### T

#### We meet- Indef detention is without trial -

US LEGAL 13 [US Legal Forms Inc., Indefinite Detention Law and Legal Definition http://definitions.uslegal.com/i/indefinite-detention/]

Indefinite detention is the practice of detaining an arrested person by a national government or law enforcement agency without a trial. It may be made by the home country or by a foreign nation. Indefinite detention is a controversial practice, especially in situations where the detention is by a foreign nation. It is controversial because it seems to violate many national and international laws. It also violates human rights laws. Indefinite detention is seen mainly in cases of suspected terrorists who are indefinitely detained.The Law Lords, Britain’s highest court, have held that the indefinite detention of foreign terrorism suspects is incompatible with the Human Rights Act and the European Convention on Human Rights. [Human Rights Watch] In the U.S., indefinite detention has been used to hold terror suspects. The case relating to the indefinite detention of Jose Padilla is one of the most highly publicized cases of indefinite detention in the U.S. In the U.S., indefinite detention is a highly controversial matter and is currently under review. Organizations such as International Red Cross and FIDH are of the opinion that U.S. detention of prisoners at Guantanamo Bay is not based on legal grounds. However, the American Civil Liberties Union is of the view that indefinite detention is permitted pursuant to section 412 of the USA Patriot Act.

#### plan causes trils in 7 days

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

¶ Second, a re-articulation of detention policies under the DTC model will limit procedural burdens on detainees to a greater degree. The DTC model requires that detainees be brought before a judge without unnecessary delay. [n182](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#n182) This should occur within seven days unless exigent circumstances arise. [n183](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#n183) Detentions must be independently reviewed at periodic intervals to ensure that the process is progressing either toward trial or release. [n184](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#n184) Fairness and efficiency are maximized by a system adapted specifically to detainees, and holding individuals for years without trial would become the rare exception under this model rather than the norm.¶

#### If there is a reasonable way to define their definition to include the aff, than T is a wash. A race to the most limiting interpretation causes a race to the bottom that kills substantive debate

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

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

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

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

#### Over limits – their arg restricts the topic to one aff per topic area, kills innovation, creativity and aff ground which is vital to two sided engagement

#### Precision – no ev in the context of the topic proves excluding the aff is arbitrary – turns limits because imprecise limits are worse than not at all

#### Functional limits guarantee ground – ESR etc

### Solvency

#### You have no uniqueness for this argument- Obama is on board with the plan but Congress circumvents absent legislative action- Conceded Rogin and Catalini- Obama has lifted transfer requirements and pushed Congress to authorize trials in the United States

#### 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.

### Terror

#### The terror attack doesn’t need to occur against the US to trigger the impact- a terrorist could nuke Israel or Russia and that’s bad- only international cooperation can prevent those attacks from occurring. Because other countries have weaker infrastructure to deal with the aftermath of the attack, that places a premium on cooperation that can prevent an attack from occurring in the first place.

#### Defense ignores empirics

Moran and Cottee, 10 (Matthew Cottee is working towards a PhD in nuclear security at King's College London. He is employed as a Research Assistant at the International Centre for Security Analysis. Matthew Moran holds a PhD from University College London. He is currently employed as a Research Associate at the International Centre for Security Analysis, King's College London. “Nuclear terrorism: should the UK be concerned?” Web, Acc at Open Democracy.net http://www.opendemocracy.net/matthew-moran-matthew-cottee/nuclear-terrorism-should-uk-be-concerned

A [recent article](http://www.guardian.co.uk/world/2010/nov/07/nuclear-material-black-market-georgia) published in a national newspaper revealed the key details of a successful sting operation carried out by Georgian counter-proliferation specialists. The incident, which took place in March of this year, saw two Armenians, a physicist and a businessman, smuggle 18 grams of highly enriched uranium (HEU) into Georgia by train. The smugglers believed that they were selling an advanced sample to a terrorist group when in reality the buyer was an undercover police officer.

In technical terms, 18 grams of almost weapons-grade HEU does not pose any large-scale threat; to construct a nuclear device, an amount of around [25 kilograms](http://www.parliament.uk/documents/post/pn179.pdf) is required. The real cause for concern lies in the fact that the HEU was successfully transported across national borders. In the case of Georgia, this is the third time in seven years that HEU has been intercepted by the authorities. On a larger scale, however, the [illicit trafficking database](http://www-ns.iaea.org/security/itdb.asp) maintained by the International Atomic Energy Agency reveals that since the early 1990s, there have been 15 confirmed incidents involving unauthorized possession of HEU and Plutonium (Plutonium being the other fundamental material that could be used in a nuclear device, although it requires considerable technical expertise to weaponise). Some of these events involved attempts to sell these materials and their smuggling across national borders.

The news of the trial in Georgia has thrust the question of nuclear terrorism into the spotlight and there are three main issues at stake. First, there exists a certain amount of fissile nuclear material which is beyond government control. Second, this material can potentially be sold transnationally on the black market. Third, vendors are willing to sell to international terrorist organizations. So what are the larger implications for nuclear terrorism?

