan, William H. Tobey, Viktor I. Yesin, and Pavel S. Zolotarev. "Steps to Prevent Nuclear Terrorism." Paper, Belfer Center for Science and International Affairs, Harvard Kennedy School, October 2, 2013, Matthew Bunn. Professor of the Practice of Public Policy at Harvard Kennedy School andCo-Principal Investigator of Project on Managing the Atom at Harvard University’s Belfer Center for Science and International Affairs. • Vice Admiral Valentin Kuznetsov (retired Russian Navy). Senior research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, Senior Military Representative of the Russian Ministry of Defense to NATO from 2002 to 2008. • Martin Malin. Executive Director of the Project on Managing the Atom at the Belfer Center for Science and International Affairs. • Colonel Yuri Morozov (retired Russian Armed Forces). Professor of the Russian Academy of Military Sciences and senior research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, chief of department at the Center for Military-Strategic Studies at the General Staff of the Russian Armed Forces from 1995 to 2000. • Simon Saradzhyan. Fellow at Harvard University’s Belfer Center for Science and International Affairs, Moscow-based defense and security expert and writer from 1993 to 2008. • William Tobey. Senior fellow at Harvard University’s Belfer Center for Science and International Affairs and director of the U.S.-Russia Initiative to Prevent Nuclear Terrorism, deputy administrator for Defense Nuclear Nonproliferation at the U.S. National Nuclear Security Administration from 2006 to 2009. • Colonel General Viktor Yesin (retired Russian Armed Forces). Leading research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences and advisor to commander of the Strategic Missile Forces of Russia, chief of staff of the Strategic Missile Forces from 1994 to 1996. • Major General Pavel Zolotarev (retired Russian Armed Forces). Deputy director of the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, head of the Information and Analysis Center of the Russian Ministry of Defense from1993 to 1997, section head - deputy chief of staff of the Defense Council of Russia from 1997 to 1998.<http://belfercenter.ksg.harvard.edu/publication/23430/steps_to_prevent_nuclear_terrorism.html>]

I. Introduction In 2011, Harvard’s Belfer Center for Science and International Affairs and the Russian Academy of Sciences’ Institute for U.S. and Canadian Studies published “The U.S. – Russia Joint Threat Assessment on Nuclear Terrorism.” The assessment analyzed the means, motives, and access of would-be nuclear terrorists, and concluded that the threat of nuclear terrorism is urgent and real. The Washington and Seoul Nuclear Security Summits in 2010 and 2012 established and demonstrated a consensus among political leaders from around the world that nuclear terrorism poses a serious threat to the peace, security, and prosperity of our planet. For any country, a terrorist attack with a nuclear device would be an immediate and catastrophic disaster, and the negative effects would reverberate around the world far beyond the location and moment of the detonation. Preventing a nuclear terrorist attack requires international cooperation to secure nuclear materials, especially among those states producing nuclear materials and weapons. As the world’s two greatest nuclear powers, the United States and Russia have the greatest experience and capabilities in securing nuclear materials and plants and, therefore, share a special responsibility to lead international efforts to prevent terrorists from seizing such materials and plants. The depth of convergence between U.S. and Russian vital national interests on the issue of nuclear security is best illustrated by the fact that bilateral cooperation on this issue has continued uninterrupted for more than two decades, even when relations between the two countries occasionally became frosty, as in the aftermath of the August 2008 war in Georgia. Russia and the United States have strong incentives to forge a close and trusting partnership to prevent nuclear terrorism and have made enormous progress in securing fissile material both at home and in partnership with other countries. However, to meet the evolving threat posed by those individuals intent upon using nuclear weapons for terrorist purposes, the United States and Russia need to deepen and broaden their cooperation. The 2011 “U.S. - Russia Joint Threat Assessment” offered both specific conclusions about the nature of the threat and general observations about how it might be addressed. This report builds on that foundation and analyzes the existing framework for action, cites gaps and deficiencies, and makes specific recommendations for improvement. “The U.S. – Russia Joint Threat Assessment on Nuclear Terrorism” (The 2011 report executive summary): • Nuclear terrorism is a real and urgent threat. Urgent actions are required to reduce the risk. The risk is driven by the rise of terrorists who seek to inflict unlimited damage, many of whom have sought justification for their plans in radical interpretations of Islam**;** by the spread of information about the decades-old technology of nuclear weapons; by the increased availability of weapons-usable nuclear materials; and by globalization, which makes it easier to move people, technologies, and materials across the world. • Making a crude nuclear bomb would not be easy, but is potentially within the capabilities of a technically sophisticated terrorist group, as numerous government studies have confirmed. Detonating a stolen nuclear weapon would likely be difficult for terrorists to accomplish, if the weapon was equipped with modern technical safeguards (such as the electronic locks known as Permissive Action Links, or PALs). Terrorists could, however, cut open a stolen nuclear weapon and make use of its nuclear material for a bomb of their own. • The nuclear material for a bomb is small and difficult to detect, making it a major challenge to stop nuclear smuggling or to recover nuclear material after it has been stolen. Hence, a primary focus in reducing the risk must be to keep nuclear material and nuclear weapons from being stolen by continually improving their security, as agreed at the Nuclear Security Summit in Washington in April 2010. • Al-Qaeda has sought nuclear weapons for almost two decades. The group has repeatedly attempted to purchase stolen nuclear material or nuclear weapons, and has repeatedly attempted to recruit nuclear expertise. Al-Qaeda reportedly conducted tests of conventional explosives for its nuclear program in the desert in Afghanistan. The group’s nuclear ambitions continued after its dispersal following the fall of the Taliban regime in Afghanistan. Recent writings from top al-Qaeda leadership are focused on justifying the mass slaughter of civilians, including the use of weapons of mass destruction, and are in all likelihood intended to provide a formal religious justification for nuclear use. While there are significant gaps in coverage of the group’s activities, al-Qaeda appears to have been frustrated thus far in acquiring a nuclear capability; it is unclear whether the the group has acquired weapons-usable nuclear material or the expertise needed to make such material into a bomb. Furthermore, pressure from a broad range of counter-terrorist actions probably has reduced the group’s ability to manage large, complex projects, but has not eliminated the danger. However, there is no sign the group has abandoned its nuclear ambitions. On the contrary, leadership statements as recently as 2008 indicate that the intention to acquire and use nuclear weapons is as strong as ever.

## Cred

#### NATO still relevant----military and commerce

Charles A. Kupchan 13, D.Phil from Oxford in International Affairs, Professor of International Affairs at Georgetown, Whitney H. Shepardson Senior Fellow at the Council on Foreign Relations, 3/6/13, "Why is NATO still needed, even after the downfall of the Soviet Union?," http://www.cfr.org/nato/why-nato-still-needed-even-after-downfall-soviet-union/p30152

The North Atlantic Treaty Organization (NATO) is an international military alliance that was created to enable its members (the United States, Canada, and their European partners) to counter the threat posed by the Soviet Union. Alliances usually come to an end when the threat that led to their formation disappears. However, NATO defies the historical norm, not only surviving well beyond the Cold War's end, but also expanding its membership and broadening its mission.¶ NATO remains valuable to its members for a number of reasons. The expansion of the alliance has played an important role in consolidating stability and democracy in Central Europe, where members continue to look to NATO as a hedge against the return of a threat from Russia. In this respect, NATO and the European Union have been working in tandem to lock in a prosperous and secure Atlantic community.¶ Meanwhile, NATO has repeatedly demonstrated the utility of its integrated military capability. The alliance used force to end ethnic conflict in the Balkans and played a role in preserving the peace that followed. NATO has sustained a long-term presence in Afghanistan, helping to counter terrorism and prepare Afghans to take over responsibility for their own security. NATO also oversaw the mission in Libya that succeeded in stopping its civil war and removing the Qaddafi regime. All of these missions demonstrate NATO's utility and its contributions to the individual and collective welfare of its members, precisely why they Nato likes drones

Reittman, 9/19 (Andres, “NATO wants EU Coutnries to buy more drones” http://euobserver.com/defence/121506

BRUSSELS - Nato chief Anders Fogh Rasmussen wants EU countries to buy more drones, refuelling planes and naval radars.¶ The head of the military alliance is expected to call for the measures at a speech in the Carnegie Europe foundation in Brussels on Thursday (19 September).¶ "I believe that European nations can, and should, do more, to match America's commitment … [and] help to rebalance Nato," he aims to say.¶ "I would like to see European allies playing their part to acquire more drones to improve surveillance. More large transport and air-to-air refuelling aircraft to enhance their ability to deploy on operations. And more upgraded radars on their ships so they can be integrated into our Nato missile defence," he plans to add.¶

#### NSA scandal is no big deal---won’t harm relations

Bernd Riegert 10/25, DW's Europe correspondent in Brussels, "Opinion: Much ado about nothing?", 2013, www.dw.de/opinion-much-ado-about-nothing/a-17184229

Spying among friends is not unusual - but spying on the head of a government is taking things a step too far. However, DW's Bernd Riegert believes lack of EU unity means the US will not face serious consequences.¶ It's the stuff spy thrillers are made of: Merkel and Hollande on a secret mission in the capital of the most powerful man in the world! What did Obama know? When did he know it? And why did he do it? The monitored chancellor and her aide force the American bad guys - who are in fact their friends - to impose a code of conduct on the intelligence services.¶ But it's a scenario that's likely to remain in the realms of fiction. So what will happen in reality? The chancellor and the French president will meet their American counterpart for the talks planned at this week's EU summit, and they will try to establish some degree of transparency.¶ There will not, however, be any publicly negotiated agreements on what intelligence agencies on both sides of the Atlantic are allowed to do. That goes against the nature of the beast. The purpose of an intelligence service is to do things that are illegal in the country it's targeting.¶ Furthermore, the French and German leaders do not speak for the European Union. There is no joint European stance, only a vague declaration the delegates at the summit spent hours wrestling with. It merely states that the Americans are good friends, and notes that there is concern - without criticizing, let alone making accusations.¶ Europe not responsible for Merkel's mobile¶ The main reason for this is that European secret services, and thus many governments, benefit from the spying activities of the NSA and CIA. No one wants to endanger a cooperation aimed at preventing potential danger just because the chancellor's insecure private mobile phone may have been tapped. British Prime Minister David Cameron, whose intelligence services cooperate particularly closely with the US, prevented tougher wording on the EU statement. EU member states regard spying as a sovereign national matter. The EU has no authority - it's every country for itself.¶ The fuss in Brussels is also somewhat hypocritical. Now that a top politician is personally affected, delegations are being dispatched to a friendly nation. Yet it was already established months ago that US intelligence services snooped on millions of European citizens in Germany, France and elsewhere. The chancellor ignored the problem for far too long - until she herself was directly affected.¶ Not a big surprise¶ Intelligence service experts know perfectly well that the European services also spy, snoop and wiretap abroad, among both friends and foes. To prevent terrorist attacks, American and European services then share their findings: after 9/11, a liaison office was established outside Paris for precisely that purpose. The exchange allows the agencies to circumvent legal barriers they may be subject to in their own countries.¶ Trust has been lost, and must be won back, said Merkel and many top EU politicians in Brussels. Friends shouldn't be spied on. This is a rather naive notion: it is hardly news that agencies are also active in friendly states. Instead, European leaders should be worrying about what potential opponents, like China, Iran and Russia, are spying on in Europe. This could really cause damage.¶ What insight can the US glean by listening in on Merkel's partisan small talk on her CDU party phone? The comments made by US President Barack Obama on his last visit to Germany are probably closer to the truth: that if he wanted to know what Merkel was thinking, he'd simply give her a call, not ask the NSA.¶ Merkel's mission won't harm ties¶ The European Union will not cancel the agreement to share a large amount of banking data collected via SWIFT, nor will it suspend talks on a free trade agreement. This is the right decision, as such a drastic reaction really would do lasting damage to relations with the US. On their "mission impossible" in Washington, Merkel and Hollande should urge Obama to reduce the NSA's activities to a reasonable scale.

## NSC CP

Multiple Conditional alternatives are evil - and a voting issue -

1. Skews strategy and time – we have to focus the 2ac on multiple alternatives to the plan - this gives the neg the ability to exploit aff time decisions - not make the best most educational decision.
2. Kills rejoinder & not reciprocal - the aff doesn't get to respond OR claim advantages from offense they've read – that kills debate and kills the affs ability to generate offense.
3. Ensures argumentative irresponsibility - that undermines education - kicking arguments and not defending them is anti-educational. Multiple conditional alts insures that it has to happen.
4. Counter-interpretation – the neg gets one conditional strategy and the status quo - this solves all of their offense.

#### Permutation do both

#### Permutation: do the counterplan

#### links to flex

#### No solve the aff - Aff creates separate court system that undermines legitimacy and turns terrorism

**Zabel and Benjamin, 8 –** (In Pursuit of Justice Prosecuting Terrorism Cases in the Federal Courts

<http://www.humanrightsfirst.org/wp-content/uploads/pdf/080521-USLS-pursuit-justice.pdf>)

Indeed, it is also likely that the overwhelming majority of defendants in such proceedings would be of particular national and religious backgrounds, a point that would only further undermine the appropriateness of such a “separate” system. Cf. Neal Kumar Katyal, Equality in the War on Terror , 59 S TAN . L. R EV . 1365 (2007). The creation of a different court to try suspects, most of whom, if not all of whom, are likely to be Muslims, would be widely seen as the creation of a second-class justice system for Muslims. That result would further tarnish the United States’ reputation for justice and fairness in the Arab and Muslim world, and would be co unterproductive for U.S. foreig n policy and our efforts to combat terrorism

#### the aff reentrenches the status quo

**Fisher, 9 –** (William, Anti-war.com, “Special ‘Terror’ Courts Worry Legal Experts,” <http://original.antiwar.com/fisher/2009/05/20/special-terror-courts/>)

Jonathan Hafetz, an attorney with the American Civil Liberties Union’s National Security Project, believes the establishment of national security courts "would be a terrible mistake." He told IPS that these new courts "would institutionalize many of the worst features of Bush administration policies, perpetuating both indefinite detention and trial of terrorism suspects outside the established federal criminal courts." He added, "National security court proposals are riddled with constitutional flaws including reliance on secret evidence, elimination of core constitutional safeguards like the right to confront one’s accusers, and the absence of protections against the use of evidence obtained by coercion." "While they might be sold as a reform measure, national security courts are part of an agenda to continue the failed Guantanamo system rather than to end it," he said. Brian J. Foley, visiting associate professor at the Boston University law school, says U.S. detention policy "needs rethinking." He told IPS, "The current Guantanamo system has rules that are too soft and allow roundups of suspected terrorists based on unreliable evidence. Interrogating these people using harsh methods leads to false confessions and other statements calculated to end the abuse. Threatening them with trial by what amounts to a kangaroo court will also cause many to confess falsely."

#### destroys allies cooperation and international coalition

**Colson, 9** – (Acting Director, Law and Security Program @ HR First

(Deborah, Prepared the following report: “The Case Against A Special Terrorism Court,” HR First, http://www.humanrightsfirst.org/wp-content/uploads/pdf/090323-LS-nsc-policy-paper.pdf)

Human Rights First believes that all indefinite detention and special court proposals—whatever form they might take—are unwise, unnecessary and should be rejected. The fe deral criminal courts have proven to be fully capable of handling the challenges posed by complex terrorism case s without compromising national security or sacrificing standards of fairness and due proces s. Our procedural safeguards and eviden tiary standards comprise the bedrock of American justice. A decision to jettison them, even for a small number of suspects, would weaken our system as a whole, undermine America’s efforts to forge an internat ional coalition to combat terrorism, and perpetuate the damage to America’s reputation for fairness and transparency done by unjust trials and prolonged detention without charge at Guantánamo.

#### National security court turns cred and alliance

**Ratner, 7** (A New Court for Terror Suspects? (5 Letters)

<http://www.nytimes.com/2007/07/16/opinion/l16terrorists.html?pagewanted=print>)

Jack L. Goldsmith and Neal Katyal call for creation of a preventive detention system. We already have that system at Guantánamo. The idea of making this system permanent and more acceptable by adding some bells and whistles — a special national security court — is going in the wrong direction. It is contrary to American values and will ensure the continued negative consequences of the current policy that the authors refer to in the article: harm to our reputation, disrupted alliances and the “war of ideas with the Islamic world.” Preventive detention cuts the heart out of any concept of human liberty; it permits the state to imprison people who have not committed any crime and to do so outside of the rules of a criminal law system that has been with us for more than 200 years. No domestic or international law permits preventive detention under the current circumstances. The International Covenant on Civil and Political Rights, a treaty binding on the United States, permits it only in the most drastic of circumstances when the actual continued existence of the nation is threatened. Even then, a situation we are not facing, the detentions must be of an exceptional and temporary nature — not potentially forever. The treaty expressly prohibits indefinite detention without charges and trial.

**cp solves the case**

**Beech, 8 –** (JD at Washington Metro Area, “A CRITIQUE OF “NATIONAL SECURITY COURTS”, <http://www.constitutionproject.org/pdf/Critique_of_the_National_Security_Courts_Updated_Signers1.pdf>)

Advocates of national security courts that would try terrorism suspects claim that traditional Article III courts are unequipped to handle thes e cases. This claim has not been substantiated, and is made in the face of a significant — and growing — body of evidence to the contrary. A recent report released by Human Rights First persuasively demonstrates that our existing federal courts are competent to try these cases. The report examines more than 120 international terrorism cases brough t in the federal courts over the past fifteen years.

**Independent courts fail – turns both democracy and legitimacy**

**Colson, 9** – (Acting Director, Law and Security Program @ HR First

(Deborah, Prepared the following report: “The Case Against A Special Terrorism Court,” HR First, http://www.humanrightsfirst.org/wp-content/uploads/pdf/090323-LS-nsc-policy-paper.pdf)

Proposals for a special terrorism court should be rejected A special terrorism court is unnecessary and impractical: Among the many lessons learned from the misguided Guantánamo episode are the practical difficulti es of trying to create new, ad hoc justice systems. Just like the military commissions at Guantánamo, a new court inevitably would be bogged down in litigation and delay. Our procedural safeguards and evidentiary standards comprise the bedrock of American justice: A new court would undermine the integrity of the just ice system and perpetuate the damage to America’s reputation for fairness and transparency done by unjust m ilitary commissions and prolonged detention without charge at Guantánamo.

## Court CP

Interpretation: Counterplans that use a different agent than the plan are illegitimate.

1. Doesn’t cause critical thinking outside of debate- personal decisions aren’t made by finding a different agent than ourselves

2. no literature compares it- discussions are only valuable if they are informed with real information

3. Promotes abdication of responsibility – they teach debaters to wish someone else would act instead of how to persuade someone to act

4. Forces us to debate ourselves- any of our solvency deficits can be applied to the aff as reasons why the executive will ignore the plan

Voter for fairness and education

#### Permutation: the supreme court should apply Geneva and the united states federal government should create a domestic terror court.

#### Net benefit is Court Creation DA – The courts cannot give a court jurisdiction, only Congress is vested with this power.

Schuck, Lecturer at Yale Law School, ‘4

[Peter, “Terrorism Cases Demand New Hybrid Courts”, LA Times, 7-9-2004,

<http://articles.latimes.com/2004/jul/09/opinion/oe-schuck9>, RSR]

The Supreme Court in its recent rulings has given U.S. citizens who are captives in the war on terror, as well as noncitizen Guantanamo detainees, the right to hearings. Now comes the hard part: what kinds of hearings, in what courts, by what process?¶ The court wisely refrained from answering these questions in detail. Arguments on the specifics had not been presented to the court, and the limited guidance that the justices did offer was more intuitive than analytical. Wisdom aside, this sort of self-restraint is constitutionally required: Article 1, Section 8, Clause 14 gives Congress -- not the judicial or the executive branch -- the authority to make rules for the armed forces, including the initial design of hearings for the prisoners.

#### Extend Silivana - only Congressional action inspires the public to care about habeas violations- that solves accountability issues the prevent the executive from circumventing the counterplan 1. Legitimacy – congressional action most perceived and judicial deference makes the decision more powerful

Yoshino 11 (Kenji, a professor at N.Y.U. School of Law, The Military in the Constitution, June 28, <http://www.nytimes.com/roomfordebate/2010/10/13/the-future-of-dont-ask-dont-tell/the-military-in-the-constitution>) ap

I have a general and a specific reason for favoring legislative action over judicial action here. The general reason is that any time over 70 percent of the nation opposes a policy, as is the case with "don't ask, don't tell," that opposition is presumptively best expressed through our elected representatives. Such action gives more legitimacy to the ultimate decision because it more clearly hews to the democratic process.¶ The specific reason for preferring a legislative repeal of the policy is that the Constitution explicitly gives the legislative and executive branches control over the military. Article I of our Constitution grants Congress the power to regulate the military, while Article II makes the president the commander in chief of the armed forces.¶ Historically, these grants of authority have led the courts to accord extreme deference to the elected branches of government with respect to military issues. In the 1981 case of Rostker v. Goldberg, the Supreme Court rejected a sex-discrimination challenge to the male-only draft by observing that "judicial deference . . . is at its apogee when legislative action under the congressional authority to raise and support armies and make rules and regulations for their governance is challenged."

#### Congress necessary to prevent Court evisceration of War Powers

Benjamin Wittes 8, Senior Fellow in Governance Studies at the Brookings Institution, co-founder and editor-in-chief of the Lawfare blog, member of the Hoover Institution’s Task Force on National Security Law, Law and the Long War: The Future of Justice in the Age of Terror, google books

What the Supreme Court has done is carve itself a seat at the table. It has intimated, without ever deciding, that a constitutional basis for its actions exists—in addition to the statutory bases on which it decided the cases—meaning that its authority over overseas detentions may be an inherent feature of judicial power, not a policy question on which the legislature and executive can work their will. Whether the votes exist on the court to go this extra step we will find out soon enough. But the specter of a vastly different judicial posture in this area now haunts the executive branch—one in which the justices assert an inherent authority to review executive detention and interrogation practices, divine rights to apply with that jurisdiction based on due process and vaguely worded international humanitarian law principles not clearly implemented in U.S. law, and allow their own power to follow the military’s anywhere in the world. Such a posture would constitute an earthquake in the relationships among all three branches of government, and the doctrinal seeds for it have all been planted. Whether they ultimately take root depends on factors extrinsic to the war on terror—particularly the future composition of a Supreme Court now closely divided on these questions. It will also pivot on the manner in which the political branches posture the legal foundations of the war in the future. Building a strong legislative architecture now may be the only way to avert a major expansion of judicial power over foreign policy and warfare.