In April 2009, Barack Obama’s [Prague speech](http://prague.usembassy.gov/obama.html) proposed an international effort to lock down nuclear material in order to prevent the acquisition of a nuclear weapon by terrorists.  He surmised that although ‘the threat of global nuclear war has gone down [...] the risk of a nuclear attack has gone up.’ Obama’s concerns culminated in the Nuclear Security Summit in Washington – the largest gathering of Heads of State hosted by a US President since 1945 – highlighting the seriousness of the issue.

However, concerns regarding accessible nuclear material have existed for some time. Legacy threats resulting from the Cold War led to the creation of the US Cooperative Threat Reduction Program (CTR) in 1992, and the G-8 initiated Global Partnership (GP) in 2002. These programmes have thrown significant resources at mitigating the threat of nuclear material and relevant knowledge ending up in the wrong hands. CTR was aimed at preventing the theft or diversion of sensitive material following the collapse of the Soviet Union and the subsequent turmoil that followed, and has tried to safeguard the technical expertise associated with the Soviet nuclear weapons programmes. Similarly, the GP, which budgeted US$20 billion over 10 years, was designed to enhance the security of nuclear and radiological materials in the same region. The GP represents a very narrow set of achievements however, focused on destroying chemical weapon stockpiles and the dismantling of old nuclear submarines. Although a clear step in the right direction, the magnitude of the task has become clearly apparent. The Georgian episode has highlighted the limitations of these initiatives, and has provided an insight into just how big the problem could be.

Should the Georgian case give the UK cause for concern? The recent and comprehensive government review of national security found form in two key documents in October, The National Security Strategy and The Strategic Defence and Security Review. In her [critique](http://www.opendemocracy.net/mary-kaldor/documents-at-odds-uk%E2%80%99s-national-security-review) of these documents, Mary Kaldor highlights the move, outlined in the first document, away from ‘classic military threats’, acknowledging the benefits of the suggested defence framework which is more suited to the changing nature of the security threats facing nation-states in contemporary society. In this context, The National Security Strategy does allude to the threat of nuclear terrorism. However, as Kaldor points out, the ‘radical overhaul’ envisaged in this document is undermined by The Strategic Defence and Security Review, which constitutes a cost-cutting exercise in essence. At odds with the first document, this second review ‘fails to create a capability for the kind of intervention envisaged’ in The National Security Strategy. In terms of nuclear security this is significant, for while the threat posed by non-state actors is recognized, it appears that the national security review fails to go beyond acknowledging the threat posed by nuclear terrorism. There are a number of reasons for this, the overarching one being the gap between perception and reality.

In their work on nuclear terrorism, Matthew Bunn and Anthony Weir debunk what they term the ‘[myths of nuclear terrorism](http://belfercenter.ksg.harvard.edu/publication/658/seven_myths_of_nuclear_terrorism.html)’. Among these myths are the belief that it is possible to place a security cordon around a state, the belief that terrorists need to source nuclear weapons from a state, and the belief that terrorists are unable to construct a nuclear device. The incident in Georgia has proven that at least two of the above statements are indeed myths; states are not impenetrable and fissile material can be bought on the black market. The problem is, proof of the third myth would be potentially devastating. For while the threat of nuclear terrorism is easily exaggerated, an enormous amount of damage could be done with a relatively small quantity of HEU in the wrong hands.

#### 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.

### Cred

#### Doesn’t take out our Geneva’s internal - Use of drones is not adverse to international humanitarian law

Wagner 2011 [Markus, Associate Professor of Law at University of Miami School of Law, “Taking Humans Out of the Loop: Implications for International Humanitarian Law”, Miami Law Research Paper Series, July 11 2011, <http://law.huji.ac.il/upload/Wagnerpaperupdated4dec2011.pdf>, p. 4]AM

While it is not possible to describe the debate about the use of UAVs in great detail, their usage appears uncontroversial as long as a person remains in the loop. Notwithstanding the debate over whether or not the amount of information that is relayed by way of remotely-operated drones leads to better targeting decisions,17 the use of such weapon systems appears generally unproblematic under international humanitarian law. This remains presumptively the case even in scenarios where an operator no longer actively manages detection and targeting, but also in cases of more advanced autonomy. This is the case, for example, where an operator has to actively intervene in order to stop an attack. Situations like this are not characterised by full autonomy, as an operator remains in the loop. Arguably however, the control that an operator exercises in these situations is far less detailed than is the case today. Instead of actively operating a UV, the situation is characterised by managing UVs through oversight, intervening only when necessary.