#### Links to politics

Terence Samuel 9, Deputy Editor – The Root and Senior Correspondent - Prospect, “Obama's Honeymoon Nears Its End”, American Prospect, 5/29, http://www.prospect.org/cs/articles?article=obamas\_honeymoon\_nears\_its\_end

This week, Barack Obama named his first nominee to the Supreme Court, then headed west to Las Vegas and Los Angeles to raise money for Democrats in the 2010 midterms. Taken together, these two seemingly disparate acts mark the end of a certain period of innocence in the Obama administration: The "blame Bush" phase of the Obama administration is over, and the prolonged honeymoon that the president has enjoyed with the country and the media will soon come to an end as well. Obama is no longer just the inheritor of Bush's mess. This is now his presidency in his own right. The chance to choose a Supreme Court justice is such a sui generis exercise of executive power -- it so powerfully underscores the vast and unique powers of a president -- that blame-shifting has become a less effective political strategy, and less becoming as well. Obama's political maturation will be hastened by the impending ideological fight that is now virtually a guarantee for Supreme Court nominations. Old wounds will be opened, and old animosities will be triggered as the process moves along. Already we see the effect in the polls. While Obama himself remains incredibly popular, only 47 percent of Americans think his choice of Judge Sonia Sotomayor is an excellent or good choice for the Court, according to the latest Gallup poll. The stimulus package scored better than that. The prospect of a new justice really seems to force people to reconsider their culture warrior allegiances in the context of the party in power. This month, after news of Justice David Souter's retirement, a Gallup poll showed that more Americans considered themselves against abortion rights than in favor: 51 percent to 42 percent. Those number were almost exactly reversed a year ago when Bush was in office and Obama was on the verge of wrapping up the Democratic nomination. "This is the first time a majority of U.S. adults have identified themselves as pro-life since Gallup began asking this question in 1995," according to the polling organization. Is this the same country that elected Obama? Yes, but with his overwhelmingly Democratic Senate, the public may be sending preemptory signals that they are not interested in a huge swing on some of these cultural issues that tend to explode during nomination hearings. Even though Obama will win the Sotomayor fight, her confirmation is likely to leave him less popular in the end because it will involve contentious issues -- questions of race and gender politics like affirmative action and abortion -- that he managed to avoid or at least finesse through his campaign and during his presidency so far.

#### Perm do both---shields the link

Perine, 6/12/2008 (Katherine – staff at CQ politics, Congress unlikely to try to counter Supreme Court detainee ruling, CQ Politics, p. http://www.cqpolitics.com/wmspage.cfm?docID=news-000002896528&cpage=2)

Thursday’s decision, from a Supreme Court dominated by Republican appointees, gives Democrats further cover against GOP sniping. “This is something that the court has decided, and very often the court gives political cover to Congress,” said Ross K. Baker, a Rutgers University political science professor. “You can simply point to a Supreme Court decision and say, ‘The devil made me do it.’ ”

#### 2. Timing - Courts can’t control time frame of trials

Michael McAuliff, June 14, 2013, “Guantanamo Bay To Stay Open As House Blocks Bill To Close Infamous Prison,” <http://www.huffingtonpost.com/2013/06/14/guantanamo-bay-close_n_3438347.html>

The Supreme Court ruled that detainees have a right to be presented to a judge, and a right to be tried in a military court, but the issue of how quickly those trials must happen has not been litigated, effectively making the detentions indefinite. Numerous inmates are deemed to be too difficult to try, and are being held under the laws of war until the conflict is ended.

#### Extend Chesney – Legislative action is key to international legitimacy – it’s seen as the most meaningful constraint on presidential action and sends a stronger signal to allies.

#### 3. Stripping - Causes a massive debate in Congress that links to politics and strips the Court decision of meaning- MCA passage proves

Hajjar, 2011 (Lisa, “Bagram, Obama’s Gitmo” Middle East Report. Webb, Acc 8/18/2013 at

<http://www.merip.org/mer/mer260/bagram-obamas-gitmo>

The Supreme Court’s Hamdan decision in June 2006, which ruled that the president’s military commissions are unconstitutional, also held that “war on terror” prisoners have, at minimum, the rights and protections of Common Article 3 of the Geneva Conventions, which prohibits “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture” and “outrages upon personal dignity, in particular humiliating and degrading treatment.” That decision undermined the efficacy of the administration’s stock assertions that the detainees are rightless. At a September 16 press conference, President Bush denounced the decision and mocked the vagueness of “outrages.” He said that the White House was drafting legislation to restore the military commissions. He also acknowledged for the first time the existence of the CIA’s program and proclaimed that practices authorized for detainees held at black sites -- including waterboarding -- had been deemed “legal” by OLC lawyers. He also announced that 14 “high-value detainees” in CIA custody were being transferred to Guantánamo.¶ In October 2006, Congress passed the Military Commissions Act (MCA), which included a clause granting ex post facto immunity for violations of the 1996 War Crimes Act to shield government officials and state agents from prosecution for grave breaches of Common Article 3. The MCA included even bolder language stripping jurisdiction than the Detainee Treatment Act: No court would have jurisdiction for an application of the writ of habeas corpus filed by a person “who has been determined by the US to have been properly detained as an enemy combatant or is awaiting such determination.” This stipulation “shall apply to all cases, without exception…which relate to any aspect of detention, transfer, treatment, trial, or conditions of detention of an alien detained by the United States since September 11, 2001.” Sen. Obama voted against the MCA.

#### Stripping guts the case solvency and turns the case—all rights protections would go completely unenforced—trampling meaningful rights:

Barry W. Lynn, 2004 bachelor's degree at Dickinson College, theology degree from Boston University School of Theology, minister in the United Church of Christ, of the Washington, D.C. bar, law degree from Georgetown University Law Center, the Executive Director of Americans United for Separation of Church and State, 20**04**[“Congress and Court Stripping: Just Keep Your Shirts On” Church and State Magazine, May]

Another measure, the misnamed "Constitution Restoration Act of 2004," was written by former Alabama Supreme Court Chief Justice Roy Moore and his allies. It would ban all cases challenging state-sponsored acknowledgement of "God as the sovereign source of law, liberty, or government." For good measure, it would also retroactively overturn all existing rulings in this area and establish a mechanism for impeaching federal judges who dare to uphold church-state separation! One wonders if the legislators who wrote these bills slept through high school civics class. The separation of powers means that the U.S. government consists of three co-equal branches: the president, the Congress and the courts. Congress does not have the power, through simple legislation, to decimate the authority of the courts over issues dealing with the Bill of Rights. Such power would rapidly make the courts superfluous. Whenever a judge ruled in a manner that displeased a legislator, a court-stripping bill would be drawn up and passed. Pretty soon the courts would be nothing but a rubber-stamp **body for Congress**. Some members of Congress might want that, but it would be a disaster for American democracy. Courts exist to make hard decisions. When lawmakers overstep their bounds and infringe on constitutional rights, courts are there to pull them back. Without the judiciary to protect us, Americans would quickly be at the mercy of the momentary whims of the majority. Our rights would be trampled on.

## 2AC Warfighting

#### Can’t solve the aff –extradition key to prevent European safe havens – cooperation key

#### Squo approach fails - Gitmo closure and challenge to military commissions inevitable – triggers the link – aff only secures convictions – that’s Kimery and Whittes

#### I DON’T THINK THE AFF IS A COURT DECISION – it’s an ACT OF CONGRESS -

#### Legitimacy solves the impact – obviates the need for flexibility by deescalating crisis before they begin

Schwarz, senior counsel, and Huq, associate counsel at the Brennan Center for Justice at NYU School of Law, 2007 [Frederick A.O., Jr., partner at Cravath, Swaine & Moore, chief counsel to the Church Committee, and Aziz Z, former clerk for the U.S. Supreme Court, Unchecked and Unbalanced: Presidential Power in a Time of Terror, p. 201]

The Administration insists that its plunge into torture, its lawless spying, and its lock-up of innocents have made the country safer. Beyond mere posturing, they provide little evidence to back up their claims. Executive unilateralism not only undermines the delicate balance of our Constitution, but also lessens our human liberties and hurts vital counterterrorism campaigns. How? Our reputation has always mattered. In 1607, Massachusetts governor John Winthrop warned his fellow colonists that because they were a "City on a Hill," "the eyes of all people are upon us."4 Thomas Jefferson began the Declaration of Independence by invoking the need for a "decent respect to the opinions of mankind:' In today's battle against stateless terrorists, who are undeterred by law, morality, or the mightiest military power on earth, our reputation matters greatly.¶ Despite its military edge, the United States cannot force needed aid and cooperation from allies. Indeed, our status as lone superpower means that only by persuading other nations and their citizens—that our values and interests align with theirs, and so merit support, can America maintain its influence in the world. Military might, even extended to the globe's corners, is not a sufficient condition for achieving America's safety or its democratic ideals at home. To be "dictatress of the world," warned John Quincy Adams in 1821, America "would be no longer the ruler of her own spirit." A national security policy loosed from the bounds of law, and conducted at the executive's discretion, will unfailingly lapse into hypocrisy and mendacity that alienate our allies and corrode the vitality of the world's oldest democracy.5

#### Comparatively, that’s more important

Matthew C. Waxman 8/25, Professor of Law, Columbia Law School; Adjunct Senior Fellow for Law and Foreign Policy, Council on Foreign Relations, “The Constitutional Power to Threaten War”, Forthcoming in Yale Law Journal, vol. 123 (2014), 2013, PDF

A second argument, this one advanced by some congressionalists, is that stronger legislative checks on presidential uses of force would improve deterrent and coercive strategies by making them more selective and credible. The most credible U.S. threats, this argument holds, are those that carry formal approval by Congress, which reflects strong public support and willingness to bear the costs of war; requiring express legislative backing to make good on threats might therefore be thought to enhance the potency of threats by encouraging the President to seek congressional authorization before acting.181 A frequently cited instance is President Eisenhower’s request (soon granted) for standing congressional authorization to use force in the Taiwan Straits crises of the mid- and late-1950s – an authorization he claimed at the time was important to bolstering the credibility of U.S. threats to protect Formosa from Chinese aggression.182 (Eisenhower did not go so far as to suggest that congressional authorization ought to be legally required, however.) “It was [Eisenhower’s] seasoned judgment … that a commitment the United States would have much greater impact on allies and enemies alike because it would represent the collective judgment of the President and Congress,” concludes Louis Fisher. “Single-handed actions taken by a President, without the support of Congress and the people, can threaten national prestige and undermine the presidency. Eisenhower’s position was sound then. It is sound now.”183 A critical assumption here is that legal requirements of congressional participation in decisions to use force filters out unpopular uses of force, the threats of which are unlikely to be credible and which, if unsuccessful, undermine the credibility of future U.S. threats.¶ A third view is that legal clarity is important to U.S. coercive and deterrent strategies; that ambiguity as to the President’s powers to use force undermines the credibility of threats. Michael Reisman observed, for example, in 1989: “Lack of clarity in the allocation of competence and the uncertain congressional role will sow uncertainty among those who depend on U.S. effectiveness for security and the maintenance of world order. Some reduction in U.S. credibility and diplomatic effectiveness may result.”184 Such stress on legal clarity is common among lawyers, who usually regard it as important to planning, whereas strategists tend to see possible value in “constructive ambiguity”, or deliberate fudging of drawn lines as a negotiating tactic or for domestic political purposes.185 A critical assumption here is that clarity of constitutional or statutory design with respect to decisions about force exerts significant effects on foreign perceptions of U.S. resolve to make good on threats, if not by affecting the substance of U.S. policy commitments with regard to force then by pointing foreign actors to the appropriate institution or process for reading them.

#### Judicial intervention into detention is inevitable – withdrawal from Afghanistan

Chesney 13, Law Prof at UT

(November, Robert, BEYOND THE BATTLEFIELD, BEYOND AL QAEDA: THE DESTABILIZING LEGAL ARCHITECTURE OF COUNTERTERRORISM, 112 Mich. L. Rev. 163)

The government will not be able to simply ride out the legal friction generated by the fragmentation of al Qaeda and the shift toward shadow war. Those trends do not merely shift unsettled questions of substantive law to the forefront of the debate; they also greatly increase the prospects for a new round of judicial intervention focusing on those substantive questions. 1. Military Detention Consider military detention first. Fresh judicial intervention regarding the substantive law of detention is a virtual certainty. It will come in connection with the lingering Guantanamo population, and it will come as well in connection with any future detainees taken into custody on a long-term basis, regardless of where they might be held. a. Existing Guantanamo Detainees Most of the existing Guantanamo detainees have already had a shot at habeas relief, and many lost on both the facts and the law. But some of them can and will pursue a second shot, should changing conditions call into question the legal foundation for the earlier rulings against them. n202 The first round of Guantanamo habeas decisions depended in almost every instance on the existence of a meaningful tie to ongoing hostilities in Afghanistan, as did the Supreme Court's 2004 decision in Hamdi. Indeed, Justice O'Connor in Hamdi was at pains to caution that at some point in the future this baseline condition making LOAC relevant could unravel. n203 The declining U.S. role in combat operations in Afghanistan goes directly to that point. This decline will open the door to a second wave of Guantanamo litigation, with detainees arguing that neither LOAC nor the relevant statutory authorities continues to apply. This argument may or may not succeed on the merits. At first blush, the NDAA FY12 would seem to present a substantial obstacle to the detainees. That statute expressly codifies detention authority as to members (and supporters) of al Qaeda, the Afghan Taliban, and "associated forces," n204 thus grounding detention authority directly in domestic law rather than requiring courts to impute such authority into the 2001 AUMF by implication from LOAC (as the Supreme Court had to do in [\*214] Hamdi itself). But it is not quite so simple. The same section of the NDAA FY12 relinks the question of detention authority to LOAC after all. It specifies that statutory detention authority as an initial matter exists solely "pending disposition under the law of war." n205 And although it then lists long-term military detention as a possible disposition option, the statute specifically defines this authority as "detention under the law of war without trial until the end of the hostilities authorized by the [AUMF]." n206 A court confronted with this language might interpret it in a manner consistent with the government's borderless-conflict position, such that the drawdown in Afghanistan would not matter. But it might not. The repeated references to the "law of war" in the statute--that is to LOAC--might lead at least some judges to conduct a fresh field-of-application analysis regarding the extent to which LOAC remains applicable in light of the drawdown, and judges might then read the results back into the NDAA FY12. I am not saying that this is the likely outcome or that any such analysis would necessarily reject the government's borderless-conflict position. I am just saying that judges eventually will decide these matters without real guidance from Congress (unless Congress clarifies its intentions in the interim). Note, too, that any such judicial interpretations may well have far broader implications than just the fate of the particular detainee in question; a ruling that LOAC has no application in a given situation would cast a long shadow over any other LOAC-based actions the U.S. government might undertake in the same or similar contexts (including targeting measures). Regardless of what occurs in Afghanistan, the existing Guantanamo detainee population might also find occasion to come back to court should the decline of the core al Qaeda organization continue to the point where it can plausibly be described as defunct. In such a case, it is likely that at least some current al Qaeda detainees would revive their habeas petitions in order to contend that the demise of the organization also means the demise of detention authority over members of the defunct group. This argument would be particularly likely to come from those who were held on the ground of membership in al Qaeda but who the government had not shown to have been otherwise involved in hostile acts. This would be a challenging argument to make; the government would surely respond that al Qaeda would no longer be defunct if some of its members were set free. But setting that possible response aside, such a petition could compel the government to litigate the question of whether the continuing existence of various "franchises," like AQAP or al-Shabaab, suffices to preserve detention authority over al Qaeda members. That is, such a challenge could lead a judge to weigh in on the organizational boundary question.

#### But the aff doesn’t, we result in judicial deference

Bauer, Junior Editor at the Alabama Law Review, ‘6

[Jay, “DETAINEES UNDER REVIEW: STRIKING THE RIGHT¶ CONSTITUTIONAL BALANCE BETWEEN THE EXECUTIVE'S¶ WAR POWERS AND JUDICIAL REVIEW”, Vol. 57, No. 4, RSR]

Establishing a detainee review process that is as transparent and fair as¶ possible may be the best way to "strik[e] the proper constitutional balance."'179 In considering the executive's concerns for national security and¶ protection of classified information, the courts have shown an ability to be¶ flexible and accommodate the special needs of the executive while preserving¶ the fundamental precepts of the Constitution. That flexibility will likely¶ come into play regardless of whether a court is reviewing a habeas petition¶ or the final decision of a tribunal under a separate statutory scheme like that¶ in the Detainee Treatment Act.¶ If a court is reviewing a non-citizen detainee's habeas claim, now that¶ the Supreme Court has established in Rasul that federal courts do have jurisdiction¶ over detainees at Guantanamo, the federal courts and habeas jurisprudence¶ may actually prove beneficial for the executive. For instance,¶ because a habeas court looks primarily to the authority and process of detention¶ in a habeas case, this Comment argues that from a practical standpoint¶ the more the executive branch establishes a solidly fair and judicial¶ process for determining detainee status, the better it would be for the executive.¶ Since the courts tend to deny habeas petitions when there is apparent¶ authority and alternative remedies available to a habeas petitioner, it is logical¶ that a full and fair process establishing those remedies for non-citizen¶ detainees is in the executive's best interest. In other words, if the executive¶ branch wants to preserve its independent control over detainees, then practically¶ speaking it could rely on history and precedence as a model. The¶ courts will defer to executive action, but only to a point. They will seek to¶ preserve the authority of the Constitution, albeit in a restrained sense considering¶ the unique nature of detaining enemy combatants in the "war on¶ terror." Habeas corpus jurisprudence teaches that as long as there is a way¶ for an independent judiciary to examine the lawfulness of executive detention,¶ or at least ensure that the detainee has an appropriate alternative remedy¶ available, then that detention will be upheld. Thus, ironically, the way¶ for the executive to retain control over detainees is to create a full and fair¶ tribunal process. Moreover, the traditional deference the judiciary pays to¶ the executive branch when it is looking at executive wartime actions or¶ judgments should also give the executive branch confidence that federal¶ court jurisdiction over detainees at Guantanamo Bay is not going to hinder¶ its execution of the "war on terror."¶ When it passed the Detainee Treatment Act, Congress intended to interject¶ congressional oversight into the detainee review process by dictating¶ the standard of evidence used, and it wanted to ensure that the procedures of¶ the CSRT are in accordance with the Constitution. 80 The passage of the Act¶ clearly shows that the executive should anticipate more, not less, assertion¶ of authority over the detainee review process by the other branches of government.¶ Although the consequences of the Act are unknown at this point in¶ time, it is also fairly clear that however the courts consider the detainee review process-whether it is through habeas litigation or under another¶ statutorily prescribed method like that of the Detainee Treatment Act-the¶ analysis will be in terms of whether that process fundamentally complies¶ with the Constitution. Thus, from just a pragmatic standpoint, it would be¶ prudent for the executive branch to ensure that the detainee review procedures¶ uphold the ideals of that great charter.¶ Consequently, creating a detainee review process as transparent and fair¶ as possible is the best option for our government and this nation as it seeks¶ to strike the right balance between executive war powers and judicial right¶ of review.

#### Yoo ’06 is talking about “Congress’s warmaking powers,”

#### Syria restraints should have triggered the link – Obama asked which was a political restriction

Waxman, Professor Law at Columbia, 9-3-’13 (Matthew, “Constitutional Power to Threaten War: Three Points on Syria” http://www.lawfareblog.com/2013/09/constitutional-power-to-threaten-war-three-points-on-syria/)

First, a point about constraints on the President: Whatever one thinks about the President’s constitutional authority to make good on his threat against Syria with military force, I’ve not heard anyone question his authority to have unilaterally issued the threat to begin with – that is, his authority to draw a red line on chemical weapon use and imply that the United States would respond forcefully. Most would agree, though, the President has been politically constrained in what he’s communicated through words and actions to the Syrian government, U.S. allies, and others. Some of that political constraint has probably come from Congress all along, and even if Congress were unlikely to wield formal legislative power to terminate or cut-off funds from a Syria operation that the President might launch on his own, Congress’s influence derives in part from its institutional position to make things difficult for the President, and even from influential members’ ability to speak out publicly in ways that might undermine the credibility of presidential threats. Law helps constitute the processes of political struggles in any area of public policy, but what is special here in the context of deterrent strategy is the added importance of foreign audiences – including adversaries and allies, alike – observing and reacting to those politics, too.

#### Their link assumes a broad court ruling – limited purpose preserves flexibility

Andrew McCarthy 9, Director of the Center for Law & Counterterrorism at the Foundation for the Defense of Democracies. From 1985 through 2003, he was a federal prosecutor at the U.S. Attorney’s Office for the Southern District of New York, and was the lead prosecutor in the seditious conspiracy trial against Sheikh Omar Abdel Rahman and eleven others, described subsequently. AND Alykhan Velshi, a staff attorney at the Center for Law & Counterterrorism, where he focuses on the international law of armed conflict and the use of force, 8/20/09, “Outsourcing American Law,” AEI Working Paper, http://www.aei.org/files/2009/08/20/20090820-Chapter6.pdf

What is an asset in the criminal justice system, however, would be a liability in a system whose priority is not justice for the individual but the security of the American people. That liability, though, can be satisfactorily rectified by clear procedural rules which underscore that the overriding mission – into which the judicial function is being imported for very limited purposes – remains executive and military. The default position of the criminal justice system would not carry over to a system conceived for enemies of the United States – i.e., terrorist operatives who would not be facing NSC trials in the first place absent a finding, tested by judicial review, that they were alien enemy combatants. ¶ In such a system, the opportunities for judicial creativity would be limited by being plainspoken and unapologetic in enabling legislation about the fact that the defendants are not Americans but those who mean America harm; that the task of federal judges is not to ensure that defendants are considered as equals to our government before the bar of justice, but merely to ensure that they are not capriciously convicted of war crimes by the same branch of government that is prosecuting the war; that if credible and convincing evidence supports the allegations, the system’s preference is that defendants be convicted and harshly sentenced; and that the authority of judges is enumerated and finite – if the rules as promulgated do not expressly provide for the defendant to have particular relief, the judge is powerless to direct it. In short, the system would curb judicial excess by the recognition, which underlies the military justice system, that prosecuting war remains a quintessentially executive endeavor; in the NSC, judges would be a check against arbitrariness but they would not have any general supervisory authority over the conduct of proceedings and they would not be at liberty to create new entitlements by analogizing to ordinary criminal proceedings.