#### Advances in Drone technology decreases accidental deaths, empirics prove

Bergen and Tiedemann 11 (Peter and Katherine, BERGEN is Director of the National Security Studies Program at the New America Foundation and the author of The Longest War: The Enduring Conflict Between America and Al-Qaeda. KATHERINE TIEDEMANN is a Research Fellow at the National Security Studies Program at the New America Foundation and a doctoral student in political science at George Washington University. “Washington’s Phantom War”, Foreign Affairs issue no.4 July/August pg13 http://heinonline.org/HOL/Page?handle=hein.journals/fora90&div=61&collection=journals&set\_as\_cursor=0&men\_tab=srchresults)

One of the primary challenges in producing an accurate count of fatalities from drone strikes is the divergent incentives for U.S. officials and for militants: Washington claims that almost all those killed in the drone strikes are militants, whereas militants and locals often claim that the victims are civilians. Even determining who is a militant and who is a civilian is often impossible given the environment of the tribal areas, a place where insurgents live among the civilian population and do not wear uniforms. According to our data, as of early April 2011, U.S. drones had struck targets in northwestern Pakistan 233 times. Most of these strikes took place in the preceding year and a half. From June 2004 to April 7, 20U, drone strikes killed somewhere be tween 1,435 and 2,283 people, of whom between 1,145 and 1,822 were described as militants in reliable press accounts. This suggests that over the life of the program, the percentage of fatalities who were militants has been around 8o percent; in 2010, that figure rose to 95 percent. This increase in accuracy is likely the result of better coordination between Pakistani and U.S. intelligence agencies, the smaller missiles now fired by the drones, and the drones' increasing ability to linger many hours over a target, which better allows their U.S. pilots to distinguish militants from civilians.

### K

#### 1. Any role of the ballot is arbitrary- fiat’s problems does not mean that the aff goes away - we should get the impacts of the aff- your links are predicated off our consequences. Its tautological for us not to get those same consequences. The aff outweighs the K (explain)

#### 2. Your criticism of rollplaying does not understand what we are doing here – we are not in a position to pass policies, but what we did is refuse (thinking of the k) – we spoke out against the government”

#### 3. None of their arguments disprove our specific solvency. We still solve the aff because (explain based on your advantages) . Make the neg prove they turn all of our different solvency arguments.

#### 4. The alt’s not feasible

#### A. Mobilization of politics is key – pointing out that we should think differently doesn’t make it so. The neg has to prove that their politics can be actualized. Make them prove the alt is feasible.

#### B. The alt does not solve quick enough – insert short term explanation of the aff

#### Individual solutions are bad – focusing on the individual over personalizes politics and causes false believe in change

LOBEL 7, Professor of Law, University of San Diego, (Orly, Harvard Law Review, 120 Harv. L. Rev. 937)

This **celebration of multiple micro-resistances** seems to rely on an aggregate approach - an idea that the multiplication of practices will **evolve into something substantial**. In fact, the myth of engagement obscures the actual lack of change being produced, while the broader pattern of **equating extralegal activism with social reform produces a** false belief in the potential of change. There are few instances of meaningful reordering of social and economic arrangements and macro-redistribution. Scholars write about decoding what is really happening, as though the scholarly narrative has the power to unpack more than the actual conventional experience will admit. [224](http://www.lexis.com/research/retrieve?_m=b7d531dcca7209b987833602ed6fbb4e&docnum=23&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzb-zSkAt&_md5=3f8bfd4662cb01d0d1bf9f28a63e1155&focBudTerms=lobel%20and%20harvard&focBudSel=all#n224) Unrelated efforts become related and part of a whole through mere reframing. At the same time, the elephant in the room - the rising level of economic inequality - is left unaddressed and comes to be understood as natural and inevitable. [225](http://www.lexis.com/research/retrieve?_m=b7d531dcca7209b987833602ed6fbb4e&docnum=23&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzb-zSkAt&_md5=3f8bfd4662cb01d0d1bf9f28a63e1155&focBudTerms=lobel%20and%20harvard&focBudSel=all#n225) This is precisely the problematic process that critical theorists decry as losers' self-mystification, through which marginalized groups come to see systemic losses as the  [\*986]  product of their own actions and thereby begin to focus on minor achievements as representing the boundaries of their willed reality.

#### Perm: do the plan and refuse sovereign power to draw lines between inside and outside

#### Turn – the K ignores that indefinite detention is becoming the norm at home – only the aff exposes it as exceptional practice that should be ended.

Hafetz, 2012 (Johathan, Associate Professor of Law at Seton hall University School of Law. “Military Detention in the ‘War on Terorirms”: Normalizing the Exceptional after 9/11. Columbia Law Review Sidebar¶ 112 Colum. L. Rev. Sidebar 31. Lexis Nexis.

Another long-term consequence of the war on terrorism is the threat that it poses to the integrity of the criminal justice system, whose protections for defendants may be circumvented by the government's ability to incarcerate terrorism suspects through an alternative system of military detention or trial by military commission. In prior armed conflicts, military detention operated in a sphere that domestic criminal law generally did not reach--whether because prisoners were detainable solely under the laws of war or because their prosecution in a military commission filled a jurisdictional gap when regular civilian courts were unavailable. By contrast, the military detention and prosecution of terrorism suspects creates significant overlap with the criminal justice system by providing another means of holding prisoners who can be prosecuted in civilian courts. [n73](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?tokenKey=rsh-20.42089.784017215745&target=results_DocumentContent&returnToKey=20_T17970796915&parent=docview&rand=1376618781978&reloadEntirePage=true#n73) In other words, whereas a typical German soldier during World War II could be detained only as a prisoner of war, and was not subject to prosecution under domestic criminal law, a person held today for aiding al Qaeda may be prosecuted in federal court for providing material support for terrorism, held indefinitely in law-of-war detention under the AUMF, or prosecuted for a war crime in a military commission. [n74](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?tokenKey=rsh-20.42089.784017215745&target=results_DocumentContent&returnToKey=20_T17970796915&parent=docview&rand=1376618781978&reloadEntirePage=true#n74)¶ Because this alternative military system provides fewer legal protections to detainees, it creates an incentive for the government to [\*45] divert terrorism suspects there rather than trying them in federal court. Paradoxically, this incentive is greatest where the government's case is weakest and where civilian prosecution appears problematic as a legal, evidentiary, or political matter. For individuals who fall within the AUMF's scope of detention authority based on their relationship to or support for al Qaeda or associated groups, the safeguards provided the federal criminal justice system--above all, the right to be charged and tried under the Constitution--become a matter of discretion, triggered only when the government elects not to proceed with the military option. Conversely, maintaining this alternative military detention system forces the civilian criminal justice system to demonstrate its capacity to prosecute terrorism cases successfully--with success measured in terms of convictions obtained rather than in the fairness and integrity of the procedures . This creates pressure to limit criminal defendants' rights--a trend reflected by recent proposals to expand the "public safety" exception to Miranda v. Arizona [n75](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?tokenKey=rsh-20.42089.784017215745&target=results_DocumentContent&returnToKey=20_T17970796915&parent=docview&rand=1376618781978&reloadEntirePage=true#n75) to deflect criticisms of prosecuting terrorism suspects in federal court. [n76](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?tokenKey=rsh-20.42089.784017215745&target=results_DocumentContent&returnToKey=20_T17970796915&parent=docview&rand=1376618781978&reloadEntirePage=true#n76)¶ Additionally, the war on terror has created a framework for the institutionalization of military detention as well as its expansion into areas traditionally reserved for the criminal justice system. Following 9/11, the Bush Administration applied the enemy combatant label almost exclusively to individuals seized and held abroad. [n77](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?tokenKey=rsh-20.42089.784017215745&target=results_DocumentContent&returnToKey=20_T17970796915&parent=docview&rand=1376618781978&reloadEntirePage=true#n77) The two instances in which it applied this label domestically proved highly controversial, prompting the government to criminally charge and transfer the prisoners to civilian court to avoid Supreme Court review. [n78](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?tokenKey=rsh-20.42089.784017215745&target=results_DocumentContent&returnToKey=20_T17970796915&parent=docview&rand=1376618781978&reloadEntirePage=true#n78) Yet, the continued military confinement of terrorism suspects at Guantánamo and elsewhere outside the country has made this form of detention without trial seem less exceptional. Recent legislative proposals have sought not only to expressly authorize military detention--whereas the AUMF did so only by [\*46] implication--but also to extend that authority to the domestic United States. [n79](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?tokenKey=rsh-20.42089.784017215745&target=results_DocumentContent&returnToKey=20_T17970796915&parent=docview&rand=1376618781978&reloadEntirePage=true#n79) These proposals, moreover, would require the military detention of terrorism suspects who fell within its scope, thus creating a new presumption of military detention that can be overridden only through a waiver process. [n80](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?tokenKey=rsh-20.42089.784017215745&target=results_DocumentContent&returnToKey=20_T17970796915&parent=docview&rand=1376618781978&reloadEntirePage=true#n80) While Congress ultimately enacted a more limited military detention measure in the 2012 National Defense Authorization Act, [n81](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?tokenKey=rsh-20.42089.784017215745&target=results_DocumentContent&returnToKey=20_T17970796915&parent=docview&rand=1376618781978&reloadEntirePage=true#n81) such measures threaten to cement the transformation of post-9/11 military detention powers--created based on the premise of wartime exigency--into a permanent, default detention system for an elastic category of terrorism cases.

#### -The state of exception is rhetorical. Your link arguments ignore that it takes work to justify states of exception – proving the aff is critical to their contestation.