#### Constraints improve decision-making to combat attacks

Deborah N. Pearlstein 9, lecturer in public and international affairs, Woodrow Wilson School of Public & International Affairs, July 2009, "Form and Function in the National Security Constitution," Connecticut Law Review, 41 Conn. L. Rev. 1549, lexis nexis

It is in part for such reasons that studies of organizational performance in crisis management have regularly found that "planning and effective [\*1604] response are causally connected." n196 Clear, well-understood rules, formalized training and planning can function to match cultural and individual instincts that emerge in a crisis with commitments that flow from standard operating procedures and professional norms. n197 Indeed, "the less an organization has to change its pre-disaster functions and roles to perform in a disaster, the more effective is its disaster [sic] response." n198 In this sense, a decisionmaker with absolute flexibility in an emergency-unconstrained by protocols or plans-may be systematically more prone to error than a decision-maker who is in some way compelled to follow procedures and guidelines, which have incorporated professional expertise, and which are set as effective constraints in advance.¶ Examples of excessive flexibility producing adverse consequences are ample. Following Hurricane Katrina, one of the most important lessons independent analysis drew from the government response was the extent to which the disaster was made worse as a result of the lack of experience and knowledge of crisis procedures among key officials, the absence of expert advisors replacing those rules with more than the most general guidance about custodial intelligence collection available to key officials (including the President), and the failure to follow existing response plans or to draw from lessons learned from simulations conducted before the fact. n199 Among the many consequences, [\*1605] basic items like food, water, and medicines were in such short supply that local law enforcement (instead of focusing on security issues) were occupied, in part, with breaking into businesses and taking what residents needed. n200¶ Or consider the widespread abuse of prisoners at U.S. detention facilities such as Abu Ghraib. Whatever the theoretical merits of applying coercive interrogation in a carefully selected way against key intelligence targets, n201 the systemic torture and abuse of scores of detainees was an outcome no one purported to seek. There is substantial agreement among security analysts of both parties that the prisoner abuse scandals have produced predominantly negative consequences for U.S. national security. n202 While there remain important questions about the extent to which some of the abuses at Abu Ghraib were the result of civilian or senior military command actions or omissions, one of the too often overlooked findings of the government investigations of the incidents is the unanimous agreement that the abuse was (at least in part) the result of structural organization failures n203 -failures that one might expect to [\*1606] produce errors either to the benefit or detriment of security.¶ In particular, military investigators looking at the causes of Abu Ghraib cited vague guidance, as well as inadequate training and planning for detention and interrogation operations, as key factors leading to the abuse. Remarkably, "pre-war planning [did] not include[] planning for detainee operations" in Iraq. n204 Moreover, investigators cited failures at the policy level- decisions to lift existing detention and interrogation strictures without n205 As one Army General later investigating the abuses noted: "By October 2003, interrogation policy in Iraq had changed three times in less than thirty days and it became very confusing as to what techniques could be employed and at what level non-doctrinal approaches had to be approved." n206 It was thus unsurprising that detention and interrogation operations were assigned to troops with grossly inadequate training in any rules that were still recognized. n207 The uncertain effect of broad, general guidance, coupled [\*1607] with the competing imperatives of guidelines that differed among theaters of operation, agencies, and military units, caused serious confusion among troops and led to decisionmaking that it is overly kind to call arbitrary. n208¶ Would the new functionalists disagree with the importance of government planning for detention operations in an emergency surrounding a terrorist nuclear attack? Not necessarily. Can an organization anticipate and plan for everything? Certainly not. But such findings should at least call into question the inclination to simply maximize flexibility and discretion in an emergency, without, for example, structural incentives that might ensure the engagement of professional expertise. n209 Particularly if one embraces the view that the most potentially damaging terrorist threats are nuclear and biological terrorism, involving highly technical information about weapons acquisition and deployment, a security policy structure based on nothing more than general popular mandate and political instincts is unlikely to suffice; a structure that systematically excludes knowledge of and training in emergency response will almost certainly result in mismanagement. n210 In this light, a general take on role effectiveness might suggest favoring a structure in which the engagement of relevant expertise in crisis management is required, leaders have incentives to anticipate and plan in advance for trade-offs, and [\*1608] organizations are able to train subordinates to ensure that plans are adhered to in emergencies. Such structural constraints could help increase the likelihood that something more than arbitrary attention has been paid before transcendent priorities are overridden

## 2AC TPA

#### Aff solves cred decline better -

#### Economic decline doesn’t cause war

Barnett, Senior Managing Director Enterra Solutions LLC, ‘9 (Thomas, August 24, “The New Rules: Security Remains Stable Amid Financial Crisis” World Politics Review, http://www.worldpoliticsreview.com/articles/4213/the-new-rules-security-remains-stable-amid-financial-crisis)

When the global financial crisis struck roughly a year ago, the blogosphere was ablaze with all sorts of scary predictions of, and commentary regarding, ensuing conflict and wars -- a rerun of the Great Depression leading to world war, as it were. Now, as global economic news brightens and recovery -- surprisingly led by China and emerging markets -- is the talk of the day, it's interesting to look back over the past year and realize how globalization's first truly worldwide recession has had virtually no impact whatsoever on the international security landscape. None of the more than three-dozen ongoing conflicts listed by GlobalSecurity.org can be clearly attributed to the global recession. Indeed, the last new entry (civil conflict between Hamas and Fatah in the Palestine) predates the economic crisis by a year, and three quarters of the chronic struggles began in the last century. Ditto for the 15 low-intensity conflicts listed by Wikipedia (where the latest entry is the Mexican "drug war" begun in 2006). Certainly, the Russia-Georgia conflict last August was specifically timed, but by most accounts the opening ceremony of the Beijing Olympics was the most important external trigger (followed by the U.S. presidential campaign) for that sudden spike in an almost two-decade long struggle between Georgia and its two breakaway regions. Looking over the various databases, then, we see a most familiar picture: the usual mix of civil conflicts, insurgencies, and liberation-themed terrorist movements. Besides the recent Russia-Georgia dust-up, the only two potential state-on-state wars (North v. South Korea, Israel v. Iran) are both tied to one side acquiring a nuclear weapon capacity -- a process wholly unrelated to global economic trends. And with the United States effectively tied down by its two ongoing major interventions (Iraq and Afghanistan-bleeding-into-Pakistan), our involvement elsewhere around the planet has been quite modest, both leading up to and following the onset of the economic crisis: e.g., the usual counter-drug efforts in Latin America, the usual military exercises with allies across Asia, mixing it up with pirates off Somalia's coast). Everywhere else we find serious instability we pretty much let it burn, occasionally pressing the Chinese -- unsuccessfully -- to do something. Our new Africa Command, for example, hasn't led us to anything beyond advising and training local forces. So, to sum up: \*No significant uptick in mass violence or unrest (remember the smattering of urban riots last year in places like Greece, Moldova and Latvia?); \*The usual frequency maintained in civil conflicts (in all the usual places); \*Not a single state-on-state war directly caused (and no great-power-on-great-power crises even triggered); \*No great improvement or disruption in great-power cooperation regarding the emergence of new nuclear powers (despite all that diplomacy); \*A modest scaling back of international policing efforts by the system's acknowledged Leviathan power (inevitable given the strain); and \*No serious efforts by any rising great power to challenge that Leviathan or supplant its role. (The worst things we can cite are Moscow's occasional deployments of strategic assets to the Western hemisphere and its weak efforts to outbid the United States on basing rights in Kyrgyzstan; but the best include China and India stepping up their aid and investments in Afghanistan and Iraq.) Sure, we've finally seen global defense spending surpass the previous world record set in the late 1980s, but even that's likely to wane given the stress on public budgets created by all this unprecedented "stimulus" spending. If anything, the friendly cooperation on such stimulus packaging was the most notable great-power dynamic caused by the crisis. Can we say that the world has suffered a distinct shift to political radicalism as a result of the economic crisis? Indeed, no. The world's major economies remain governed by center-left or center-right political factions that remain decidedly friendly to both markets and trade. In the short run, there were attempts across the board to insulate economies from immediate damage (in effect, as much protectionism as allowed under current trade rules), but there was no great slide into "trade wars." Instead, the World Trade Organization is functioning as it was designed to function, and regional efforts toward free-trade agreements have not slowed. Can we say Islamic radicalism was inflamed by the economic crisis? If it was, that shift was clearly overwhelmed by the Islamic world's growing disenchantment with the brutality displayed by violent extremist groups such as al-Qaida. And looking forward, austere economic times are just as likely to breed connecting evangelicalism as disconnecting fundamentalism. At the end of the day, the economic crisis did not prove to be sufficiently frightening to provoke major economies into establishing global regulatory schemes, even as it has sparked a spirited -- and much needed, as I argued last week -- discussion of the continuing viability of the U.S. dollar as the world's primary reserve currency. Naturally, plenty of experts and pundits have attached great significance to this debate, seeing in it the beginning of "economic warfare" and the like between "fading" America and "rising" China. And yet, in a world of globally integrated production chains and interconnected financial markets, such "diverging interests" hardly constitute signposts for wars up ahead. Frankly, I don't welcome a world in which America's fiscal profligacy goes undisciplined, so bring it on -- please! Add it all up and it's fair to say that this global financial crisis has proven the great resilience of America's post-World War II international liberal trade order. Do I expect to read any analyses along those lines in the blogosphere any time soon? Absolutely not. I expect the fantastic fear-mongering to proceed apace. That's what the Internet is for.

#### No agenda – NSA reform, unemployment benefits, and healthcare thump.

Rogers, 1-16-’14 (Alex, “Don’t Be Fooled, It’s Gridlock Time in Washington” http://swampland.time.com/2014/01/16/dont-be-fooled-its-gridlock-time-in-washington/)

Get ready for gridlock. Despite the passage Thursday of a massive budget bill to fund the government, Congress is unlikely to pass any other major piece of legislation this year—with the possible exception of a long overdue farm bill. Reforms to immigration policy, the National Security Agency and the health care reform law have been, and will remain, under the purview of the White House. President Barack Obama‘s so-called “year of action” will take place, if anywhere, solely in the realm of the executive branch. Run down the list of issues, and the cause for pessimism is clear. The Senate last year passed comprehensive immigration reform with the support of 14 Republicans, establishing a 13-year pathway to citizenship for millions for immigrants in the country illegally. But the measure remains dead in the House—the GOP majority will release a set of principles this year, but as National Journal reports, “it will not include any concrete proposal.” A Republican member from Texas spoke up at the party’s weekly luncheon Tuesday only to declare that it was his favorite meeting yet because no one mentioned immigration, a House aide present told TIME. The immigration reform effort has turned from policy to politics, with Republicans feeling little urgency to pass anything before the midterm elections, even as party leaders fret about another presidential race with Hispanics voting in droves against their party. “There is no good time to do it,” Rep. Mike Simpson (R-Idaho) says. “It’s tough no matter when you do it.” Meanwhile, Obama is set to announce executive actions Friday to reform the NSA, Rep. Adam Schiff (D-Calif.) says, and call on Congress to do the rest. “Many of us are going to be working to do exactly that, but it won’t be easy,” says Schiff, who participated in a meeting with Obama on the issue last week. “[With] our track record, if you were a betting man, you’d have to bet against us.” Possible reforms include the creation of a public advocate to represent privacy concerns in the secret Foreign Intelligence Surveillance Court and new, increased limits on the NSA’s access to bulk telephone data. But Congress is unlikely to make either change, which privacy advocates say don’t go far enough. And although reforming aspects of the Affordable Care Act remains a focus for many lawmakers—last week almost 70 Democrats supported a bill that would alert users of breaches involving their personal data—the issue is too toxic on Capitol Hill for any serious movement, especially with the Administration continuing to give Democrats cover by granting exemptions and deadline extensions as it sees fit. “I don’t know what we’re going to do on Obamacare,” Simpson says. “I don’t know what we can do, we’ve tried just about everything.” Even the first high-profile legislative fight of the year, extending emergency unemployment insurance—which has the support of the President and the Senate—has faltered. Democrats claim to have a winning issue on their hands, with more than one million Americans losing their benefits, but most Republicans so far aren’t feeling the political pain. “At this point the Senate seems to appear incapable of passing anything and the President hasn’t proposed anything,” Rep. Tim Price (R-Ga.) says. The lone bright spot is the farm bill. Rep. Colin Peterson (D-Minn.) told reporters Thursday that his intention is to get a bill drafted by next week. Historically, the bill has been easily renewed, but the last five-year measure was passed in 2008. This year the hurdles include dairy price supports, catfish inspection jurisdiction, and a controversial amendment that forbids states from imposing agricultural standards, such as California’s barring of eggs from states that allow their farmers to pen hens in tiny cages. But even as the two sides appear to be coming together, some remain anxious that things could fall apart. As one Senate Democratic leadership aide put to TIME: “In this environment, I don’t think anything is a safe bet.” “I don’t think we’re going to be able to generate the kind of trust that you need for the majority of people to look to the government to solve the major problems,” says Rep. Jim Moran (D-Va.), who is retiring this year after 24 years in office. “You probably have at least as good, probably better, shot at making a difference outside the institution than within it today.” When asked what other bipartisan compromises can be expected after the budget bill passed, Senate Minority Whip John Cornyn (R-Texas) laughed before nodding to the must-pass increase of the debt ceiling: “It’s hard to see a whole lot else being done.”

#### XOs solve Obama’s agenda

Mason, 1-14-’14 (Jeff, “Obama: Won't wait for legislation to advance 2014 priorities” Reuters, http://www.reuters.com/article/2014/01/14/us-usa-obama-priorities-idUSBREA0D11620140114)

President Barack Obama said on Tuesday he would not wait for Congress to pass legislation to advance his policy priorities this year and said he was "getting close" to finishing a review of U.S. surveillance practices - to be unveiled on Friday. Obama, speaking to reporters during a cabinet meeting at the White House, foreshadowed his upcoming State of the Union address and what appeared to be a new messaging strategy by emphasizing his ability to take executive actions without approval from lawmakers. "We are not just going to be waiting for legislation in order to make sure that we're providing Americans the kind of help that they need," he said. "I've got a pen, and I've got a phone. And I can use that pen to sign executive orders and take executive actions ... and I've got a phone that allows me to convene Americans from every walk of life," he said. Obama began last year with high hopes of making progress on gun control, immigration reform, and other issues after giving an inaugural address that rallied his base and set an aggressive tone for his second term. But the year concluded with few legislative achievements. His gun control efforts largely failed and an immigration reform bill passed in the Senate but stalled in the House of Representatives.

#### Won’t pass – Boehner, election, and secrecy trump

Alan Guebert 1/17 Go slow on the bull muscatinejournal.com/business/go-slow-on-the-bull/article\_da40017d-3b1d-55f6-a477-99c42589cb20.html

It’s an effective argument. House Speaker John Boehner has publicly warned the Obama Administration that fast track is a dead duck on Capitol Hill should the White House walk it down Pennsylvania Avenue. But the fast track question is foreshadowing a much bigger question: Will Congress pass the secretly negotiated Trans-Pacific Partnership when it’s brought forward sometime after the November 2014 election? TPP supporters, and count almost every major farm and commodity group in that number, claim it’s a critical step forward to move U.S. goods into nations—principally Japan—that are tough, high tariff markets. Detractors counter by describing TPP as tool of “corporate trade,” not “free trade.” That judgment is based on TPP negotiation documents leaked last December that they claim grants “radical new political powers to corporations,” would increase global drug costs and “restricts bank regulation.” Both views skate on thin ice. The former is an article of free trade faith; the latter arrives on leaked evidence. (Secrecy rules all TPP talks; even most Congressional staffers are barred from viewing negotiation documents.) Faith is a good thing in religion but less so in trade talks. Until someone somewhere—in Congress, at a Land Grant university, in any farm group—actually reads a completed TPP deal, no one anywhere should blindly endorse it. Besides, you wouldn’t buy a bull without knowing something about it. So why is everyone in such a hurry to buy this bull sight unseen

**No TPA – Congressional opposition**

**Chicago Tribune 12/30**

Obama needs fast-track trade authority, 12/30/13, http://articles.chicagotribune.com/2013-12-30/opinion/ct-give-obama-tpa-fast-track-trade-edit-1230-jm-20131230\_1\_trade-deals-trade-promotion-authority-tpa

Many Democrats oppose free trade, on the misguided theory that fair and open competition hurts American workers. In fact, opening markets abroad helps America's economy grow and create the jobs it desperately needs. Nevertheless, lawmakers have been declaring their opposition in a flurry of recent letters. Last month, 151 House Democrats pledged to stand against their party's president and thwart his efforts to secure TPA.¶ Just as disappointing, 22 House Republicans also declared their opposition. Some hail from union-dominated districts that want to preserve an inefficient status quo. Some simply don't trust the White House. In their letter, they claim that TPA flouts the Constitution by ceding legislative power to the executive branch.

**Obama not spending PC**

**Chicago Tribune 12/30**

Obama needs fast-track trade authority, 12/30/13, http://articles.chicagotribune.com/2013-12-30/opinion/ct-give-obama-tpa-fast-track-trade-edit-1230-jm-20131230\_1\_trade-deals-trade-promotion-authority-tpa

The president made no push for TPA in his first four years. Recently, he has spoken out about the need for it. But **he has not twisted arms on Capitol Hill**. If TPA is the high priority that it should be for his administration, Obama needs to demand it from members of both parties. Along with immigration reform, free-trade deals could be Obama's best hope for a positive legacy in his second term.

**EU says “no”**

**Meacham 7/25**

Carl Meacham is the director of the Americas Program at the Center for Strategic and International Studies (CSIS) in Washington, D.C. Tania Miranda, intern scholar with the CSIS Americas Program, provided research assistance. “The Trans-Atlantic Trade and Investment Partnership: Mexico Wants In—Why Not?” JUL 25, 2013

http://csis.org/publication/trans-atlantic-trade-and-investment-partnership-mexico-wants-why-not

Yet, while Mexico is a member of the North American Free Trade Agreement (NAFTA), remains among the United States' top three trade partners, and already has an FTA with the European Union to build upon, it remains on the negotiating sidelines. And in recent talks at CSIS, including by the National Security Council’s Latin America head as well as the EU’s manager for the Americas, there does not appear to be much interest in including Mexico in talks that are, admittedly, already complex.

**Aff is popular**

**Sibilla, 12** – Nick "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.

#### Forcing controversial fights key to Obama’s agenda- try or die for the link turn

Dickerson 13 (John, Slate, Go for the Throat!, 1/18 www.slate.com/articles/news\_and\_politics/politics/2013/01/barack\_obama\_s\_second\_inaugural\_address\_the\_president\_should\_declare\_war.single.html)

On Monday, President Obama will preside over the grand reopening of his administration. It would be altogether fitting if he stepped to the microphone, looked down the mall, and let out a sigh: so many people expecting so much from a government that appears capable of so little. A second inaugural suggests new beginnings, but this one is being bookended by dead-end debates. Gridlock over the fiscal cliff preceded it and gridlock over the debt limit, sequester, and budget will follow. After the election, the same people are in power in all the branches of government and they don't get along. There's no indication that the president's clashes with House Republicans will end soon. Inaugural speeches are supposed to be huge and stirring. Presidents haul our heroes onstage, from George Washington to Martin Luther King Jr. George W. Bush brought the Liberty Bell. They use history to make greatness and achievements seem like something you can just take down from the shelf. Americans are not stuck in the rut of the day. But this might be too much for Obama’s second inaugural address: After the last four years, how do you call the nation and its elected representatives to common action while standing on the steps of a building where collective action goes to die? That bipartisan bag of tricks has been tried and it didn’t work. People don’t believe it. Congress' approval rating is 14 percent, the lowest in history. In a December Gallup poll, 77 percent of those asked said the way Washington works is doing “serious harm” to the country. The challenge for President Obama’s speech is the challenge of his second term: how to be great when the environment stinks. Enhancing the president’s legacy requires something more than simply the clever application of predictable stratagems. Washington’s partisan rancor, the size of the problems facing government, and the limited amount of time before Obama is a lame duck all point to a single conclusion: The president who came into office speaking in lofty terms about bipartisanship and cooperation can only cement his legacy if he destroys the GOP. If he wants to transform American politics, he must go for the throat. President Obama could, of course, resign himself to tending to the achievements of his first term. He'd make sure health care reform is implemented, nurse the economy back to health, and put the military on a new footing after two wars. But he's more ambitious than that. He ran for president as a one-term senator with no executive experience. In his first term, he pushed for the biggest overhaul of health care possible because, as he told his aides, he wanted to make history. He may already have made it. There's no question that he is already a president of consequence. But there's no sign he's content to ride out the second half of the game in the Barcalounger. He is approaching gun control, climate change, and immigration with wide and excited eyes. He's not going for caretaker. How should the president proceed then, if he wants to be bold? The Barack Obama of the first administration might have approached the task by finding some Republicans to deal with and then start agreeing to some of their demands in hope that he would win some of their votes. It's the traditional approach. Perhaps he could add a good deal more schmoozing with lawmakers, too. That's the old way. He has abandoned that. He doesn't think it will work and he doesn't have the time. As Obama explained in his last press conference, he thinks the Republicans are dead set on opposing him. They cannot be unchained by schmoozing. Even if Obama were wrong about Republican intransigence, other constraints will limit the chance for cooperation. Republican lawmakers worried about primary challenges in 2014 are not going to be willing partners. He probably has at most 18 months before people start dropping the lame-duck label in close proximity to his name. Obama’s only remaining option is to pulverize. Whether he succeeds in passing legislation or not, given his ambitions, his goal should be to delegitimize his opponents. Through a series of clarifying fights over controversial issues, he can force Republicans to either side with their coalition's most extreme elements or cause a rift in the party that will leave it, at least temporarily, in disarray.

#### Intrinsicness - Logical policy votes to do both

#### non link uniqueness and Obama won’t push- Obama aids have been pushing plan relentlessly

Klaidman, 7/31 (Daniel, national political correspondent for Newsweek and The Daily Beast and the author of [Kill or Capture: The War on Terror and the Soul of the Obama Presidency](http://www.amazon.com/Kill-Capture-Terror-Obama-Presidency/dp/0547547897/ref=as_at?tag=thedailybeast-autotag-20&linkCode=as2&), “Obama’s Secret Gitmo plan” Newsweek. Web, Acc 8/31/2013)

Ever since Obama vowed to “go back at” the Guantánamo challenge in a major national security policy address in May, his aides have gamely thrown themselves into the effort. There is more White House activity swirling around Gitmo now than there has been in three years. Numerous people are working on the project, either part time or full time, under the leadership of Lisa Monaco, Obama’s chief counterterrorism adviser. White House lobbyists have been all over Capitol Hill, meeting with members of Congress. And yet, despite all this, Obama aides quietly admit that unless the political climate changes dramatically, Guantánamo will likely be open for business for many years to come.

#### Vote no – plans introduction in this debate is its introduction in Congress

#### Aff gets McCain on board – he sees it a specific plan.

Hunt, 7/28 (Albert, “McCain Goes Maverick Again as Obama’s Republican Ally. Bloomberg View. Web, Acc 8/19/2013. http://www.bloomberg.com/news/2013-07-28/mccain-goes-maverick-again-as-obama-s-republican-ally.html

McCain also wants to help Obama fulfill his promise to close the detainee camp for terrorism suspects at Guantanamo Bay, Cuba. He says political conditions are much different than they were four years ago when there was a similar effort.¶ “The difference between 2009 and 2013 is the administration now has a plan,” he says.¶ Closing Guantanamo¶ Last month, the five-term senator traveled to Guantanamo with Senate Intelligence Committee Chairman [Dianne Feinstein](http://topics.bloomberg.com/dianne-feinstein/) and the White House chief of staff, [Denis McDonough](http://topics.bloomberg.com/denis-mcdonough/).¶ McDonough, who McCain knew as a mid-level aide to former Democratic Senate Leader Tom Daschle, is a glue that binds the Republican and the administration. He and McCain talk as often as five times a day. In addition, the Republican senator has a great fondness for Vice President [Joe Biden](http://topics.bloomberg.com/joe-biden/), a good working relationship with Secretary of State [John Kerry](http://topics.bloomberg.com/john-kerry/) and is a fan of United Nations Ambassador-designate Samantha Power.