Saas 12 \*\*William O. Pf Department of Communication Arts and Sciences at the Pennsylvania State University. symploke > Volume 20, Numbers 1-2

Theories of the exception are not hospitable to rhetoric. The most sophisticated theorists of the exception, Carl Schmitt and Giorgio Agamben, have at once both overlooked and understated its fundamentally rhetorical character. In so doing, they have mystified the exception as super-linguistic and resistant to rhetorical critique. For his part, Schmitt acknowledges that the sovereign must repeatedly and spectacularly exercise his decisive powers in public in order to maintain total power (1985). Similarly, Agamben gestures to the rhetorical nature of the exception when he notes that the exception is the product of subjective sovereign judgment: "obviously the only circumstances that are necessary and objective are those that are declared to be so" (2005, 30). Neither theorist, however, offers a substantive meditation on the role of language in sustaining and advancing the exceptional decision. Critics are left to declaim sovereign power as something transcendent, an "effective though fictional" space resistant to immanent critique (87). In contradistinction to Schmitt and Agamben, I argue that the state of exception is rhetorical in nature—and that the declaration of a state of [End Page 77] exception, in turn, mobilizes and embeds the executive bureaucracy as purely a power instrument for the charismatic leader. One aspect of the state of exception, as defined by Schmitt, is that it is clearly defined in time—it cannot be perpetual, or it is no longer by definition exceptional. For Schmitt, there are rules for what a sovereign can and cannot do during a state of exception, which is declared in a moment of constitutional or political crisis. The task of the exceptional ruler is to uphold the constitution, not to change it. What is most interesting about our post-modern state of exception is that it is at once both perpetual and constitutive—the state of exception is not bound by time, and it has become the excuse for changing the constitution in important ways and also expanding what many have called the "national security state." Both charisma as the force of history and charisma as embodied presence supplement theories of the exception in useful ways. With the former, the sovereign decision is situated in its sociohistorical context. It will thus matter when the exception is spoken. With the latter, the figure of the sovereign is reframed as the figure of the charismatic rhetor. Thus, it will matter who speaks the exception, and how successful they are at doing so. Together, these conceptions of charisma open space for critique of both the sovereign and her claims to the exception. In effect, the charismatic leader must be capable of absorbing the historical exception, of becoming the image of a new history, in order to sustain any kind of enduring rule in the state of exception. That is, the would-be charismatic leader cannot be overtaken by the force of history; she must become the force of history. With that power in hand, she is free to make any sort of extraordinary decree she likes (within the bounds of history; here the empowering force is also the limit point of charismatic-sovereign power). In Weberian terms, the sovereign must also routinize the exception, must translate the exception into a permanent "state of exception" through the "depersonalization," or transfer of charisma.

-Agamben’s criticisms of sovereign power are too theoretical. He points out that sovereigns have the power to create exceptions but he doesn’t prove that they will

Kretsedemas 8, assistant professor of sociology at the University of Massachusetts, Boston, (Philip, American Quarterly, Volume 60, Number 3, September)

Ong asserts that **there is always room for resistance to the forms of sovereign power** described by Agamben—as illustrated by the numerous immigrant rights mobilizations that have taken shape on the global stage (as well as the massive groundswell of support for the U.S. immigrant protests of 2006 and the resistance to “illegal immigrant” laws among many U.S. towns, cities, and states). Agamben provides a useful explanation of the defining tendencies and components of a particular kind of sovereign power, but this is best understood as an **ideal-type theorization and** not a literal account of how relations between the sovereign and subjected always play out in “reality.”

-You have to prove that the executive will manufacture a new emergency, something akin to a 9-11. Even the Boston bombings proves that the sovereign can resist the temptation to turn a bombing into a new national emergency that justifies the sacrificing of the law

-Reductionism. Pre-determining that all liberal constraints fail – trades-off with a better form of analysis and ignores contestation.

Alston 11 \*Phillip, John Norton Pomeroy Professor of Law, New York University School of Law. The author was UN Special Rapporteur on extrajudicial, summary or arbitrary executions from 2004 until 2010. *Harvard National Security Journal*, 2 Harv. Nat'l Sec. J. 283

The issue is not whether relying on Schmitt's theories will "produce another Hitler." 543 Rather it is whether Schmitt's diagnosis of the inevitability of liberal legal paralysis in the face of crisis necessarily leads to the conclusion that efforts to legally regulate "exceptional" measures (such as military operations) are futile and must leave almost everything to the discretion of the executive. It is well known that Schmitt maintained deep theoretical and political objections to parliamentary democracy and liberalism, and his highly stylized claims about the inherent tendency of these normative political commitments reflected a desire to discredit them. As Ulrich Preuss has shrewdly observed, Schmitt's rhetorical technique results is a heightened sense of opposition between ideas and institutions, in which ideas never get a second chance. 544 In focusing on the indeterminacy of law, Schmitt was in accord with a diverse range of thinkers, including realists and others. But, unlike them, Schmitt drew from this the message that the source or apex of the normative chain retained not only a special power to infuse the chain with meaning but also, just because it was not beholden to any higher normative authority, an extraordinary power to dispense with or opt out of the normative chain entirely. 545 Schmitt's sovereign was thus in a position both to fix meaning inside the command of the law and, as sovereign, to fix and stand outside the boundaries of legal meaning. His theory thus starts from the exception and envisages "the complete destruction of the normal by the exception." 546 To accept a moment of discretion inherent in the application of any norm need not lead to the conclusion that the line between the normal and the exceptional cannot be drawn, or that any measure classified as "exceptional" cannot be scrutinized against principled criteria. Of course, the question remains, who should decide the application of these criteria? But to assert, a priori, that only the executive can and should do so, is simply [\*427] to beg the question of whether and why the values of transparency, legality, and publicity should be regarded as always and necessarily incompatible with effective responses to emergencies. 547 Indeed, the opposite may well be true--that an executive not effectively constrained and supervise d during an emergency becomes reckless and thus endangers the state further. 548 The point is simply that we know in advance what Schmitt's conclusions may be on this question, but his sharp-eyed diagnosis of the difficulties of liberal states facing emergencies does not necessarily compel the conclusion that the absolute exclusion of liberal legalist principles is the answer. 549 But a too-ready acceptance of this conclusion merely excuses us from careful contextual analysis of what the exigencies of the situation really require. As Dyzenhaus points out, we might well acknowledge the validity of Schmitt's paradox without retreating from the position that liberal legalism is capable of meeting the challenge. When judges call the executive to account for excesses such as those undertaken post 9/11 they are: making creative, interpretive decisions about how best to understand their mandate. These decisions are not determined by law, if what one means by that phrase is that the officials simply transmit the determinate content of settled law to those subject to it. But in a looser sense of determination--one that requires all the reasons for a decision to be legal ones, and these reasons to be marshaled so as to display the best account available of the decision's legality--the decisions are as determined as any normative decision can be. Such decisions are contested, for example, by those who have positivistic inclinations, and by those who reject liberal legalism. But that contest takes place within a political and legal space that . . . Schmitt did not acknowledge. . . . . [\*428] [I]n making that critique from inside the legal-political space of liberal-democratic politics, it is important to keep in mind that our engagement with "law" is not only with the content of positive laws, but also with the idea and practice of legality. 550

#### -Lazy methods: Believing in inevitable states of exception are a form of lazy fatalism – their arguments rely on empirical assertions and ignore that courts do push back

Alston 11 \*Phillip, John Norton Pomeroy Professor of Law, New York University School of Law. The author was UN Special Rapporteur on extrajudicial, summary or arbitrary executions from 2004 until 2010. *Harvard National Security Journal*, 2 Harv. Nat'l Sec. J. 283

There is no doubt that Schmitt was an astute critic of the vulnerabilities of liberalism, but his "preferred cure turned out to be infinitely worse than the disease." 557 So too does Vermeule's theory of grey holes. The second problem with Vermeule's approach is the extent to which it blurs empirical conclusions with normative arguments. While he never actually states that black or grey holes are normatively desirable, he simply concludes that they are "inevitable" or "unavoidable", and that "decrying their existence is pointless." 558 He situates himself as a realist who is merely observing the reluctance of judges and legislators to scrutinize executive responses to emergencies. The legislators, he says, are "best [\*430] understood as Schmittian lawmakers," 559 while the judges are prudent in not being prepared to shoulder the responsibility of extending the rule of law to emergency situations, even those very broadly defined. 560 Scholars, it seems, are also realists, or at least are equally pusillanimous, since only a handful of them "takes seriously a model of 'global due process.'" 561. But it is done with an air of resignation and pragmatism rather than arguing, as Schmitt would, that it is both inevitable and normatively desirable for the sovereign to enjoy unfettered, dictatorial, powers. It is important to note that the empirical foundation upon which Vermeule bases his analysis is not only rather slight, but also ignores or downplays important examples of cases in which the courts have in fact pushed back significantly against the executive in relation to conditions of detention and the use of torture. 562 The results are far from perfect, but they hardly justify the conclusion that black and grey holes are necessarily inevitable. Vermeule seeks to buttress his reliance on this empirical fatalism and his dismissal of "the aspiration to extend legality everywhere . . . [as] hopelessly utopian," 563 by asserting that there is unanimous support among the legal and political elites in the United States that the executive must be able to act illegally: There are too many domains affecting national security in which official opinion holds unanimously, across institutions and partisan lines and throughout the modern era, that executive action must proceed untrammeled by even the threat of legal regulation and judicial review . . . . 564 This amounts to a normative argument, but because it is intertwined so carefully with the empirical argument he avoids tackling it head on. Thus, Dyzenhaus's argument for both the importance and feasibility of a common law constitutionalism that upholds the rule of law in the thick sense of vindicating fundamental constitutive principles is never really engaged with directly. Instead, claims of principle are refuted on the basis [\*431] of pragmatic arguments in favor of "hypocritical lip-service" which enables a "veil of decency" 565 to conceal the violations of the law that are being perpetrated and subsequently either overlooked or upheld by the courts. Vermeule concedes that judges could insist upon compliance with the rule of law, but asserts that it is "institutionally impossible for them to do so." 566 While Vermeule assiduously avoids any reference to or engagement with either international or foreign law, he invites such engagement when he argues that legal black and grey holes are not a peculiarly American response to the post-9/11 emergency, but rather are "integral to the administrative state," and hence "no legal order governing a massive and massively diverse administrative state can hope to dispense with them." 567 In other words, the United States should not be considered exceptional in this regard. The reality, however, is that almost all of the principal common law jurisdictions with which the United States can be reasonably be compared (such as Canada, the United Kingdom, and Australia) have, within reasonable limits, respected the rule of law in emergency situations.