#### McCain is key to getting GOP on board for the agenda – especially for immigration

Hunt, 7/28 (Albert, “McCain Goes Maverick Again as Obama’s Republican Ally. Bloomberg View. Web, Acc 8/19/2013. http://www.bloomberg.com/news/2013-07-28/mccain-goes-maverick-again-as-obama-s-republican-ally.html

The association between Obama and McCain is different. But it may be Washington’s most important since Reagan and O’Neill.¶ McCain, 76, whose political resiliency is rivaled only by such luminaries as [Bill Clinton](http://topics.bloomberg.com/bill-clinton/) and [Richard Nixon](http://topics.bloomberg.com/richard-nixon/), is the most pivotal figure in the Senate today. He often is more central than the party leaders, [Mitch McConnell](http://topics.bloomberg.com/mitch-mcconnell/), the Kentucky Republican, or [Harry Reid](http://topics.bloomberg.com/harry-reid/), a Nevada Democrat, or the self-styled new power broker, the New York Democrat Chuck Schumer.¶ When McCain is with the president -- on immigration and in brokering the recent deal to secure Senate approval of stalled Obama nominees -- they usually can trump the political right. When he’s against him -- sabotaging Obama’s plan last year to nominate [Susan Rice](http://topics.bloomberg.com/susan-rice/) as secretary of state -- the White House rarely prevails.

#### Feinstein is on board with the plan and no link - plan get’s bundled with 2014 defense authorization bill

Feinstein and Durbin, 8/14 (Dianne and Dick, United States Senators. “How to close Gitmo.” Los Angeles Times. Web, Acc at <http://www.latimes.com/news/opinion/la-oe-feinstein-durbin-close-gitmo-20130814,0,432429.story>

The 2014 [Senate](http://www.latimes.com/topic/politics/government/u.s.-senate-ORGOV0000134.topic) defense authorization bill will come up for debate on the Senate floor this fall. Congress must pass the provisions that streamline procedures for transferring detainees abroad and allow transfers to the U.S. for trial or detention under international law until the end of hostilities.¶ As chairwoman of the [Senate Intelligence Committee](http://www.latimes.com/topic/politics/espionage-intelligence/u.s.-senate-select-committee-on-intelligence-ORGOV000350.topic) and chairman of the defense appropriations subcommittee, respectively, we are committed to preventing terrorist attacks. We believe terrorists deserve swift and sure justice, and severe prison sentences. But holding detainees on an island off U.S. shores for years — without charge — is an abomination. It is not an effective administration of justice, does not serve our national security interests and is not consistent with our country's history as a champion of human rights.¶ It is time to close Guantanamo.

#### She’s key to getting GOP votes for his agenda

**SF Gate 12** (“Dianne Feinstein: 4 decades of influence”, <http://www.sfgate.com/politics/article/Dianne-Feinstein-4-decades-of-influence-3968314.php>)

She revels in split-the-baby deal making: "I think my greatest strength is finding a solution when there are opposing sides." It was Feinstein, an ally of [Hillary Rodham Clinton](http://www.sfgate.com/?controllerName=search&action=search&channel=politics&search=1&inlineLink=1&query=%22Hillary+Rodham+Clinton%22) against Barack [Obama](http://www.sfgate.com/barack-obama/) in the 2008 Democratic presidential primary, who brought the warring candidates to a secret rendezvous at her Washington home to bury the hatchet in private. In a chamber riven by partisanship, **Republicans like and respect her.** "She thinks through issues and makes what she thinks is a rational and correct decision," said Sen. Saxby Chambliss, R-Ga., the top Republican on the Intelligence Committee. "Unfortunately t**here are some Republicans who, if it's a Democratic idea, immediately jump up and they're opposed to it,** and that happens on the other side of the aisle too. **But with Dianne, that does not happen."** '

1. Political capital is fabricated- you can’t predict momentum or uplanned events. There’s only a risk the plan is a win.

Hirsh, Chief Correspondent National Journal, 2-7-’13 (Michael, “There’s No Such Thing as Political Capital” National Journal, http://www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207)

On Tuesday, in his State of the Union address, President Obama will do what every president does this time of year. For about 60 minutes, he will lay out a sprawling and ambitious wish list highlighted by gun control and immigration reform, climate change and debt reduction. In response, the pundits will do what they always do this time of year: They will talk about how unrealistic most of the proposals are, discussions often informed by sagacious reckonings of how much “political capital” Obama possesses to push his program through.¶ Most of this talk will have no bearing on what actually happens over the next four years.¶ Consider this: Three months ago, just before the November election, if someone had talked seriously about Obama having enough political capital to oversee passage of both immigration reform and gun-control legislation at the beginning of his second term—even after winning the election by 4 percentage points and 5 million votes (the actual final tally)—this person would have been called crazy and stripped of his pundit’s license. (It doesn’t exist, but it ought to.) In his first term, in a starkly polarized country, the president had been so frustrated by GOP resistance that he finally issued a limited executive order last August permitting immigrants who entered the country illegally as children to work without fear of deportation for at least two years. Obama didn’t dare to even bring up gun control, a Democratic “third rail” that has cost the party elections and that actually might have been even less popular on the right than the president’s health care law. And yet, for reasons that have very little to do with Obama’s personal prestige or popularity—variously put in terms of a “mandate” or “political capital”—chances are fair that both will now happen.¶ What changed? In the case of gun control, of course, it wasn’t the election. It was the horror of the 20 first-graders who were slaughtered in Newtown, Conn., in mid-December. The sickening reality of little girls and boys riddled with bullets from a high-capacity assault weapon seemed to precipitate a sudden tipping point in the national conscience. One thing changed after another. Wayne LaPierre of the National Rifle Association marginalized himself with poorly chosen comments soon after the massacre. The pro-gun lobby, once a phalanx of opposition, began to fissure into reasonables and crazies. Former Rep. Gabrielle Giffords, D-Ariz., who was shot in the head two years ago and is still struggling to speak and walk, started a PAC with her husband to appeal to the moderate middle of gun owners. Then she gave riveting and poignant testimony to the Senate, challenging lawmakers: “Be bold.”¶ As a result, momentum has appeared to build around some kind of a plan to curtail sales of the most dangerous weapons and ammunition and the way people are permitted to buy them. It’s impossible to say now whether such a bill will pass and, if it does, whether it will make anything more than cosmetic changes to gun laws. But one thing is clear: The political tectonics have shifted dramatically in very little time. Whole new possibilities exist now that didn’t a few weeks ago.¶ Meanwhile, the Republican members of the Senate’s so-called Gang of Eight are pushing hard for a new spirit of compromise on immigration reform, a sharp change after an election year in which the GOP standard-bearer declared he would make life so miserable for the 11 million illegal immigrants in the U.S. that they would “self-deport.” But this turnaround has very little to do with Obama’s personal influence—his political mandate, as it were. It has almost entirely to do with just two numbers: 71 and 27. That’s 71 percent for Obama, 27 percent for Mitt Romney, the breakdown of the Hispanic vote in the 2012 presidential election. Obama drove home his advantage by giving a speech on immigration reform on Jan. 29 at a Hispanic-dominated high school in Nevada, a swing state he won by a surprising 8 percentage points in November. But the movement on immigration has mainly come out of the Republican Party’s recent introspection, and the realization by its more thoughtful members, such as Sen. Marco Rubio of Florida and Gov. Bobby Jindal of Louisiana, that without such a shift the party may be facing demographic death in a country where the 2010 census showed, for the first time, that white births have fallen into the minority. It’s got nothing to do with Obama’s political capital or, indeed, Obama at all.¶ The point is not that “political capital” is a meaningless term. Often it is a synonym for “mandate” or “momentum” in the aftermath of a decisive election—and just about every politician ever elected has tried to claim more of a mandate than he actually has. Certainly, Obama can say that because he was elected and Romney wasn’t, he has a better claim on the country’s mood and direction. Many pundits still defend political capital as a useful metaphor at least. “It’s an unquantifiable but meaningful concept,” says Norman Ornstein of the American Enterprise Institute. “You can’t really look at a president and say he’s got 37 ounces of political capital. But the fact is, it’s a concept that matters, if you have popularity and some momentum on your side.”¶ The real problem is that the idea of political capital—or mandates, or momentum—is so poorly defined that presidents and pundits often get it wrong. “Presidents usually over-estimate it,” says George Edwards, a presidential scholar at Texas A&M University. “The best kind of political capital—some sense of an electoral mandate to do something—is very rare. It almost never happens. In 1964, maybe. And to some degree in 1980.” For that reason, political capital is a concept that misleads far more than it enlightens. It is distortionary. It conveys the idea that we know more than we really do about the ever-elusive concept of political power, and it discounts the way unforeseen events can suddenly change everything. Instead, it suggests, erroneously, that a political figure has a concrete amount of political capital to invest, just as someone might have real investment capital—that a particular leader can bank his gains, and the size of his account determines what he can do at any given moment in history.¶ Naturally, any president has practical and electoral limits. Does he have a majority in both chambers of Congress and a cohesive coalition behind him? Obama has neither at present. And unless a surge in the economy—at the moment, still stuck—or some other great victory gives him more momentum, it is inevitable that the closer Obama gets to the 2014 election, the less he will be able to get done. Going into the midterms, Republicans will increasingly avoid any concessions that make him (and the Democrats) stronger.¶ But the abrupt emergence of the immigration and gun-control issues illustrates how suddenly shifts in mood can occur and how political interests can align in new ways just as suddenly. Indeed, the pseudo-concept of political capital masks a larger truth about Washington that is kindergarten simple: You just don’t know what you can do until you try. Or as Ornstein himself once wrote years ago, “Winning wins.” In theory, and in practice, depending on Obama’s handling of any particular issue, even in a polarized time, he could still deliver on a lot of his second-term goals, depending on his skill and the breaks. Unforeseen catalysts can appear, like Newtown. Epiphanies can dawn, such as when many Republican Party leaders suddenly woke up in panic to the huge disparity in the Hispanic vote.¶ Some political scientists who study the elusive calculus of how to pass legislation and run successful presidencies say that political capital is, at best, an empty concept, and that almost nothing in the academic literature successfully quantifies or even defines it. “It can refer to a very abstract thing, like a president’s popularity, but there’s no mechanism there. That makes it kind of useless,” says Richard Bensel, a government professor at Cornell University. Even Ornstein concedes that the calculus is far more complex than the term suggests. Winning on one issue often changes the calculation for the next issue; there is never any known amount of capital. “The idea here is, if an issue comes up where the conventional wisdom is that president is not going to get what he wants, and he gets it, then each time that happens, it changes the calculus of the other actors” Ornstein says. “If they think he’s going to win, they may change positions to get on the winning side. It’s a bandwagon effect.”¶ ALL THE WAY WITH LBJ¶ Sometimes, a clever practitioner of power can get more done just because he’s aggressive and knows the hallways of Congress well. Texas A&M’s Edwards is right to say that the outcome of the 1964 election, Lyndon Johnson’s landslide victory over Barry Goldwater, was one of the few that conveyed a mandate. But one of the main reasons for that mandate (in addition to Goldwater’s ineptitude as a candidate) was President Johnson’s masterful use of power leading up to that election, and his ability to get far more done than anyone thought possible, given his limited political capital. In the newest volume in his exhaustive study of LBJ, The Passage of Power, historian Robert Caro recalls Johnson getting cautionary advice after he assumed the presidency from the assassinated John F. Kennedy in late 1963. Don’t focus on a long-stalled civil-rights bill, advisers told him, because it might jeopardize Southern lawmakers’ support for a tax cut and appropriations bills the president needed. “One of the wise, practical people around the table [said that] the presidency has only a certain amount of coinage to expend, and you oughtn’t to expend it on this,” Caro writes. (Coinage, of course, was what political capital was called in those days.) Johnson replied, “Well, what the hell’s the presidency for?”¶ Johnson didn’t worry about coinage, and he got the Civil Rights Act enacted, along with much else: Medicare, a tax cut, antipoverty programs. He appeared to understand not just the ways of Congress but also the way to maximize the momentum he possessed in the lingering mood of national grief and determination by picking the right issues, as Caro records. “Momentum is not a mysterious mistress,” LBJ said. “It is a controllable fact of political life.” Johnson had the skill and wherewithal to realize that, at that moment of history, he could have unlimited coinage if he handled the politics right. He did. (At least until Vietnam, that is.)¶ And then there are the presidents who get the politics, and the issues, wrong. It was the last president before Obama who was just starting a second term, George W. Bush, who really revived the claim of political capital, which he was very fond of wielding. Then Bush promptly demonstrated that he didn’t fully understand the concept either.¶ At his first news conference after his 2004 victory, a confident-sounding Bush declared, “I earned capital in the campaign, political capital, and now I intend to spend it. That’s my style.” The 43rd president threw all of his political capital at an overriding passion: the partial privatization of Social Security. He mounted a full-bore public-relations campaign that included town-hall meetings across the country.¶ Bush failed utterly, of course. But the problem was not that he didn’t have enough political capital. Yes, he may have overestimated his standing. Bush’s margin over John Kerry was thin—helped along by a bumbling Kerry campaign that was almost the mirror image of Romney’s gaffe-filled failure this time—but that was not the real mistake. The problem was that whatever credibility or stature Bush thought he had earned as a newly reelected president did nothing to make Social Security privatization a better idea in most people’s eyes. Voters didn’t trust the plan, and four years later, at the end of Bush’s term, the stock-market collapse bore out the public’s skepticism. Privatization just didn’t have any momentum behind it, no matter who was pushing it or how much capital Bush spent to sell it.¶ The mistake that Bush made with Social Security, says John Sides, an associate professor of political science at George Washington University and a well-followed political blogger, “was that just because he won an election, he thought he had a green light. But there was no sense of any kind of public urgency on Social Security reform. It’s like he went into the garage where various Republican policy ideas were hanging up and picked one. I don’t think Obama’s going to make that mistake.… Bush decided he wanted to push a rock up a hill. He didn’t understand how steep the hill was. I think Obama has more momentum on his side because of the Republican Party’s concerns about the Latino vote and the shooting at Newtown.” Obama may also get his way on the debt ceiling, not because of his reelection, Sides says, “but because Republicans are beginning to doubt whether taking a hard line on fiscal policy is a good idea,” as the party suffers in the polls.¶ THE REAL LIMITS ON POWER¶ Presidents are limited in what they can do by time and attention span, of course, just as much as they are by electoral balances in the House and Senate. But this, too, has nothing to do with political capital. Another well-worn meme of recent years was that Obama used up too much political capital passing the health care law in his first term. But the real problem was that the plan was unpopular, the economy was bad, and the president didn’t realize that the national mood (yes, again, the national mood) was at a tipping point against big-government intervention, with the tea-party revolt about to burst on the scene. For Americans in 2009 and 2010—haunted by too many rounds of layoffs, appalled by the Wall Street bailout, aghast at the amount of federal spending that never seemed to find its way into their pockets—government-imposed health care coverage was simply an intervention too far. So was the idea of another economic stimulus. Cue the tea party and what ensued: two titanic fights over the debt ceiling. Obama, like Bush, had settled on pushing an issue that was out of sync with the country’s mood.¶ Unlike Bush, Obama did ultimately get his idea passed. But the bigger political problem with health care reform was that it distracted the government’s attention from other issues that people cared about more urgently, such as the need to jump-start the economy and financial reform. Various congressional staffers told me at the time that their bosses didn’t really have the time to understand how the Wall Street lobby was riddling the Dodd-Frank financial-reform legislation with loopholes. Health care was sucking all the oxygen out of the room, the aides said.¶ Weighing the imponderables of momentum, the often-mystical calculations about when the historic moment is ripe for an issue, will never be a science. It is mainly intuition, and its best practitioners have a long history in American politics. This is a tale told well in Steven Spielberg’s hit movie Lincoln. Daniel Day-Lewis’s Abraham Lincoln attempts a lot of behind-the-scenes vote-buying to win passage of the 13th Amendment, banning slavery, along with eloquent attempts to move people’s hearts and minds. He appears to be using the political capital of his reelection and the turning of the tide in the Civil War. But it’s clear that a surge of conscience, a sense of the changing times, has as much to do with the final vote as all the backroom horse-trading. “The reason I think the idea of political capital is kind of distorting is that it implies you have chits you can give out to people. It really oversimplifies why you elect politicians, or why they can do what Lincoln did,” says Tommy Bruce, a former political consultant in Washington.¶ Consider, as another example, the storied political career of President Franklin Roosevelt. Because the mood was ripe for dramatic change in the depths of the Great Depression, FDR was able to push an astonishing array of New Deal programs through a largely compliant Congress, assuming what some described as near-dictatorial powers. But in his second term, full of confidence because of a landslide victory in 1936 that brought in unprecedented Democratic majorities in the House and Senate, Roosevelt overreached with his infamous Court-packing proposal. All of a sudden, the political capital that experts thought was limitless disappeared. FDR’s plan to expand the Supreme Court by putting in his judicial allies abruptly created an unanticipated wall of opposition from newly reunited Republicans and conservative Southern Democrats. FDR thus inadvertently handed back to Congress, especially to the Senate, the power and influence he had seized in his first term. Sure, Roosevelt had loads of popularity and momentum in 1937. He seemed to have a bank vault full of political capital. But, once again, a president simply chose to take on the wrong issue at the wrong time; this time, instead of most of the political interests in the country aligning his way, they opposed him. Roosevelt didn’t fully recover until World War II, despite two more election victories.¶ In terms of Obama’s second-term agenda, what all these shifting tides of momentum and political calculation mean is this: Anything goes. Obama has no more elections to win, and he needs to worry only about the support he will have in the House and Senate after 2014. But if he picks issues that the country’s mood will support—such as, perhaps, immigration reform and gun control—there is no reason to think he can’t win far more victories than any of the careful calculators of political capital now believe is possible, including battles over tax reform and deficit reduction.¶ Amid today’s atmosphere of Republican self-doubt, a new, more mature Obama seems to be emerging, one who has his agenda clearly in mind and will ride the mood of the country more adroitly. If he can get some early wins—as he already has, apparently, on the fiscal cliff and the upper-income tax increase—that will create momentum, and one win may well lead to others. “Winning wins.”¶ Obama himself learned some hard lessons over the past four years about the falsity of the political-capital concept. Despite his decisive victory over John McCain in 2008, he fumbled the selling of his $787 billion stimulus plan by portraying himself naively as a “post-partisan” president who somehow had been given the electoral mandate to be all things to all people. So Obama tried to sell his stimulus as a long-term restructuring plan that would “lay the groundwork for long-term economic growth.” The president thus fed GOP suspicions that he was just another big-government liberal. Had he understood better that the country was digging in against yet more government intervention and had sold the stimulus as what it mainly was—a giant shot of adrenalin to an economy with a stopped heart, a pure emergency measure—he might well have escaped the worst of the backlash. But by laying on ambitious programs, and following up quickly with his health care plan, he only sealed his reputation on the right as a closet socialist.¶ After that, Obama’s public posturing provoked automatic opposition from the GOP, no matter what he said. If the president put his personal imprimatur on any plan—from deficit reduction, to health care, to immigration reform—Republicans were virtually guaranteed to come out against it. But this year, when he sought to exploit the chastened GOP’s newfound willingness to compromise on immigration, his approach was different. He seemed to understand that the Republicans needed to reclaim immigration reform as their own issue, and he was willing to let them have some credit. When he mounted his bully pulpit in Nevada, he delivered another new message as well: You Republicans don’t have to listen to what I say anymore. And don’t worry about who’s got the political capital. Just take a hard look at where I’m saying this: in a state you were supposed to have won but lost because of the rising Hispanic vote.¶ Obama was cleverly pointing the GOP toward conclusions that he knows it is already reaching on its own: If you, the Republicans, want to have any kind of a future in a vastly changed electoral map, you have no choice but to move. It’s your choice.¶ The future is wide open.

## Solvency

#### Ev says Libya and Syria and drones

#### No circumvention – the President would use the NSC

Harvey Rishikof 8, Professor of Law and Former Chair of the Department of National Security Strategy at the National War College and Kevin E Lunday, Captain and judge advocate in the US Coast Guard, "Due Process Is a Strategic Choice: Legitimacy and the Establishment of an Article III National Security Court", December 19, www.cwsl.edu/content/journals/Rishikof.pdf

The primary triggering mechanism for establishing NSC jurisdiction would fall within the discretion and control of the Attorney General. Through certification and charging provisions, the Attorney General could invoke NSC jurisdiction by certifying that persons in custody inside the United States are suspected of terrorist activity, or by charging persons in custody outside the United States with one or more specific terrorism offenses. However, the NSC would provide the government with a preferred venue to manage terrorism cases and proceedings, reducing the risk of the NSC being sidelined like the current ATRC.102 Further, the NSC could review challenges to the executive certification or charging decisions,103 transferring those cases in which the government has improperly attempted to employ the NSC for non-terrorism cases to the appropriate district court. This review power will reduce government incentives to dress up any case in terrorism clothing to obtain the advantages of the NSC procedures. The review power would not prevent the government from pursuing a terrorism matter in district court instead of the NSC. However, even without an executive action triggering NSC jurisdiction, if a district court determines that it is unable to adequately manage a terrorism case, it would be permitted to sua sponte transfer the case to NSC jurisdiction

#### Congress solves circumvention---raises political costs

Ilya **Somin 11**, Professor of Law at George Mason University School of Law, June 21 2011, “Obama, the OLC, and the Libya Intervention,” http://www.volokh.com/2011/06/21/obama-the-olc-and-the-libya-intervention/

But I am more skeptical than Balkin that illegal presidential action can be constrained through better consultation with legal experts within the executive branch. The fact is that the president can almost always find respectable lawyers within his administration who will tell him that any policy he really wants to undertake is constitutional. Despite the opposition of the OLC, Obama got the view he wanted from the White House Counsel and from State Department Legal Adviser Harold Koh. Bush, of course, got it from within the OLC itself, in the form of John Yoo’s “torture memo.” This isn’t just because administration lawyers want to tell their political masters what they want to hear. It also arises from the understandable fact that administrations tend to appoint people who share the president’s ideological agenda and approach to constitutional interpretation. By all accounts, John Yoo was and is a true believer in nearly unlimited wartime executive power. He wasn’t simply trying to please Bush or Dick Cheney.¶ Better and more thorough consultation with executive branch lawyers can prevent the president from undertaking actions that virtually all legal experts believe to be unconstitutional. But on the many disputed questions where there is no such consensus, the president will usually be able find administration lawyers who will tell him what he wants to hear. To his credit, Ackerman is aware of this possibility, and recommends a creative institutional fix in his recent book: a new quasi-independent tribunal for assessing constitutional issues within the executive branch. I am somewhat skeptical that his approach will work, and it may well require a constitutional amendment to enact. I may elaborate these points in a future post, if time permits.¶ Regardless, for the foreseeable future, the main constraints on unconstitutional presidential activity must come from outside the executive branch – that is, from Congress, the courts, and public opinion. These constraints are highly imperfect. But they do impose genuine costs on presidents who cross the line. Ackerman cites the Watergate scandal, Iran-Contra and the “torture memo” as examples of the sorts of abuses of executive power that need to be restricted. True enough. But it’s worth remembering that Nixon was forced to resign over Watergate, Reagan paid a high political price for Iran-Contra, and the torture memo was a public relations disaster for Bush, whose administration eventually ended up withdrawing it (thanks in large part to the efforts of Jack Goldsmith). On the other side of the ledger, Bill Clinton paid little price for waging an illegal war in Kosovo, though he avoided it in part by keeping that conflict short and limited. It remains to be seen whether President Obama will suffer any political damage over Libya.