- AN ONTOLOGY OF WAR DOESN’T EXPLAIN WHY POLICYMAKERS CHOOSE VIOLENCE

Burke 7, Pf Politics & International Relations @ U of New South Wales, Sydney,

(Anthony, Theory & Event, Vol. 10, No. 2)

By itself, such an account of the nationalist ontology of war and security provides only a general insight into the perseverance of military violence as a core element of politics. It **does not explain why so many policymakers think military violence works**.

#### - The concept of bare life is politically dangerous and neutralizes resistance

Negri and Casarino, 4 –Italian Moral and Political Philosopher and Associate Professor Of Cultural Studies And Comparative Literature At The University Of Minnesota

(Antonio and Cesare, "It’s a Powerful Life: A Conversation on Contemporary Philosophy," Cultural Critique, No. 57, Spring, Project Muse)

AN: I believe Giorgio is writing a sequel to Homo Sacer, and I feel that this new work will be resolutive for his thought—in the sense that he will be forced in it to resolve and find a way out of the ambiguity that has qualified his understanding of naked life so far. He already attempted something of the sort in his recent book on Saint Paul, but I think this attempt largely failed: as usual, this book is extremely learned and elegant; it remains, however, somewhat trapped within Pauline exegesis, rather than constituting a full-fledged attempt to reconstruct naked life as a potentiality for exodus, to rethink naked life fundamentally in terms of exodus. I believe that the concept of naked life is not an impossible, unfeasible one. I believe it is possible to push the image of power to the point at which a defenseless human being [un povero Cristo] is crushed, to conceive of that extreme point at which power tries to [End Page 173] eliminate that ultimate resistance that is the sheer attempt to keep oneself alive. From a logical standpoint, it is possible to think all this: the naked bodies of the people in the camps, for example, can lead one precisely in this direction. But this is also the point at which this concept turns into ideology: to conceive of the relation between power and life in such a way actually ends up bolstering and reinforcing ideology. Agamben, in effect, is saying that such is the nature of power: in the final instance, power reduces each and every human being to such a state of powerlessness. But this is absolutely not true! On the contrary: the historical process takes place and is produced thanks to a continuous constitution and construction, which undoubtedly confronts the limit over and over again—but this is an extraordinarily rich limit, in which desires expand, and in which life becomes increasingly fuller. Of course it is possible to conceive of the limit as absolute pow-erlessness, especially when it has been actually enacted and enforced in such a way so many times. And yet, isn't such a conception of the limit precisely what the limit looks like from the standpoint of constituted power as well as from the standpoint of those who have already been totally annihilated by such a power—which is, of course, one and the same standpoint? Isn't this the story about power that power itself would like us to believe in and reiterate? Isn't it far more politically useful to conceive of this limit from the standpoint of those who are not yet or not completely crushed by power, from the standpoint of those still struggling to overcome such a limit, from the standpoint of the process of constitution, from the standpoint of power [potenza]? **I am worried about the fact that the concept of naked life** as it is conceived by Agamben **might be taken up by political movements and in political debates: I find this prospect quite troubling, which is why I felt the need to attack this concept** in my recent essay. Ultimately, I feel that nowadays **the logic of traditional eugenics is attempting to saturate and capture the whole of human reality**—even at the level of its materiality, that is, through genetic engineering—and **the ultimate result of such a process of saturation and capture is a capsized production of subjectivity within which ideological undercurrents continuously try to subtract or neutralize our resistance.** CC: And I suppose you are suggesting that the concept of naked life is part and parcel of such undercurrents. But have you discussed all this with Agamben? What does he think about your critiques? AN: Whenever I tell him what I have just finished telling you, he gets quite irritated, even angry. I still maintain, nonetheless, that **the conclusions he draws in Homo Sacer lead to dangerous political outcomes** and that the burden of finding a way out of this mess rests entirely on him. And the type of problems he runs into in this book recur throughout many of his other works. I found his essay on Bartleby, for example, absolutely infuriating. This essay was published originally as a little book that also contained Deleuze's essay on Bartleby: well, it turns out that what Deleuze says in his essay is exactly the contrary of what Giorgio says in his! I suppose one could say that they decided to publish their essays together precisely so as to attempt to figure this limit— that is, to find a figure for it, to give it a form—by some sort of paradoxical juxtaposition, but I don't think that this attempt was really successful in the end. In any case, all this incessant talk about the limit bores me and tires me out after a little while. The point is that, inasmuch as it is death, the limit is not creative. The limit is creative to the extent to which you have been able to overcome it qua death: the limit is creative because you have overcome death.