#### President believes he is constrained by statute

Saikrishna Prakash 12**,** professor of law at the University of Virginia and Michael Ramsey, professor of law at San Diego, “The Goldilocks Executive” Feb, SSRN

We accept that the President’s lawyers search for legal arguments to justify presidential action, that they find the President’s policy preferences legal more often than they do not, and that the President sometimes disregards their conclusions. But the close attention the Executive pays to legal constraints suggests that the President (who, after all, is in a good position to know) believes himself constrained by law. Perhaps Posner and Vermeule believe that the President is mistaken. But we think, to the contrary, it represents the President’s recognition of the various constraints we have listed, and his appreciation that attempting to operate outside the bounds of law would trigger censure from Congress, courts, and the public.

## Terror

#### They don’t need much nuclear material, and neg evidence doesn’t assume DIRTY BOMBS

Dahl, 13 (Fredrik, “Governments warn about nuclear terror threat” Reuters. Web, Acc at http://www.reuters.com/article/2013/07/01/us-nuclear-security-idUSBRE96010E20130701)

An apple-sized amount of plutonium in a nuclear device and detonated in a highly populated area could instantly kill or wound hundreds of thousands of people, according to the Nuclear Security Governance Experts Group (NSGEG) lobby group.¶ But experts say a so-called "dirty bomb" is a more likely threat than a nuclear bomb. In a dirty bomb, conventional explosives are used to disperse radiation from a radioactive source, which can be found in hospitals or other places that are generally not very well protected.¶ More than a hundred incidents of thefts and other unauthorized activities involving nuclear and radioactive material are reported to the IAEA every year, Amano said.¶ "Some material goes missing and is never found," he said.¶ U.S. Energy Secretary Ernest Moniz said al Qaeda was still likely to be trying to obtain nuclear material for a weapon.¶ "Despite the strides we have made in dismantling core al Qaeda we should expect its adherents ... to continue trying to achieve their nuclear ambitions," he said.

#### Risk of nuclear terrorism is real and high now

Matthew, et al, 10/2/13 [ Bunn, Matthew, Valentin Kuznetsov, Martin B. Malin, Yuri Morozov, Simon Saradzhyan, William H. Tobey, Viktor I. Yesin, and Pavel S. Zolotarev. "Steps to Prevent Nuclear Terrorism." Paper, Belfer Center for Science and International Affairs, Harvard Kennedy School, October 2, 2013, Matthew Bunn. Professor of the Practice of Public Policy at Harvard Kennedy School andCo-Principal Investigator of Project on Managing the Atom at Harvard University’s Belfer Center for Science and International Affairs. • Vice Admiral Valentin Kuznetsov (retired Russian Navy). Senior research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, Senior Military Representative of the Russian Ministry of Defense to NATO from 2002 to 2008. • Martin Malin. Executive Director of the Project on Managing the Atom at the Belfer Center for Science and International Affairs. • Colonel Yuri Morozov (retired Russian Armed Forces). Professor of the Russian Academy of Military Sciences and senior research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, chief of department at the Center for Military-Strategic Studies at the General Staff of the Russian Armed Forces from 1995 to 2000. • Simon Saradzhyan. Fellow at Harvard University’s Belfer Center for Science and International Affairs, Moscow-based defense and security expert and writer from 1993 to 2008. • William Tobey. Senior fellow at Harvard University’s Belfer Center for Science and International Affairs and director of the U.S.-Russia Initiative to Prevent Nuclear Terrorism, deputy administrator for Defense Nuclear Nonproliferation at the U.S. National Nuclear Security Administration from 2006 to 2009. • Colonel General Viktor Yesin (retired Russian Armed Forces). Leading research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences and advisor to commander of the Strategic Missile Forces of Russia, chief of staff of the Strategic Missile Forces from 1994 to 1996. • Major General Pavel Zolotarev (retired Russian Armed Forces). Deputy director of the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, head of the Information and Analysis Center of the Russian Ministry of Defense from1993 to 1997, section head - deputy chief of staff of the Defense Council of Russia from 1997 to 1998.<http://belfercenter.ksg.harvard.edu/publication/23430/steps_to_prevent_nuclear_terrorism.html>]

I. Introduction In 2011, Harvard’s Belfer Center for Science and International Affairs and the Russian Academy of Sciences’ Institute for U.S. and Canadian Studies published “The U.S. – Russia Joint Threat Assessment on Nuclear Terrorism.” The assessment analyzed the means, motives, and access of would-be nuclear terrorists, and concluded that the threat of nuclear terrorism is urgent and real. The Washington and Seoul Nuclear Security Summits in 2010 and 2012 established and demonstrated a consensus among political leaders from around the world that nuclear terrorism poses a serious threat to the peace, security, and prosperity of our planet. For any country, a terrorist attack with a nuclear device would be an immediate and catastrophic disaster, and the negative effects would reverberate around the world far beyond the location and moment of the detonation. Preventing a nuclear terrorist attack requires international cooperation to secure nuclear materials, especially among those states producing nuclear materials and weapons. As the world’s two greatest nuclear powers, the United States and Russia have the greatest experience and capabilities in securing nuclear materials and plants and, therefore, share a special responsibility to lead international efforts to prevent terrorists from seizing such materials and plants. The depth of convergence between U.S. and Russian vital national interests on the issue of nuclear security is best illustrated by the fact that bilateral cooperation on this issue has continued uninterrupted for more than two decades, even when relations between the two countries occasionally became frosty, as in the aftermath of the August 2008 war in Georgia. Russia and the United States have strong incentives to forge a close and trusting partnership to prevent nuclear terrorism and have made enormous progress in securing fissile material both at home and in partnership with other countries. However, to meet the evolving threat posed by those individuals intent upon using nuclear weapons for terrorist purposes, the United States and Russia need to deepen and broaden their cooperation. The 2011 “U.S. - Russia Joint Threat Assessment” offered both specific conclusions about the nature of the threat and general observations about how it might be addressed. This report builds on that foundation and analyzes the existing framework for action, cites gaps and deficiencies, and makes specific recommendations for improvement. “The U.S. – Russia Joint Threat Assessment on Nuclear Terrorism” (The 2011 report executive summary): • Nuclear terrorism is a real and urgent threat. Urgent actions are required to reduce the risk. The risk is driven by the rise of terrorists who seek to inflict unlimited damage, many of whom have sought justification for their plans in radical interpretations of Islam**;** by the spread of information about the decades-old technology of nuclear weapons; by the increased availability of weapons-usable nuclear materials; and by globalization, which makes it easier to move people, technologies, and materials across the world. • Making a crude nuclear bomb would not be easy, but is potentially within the capabilities of a technically sophisticated terrorist group, as numerous government studies have confirmed. Detonating a stolen nuclear weapon would likely be difficult for terrorists to accomplish, if the weapon was equipped with modern technical safeguards (such as the electronic locks known as Permissive Action Links, or PALs). Terrorists could, however, cut open a stolen nuclear weapon and make use of its nuclear material for a bomb of their own. • The nuclear material for a bomb is small and difficult to detect, making it a major challenge to stop nuclear smuggling or to recover nuclear material after it has been stolen. Hence, a primary focus in reducing the risk must be to keep nuclear material and nuclear weapons from being stolen by continually improving their security, as agreed at the Nuclear Security Summit in Washington in April 2010. • Al-Qaeda has sought nuclear weapons for almost two decades. The group has repeatedly attempted to purchase stolen nuclear material or nuclear weapons, and has repeatedly attempted to recruit nuclear expertise. Al-Qaeda reportedly conducted tests of conventional explosives for its nuclear program in the desert in Afghanistan. The group’s nuclear ambitions continued after its dispersal following the fall of the Taliban regime in Afghanistan. Recent writings from top al-Qaeda leadership are focused on justifying the mass slaughter of civilians, including the use of weapons of mass destruction, and are in all likelihood intended to provide a formal religious justification for nuclear use. While there are significant gaps in coverage of the group’s activities, al-Qaeda appears to have been frustrated thus far in acquiring a nuclear capability; it is unclear whether the the group has acquired weapons-usable nuclear material or the expertise needed to make such material into a bomb. Furthermore, pressure from a broad range of counter-terrorist actions probably has reduced the group’s ability to manage large, complex projects, but has not eliminated the danger. However, there is no sign the group has abandoned its nuclear ambitions. On the contrary, leadership statements as recently as 2008 indicate that the intention to acquire and use nuclear weapons is as strong as ever.

## Cred

#### NATO still relevant----military and commerce

Charles A. Kupchan 13, D.Phil from Oxford in International Affairs, Professor of International Affairs at Georgetown, Whitney H. Shepardson Senior Fellow at the Council on Foreign Relations, 3/6/13, "Why is NATO still needed, even after the downfall of the Soviet Union?," http://www.cfr.org/nato/why-nato-still-needed-even-after-downfall-soviet-union/p30152

The North Atlantic Treaty Organization (NATO) is an international military alliance that was created to enable its members (the United States, Canada, and their European partners) to counter the threat posed by the Soviet Union. Alliances usually come to an end when the threat that led to their formation disappears. However, NATO defies the historical norm, not only surviving well beyond the Cold War's end, but also expanding its membership and broadening its mission.¶ NATO remains valuable to its members for a number of reasons. The expansion of the alliance has played an important role in consolidating stability and democracy in Central Europe, where members continue to look to NATO as a hedge against the return of a threat from Russia. In this respect, NATO and the European Union have been working in tandem to lock in a prosperous and secure Atlantic community.¶ Meanwhile, NATO has repeatedly demonstrated the utility of its integrated military capability. The alliance used force to end ethnic conflict in the Balkans and played a role in preserving the peace that followed. NATO has sustained a long-term presence in Afghanistan, helping to counter terrorism and prepare Afghans to take over responsibility for their own security. NATO also oversaw the mission in Libya that succeeded in stopping its civil war and removing the Qaddafi regime. All of these missions demonstrate NATO's utility and its contributions to the individual and collective welfare of its members, precisely why they Nato likes drones

Reittman, 9/19 (Andres, “NATO wants EU Coutnries to buy more drones” http://euobserver.com/defence/121506

BRUSSELS - Nato chief Anders Fogh Rasmussen wants EU countries to buy more drones, refuelling planes and naval radars.¶ The head of the military alliance is expected to call for the measures at a speech in the Carnegie Europe foundation in Brussels on Thursday (19 September).¶ "I believe that European nations can, and should, do more, to match America's commitment … [and] help to rebalance Nato," he aims to say.¶ "I would like to see European allies playing their part to acquire more drones to improve surveillance. More large transport and air-to-air refuelling aircraft to enhance their ability to deploy on operations. And more upgraded radars on their ships so they can be integrated into our Nato missile defence," he plans to add.¶

#### NSA scandal is no big deal---won’t harm relations

Bernd Riegert 10/25, DW's Europe correspondent in Brussels, "Opinion: Much ado about nothing?", 2013, www.dw.de/opinion-much-ado-about-nothing/a-17184229

Spying among friends is not unusual - but spying on the head of a government is taking things a step too far. However, DW's Bernd Riegert believes lack of EU unity means the US will not face serious consequences.¶ It's the stuff spy thrillers are made of: Merkel and Hollande on a secret mission in the capital of the most powerful man in the world! What did Obama know? When did he know it? And why did he do it? The monitored chancellor and her aide force the American bad guys - who are in fact their friends - to impose a code of conduct on the intelligence services.¶ But it's a scenario that's likely to remain in the realms of fiction. So what will happen in reality? The chancellor and the French president will meet their American counterpart for the talks planned at this week's EU summit, and they will try to establish some degree of transparency.¶ There will not, however, be any publicly negotiated agreements on what intelligence agencies on both sides of the Atlantic are allowed to do. That goes against the nature of the beast. The purpose of an intelligence service is to do things that are illegal in the country it's targeting.¶ Furthermore, the French and German leaders do not speak for the European Union. There is no joint European stance, only a vague declaration the delegates at the summit spent hours wrestling with. It merely states that the Americans are good friends, and notes that there is concern - without criticizing, let alone making accusations.¶ Europe not responsible for Merkel's mobile¶ The main reason for this is that European secret services, and thus many governments, benefit from the spying activities of the NSA and CIA. No one wants to endanger a cooperation aimed at preventing potential danger just because the chancellor's insecure private mobile phone may have been tapped. British Prime Minister David Cameron, whose intelligence services cooperate particularly closely with the US, prevented tougher wording on the EU statement. EU member states regard spying as a sovereign national matter. The EU has no authority - it's every country for itself.¶ The fuss in Brussels is also somewhat hypocritical. Now that a top politician is personally affected, delegations are being dispatched to a friendly nation. Yet it was already established months ago that US intelligence services snooped on millions of European citizens in Germany, France and elsewhere. The chancellor ignored the problem for far too long - until she herself was directly affected.¶ Not a big surprise¶ Intelligence service experts know perfectly well that the European services also spy, snoop and wiretap abroad, among both friends and foes. To prevent terrorist attacks, American and European services then share their findings: after 9/11, a liaison office was established outside Paris for precisely that purpose. The exchange allows the agencies to circumvent legal barriers they may be subject to in their own countries.¶ Trust has been lost, and must be won back, said Merkel and many top EU politicians in Brussels. Friends shouldn't be spied on. This is a rather naive notion: it is hardly news that agencies are also active in friendly states. Instead, European leaders should be worrying about what potential opponents, like China, Iran and Russia, are spying on in Europe. This could really cause damage.¶ What insight can the US glean by listening in on Merkel's partisan small talk on her CDU party phone? The comments made by US President Barack Obama on his last visit to Germany are probably closer to the truth: that if he wanted to know what Merkel was thinking, he'd simply give her a call, not ask the NSA.¶ Merkel's mission won't harm ties¶ The European Union will not cancel the agreement to share a large amount of banking data collected via SWIFT, nor will it suspend talks on a free trade agreement. This is the right decision, as such a drastic reaction really would do lasting damage to relations with the US. On their "mission impossible" in Washington, Merkel and Hollande should urge Obama to reduce the NSA's activities to a reasonable scale.

## NSC CP

Multiple Conditional alternatives are evil - and a voting issue -

1. Skews strategy and time – we have to focus the 2ac on multiple alternatives to the plan - this gives the neg the ability to exploit aff time decisions - not make the best most educational decision.
2. Kills rejoinder & not reciprocal - the aff doesn't get to respond OR claim advantages from offense they've read – that kills debate and kills the affs ability to generate offense.
3. Ensures argumentative irresponsibility - that undermines education - kicking arguments and not defending them is anti-educational. Multiple conditional alts insures that it has to happen.
4. Counter-interpretation – the neg gets one conditional strategy and the status quo - this solves all of their offense.

#### Permutation do both

#### Permutation: do the counterplan

#### links to flex

#### No solve the aff - Aff creates separate court system that undermines legitimacy and turns terrorism

**Zabel and Benjamin, 8 –** (In Pursuit of Justice Prosecuting Terrorism Cases in the Federal Courts

<http://www.humanrightsfirst.org/wp-content/uploads/pdf/080521-USLS-pursuit-justice.pdf>)

Indeed, it is also likely that the overwhelming majority of defendants in such proceedings would be of particular national and religious backgrounds, a point that would only further undermine the appropriateness of such a “separate” system. Cf. Neal Kumar Katyal, Equality in the War on Terror , 59 S TAN . L. R EV . 1365 (2007). The creation of a different court to try suspects, most of whom, if not all of whom, are likely to be Muslims, would be widely seen as the creation of a second-class justice system for Muslims. That result would further tarnish the United States’ reputation for justice and fairness in the Arab and Muslim world, and would be co unterproductive for U.S. foreig n policy and our efforts to combat terrorism

#### the aff reentrenches the status quo

**Fisher, 9 –** (William, Anti-war.com, “Special ‘Terror’ Courts Worry Legal Experts,” <http://original.antiwar.com/fisher/2009/05/20/special-terror-courts/>)

Jonathan Hafetz, an attorney with the American Civil Liberties Union’s National Security Project, believes the establishment of national security courts "would be a terrible mistake." He told IPS that these new courts "would institutionalize many of the worst features of Bush administration policies, perpetuating both indefinite detention and trial of terrorism suspects outside the established federal criminal courts." He added, "National security court proposals are riddled with constitutional flaws including reliance on secret evidence, elimination of core constitutional safeguards like the right to confront one’s accusers, and the absence of protections against the use of evidence obtained by coercion." "While they might be sold as a reform measure, national security courts are part of an agenda to continue the failed Guantanamo system rather than to end it," he said. Brian J. Foley, visiting associate professor at the Boston University law school, says U.S. detention policy "needs rethinking." He told IPS, "The current Guantanamo system has rules that are too soft and allow roundups of suspected terrorists based on unreliable evidence. Interrogating these people using harsh methods leads to false confessions and other statements calculated to end the abuse. Threatening them with trial by what amounts to a kangaroo court will also cause many to confess falsely."

#### destroys allies cooperation and international coalition

**Colson, 9** – (Acting Director, Law and Security Program @ HR First

(Deborah, Prepared the following report: “The Case Against A Special Terrorism Court,” HR First, http://www.humanrightsfirst.org/wp-content/uploads/pdf/090323-LS-nsc-policy-paper.pdf)

Human Rights First believes that all indefinite detention and special court proposals—whatever form they might take—are unwise, unnecessary and should be rejected. The fe deral criminal courts have proven to be fully capable of handling the challenges posed by complex terrorism case s without compromising national security or sacrificing standards of fairness and due proces s. Our procedural safeguards and eviden tiary standards comprise the bedrock of American justice. A decision to jettison them, even for a small number of suspects, would weaken our system as a whole, undermine America’s efforts to forge an internat ional coalition to combat terrorism, and perpetuate the damage to America’s reputation for fairness and transparency done by unjust trials and prolonged detention without charge at Guantánamo.

#### National security court turns cred and alliance

**Ratner, 7** (A New Court for Terror Suspects? (5 Letters)

<http://www.nytimes.com/2007/07/16/opinion/l16terrorists.html?pagewanted=print>)

Jack L. Goldsmith and Neal Katyal call for creation of a preventive detention system. We already have that system at Guantánamo. The idea of making this system permanent and more acceptable by adding some bells and whistles — a special national security court — is going in the wrong direction. It is contrary to American values and will ensure the continued negative consequences of the current policy that the authors refer to in the article: harm to our reputation, disrupted alliances and the “war of ideas with the Islamic world.” Preventive detention cuts the heart out of any concept of human liberty; it permits the state to imprison people who have not committed any crime and to do so outside of the rules of a criminal law system that has been with us for more than 200 years. No domestic or international law permits preventive detention under the current circumstances. The International Covenant on Civil and Political Rights, a treaty binding on the United States, permits it only in the most drastic of circumstances when the actual continued existence of the nation is threatened. Even then, a situation we are not facing, the detentions must be of an exceptional and temporary nature — not potentially forever. The treaty expressly prohibits indefinite detention without charges and trial.

**cp solves the case**

**Beech, 8 –** (JD at Washington Metro Area, “A CRITIQUE OF “NATIONAL SECURITY COURTS”, <http://www.constitutionproject.org/pdf/Critique_of_the_National_Security_Courts_Updated_Signers1.pdf>)

Advocates of national security courts that would try terrorism suspects claim that traditional Article III courts are unequipped to handle thes e cases. This claim has not been substantiated, and is made in the face of a significant — and growing — body of evidence to the contrary. A recent report released by Human Rights First persuasively demonstrates that our existing federal courts are competent to try these cases. The report examines more than 120 international terrorism cases brough t in the federal courts over the past fifteen years.

**Independent courts fail – turns both democracy and legitimacy**

**Colson, 9** – (Acting Director, Law and Security Program @ HR First

(Deborah, Prepared the following report: “The Case Against A Special Terrorism Court,” HR First, http://www.humanrightsfirst.org/wp-content/uploads/pdf/090323-LS-nsc-policy-paper.pdf)

Proposals for a special terrorism court should be rejected A special terrorism court is unnecessary and impractical: Among the many lessons learned from the misguided Guantánamo episode are the practical difficulti es of trying to create new, ad hoc justice systems. Just like the military commissions at Guantánamo, a new court inevitably would be bogged down in litigation and delay. Our procedural safeguards and evidentiary standards comprise the bedrock of American justice: A new court would undermine the integrity of the just ice system and perpetuate the damage to America’s reputation for fairness and transparency done by unjust m ilitary commissions and prolonged detention without charge at Guantánamo.

## Court CP

Interpretation: Counterplans that use a different agent than the plan are illegitimate.

1. Doesn’t cause critical thinking outside of debate- personal decisions aren’t made by finding a different agent than ourselves

2. no literature compares it- discussions are only valuable if they are informed with real information

3. Promotes abdication of responsibility – they teach debaters to wish someone else would act instead of how to persuade someone to act

4. Forces us to debate ourselves- any of our solvency deficits can be applied to the aff as reasons why the executive will ignore the plan

Voter for fairness and education

#### Permutation: the supreme court should apply Geneva and the united states federal government should create a domestic terror court.

#### Net benefit is Court Creation DA – The courts cannot give a court jurisdiction, only Congress is vested with this power.

Schuck, Lecturer at Yale Law School, ‘4

[Peter, “Terrorism Cases Demand New Hybrid Courts”, LA Times, 7-9-2004,

<http://articles.latimes.com/2004/jul/09/opinion/oe-schuck9>, RSR]

The Supreme Court in its recent rulings has given U.S. citizens who are captives in the war on terror, as well as noncitizen Guantanamo detainees, the right to hearings. Now comes the hard part: what kinds of hearings, in what courts, by what process?¶ The court wisely refrained from answering these questions in detail. Arguments on the specifics had not been presented to the court, and the limited guidance that the justices did offer was more intuitive than analytical. Wisdom aside, this sort of self-restraint is constitutionally required: Article 1, Section 8, Clause 14 gives Congress -- not the judicial or the executive branch -- the authority to make rules for the armed forces, including the initial design of hearings for the prisoners.

#### Extend Silivana - only Congressional action inspires the public to care about habeas violations- that solves accountability issues the prevent the executive from circumventing the counterplan 1. Legitimacy – congressional action most perceived and judicial deference makes the decision more powerful

Yoshino 11 (Kenji, a professor at N.Y.U. School of Law, The Military in the Constitution, June 28, <http://www.nytimes.com/roomfordebate/2010/10/13/the-future-of-dont-ask-dont-tell/the-military-in-the-constitution>) ap

I have a general and a specific reason for favoring legislative action over judicial action here. The general reason is that any time over 70 percent of the nation opposes a policy, as is the case with "don't ask, don't tell," that opposition is presumptively best expressed through our elected representatives. Such action gives more legitimacy to the ultimate decision because it more clearly hews to the democratic process.¶ The specific reason for preferring a legislative repeal of the policy is that the Constitution explicitly gives the legislative and executive branches control over the military. Article I of our Constitution grants Congress the power to regulate the military, while Article II makes the president the commander in chief of the armed forces.¶ Historically, these grants of authority have led the courts to accord extreme deference to the elected branches of government with respect to military issues. In the 1981 case of Rostker v. Goldberg, the Supreme Court rejected a sex-discrimination challenge to the male-only draft by observing that "judicial deference . . . is at its apogee when legislative action under the congressional authority to raise and support armies and make rules and regulations for their governance is challenged."

#### Congress necessary to prevent Court evisceration of War Powers

Benjamin Wittes 8, Senior Fellow in Governance Studies at the Brookings Institution, co-founder and editor-in-chief of the Lawfare blog, member of the Hoover Institution’s Task Force on National Security Law, Law and the Long War: The Future of Justice in the Age of Terror, google books

What the Supreme Court has done is carve itself a seat at the table. It has intimated, without ever deciding, that a constitutional basis for its actions exists—in addition to the statutory bases on which it decided the cases—meaning that its authority over overseas detentions may be an inherent feature of judicial power, not a policy question on which the legislature and executive can work their will. Whether the votes exist on the court to go this extra step we will find out soon enough. But the specter of a vastly different judicial posture in this area now haunts the executive branch—one in which the justices assert an inherent authority to review executive detention and interrogation practices, divine rights to apply with that jurisdiction based on due process and vaguely worded international humanitarian law principles not clearly implemented in U.S. law, and allow their own power to follow the military’s anywhere in the world. Such a posture would constitute an earthquake in the relationships among all three branches of government, and the doctrinal seeds for it have all been planted. Whether they ultimately take root depends on factors extrinsic to the war on terror—particularly the future composition of a Supreme Court now closely divided on these questions. It will also pivot on the manner in which the political branches posture the legal foundations of the war in the future. Building a strong legislative architecture now may be the only way to avert a major expansion of judicial power over foreign policy and warfare.

#### Links to politics

Terence Samuel 9, Deputy Editor – The Root and Senior Correspondent - Prospect, “Obama's Honeymoon Nears Its End”, American Prospect, 5/29, http://www.prospect.org/cs/articles?article=obamas\_honeymoon\_nears\_its\_end

This week, Barack Obama named his first nominee to the Supreme Court, then headed west to Las Vegas and Los Angeles to raise money for Democrats in the 2010 midterms. Taken together, these two seemingly disparate acts mark the end of a certain period of innocence in the Obama administration: The "blame Bush" phase of the Obama administration is over, and the prolonged honeymoon that the president has enjoyed with the country and the media will soon come to an end as well. Obama is no longer just the inheritor of Bush's mess. This is now his presidency in his own right. The chance to choose a Supreme Court justice is such a sui generis exercise of executive power -- it so powerfully underscores the vast and unique powers of a president -- that blame-shifting has become a less effective political strategy, and less becoming as well. Obama's political maturation will be hastened by the impending ideological fight that is now virtually a guarantee for Supreme Court nominations. Old wounds will be opened, and old animosities will be triggered as the process moves along. Already we see the effect in the polls. While Obama himself remains incredibly popular, only 47 percent of Americans think his choice of Judge Sonia Sotomayor is an excellent or good choice for the Court, according to the latest Gallup poll. The stimulus package scored better than that. The prospect of a new justice really seems to force people to reconsider their culture warrior allegiances in the context of the party in power. This month, after news of Justice David Souter's retirement, a Gallup poll showed that more Americans considered themselves against abortion rights than in favor: 51 percent to 42 percent. Those number were almost exactly reversed a year ago when Bush was in office and Obama was on the verge of wrapping up the Democratic nomination. "This is the first time a majority of U.S. adults have identified themselves as pro-life since Gallup began asking this question in 1995," according to the polling organization. Is this the same country that elected Obama? Yes, but with his overwhelmingly Democratic Senate, the public may be sending preemptory signals that they are not interested in a huge swing on some of these cultural issues that tend to explode during nomination hearings. Even though Obama will win the Sotomayor fight, her confirmation is likely to leave him less popular in the end because it will involve contentious issues -- questions of race and gender politics like affirmative action and abortion -- that he managed to avoid or at least finesse through his campaign and during his presidency so far.

#### Perm do both---shields the link

Perine, 6/12/2008 (Katherine – staff at CQ politics, Congress unlikely to try to counter Supreme Court detainee ruling, CQ Politics, p. http://www.cqpolitics.com/wmspage.cfm?docID=news-000002896528&cpage=2)

Thursday’s decision, from a Supreme Court dominated by Republican appointees, gives Democrats further cover against GOP sniping. “This is something that the court has decided, and very often the court gives political cover to Congress,” said Ross K. Baker, a Rutgers University political science professor. “You can simply point to a Supreme Court decision and say, ‘The devil made me do it.’ ”

#### 2. Timing - Courts can’t control time frame of trials

Michael McAuliff, June 14, 2013, “Guantanamo Bay To Stay Open As House Blocks Bill To Close Infamous Prison,” <http://www.huffingtonpost.com/2013/06/14/guantanamo-bay-close_n_3438347.html>

The Supreme Court ruled that detainees have a right to be presented to a judge, and a right to be tried in a military court, but the issue of how quickly those trials must happen has not been litigated, effectively making the detentions indefinite. Numerous inmates are deemed to be too difficult to try, and are being held under the laws of war until the conflict is ended.

#### Extend Chesney – Legislative action is key to international legitimacy – it’s seen as the most meaningful constraint on presidential action and sends a stronger signal to allies.

#### 3. Stripping - Causes a massive debate in Congress that links to politics and strips the Court decision of meaning- MCA passage proves

Hajjar, 2011 (Lisa, “Bagram, Obama’s Gitmo” Middle East Report. Webb, Acc 8/18/2013 at

<http://www.merip.org/mer/mer260/bagram-obamas-gitmo>

The Supreme Court’s Hamdan decision in June 2006, which ruled that the president’s military commissions are unconstitutional, also held that “war on terror” prisoners have, at minimum, the rights and protections of Common Article 3 of the Geneva Conventions, which prohibits “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture” and “outrages upon personal dignity, in particular humiliating and degrading treatment.” That decision undermined the efficacy of the administration’s stock assertions that the detainees are rightless. At a September 16 press conference, President Bush denounced the decision and mocked the vagueness of “outrages.” He said that the White House was drafting legislation to restore the military commissions. He also acknowledged for the first time the existence of the CIA’s program and proclaimed that practices authorized for detainees held at black sites -- including waterboarding -- had been deemed “legal” by OLC lawyers. He also announced that 14 “high-value detainees” in CIA custody were being transferred to Guantánamo.¶ In October 2006, Congress passed the Military Commissions Act (MCA), which included a clause granting ex post facto immunity for violations of the 1996 War Crimes Act to shield government officials and state agents from prosecution for grave breaches of Common Article 3. The MCA included even bolder language stripping jurisdiction than the Detainee Treatment Act: No court would have jurisdiction for an application of the writ of habeas corpus filed by a person “who has been determined by the US to have been properly detained as an enemy combatant or is awaiting such determination.” This stipulation “shall apply to all cases, without exception…which relate to any aspect of detention, transfer, treatment, trial, or conditions of detention of an alien detained by the United States since September 11, 2001.” Sen. Obama voted against the MCA.

#### Stripping guts the case solvency and turns the case—all rights protections would go completely unenforced—trampling meaningful rights:

Barry W. Lynn, 2004 bachelor's degree at Dickinson College, theology degree from Boston University School of Theology, minister in the United Church of Christ, of the Washington, D.C. bar, law degree from Georgetown University Law Center, the Executive Director of Americans United for Separation of Church and State, 20**04**[“Congress and Court Stripping: Just Keep Your Shirts On” Church and State Magazine, May]

Another measure, the misnamed "Constitution Restoration Act of 2004," was written by former Alabama Supreme Court Chief Justice Roy Moore and his allies. It would ban all cases challenging state-sponsored acknowledgement of "God as the sovereign source of law, liberty, or government." For good measure, it would also retroactively overturn all existing rulings in this area and establish a mechanism for impeaching federal judges who dare to uphold church-state separation! One wonders if the legislators who wrote these bills slept through high school civics class. The separation of powers means that the U.S. government consists of three co-equal branches: the president, the Congress and the courts. Congress does not have the power, through simple legislation, to decimate the authority of the courts over issues dealing with the Bill of Rights. Such power would rapidly make the courts superfluous. Whenever a judge ruled in a manner that displeased a legislator, a court-stripping bill would be drawn up and passed. Pretty soon the courts would be nothing but a rubber-stamp **body for Congress**. Some members of Congress might want that, but it would be a disaster for American democracy. Courts exist to make hard decisions. When lawmakers overstep their bounds and infringe on constitutional rights, courts are there to pull them back. Without the judiciary to protect us, Americans would quickly be at the mercy of the momentary whims of the majority. Our rights would be trampled on.

## 2AC Warfighting

#### Can’t solve the aff –extradition key to prevent European safe havens – cooperation key

#### Squo approach fails - Gitmo closure and challenge to military commissions inevitable – triggers the link – aff only secures convictions – that’s Kimery and Whittes

#### I DON’T THINK THE AFF IS A COURT DECISION – it’s an ACT OF CONGRESS -

#### Legitimacy solves the impact – obviates the need for flexibility by deescalating crisis before they begin

Schwarz, senior counsel, and Huq, associate counsel at the Brennan Center for Justice at NYU School of Law, 2007 [Frederick A.O., Jr., partner at Cravath, Swaine & Moore, chief counsel to the Church Committee, and Aziz Z, former clerk for the U.S. Supreme Court, Unchecked and Unbalanced: Presidential Power in a Time of Terror, p. 201]

The Administration insists that its plunge into torture, its lawless spying, and its lock-up of innocents have made the country safer. Beyond mere posturing, they provide little evidence to back up their claims. Executive unilateralism not only undermines the delicate balance of our Constitution, but also lessens our human liberties and hurts vital counterterrorism campaigns. How? Our reputation has always mattered. In 1607, Massachusetts governor John Winthrop warned his fellow colonists that because they were a "City on a Hill," "the eyes of all people are upon us."4 Thomas Jefferson began the Declaration of Independence by invoking the need for a "decent respect to the opinions of mankind:' In today's battle against stateless terrorists, who are undeterred by law, morality, or the mightiest military power on earth, our reputation matters greatly.¶ Despite its military edge, the United States cannot force needed aid and cooperation from allies. Indeed, our status as lone superpower means that only by persuading other nations and their citizens—that our values and interests align with theirs, and so merit support, can America maintain its influence in the world. Military might, even extended to the globe's corners, is not a sufficient condition for achieving America's safety or its democratic ideals at home. To be "dictatress of the world," warned John Quincy Adams in 1821, America "would be no longer the ruler of her own spirit." A national security policy loosed from the bounds of law, and conducted at the executive's discretion, will unfailingly lapse into hypocrisy and mendacity that alienate our allies and corrode the vitality of the world's oldest democracy.5

#### Comparatively, that’s more important

Matthew C. Waxman 8/25, Professor of Law, Columbia Law School; Adjunct Senior Fellow for Law and Foreign Policy, Council on Foreign Relations, “The Constitutional Power to Threaten War”, Forthcoming in Yale Law Journal, vol. 123 (2014), 2013, PDF

A second argument, this one advanced by some congressionalists, is that stronger legislative checks on presidential uses of force would improve deterrent and coercive strategies by making them more selective and credible. The most credible U.S. threats, this argument holds, are those that carry formal approval by Congress, which reflects strong public support and willingness to bear the costs of war; requiring express legislative backing to make good on threats might therefore be thought to enhance the potency of threats by encouraging the President to seek congressional authorization before acting.181 A frequently cited instance is President Eisenhower’s request (soon granted) for standing congressional authorization to use force in the Taiwan Straits crises of the mid- and late-1950s – an authorization he claimed at the time was important to bolstering the credibility of U.S. threats to protect Formosa from Chinese aggression.182 (Eisenhower did not go so far as to suggest that congressional authorization ought to be legally required, however.) “It was [Eisenhower’s] seasoned judgment … that a commitment the United States would have much greater impact on allies and enemies alike because it would represent the collective judgment of the President and Congress,” concludes Louis Fisher. “Single-handed actions taken by a President, without the support of Congress and the people, can threaten national prestige and undermine the presidency. Eisenhower’s position was sound then. It is sound now.”183 A critical assumption here is that legal requirements of congressional participation in decisions to use force filters out unpopular uses of force, the threats of which are unlikely to be credible and which, if unsuccessful, undermine the credibility of future U.S. threats.¶ A third view is that legal clarity is important to U.S. coercive and deterrent strategies; that ambiguity as to the President’s powers to use force undermines the credibility of threats. Michael Reisman observed, for example, in 1989: “Lack of clarity in the allocation of competence and the uncertain congressional role will sow uncertainty among those who depend on U.S. effectiveness for security and the maintenance of world order. Some reduction in U.S. credibility and diplomatic effectiveness may result.”184 Such stress on legal clarity is common among lawyers, who usually regard it as important to planning, whereas strategists tend to see possible value in “constructive ambiguity”, or deliberate fudging of drawn lines as a negotiating tactic or for domestic political purposes.185 A critical assumption here is that clarity of constitutional or statutory design with respect to decisions about force exerts significant effects on foreign perceptions of U.S. resolve to make good on threats, if not by affecting the substance of U.S. policy commitments with regard to force then by pointing foreign actors to the appropriate institution or process for reading them.

#### Judicial intervention into detention is inevitable – withdrawal from Afghanistan

Chesney 13, Law Prof at UT

(November, Robert, BEYOND THE BATTLEFIELD, BEYOND AL QAEDA: THE DESTABILIZING LEGAL ARCHITECTURE OF COUNTERTERRORISM, 112 Mich. L. Rev. 163)

The government will not be able to simply ride out the legal friction generated by the fragmentation of al Qaeda and the shift toward shadow war. Those trends do not merely shift unsettled questions of substantive law to the forefront of the debate; they also greatly increase the prospects for a new round of judicial intervention focusing on those substantive questions. 1. Military Detention Consider military detention first. Fresh judicial intervention regarding the substantive law of detention is a virtual certainty. It will come in connection with the lingering Guantanamo population, and it will come as well in connection with any future detainees taken into custody on a long-term basis, regardless of where they might be held. a. Existing Guantanamo Detainees Most of the existing Guantanamo detainees have already had a shot at habeas relief, and many lost on both the facts and the law. But some of them can and will pursue a second shot, should changing conditions call into question the legal foundation for the earlier rulings against them. n202 The first round of Guantanamo habeas decisions depended in almost every instance on the existence of a meaningful tie to ongoing hostilities in Afghanistan, as did the Supreme Court's 2004 decision in Hamdi. Indeed, Justice O'Connor in Hamdi was at pains to caution that at some point in the future this baseline condition making LOAC relevant could unravel. n203 The declining U.S. role in combat operations in Afghanistan goes directly to that point. This decline will open the door to a second wave of Guantanamo litigation, with detainees arguing that neither LOAC nor the relevant statutory authorities continues to apply. This argument may or may not succeed on the merits. At first blush, the NDAA FY12 would seem to present a substantial obstacle to the detainees. That statute expressly codifies detention authority as to members (and supporters) of al Qaeda, the Afghan Taliban, and "associated forces," n204 thus grounding detention authority directly in domestic law rather than requiring courts to impute such authority into the 2001 AUMF by implication from LOAC (as the Supreme Court had to do in [\*214] Hamdi itself). But it is not quite so simple. The same section of the NDAA FY12 relinks the question of detention authority to LOAC after all. It specifies that statutory detention authority as an initial matter exists solely "pending disposition under the law of war." n205 And although it then lists long-term military detention as a possible disposition option, the statute specifically defines this authority as "detention under the law of war without trial until the end of the hostilities authorized by the [AUMF]." n206 A court confronted with this language might interpret it in a manner consistent with the government's borderless-conflict position, such that the drawdown in Afghanistan would not matter. But it might not. The repeated references to the "law of war" in the statute--that is to LOAC--might lead at least some judges to conduct a fresh field-of-application analysis regarding the extent to which LOAC remains applicable in light of the drawdown, and judges might then read the results back into the NDAA FY12. I am not saying that this is the likely outcome or that any such analysis would necessarily reject the government's borderless-conflict position. I am just saying that judges eventually will decide these matters without real guidance from Congress (unless Congress clarifies its intentions in the interim). Note, too, that any such judicial interpretations may well have far broader implications than just the fate of the particular detainee in question; a ruling that LOAC has no application in a given situation would cast a long shadow over any other LOAC-based actions the U.S. government might undertake in the same or similar contexts (including targeting measures). Regardless of what occurs in Afghanistan, the existing Guantanamo detainee population might also find occasion to come back to court should the decline of the core al Qaeda organization continue to the point where it can plausibly be described as defunct. In such a case, it is likely that at least some current al Qaeda detainees would revive their habeas petitions in order to contend that the demise of the organization also means the demise of detention authority over members of the defunct group. This argument would be particularly likely to come from those who were held on the ground of membership in al Qaeda but who the government had not shown to have been otherwise involved in hostile acts. This would be a challenging argument to make; the government would surely respond that al Qaeda would no longer be defunct if some of its members were set free. But setting that possible response aside, such a petition could compel the government to litigate the question of whether the continuing existence of various "franchises," like AQAP or al-Shabaab, suffices to preserve detention authority over al Qaeda members. That is, such a challenge could lead a judge to weigh in on the organizational boundary question.

#### But the aff doesn’t, we result in judicial deference

Bauer, Junior Editor at the Alabama Law Review, ‘6

[Jay, “DETAINEES UNDER REVIEW: STRIKING THE RIGHT¶ CONSTITUTIONAL BALANCE BETWEEN THE EXECUTIVE'S¶ WAR POWERS AND JUDICIAL REVIEW”, Vol. 57, No. 4, RSR]

Establishing a detainee review process that is as transparent and fair as¶ possible may be the best way to "strik[e] the proper constitutional balance."'179 In considering the executive's concerns for national security and¶ protection of classified information, the courts have shown an ability to be¶ flexible and accommodate the special needs of the executive while preserving¶ the fundamental precepts of the Constitution. That flexibility will likely¶ come into play regardless of whether a court is reviewing a habeas petition¶ or the final decision of a tribunal under a separate statutory scheme like that¶ in the Detainee Treatment Act.¶ If a court is reviewing a non-citizen detainee's habeas claim, now that¶ the Supreme Court has established in Rasul that federal courts do have jurisdiction¶ over detainees at Guantanamo, the federal courts and habeas jurisprudence¶ may actually prove beneficial for the executive. For instance,¶ because a habeas court looks primarily to the authority and process of detention¶ in a habeas case, this Comment argues that from a practical standpoint¶ the more the executive branch establishes a solidly fair and judicial¶ process for determining detainee status, the better it would be for the executive.¶ Since the courts tend to deny habeas petitions when there is apparent¶ authority and alternative remedies available to a habeas petitioner, it is logical¶ that a full and fair process establishing those remedies for non-citizen¶ detainees is in the executive's best interest. In other words, if the executive¶ branch wants to preserve its independent control over detainees, then practically¶ speaking it could rely on history and precedence as a model. The¶ courts will defer to executive action, but only to a point. They will seek to¶ preserve the authority of the Constitution, albeit in a restrained sense considering¶ the unique nature of detaining enemy combatants in the "war on¶ terror." Habeas corpus jurisprudence teaches that as long as there is a way¶ for an independent judiciary to examine the lawfulness of executive detention,¶ or at least ensure that the detainee has an appropriate alternative remedy¶ available, then that detention will be upheld. Thus, ironically, the way¶ for the executive to retain control over detainees is to create a full and fair¶ tribunal process. Moreover, the traditional deference the judiciary pays to¶ the executive branch when it is looking at executive wartime actions or¶ judgments should also give the executive branch confidence that federal¶ court jurisdiction over detainees at Guantanamo Bay is not going to hinder¶ its execution of the "war on terror."¶ When it passed the Detainee Treatment Act, Congress intended to interject¶ congressional oversight into the detainee review process by dictating¶ the standard of evidence used, and it wanted to ensure that the procedures of¶ the CSRT are in accordance with the Constitution. 80 The passage of the Act¶ clearly shows that the executive should anticipate more, not less, assertion¶ of authority over the detainee review process by the other branches of government.¶ Although the consequences of the Act are unknown at this point in¶ time, it is also fairly clear that however the courts consider the detainee review process-whether it is through habeas litigation or under another¶ statutorily prescribed method like that of the Detainee Treatment Act-the¶ analysis will be in terms of whether that process fundamentally complies¶ with the Constitution. Thus, from just a pragmatic standpoint, it would be¶ prudent for the executive branch to ensure that the detainee review procedures¶ uphold the ideals of that great charter.¶ Consequently, creating a detainee review process as transparent and fair¶ as possible is the best option for our government and this nation as it seeks¶ to strike the right balance between executive war powers and judicial right¶ of review.

#### Yoo ’06 is talking about “Congress’s warmaking powers,”

#### Syria restraints should have triggered the link – Obama asked which was a political restriction

Waxman, Professor Law at Columbia, 9-3-’13 (Matthew, “Constitutional Power to Threaten War: Three Points on Syria” http://www.lawfareblog.com/2013/09/constitutional-power-to-threaten-war-three-points-on-syria/)

First, a point about constraints on the President: Whatever one thinks about the President’s constitutional authority to make good on his threat against Syria with military force, I’ve not heard anyone question his authority to have unilaterally issued the threat to begin with – that is, his authority to draw a red line on chemical weapon use and imply that the United States would respond forcefully. Most would agree, though, the President has been politically constrained in what he’s communicated through words and actions to the Syrian government, U.S. allies, and others. Some of that political constraint has probably come from Congress all along, and even if Congress were unlikely to wield formal legislative power to terminate or cut-off funds from a Syria operation that the President might launch on his own, Congress’s influence derives in part from its institutional position to make things difficult for the President, and even from influential members’ ability to speak out publicly in ways that might undermine the credibility of presidential threats. Law helps constitute the processes of political struggles in any area of public policy, but what is special here in the context of deterrent strategy is the added importance of foreign audiences – including adversaries and allies, alike – observing and reacting to those politics, too.

#### Their link assumes a broad court ruling – limited purpose preserves flexibility

Andrew McCarthy 9, Director of the Center for Law & Counterterrorism at the Foundation for the Defense of Democracies. From 1985 through 2003, he was a federal prosecutor at the U.S. Attorney’s Office for the Southern District of New York, and was the lead prosecutor in the seditious conspiracy trial against Sheikh Omar Abdel Rahman and eleven others, described subsequently. AND Alykhan Velshi, a staff attorney at the Center for Law & Counterterrorism, where he focuses on the international law of armed conflict and the use of force, 8/20/09, “Outsourcing American Law,” AEI Working Paper, http://www.aei.org/files/2009/08/20/20090820-Chapter6.pdf

What is an asset in the criminal justice system, however, would be a liability in a system whose priority is not justice for the individual but the security of the American people. That liability, though, can be satisfactorily rectified by clear procedural rules which underscore that the overriding mission – into which the judicial function is being imported for very limited purposes – remains executive and military. The default position of the criminal justice system would not carry over to a system conceived for enemies of the United States – i.e., terrorist operatives who would not be facing NSC trials in the first place absent a finding, tested by judicial review, that they were alien enemy combatants. ¶ In such a system, the opportunities for judicial creativity would be limited by being plainspoken and unapologetic in enabling legislation about the fact that the defendants are not Americans but those who mean America harm; that the task of federal judges is not to ensure that defendants are considered as equals to our government before the bar of justice, but merely to ensure that they are not capriciously convicted of war crimes by the same branch of government that is prosecuting the war; that if credible and convincing evidence supports the allegations, the system’s preference is that defendants be convicted and harshly sentenced; and that the authority of judges is enumerated and finite – if the rules as promulgated do not expressly provide for the defendant to have particular relief, the judge is powerless to direct it. In short, the system would curb judicial excess by the recognition, which underlies the military justice system, that prosecuting war remains a quintessentially executive endeavor; in the NSC, judges would be a check against arbitrariness but they would not have any general supervisory authority over the conduct of proceedings and they would not be at liberty to create new entitlements by analogizing to ordinary criminal proceedings.

#### Constraints improve decision-making to combat attacks

Deborah N. Pearlstein 9, lecturer in public and international affairs, Woodrow Wilson School of Public & International Affairs, July 2009, "Form and Function in the National Security Constitution," Connecticut Law Review, 41 Conn. L. Rev. 1549, lexis nexis

It is in part for such reasons that studies of organizational performance in crisis management have regularly found that "planning and effective [\*1604] response are causally connected." n196 Clear, well-understood rules, formalized training and planning can function to match cultural and individual instincts that emerge in a crisis with commitments that flow from standard operating procedures and professional norms. n197 Indeed, "the less an organization has to change its pre-disaster functions and roles to perform in a disaster, the more effective is its disaster [sic] response." n198 In this sense, a decisionmaker with absolute flexibility in an emergency-unconstrained by protocols or plans-may be systematically more prone to error than a decision-maker who is in some way compelled to follow procedures and guidelines, which have incorporated professional expertise, and which are set as effective constraints in advance.¶ Examples of excessive flexibility producing adverse consequences are ample. Following Hurricane Katrina, one of the most important lessons independent analysis drew from the government response was the extent to which the disaster was made worse as a result of the lack of experience and knowledge of crisis procedures among key officials, the absence of expert advisors replacing those rules with more than the most general guidance about custodial intelligence collection available to key officials (including the President), and the failure to follow existing response plans or to draw from lessons learned from simulations conducted before the fact. n199 Among the many consequences, [\*1605] basic items like food, water, and medicines were in such short supply that local law enforcement (instead of focusing on security issues) were occupied, in part, with breaking into businesses and taking what residents needed. n200¶ Or consider the widespread abuse of prisoners at U.S. detention facilities such as Abu Ghraib. Whatever the theoretical merits of applying coercive interrogation in a carefully selected way against key intelligence targets, n201 the systemic torture and abuse of scores of detainees was an outcome no one purported to seek. There is substantial agreement among security analysts of both parties that the prisoner abuse scandals have produced predominantly negative consequences for U.S. national security. n202 While there remain important questions about the extent to which some of the abuses at Abu Ghraib were the result of civilian or senior military command actions or omissions, one of the too often overlooked findings of the government investigations of the incidents is the unanimous agreement that the abuse was (at least in part) the result of structural organization failures n203 -failures that one might expect to [\*1606] produce errors either to the benefit or detriment of security.¶ In particular, military investigators looking at the causes of Abu Ghraib cited vague guidance, as well as inadequate training and planning for detention and interrogation operations, as key factors leading to the abuse. Remarkably, "pre-war planning [did] not include[] planning for detainee operations" in Iraq. n204 Moreover, investigators cited failures at the policy level- decisions to lift existing detention and interrogation strictures without n205 As one Army General later investigating the abuses noted: "By October 2003, interrogation policy in Iraq had changed three times in less than thirty days and it became very confusing as to what techniques could be employed and at what level non-doctrinal approaches had to be approved." n206 It was thus unsurprising that detention and interrogation operations were assigned to troops with grossly inadequate training in any rules that were still recognized. n207 The uncertain effect of broad, general guidance, coupled [\*1607] with the competing imperatives of guidelines that differed among theaters of operation, agencies, and military units, caused serious confusion among troops and led to decisionmaking that it is overly kind to call arbitrary. n208¶ Would the new functionalists disagree with the importance of government planning for detention operations in an emergency surrounding a terrorist nuclear attack? Not necessarily. Can an organization anticipate and plan for everything? Certainly not. But such findings should at least call into question the inclination to simply maximize flexibility and discretion in an emergency, without, for example, structural incentives that might ensure the engagement of professional expertise. n209 Particularly if one embraces the view that the most potentially damaging terrorist threats are nuclear and biological terrorism, involving highly technical information about weapons acquisition and deployment, a security policy structure based on nothing more than general popular mandate and political instincts is unlikely to suffice; a structure that systematically excludes knowledge of and training in emergency response will almost certainly result in mismanagement. n210 In this light, a general take on role effectiveness might suggest favoring a structure in which the engagement of relevant expertise in crisis management is required, leaders have incentives to anticipate and plan in advance for trade-offs, and [\*1608] organizations are able to train subordinates to ensure that plans are adhered to in emergencies. Such structural constraints could help increase the likelihood that something more than arbitrary attention has been paid before transcendent priorities are overridden

## 2AC TPA

#### Aff solves cred decline better -

#### Economic decline doesn’t cause war

Barnett, Senior Managing Director Enterra Solutions LLC, ‘9 (Thomas, August 24, “The New Rules: Security Remains Stable Amid Financial Crisis” World Politics Review, http://www.worldpoliticsreview.com/articles/4213/the-new-rules-security-remains-stable-amid-financial-crisis)

When the global financial crisis struck roughly a year ago, the blogosphere was ablaze with all sorts of scary predictions of, and commentary regarding, ensuing conflict and wars -- a rerun of the Great Depression leading to world war, as it were. Now, as global economic news brightens and recovery -- surprisingly led by China and emerging markets -- is the talk of the day, it's interesting to look back over the past year and realize how globalization's first truly worldwide recession has had virtually no impact whatsoever on the international security landscape. None of the more than three-dozen ongoing conflicts listed by GlobalSecurity.org can be clearly attributed to the global recession. Indeed, the last new entry (civil conflict between Hamas and Fatah in the Palestine) predates the economic crisis by a year, and three quarters of the chronic struggles began in the last century. Ditto for the 15 low-intensity conflicts listed by Wikipedia (where the latest entry is the Mexican "drug war" begun in 2006). Certainly, the Russia-Georgia conflict last August was specifically timed, but by most accounts the opening ceremony of the Beijing Olympics was the most important external trigger (followed by the U.S. presidential campaign) for that sudden spike in an almost two-decade long struggle between Georgia and its two breakaway regions. Looking over the various databases, then, we see a most familiar picture: the usual mix of civil conflicts, insurgencies, and liberation-themed terrorist movements. Besides the recent Russia-Georgia dust-up, the only two potential state-on-state wars (North v. South Korea, Israel v. Iran) are both tied to one side acquiring a nuclear weapon capacity -- a process wholly unrelated to global economic trends. And with the United States effectively tied down by its two ongoing major interventions (Iraq and Afghanistan-bleeding-into-Pakistan), our involvement elsewhere around the planet has been quite modest, both leading up to and following the onset of the economic crisis: e.g., the usual counter-drug efforts in Latin America, the usual military exercises with allies across Asia, mixing it up with pirates off Somalia's coast). Everywhere else we find serious instability we pretty much let it burn, occasionally pressing the Chinese -- unsuccessfully -- to do something. Our new Africa Command, for example, hasn't led us to anything beyond advising and training local forces. So, to sum up: \*No significant uptick in mass violence or unrest (remember the smattering of urban riots last year in places like Greece, Moldova and Latvia?); \*The usual frequency maintained in civil conflicts (in all the usual places); \*Not a single state-on-state war directly caused (and no great-power-on-great-power crises even triggered); \*No great improvement or disruption in great-power cooperation regarding the emergence of new nuclear powers (despite all that diplomacy); \*A modest scaling back of international policing efforts by the system's acknowledged Leviathan power (inevitable given the strain); and \*No serious efforts by any rising great power to challenge that Leviathan or supplant its role. (The worst things we can cite are Moscow's occasional deployments of strategic assets to the Western hemisphere and its weak efforts to outbid the United States on basing rights in Kyrgyzstan; but the best include China and India stepping up their aid and investments in Afghanistan and Iraq.) Sure, we've finally seen global defense spending surpass the previous world record set in the late 1980s, but even that's likely to wane given the stress on public budgets created by all this unprecedented "stimulus" spending. If anything, the friendly cooperation on such stimulus packaging was the most notable great-power dynamic caused by the crisis. Can we say that the world has suffered a distinct shift to political radicalism as a result of the economic crisis? Indeed, no. The world's major economies remain governed by center-left or center-right political factions that remain decidedly friendly to both markets and trade. In the short run, there were attempts across the board to insulate economies from immediate damage (in effect, as much protectionism as allowed under current trade rules), but there was no great slide into "trade wars." Instead, the World Trade Organization is functioning as it was designed to function, and regional efforts toward free-trade agreements have not slowed. Can we say Islamic radicalism was inflamed by the economic crisis? If it was, that shift was clearly overwhelmed by the Islamic world's growing disenchantment with the brutality displayed by violent extremist groups such as al-Qaida. And looking forward, austere economic times are just as likely to breed connecting evangelicalism as disconnecting fundamentalism. At the end of the day, the economic crisis did not prove to be sufficiently frightening to provoke major economies into establishing global regulatory schemes, even as it has sparked a spirited -- and much needed, as I argued last week -- discussion of the continuing viability of the U.S. dollar as the world's primary reserve currency. Naturally, plenty of experts and pundits have attached great significance to this debate, seeing in it the beginning of "economic warfare" and the like between "fading" America and "rising" China. And yet, in a world of globally integrated production chains and interconnected financial markets, such "diverging interests" hardly constitute signposts for wars up ahead. Frankly, I don't welcome a world in which America's fiscal profligacy goes undisciplined, so bring it on -- please! Add it all up and it's fair to say that this global financial crisis has proven the great resilience of America's post-World War II international liberal trade order. Do I expect to read any analyses along those lines in the blogosphere any time soon? Absolutely not. I expect the fantastic fear-mongering to proceed apace. That's what the Internet is for.

#### No agenda – NSA reform, unemployment benefits, and healthcare thump.

Rogers, 1-16-’14 (Alex, “Don’t Be Fooled, It’s Gridlock Time in Washington” http://swampland.time.com/2014/01/16/dont-be-fooled-its-gridlock-time-in-washington/)

Get ready for gridlock. Despite the passage Thursday of a massive budget bill to fund the government, Congress is unlikely to pass any other major piece of legislation this year—with the possible exception of a long overdue farm bill. Reforms to immigration policy, the National Security Agency and the health care reform law have been, and will remain, under the purview of the White House. President Barack Obama‘s so-called “year of action” will take place, if anywhere, solely in the realm of the executive branch. Run down the list of issues, and the cause for pessimism is clear. The Senate last year passed comprehensive immigration reform with the support of 14 Republicans, establishing a 13-year pathway to citizenship for millions for immigrants in the country illegally. But the measure remains dead in the House—the GOP majority will release a set of principles this year, but as National Journal reports, “it will not include any concrete proposal.” A Republican member from Texas spoke up at the party’s weekly luncheon Tuesday only to declare that it was his favorite meeting yet because no one mentioned immigration, a House aide present told TIME. The immigration reform effort has turned from policy to politics, with Republicans feeling little urgency to pass anything before the midterm elections, even as party leaders fret about another presidential race with Hispanics voting in droves against their party. “There is no good time to do it,” Rep. Mike Simpson (R-Idaho) says. “It’s tough no matter when you do it.” Meanwhile, Obama is set to announce executive actions Friday to reform the NSA, Rep. Adam Schiff (D-Calif.) says, and call on Congress to do the rest. “Many of us are going to be working to do exactly that, but it won’t be easy,” says Schiff, who participated in a meeting with Obama on the issue last week. “[With] our track record, if you were a betting man, you’d have to bet against us.” Possible reforms include the creation of a public advocate to represent privacy concerns in the secret Foreign Intelligence Surveillance Court and new, increased limits on the NSA’s access to bulk telephone data. But Congress is unlikely to make either change, which privacy advocates say don’t go far enough. And although reforming aspects of the Affordable Care Act remains a focus for many lawmakers—last week almost 70 Democrats supported a bill that would alert users of breaches involving their personal data—the issue is too toxic on Capitol Hill for any serious movement, especially with the Administration continuing to give Democrats cover by granting exemptions and deadline extensions as it sees fit. “I don’t know what we’re going to do on Obamacare,” Simpson says. “I don’t know what we can do, we’ve tried just about everything.” Even the first high-profile legislative fight of the year, extending emergency unemployment insurance—which has the support of the President and the Senate—has faltered. Democrats claim to have a winning issue on their hands, with more than one million Americans losing their benefits, but most Republicans so far aren’t feeling the political pain. “At this point the Senate seems to appear incapable of passing anything and the President hasn’t proposed anything,” Rep. Tim Price (R-Ga.) says. The lone bright spot is the farm bill. Rep. Colin Peterson (D-Minn.) told reporters Thursday that his intention is to get a bill drafted by next week. Historically, the bill has been easily renewed, but the last five-year measure was passed in 2008. This year the hurdles include dairy price supports, catfish inspection jurisdiction, and a controversial amendment that forbids states from imposing agricultural standards, such as California’s barring of eggs from states that allow their farmers to pen hens in tiny cages. But even as the two sides appear to be coming together, some remain anxious that things could fall apart. As one Senate Democratic leadership aide put to TIME: “In this environment, I don’t think anything is a safe bet.” “I don’t think we’re going to be able to generate the kind of trust that you need for the majority of people to look to the government to solve the major problems,” says Rep. Jim Moran (D-Va.), who is retiring this year after 24 years in office. “You probably have at least as good, probably better, shot at making a difference outside the institution than within it today.” When asked what other bipartisan compromises can be expected after the budget bill passed, Senate Minority Whip John Cornyn (R-Texas) laughed before nodding to the must-pass increase of the debt ceiling: “It’s hard to see a whole lot else being done.”

#### XOs solve Obama’s agenda

Mason, 1-14-’14 (Jeff, “Obama: Won't wait for legislation to advance 2014 priorities” Reuters, http://www.reuters.com/article/2014/01/14/us-usa-obama-priorities-idUSBREA0D11620140114)

President Barack Obama said on Tuesday he would not wait for Congress to pass legislation to advance his policy priorities this year and said he was "getting close" to finishing a review of U.S. surveillance practices - to be unveiled on Friday. Obama, speaking to reporters during a cabinet meeting at the White House, foreshadowed his upcoming State of the Union address and what appeared to be a new messaging strategy by emphasizing his ability to take executive actions without approval from lawmakers. "We are not just going to be waiting for legislation in order to make sure that we're providing Americans the kind of help that they need," he said. "I've got a pen, and I've got a phone. And I can use that pen to sign executive orders and take executive actions ... and I've got a phone that allows me to convene Americans from every walk of life," he said. Obama began last year with high hopes of making progress on gun control, immigration reform, and other issues after giving an inaugural address that rallied his base and set an aggressive tone for his second term. But the year concluded with few legislative achievements. His gun control efforts largely failed and an immigration reform bill passed in the Senate but stalled in the House of Representatives.

#### Won’t pass – Boehner, election, and secrecy trump

Alan Guebert 1/17 Go slow on the bull muscatinejournal.com/business/go-slow-on-the-bull/article\_da40017d-3b1d-55f6-a477-99c42589cb20.html

It’s an effective argument. House Speaker John Boehner has publicly warned the Obama Administration that fast track is a dead duck on Capitol Hill should the White House walk it down Pennsylvania Avenue. But the fast track question is foreshadowing a much bigger question: Will Congress pass the secretly negotiated Trans-Pacific Partnership when it’s brought forward sometime after the November 2014 election? TPP supporters, and count almost every major farm and commodity group in that number, claim it’s a critical step forward to move U.S. goods into nations—principally Japan—that are tough, high tariff markets. Detractors counter by describing TPP as tool of “corporate trade,” not “free trade.” That judgment is based on TPP negotiation documents leaked last December that they claim grants “radical new political powers to corporations,” would increase global drug costs and “restricts bank regulation.” Both views skate on thin ice. The former is an article of free trade faith; the latter arrives on leaked evidence. (Secrecy rules all TPP talks; even most Congressional staffers are barred from viewing negotiation documents.) Faith is a good thing in religion but less so in trade talks. Until someone somewhere—in Congress, at a Land Grant university, in any farm group—actually reads a completed TPP deal, no one anywhere should blindly endorse it. Besides, you wouldn’t buy a bull without knowing something about it. So why is everyone in such a hurry to buy this bull sight unseen

**No TPA – Congressional opposition**

**Chicago Tribune 12/30**

Obama needs fast-track trade authority, 12/30/13, http://articles.chicagotribune.com/2013-12-30/opinion/ct-give-obama-tpa-fast-track-trade-edit-1230-jm-20131230\_1\_trade-deals-trade-promotion-authority-tpa

Many Democrats oppose free trade, on the misguided theory that fair and open competition hurts American workers. In fact, opening markets abroad helps America's economy grow and create the jobs it desperately needs. Nevertheless, lawmakers have been declaring their opposition in a flurry of recent letters. Last month, 151 House Democrats pledged to stand against their party's president and thwart his efforts to secure TPA.¶ Just as disappointing, 22 House Republicans also declared their opposition. Some hail from union-dominated districts that want to preserve an inefficient status quo. Some simply don't trust the White House. In their letter, they claim that TPA flouts the Constitution by ceding legislative power to the executive branch.

**Obama not spending PC**

**Chicago Tribune 12/30**

Obama needs fast-track trade authority, 12/30/13, http://articles.chicagotribune.com/2013-12-30/opinion/ct-give-obama-tpa-fast-track-trade-edit-1230-jm-20131230\_1\_trade-deals-trade-promotion-authority-tpa

The president made no push for TPA in his first four years. Recently, he has spoken out about the need for it. But **he has not twisted arms on Capitol Hill**. If TPA is the high priority that it should be for his administration, Obama needs to demand it from members of both parties. Along with immigration reform, free-trade deals could be Obama's best hope for a positive legacy in his second term.

**EU says “no”**

**Meacham 7/25**

Carl Meacham is the director of the Americas Program at the Center for Strategic and International Studies (CSIS) in Washington, D.C. Tania Miranda, intern scholar with the CSIS Americas Program, provided research assistance. “The Trans-Atlantic Trade and Investment Partnership: Mexico Wants In—Why Not?” JUL 25, 2013

http://csis.org/publication/trans-atlantic-trade-and-investment-partnership-mexico-wants-why-not

Yet, while Mexico is a member of the North American Free Trade Agreement (NAFTA), remains among the United States' top three trade partners, and already has an FTA with the European Union to build upon, it remains on the negotiating sidelines. And in recent talks at CSIS, including by the National Security Council’s Latin America head as well as the EU’s manager for the Americas, there does not appear to be much interest in including Mexico in talks that are, admittedly, already complex.

**Aff is popular**

**Sibilla, 12** – Nick "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.

#### Forcing controversial fights key to Obama’s agenda- try or die for the link turn

Dickerson 13 (John, Slate, Go for the Throat!, 1/18 www.slate.com/articles/news\_and\_politics/politics/2013/01/barack\_obama\_s\_second\_inaugural\_address\_the\_president\_should\_declare\_war.single.html)

On Monday, President Obama will preside over the grand reopening of his administration. It would be altogether fitting if he stepped to the microphone, looked down the mall, and let out a sigh: so many people expecting so much from a government that appears capable of so little. A second inaugural suggests new beginnings, but this one is being bookended by dead-end debates. Gridlock over the fiscal cliff preceded it and gridlock over the debt limit, sequester, and budget will follow. After the election, the same people are in power in all the branches of government and they don't get along. There's no indication that the president's clashes with House Republicans will end soon. Inaugural speeches are supposed to be huge and stirring. Presidents haul our heroes onstage, from George Washington to Martin Luther King Jr. George W. Bush brought the Liberty Bell. They use history to make greatness and achievements seem like something you can just take down from the shelf. Americans are not stuck in the rut of the day. But this might be too much for Obama’s second inaugural address: After the last four years, how do you call the nation and its elected representatives to common action while standing on the steps of a building where collective action goes to die? That bipartisan bag of tricks has been tried and it didn’t work. People don’t believe it. Congress' approval rating is 14 percent, the lowest in history. In a December Gallup poll, 77 percent of those asked said the way Washington works is doing “serious harm” to the country. The challenge for President Obama’s speech is the challenge of his second term: how to be great when the environment stinks. Enhancing the president’s legacy requires something more than simply the clever application of predictable stratagems. Washington’s partisan rancor, the size of the problems facing government, and the limited amount of time before Obama is a lame duck all point to a single conclusion: The president who came into office speaking in lofty terms about bipartisanship and cooperation can only cement his legacy if he destroys the GOP. If he wants to transform American politics, he must go for the throat. President Obama could, of course, resign himself to tending to the achievements of his first term. He'd make sure health care reform is implemented, nurse the economy back to health, and put the military on a new footing after two wars. But he's more ambitious than that. He ran for president as a one-term senator with no executive experience. In his first term, he pushed for the biggest overhaul of health care possible because, as he told his aides, he wanted to make history. He may already have made it. There's no question that he is already a president of consequence. But there's no sign he's content to ride out the second half of the game in the Barcalounger. He is approaching gun control, climate change, and immigration with wide and excited eyes. He's not going for caretaker. How should the president proceed then, if he wants to be bold? The Barack Obama of the first administration might have approached the task by finding some Republicans to deal with and then start agreeing to some of their demands in hope that he would win some of their votes. It's the traditional approach. Perhaps he could add a good deal more schmoozing with lawmakers, too. That's the old way. He has abandoned that. He doesn't think it will work and he doesn't have the time. As Obama explained in his last press conference, he thinks the Republicans are dead set on opposing him. They cannot be unchained by schmoozing. Even if Obama were wrong about Republican intransigence, other constraints will limit the chance for cooperation. Republican lawmakers worried about primary challenges in 2014 are not going to be willing partners. He probably has at most 18 months before people start dropping the lame-duck label in close proximity to his name. Obama’s only remaining option is to pulverize. Whether he succeeds in passing legislation or not, given his ambitions, his goal should be to delegitimize his opponents. Through a series of clarifying fights over controversial issues, he can force Republicans to either side with their coalition's most extreme elements or cause a rift in the party that will leave it, at least temporarily, in disarray.

#### Intrinsicness - Logical policy votes to do both

#### non link uniqueness and Obama won’t push- Obama aids have been pushing plan relentlessly

Klaidman, 7/31 (Daniel, national political correspondent for Newsweek and The Daily Beast and the author of [Kill or Capture: The War on Terror and the Soul of the Obama Presidency](http://www.amazon.com/Kill-Capture-Terror-Obama-Presidency/dp/0547547897/ref=as_at?tag=thedailybeast-autotag-20&linkCode=as2&), “Obama’s Secret Gitmo plan” Newsweek. Web, Acc 8/31/2013)

Ever since Obama vowed to “go back at” the Guantánamo challenge in a major national security policy address in May, his aides have gamely thrown themselves into the effort. There is more White House activity swirling around Gitmo now than there has been in three years. Numerous people are working on the project, either part time or full time, under the leadership of Lisa Monaco, Obama’s chief counterterrorism adviser. White House lobbyists have been all over Capitol Hill, meeting with members of Congress. And yet, despite all this, Obama aides quietly admit that unless the political climate changes dramatically, Guantánamo will likely be open for business for many years to come.

#### Vote no – plans introduction in this debate is its introduction in Congress

#### Aff gets McCain on board – he sees it a specific plan.

Hunt, 7/28 (Albert, “McCain Goes Maverick Again as Obama’s Republican Ally. Bloomberg View. Web, Acc 8/19/2013. http://www.bloomberg.com/news/2013-07-28/mccain-goes-maverick-again-as-obama-s-republican-ally.html

McCain also wants to help Obama fulfill his promise to close the detainee camp for terrorism suspects at Guantanamo Bay, Cuba. He says political conditions are much different than they were four years ago when there was a similar effort.¶ “The difference between 2009 and 2013 is the administration now has a plan,” he says.¶ Closing Guantanamo¶ Last month, the five-term senator traveled to Guantanamo with Senate Intelligence Committee Chairman [Dianne Feinstein](http://topics.bloomberg.com/dianne-feinstein/) and the White House chief of staff, [Denis McDonough](http://topics.bloomberg.com/denis-mcdonough/).¶ McDonough, who McCain knew as a mid-level aide to former Democratic Senate Leader Tom Daschle, is a glue that binds the Republican and the administration. He and McCain talk as often as five times a day. In addition, the Republican senator has a great fondness for Vice President [Joe Biden](http://topics.bloomberg.com/joe-biden/), a good working relationship with Secretary of State [John Kerry](http://topics.bloomberg.com/john-kerry/) and is a fan of United Nations Ambassador-designate Samantha Power.

#### McCain is key to getting GOP on board for the agenda – especially for immigration

Hunt, 7/28 (Albert, “McCain Goes Maverick Again as Obama’s Republican Ally. Bloomberg View. Web, Acc 8/19/2013. http://www.bloomberg.com/news/2013-07-28/mccain-goes-maverick-again-as-obama-s-republican-ally.html

The association between Obama and McCain is different. But it may be Washington’s most important since Reagan and O’Neill.¶ McCain, 76, whose political resiliency is rivaled only by such luminaries as [Bill Clinton](http://topics.bloomberg.com/bill-clinton/) and [Richard Nixon](http://topics.bloomberg.com/richard-nixon/), is the most pivotal figure in the Senate today. He often is more central than the party leaders, [Mitch McConnell](http://topics.bloomberg.com/mitch-mcconnell/), the Kentucky Republican, or [Harry Reid](http://topics.bloomberg.com/harry-reid/), a Nevada Democrat, or the self-styled new power broker, the New York Democrat Chuck Schumer.¶ When McCain is with the president -- on immigration and in brokering the recent deal to secure Senate approval of stalled Obama nominees -- they usually can trump the political right. When he’s against him -- sabotaging Obama’s plan last year to nominate [Susan Rice](http://topics.bloomberg.com/susan-rice/) as secretary of state -- the White House rarely prevails.

#### Feinstein is on board with the plan and no link - plan get’s bundled with 2014 defense authorization bill

Feinstein and Durbin, 8/14 (Dianne and Dick, United States Senators. “How to close Gitmo.” Los Angeles Times. Web, Acc at <http://www.latimes.com/news/opinion/la-oe-feinstein-durbin-close-gitmo-20130814,0,432429.story>

The 2014 [Senate](http://www.latimes.com/topic/politics/government/u.s.-senate-ORGOV0000134.topic) defense authorization bill will come up for debate on the Senate floor this fall. Congress must pass the provisions that streamline procedures for transferring detainees abroad and allow transfers to the U.S. for trial or detention under international law until the end of hostilities.¶ As chairwoman of the [Senate Intelligence Committee](http://www.latimes.com/topic/politics/espionage-intelligence/u.s.-senate-select-committee-on-intelligence-ORGOV000350.topic) and chairman of the defense appropriations subcommittee, respectively, we are committed to preventing terrorist attacks. We believe terrorists deserve swift and sure justice, and severe prison sentences. But holding detainees on an island off U.S. shores for years — without charge — is an abomination. It is not an effective administration of justice, does not serve our national security interests and is not consistent with our country's history as a champion of human rights.¶ It is time to close Guantanamo.

#### She’s key to getting GOP votes for his agenda

**SF Gate 12** (“Dianne Feinstein: 4 decades of influence”, <http://www.sfgate.com/politics/article/Dianne-Feinstein-4-decades-of-influence-3968314.php>)

She revels in split-the-baby deal making: "I think my greatest strength is finding a solution when there are opposing sides." It was Feinstein, an ally of [Hillary Rodham Clinton](http://www.sfgate.com/?controllerName=search&action=search&channel=politics&search=1&inlineLink=1&query=%22Hillary+Rodham+Clinton%22) against Barack [Obama](http://www.sfgate.com/barack-obama/) in the 2008 Democratic presidential primary, who brought the warring candidates to a secret rendezvous at her Washington home to bury the hatchet in private. In a chamber riven by partisanship, **Republicans like and respect her.** "She thinks through issues and makes what she thinks is a rational and correct decision," said Sen. Saxby Chambliss, R-Ga., the top Republican on the Intelligence Committee. "Unfortunately t**here are some Republicans who, if it's a Democratic idea, immediately jump up and they're opposed to it,** and that happens on the other side of the aisle too. **But with Dianne, that does not happen."** '

1. Political capital is fabricated- you can’t predict momentum or uplanned events. There’s only a risk the plan is a win.

Hirsh, Chief Correspondent National Journal, 2-7-’13 (Michael, “There’s No Such Thing as Political Capital” National Journal, http://www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207)

On Tuesday, in his State of the Union address, President Obama will do what every president does this time of year. For about 60 minutes, he will lay out a sprawling and ambitious wish list highlighted by gun control and immigration reform, climate change and debt reduction. In response, the pundits will do what they always do this time of year: They will talk about how unrealistic most of the proposals are, discussions often informed by sagacious reckonings of how much “political capital” Obama possesses to push his program through.¶ Most of this talk will have no bearing on what actually happens over the next four years.¶ Consider this: Three months ago, just before the November election, if someone had talked seriously about Obama having enough political capital to oversee passage of both immigration reform and gun-control legislation at the beginning of his second term—even after winning the election by 4 percentage points and 5 million votes (the actual final tally)—this person would have been called crazy and stripped of his pundit’s license. (It doesn’t exist, but it ought to.) In his first term, in a starkly polarized country, the president had been so frustrated by GOP resistance that he finally issued a limited executive order last August permitting immigrants who entered the country illegally as children to work without fear of deportation for at least two years. Obama didn’t dare to even bring up gun control, a Democratic “third rail” that has cost the party elections and that actually might have been even less popular on the right than the president’s health care law. And yet, for reasons that have very little to do with Obama’s personal prestige or popularity—variously put in terms of a “mandate” or “political capital”—chances are fair that both will now happen.¶ What changed? In the case of gun control, of course, it wasn’t the election. It was the horror of the 20 first-graders who were slaughtered in Newtown, Conn., in mid-December. The sickening reality of little girls and boys riddled with bullets from a high-capacity assault weapon seemed to precipitate a sudden tipping point in the national conscience. One thing changed after another. Wayne LaPierre of the National Rifle Association marginalized himself with poorly chosen comments soon after the massacre. The pro-gun lobby, once a phalanx of opposition, began to fissure into reasonables and crazies. Former Rep. Gabrielle Giffords, D-Ariz., who was shot in the head two years ago and is still struggling to speak and walk, started a PAC with her husband to appeal to the moderate middle of gun owners. Then she gave riveting and poignant testimony to the Senate, challenging lawmakers: “Be bold.”¶ As a result, momentum has appeared to build around some kind of a plan to curtail sales of the most dangerous weapons and ammunition and the way people are permitted to buy them. It’s impossible to say now whether such a bill will pass and, if it does, whether it will make anything more than cosmetic changes to gun laws. But one thing is clear: The political tectonics have shifted dramatically in very little time. Whole new possibilities exist now that didn’t a few weeks ago.¶ Meanwhile, the Republican members of the Senate’s so-called Gang of Eight are pushing hard for a new spirit of compromise on immigration reform, a sharp change after an election year in which the GOP standard-bearer declared he would make life so miserable for the 11 million illegal immigrants in the U.S. that they would “self-deport.” But this turnaround has very little to do with Obama’s personal influence—his political mandate, as it were. It has almost entirely to do with just two numbers: 71 and 27. That’s 71 percent for Obama, 27 percent for Mitt Romney, the breakdown of the Hispanic vote in the 2012 presidential election. Obama drove home his advantage by giving a speech on immigration reform on Jan. 29 at a Hispanic-dominated high school in Nevada, a swing state he won by a surprising 8 percentage points in November. But the movement on immigration has mainly come out of the Republican Party’s recent introspection, and the realization by its more thoughtful members, such as Sen. Marco Rubio of Florida and Gov. Bobby Jindal of Louisiana, that without such a shift the party may be facing demographic death in a country where the 2010 census showed, for the first time, that white births have fallen into the minority. It’s got nothing to do with Obama’s political capital or, indeed, Obama at all.¶ The point is not that “political capital” is a meaningless term. Often it is a synonym for “mandate” or “momentum” in the aftermath of a decisive election—and just about every politician ever elected has tried to claim more of a mandate than he actually has. Certainly, Obama can say that because he was elected and Romney wasn’t, he has a better claim on the country’s mood and direction. Many pundits still defend political capital as a useful metaphor at least. “It’s an unquantifiable but meaningful concept,” says Norman Ornstein of the American Enterprise Institute. “You can’t really look at a president and say he’s got 37 ounces of political capital. But the fact is, it’s a concept that matters, if you have popularity and some momentum on your side.”¶ The real problem is that the idea of political capital—or mandates, or momentum—is so poorly defined that presidents and pundits often get it wrong. “Presidents usually over-estimate it,” says George Edwards, a presidential scholar at Texas A&M University. “The best kind of political capital—some sense of an electoral mandate to do something—is very rare. It almost never happens. In 1964, maybe. And to some degree in 1980.” For that reason, political capital is a concept that misleads far more than it enlightens. It is distortionary. It conveys the idea that we know more than we really do about the ever-elusive concept of political power, and it discounts the way unforeseen events can suddenly change everything. Instead, it suggests, erroneously, that a political figure has a concrete amount of political capital to invest, just as someone might have real investment capital—that a particular leader can bank his gains, and the size of his account determines what he can do at any given moment in history.¶ Naturally, any president has practical and electoral limits. Does he have a majority in both chambers of Congress and a cohesive coalition behind him? Obama has neither at present. And unless a surge in the economy—at the moment, still stuck—or some other great victory gives him more momentum, it is inevitable that the closer Obama gets to the 2014 election, the less he will be able to get done. Going into the midterms, Republicans will increasingly avoid any concessions that make him (and the Democrats) stronger.¶ But the abrupt emergence of the immigration and gun-control issues illustrates how suddenly shifts in mood can occur and how political interests can align in new ways just as suddenly. Indeed, the pseudo-concept of political capital masks a larger truth about Washington that is kindergarten simple: You just don’t know what you can do until you try. Or as Ornstein himself once wrote years ago, “Winning wins.” In theory, and in practice, depending on Obama’s handling of any particular issue, even in a polarized time, he could still deliver on a lot of his second-term goals, depending on his skill and the breaks. Unforeseen catalysts can appear, like Newtown. Epiphanies can dawn, such as when many Republican Party leaders suddenly woke up in panic to the huge disparity in the Hispanic vote.¶ Some political scientists who study the elusive calculus of how to pass legislation and run successful presidencies say that political capital is, at best, an empty concept, and that almost nothing in the academic literature successfully quantifies or even defines it. “It can refer to a very abstract thing, like a president’s popularity, but there’s no mechanism there. That makes it kind of useless,” says Richard Bensel, a government professor at Cornell University. Even Ornstein concedes that the calculus is far more complex than the term suggests. Winning on one issue often changes the calculation for the next issue; there is never any known amount of capital. “The idea here is, if an issue comes up where the conventional wisdom is that president is not going to get what he wants, and he gets it, then each time that happens, it changes the calculus of the other actors” Ornstein says. “If they think he’s going to win, they may change positions to get on the winning side. It’s a bandwagon effect.”¶ ALL THE WAY WITH LBJ¶ Sometimes, a clever practitioner of power can get more done just because he’s aggressive and knows the hallways of Congress well. Texas A&M’s Edwards is right to say that the outcome of the 1964 election, Lyndon Johnson’s landslide victory over Barry Goldwater, was one of the few that conveyed a mandate. But one of the main reasons for that mandate (in addition to Goldwater’s ineptitude as a candidate) was President Johnson’s masterful use of power leading up to that election, and his ability to get far more done than anyone thought possible, given his limited political capital. In the newest volume in his exhaustive study of LBJ, The Passage of Power, historian Robert Caro recalls Johnson getting cautionary advice after he assumed the presidency from the assassinated John F. Kennedy in late 1963. Don’t focus on a long-stalled civil-rights bill, advisers told him, because it might jeopardize Southern lawmakers’ support for a tax cut and appropriations bills the president needed. “One of the wise, practical people around the table [said that] the presidency has only a certain amount of coinage to expend, and you oughtn’t to expend it on this,” Caro writes. (Coinage, of course, was what political capital was called in those days.) Johnson replied, “Well, what the hell’s the presidency for?”¶ Johnson didn’t worry about coinage, and he got the Civil Rights Act enacted, along with much else: Medicare, a tax cut, antipoverty programs. He appeared to understand not just the ways of Congress but also the way to maximize the momentum he possessed in the lingering mood of national grief and determination by picking the right issues, as Caro records. “Momentum is not a mysterious mistress,” LBJ said. “It is a controllable fact of political life.” Johnson had the skill and wherewithal to realize that, at that moment of history, he could have unlimited coinage if he handled the politics right. He did. (At least until Vietnam, that is.)¶ And then there are the presidents who get the politics, and the issues, wrong. It was the last president before Obama who was just starting a second term, George W. Bush, who really revived the claim of political capital, which he was very fond of wielding. Then Bush promptly demonstrated that he didn’t fully understand the concept either.¶ At his first news conference after his 2004 victory, a confident-sounding Bush declared, “I earned capital in the campaign, political capital, and now I intend to spend it. That’s my style.” The 43rd president threw all of his political capital at an overriding passion: the partial privatization of Social Security. He mounted a full-bore public-relations campaign that included town-hall meetings across the country.¶ Bush failed utterly, of course. But the problem was not that he didn’t have enough political capital. Yes, he may have overestimated his standing. Bush’s margin over John Kerry was thin—helped along by a bumbling Kerry campaign that was almost the mirror image of Romney’s gaffe-filled failure this time—but that was not the real mistake. The problem was that whatever credibility or stature Bush thought he had earned as a newly reelected president did nothing to make Social Security privatization a better idea in most people’s eyes. Voters didn’t trust the plan, and four years later, at the end of Bush’s term, the stock-market collapse bore out the public’s skepticism. Privatization just didn’t have any momentum behind it, no matter who was pushing it or how much capital Bush spent to sell it.¶ The mistake that Bush made with Social Security, says John Sides, an associate professor of political science at George Washington University and a well-followed political blogger, “was that just because he won an election, he thought he had a green light. But there was no sense of any kind of public urgency on Social Security reform. It’s like he went into the garage where various Republican policy ideas were hanging up and picked one. I don’t think Obama’s going to make that mistake.… Bush decided he wanted to push a rock up a hill. He didn’t understand how steep the hill was. I think Obama has more momentum on his side because of the Republican Party’s concerns about the Latino vote and the shooting at Newtown.” Obama may also get his way on the debt ceiling, not because of his reelection, Sides says, “but because Republicans are beginning to doubt whether taking a hard line on fiscal policy is a good idea,” as the party suffers in the polls.¶ THE REAL LIMITS ON POWER¶ Presidents are limited in what they can do by time and attention span, of course, just as much as they are by electoral balances in the House and Senate. But this, too, has nothing to do with political capital. Another well-worn meme of recent years was that Obama used up too much political capital passing the health care law in his first term. But the real problem was that the plan was unpopular, the economy was bad, and the president didn’t realize that the national mood (yes, again, the national mood) was at a tipping point against big-government intervention, with the tea-party revolt about to burst on the scene. For Americans in 2009 and 2010—haunted by too many rounds of layoffs, appalled by the Wall Street bailout, aghast at the amount of federal spending that never seemed to find its way into their pockets—government-imposed health care coverage was simply an intervention too far. So was the idea of another economic stimulus. Cue the tea party and what ensued: two titanic fights over the debt ceiling. Obama, like Bush, had settled on pushing an issue that was out of sync with the country’s mood.¶ Unlike Bush, Obama did ultimately get his idea passed. But the bigger political problem with health care reform was that it distracted the government’s attention from other issues that people cared about more urgently, such as the need to jump-start the economy and financial reform. Various congressional staffers told me at the time that their bosses didn’t really have the time to understand how the Wall Street lobby was riddling the Dodd-Frank financial-reform legislation with loopholes. Health care was sucking all the oxygen out of the room, the aides said.¶ Weighing the imponderables of momentum, the often-mystical calculations about when the historic moment is ripe for an issue, will never be a science. It is mainly intuition, and its best practitioners have a long history in American politics. This is a tale told well in Steven Spielberg’s hit movie Lincoln. Daniel Day-Lewis’s Abraham Lincoln attempts a lot of behind-the-scenes vote-buying to win passage of the 13th Amendment, banning slavery, along with eloquent attempts to move people’s hearts and minds. He appears to be using the political capital of his reelection and the turning of the tide in the Civil War. But it’s clear that a surge of conscience, a sense of the changing times, has as much to do with the final vote as all the backroom horse-trading. “The reason I think the idea of political capital is kind of distorting is that it implies you have chits you can give out to people. It really oversimplifies why you elect politicians, or why they can do what Lincoln did,” says Tommy Bruce, a former political consultant in Washington.¶ Consider, as another example, the storied political career of President Franklin Roosevelt. Because the mood was ripe for dramatic change in the depths of the Great Depression, FDR was able to push an astonishing array of New Deal programs through a largely compliant Congress, assuming what some described as near-dictatorial powers. But in his second term, full of confidence because of a landslide victory in 1936 that brought in unprecedented Democratic majorities in the House and Senate, Roosevelt overreached with his infamous Court-packing proposal. All of a sudden, the political capital that experts thought was limitless disappeared. FDR’s plan to expand the Supreme Court by putting in his judicial allies abruptly created an unanticipated wall of opposition from newly reunited Republicans and conservative Southern Democrats. FDR thus inadvertently handed back to Congress, especially to the Senate, the power and influence he had seized in his first term. Sure, Roosevelt had loads of popularity and momentum in 1937. He seemed to have a bank vault full of political capital. But, once again, a president simply chose to take on the wrong issue at the wrong time; this time, instead of most of the political interests in the country aligning his way, they opposed him. Roosevelt didn’t fully recover until World War II, despite two more election victories.¶ In terms of Obama’s second-term agenda, what all these shifting tides of momentum and political calculation mean is this: Anything goes. Obama has no more elections to win, and he needs to worry only about the support he will have in the House and Senate after 2014. But if he picks issues that the country’s mood will support—such as, perhaps, immigration reform and gun control—there is no reason to think he can’t win far more victories than any of the careful calculators of political capital now believe is possible, including battles over tax reform and deficit reduction.¶ Amid today’s atmosphere of Republican self-doubt, a new, more mature Obama seems to be emerging, one who has his agenda clearly in mind and will ride the mood of the country more adroitly. If he can get some early wins—as he already has, apparently, on the fiscal cliff and the upper-income tax increase—that will create momentum, and one win may well lead to others. “Winning wins.”¶ Obama himself learned some hard lessons over the past four years about the falsity of the political-capital concept. Despite his decisive victory over John McCain in 2008, he fumbled the selling of his $787 billion stimulus plan by portraying himself naively as a “post-partisan” president who somehow had been given the electoral mandate to be all things to all people. So Obama tried to sell his stimulus as a long-term restructuring plan that would “lay the groundwork for long-term economic growth.” The president thus fed GOP suspicions that he was just another big-government liberal. Had he understood better that the country was digging in against yet more government intervention and had sold the stimulus as what it mainly was—a giant shot of adrenalin to an economy with a stopped heart, a pure emergency measure—he might well have escaped the worst of the backlash. But by laying on ambitious programs, and following up quickly with his health care plan, he only sealed his reputation on the right as a closet socialist.¶ After that, Obama’s public posturing provoked automatic opposition from the GOP, no matter what he said. If the president put his personal imprimatur on any plan—from deficit reduction, to health care, to immigration reform—Republicans were virtually guaranteed to come out against it. But this year, when he sought to exploit the chastened GOP’s newfound willingness to compromise on immigration, his approach was different. He seemed to understand that the Republicans needed to reclaim immigration reform as their own issue, and he was willing to let them have some credit. When he mounted his bully pulpit in Nevada, he delivered another new message as well: You Republicans don’t have to listen to what I say anymore. And don’t worry about who’s got the political capital. Just take a hard look at where I’m saying this: in a state you were supposed to have won but lost because of the rising Hispanic vote.¶ Obama was cleverly pointing the GOP toward conclusions that he knows it is already reaching on its own: If you, the Republicans, want to have any kind of a future in a vastly changed electoral map, you have no choice but to move. It’s your choice.¶ The future is wide open.