### 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.

#### Perm --- do the counterplan --- functionally mandates the plan

#### Perm --- do both --- solves the link

Denning 2 (Brannon P, Assistant Professor of Law – Southern Illinois University School of Law; John R. Vile, Chair of Political Science – Middle Tennessee State University; November, 77 Tul. L. Rev. 247, Lexis)

The Article V process is, as the Framers intended, rigorous. The supermajority provisions for both proposal and ratification almost always guarantee that additions will not be made to the Constitution without both deep and broad support. Though some have criticized the necessity of such supermajorities, 127 holding additions to the Constitution in abeyance until it is clear that support is broad generally prevents populous regions from dominating less populous ones. This, in turn, allows the amendment to become part of the Constitution with a near-conclusive presumption of legitimacy. This legitimacy, then, helps free the other branches (courts, for example) to enforce it vigorously; indeed, such enforcement would likely be expected after an amendment makes it through Article V's arduous process. And if, after popular expectations were raised through the debates over proposal and ratification, the amendment is not enforced, institutions responsible for the foot-dragging may again face costs for evasion. This legitimization element is so crucial that the examples Strauss cites of amendments that, he argues, did not do anything immediately (the Reconstruction Amendments) or are not likely to have a significant effect despite their eventual ratification (the Twenty-Seventh Amendment), 128 could be cited as proof of what [\*279] happens when attempts are made to short-circuit (or play games with) Article V's procedural requirements. 129

#### Multi-actor fiat is a voter – it makes it impossible for us to find literature and destroys predictability because you can combine any variety of actors – they don’t even take a stance on which actors which is uniquely abusive

#### Perm --- do the CP, then plan --- means its just enforcement

#### No solvency --- delay

Duggin 5 (Sarah, Professor of Law – Catholic University of America, and Mary Collins, Law Clerk, Boston University Law Review, February, 85 B.U.L. Rev. 53, Lexis)

The process of amending the Constitution is often a lengthy one – the Twenty-seventh Amendment was adopted more than two hundred years after it was first proposed. 513 Recent Congresses have generally provided self-executing, seven-year sunset provisions in the resolutions proposing constitutional amendments, 514 but even an amendment on the fast track is likely to take several years to become part of the Constitution. Preparations for Presidential elections begin long before the actual events, and the threat of a national crisis is all too immediate. Congress should take interim measures to decrease the impact of the uncertainty created by the natural born citizenship proviso over the eligibility of Congressional leaders and cabinet members to assume the office of Acting President.

#### Amendment counterplans are a reason to reject the team –

#### they detract from topic-specific education because they force us to focus on the process instead of whether or not the plan is a good idea – winning the CP doesn’t disprove the aff and creates a focus on stale issues and steals Aff ground by doing all of the plan which makes it difficult to generate offense

#### Counterplan fails – timeframe

Strauss 01

[David, Harry N. Wyatt Professor of Law, The University of Chicago, The Irrelevance Of Constitutional Amendments, 2001 The Harvard Law Review Association, L/N]

These arguments presuppose that amending the Constitution - and, by implication, failing to amend the Constitution - is a significant event. If this supposition is true, a formal, textual amendment might legitimately be read back into other provisions of the Constitution to produce a result that would not be warranted without the formal amendment. n24 But if the amendments carry no special significance - if they are not the principal means (or even an important means) by which the People change our constitutional order - then these interpretive approaches lose their foundation. It may be correct to interpret the Fourteenth Amendment to forbid gender discrimination, and the movement toward greater equality for women, including women's suffrage, may be a legitimate reason to interpret the Fourteenth Amendment this way. But the fact that women's suffrage was formally recognized by the Nineteenth Amendment - instead of coming about through, for example, state legislation or judicial interpretation - should not carry great weight. One final implication is the most practical of all. If amendments are in fact a sidelight, then it will usually be a mistake for people concerned about an issue to try to address it by amending the Constitution. Their resources are generally better spent on legislation, litigation, or private-sector activities. It is true that the effort to obtain a constitutional amendment may serve very effectively as a rallying point for political activity. A constitutional amendment may be an especially powerful symbol, and it may be worthwhile for a group to seek an amendment for just that reason. But in this respect constitutional amendments are comparable to congressional resolutions, presidential proclamations, or declarations of national holidays. If they bring about change, they do so because of their symbolic value, not because of their operative legal effect. The claim that constitutional amendments under Article V are not a principal means of constitutional change is a claim about the relationship between supermajoritarian amendments and fundamental, constitutional change. It should not be confused with the very different claim that judicial decisions cannot make significant changes without help from Congress or the President; n25 and it certainly should not [\*1468] be confused with a global skepticism about the efficacy of political activity generally. The point is that changes of constitutional magnitude - changes in the small-"c" constitution - are not brought about by discrete, supermajoritarian political acts like Article V amendments. It may also be true that such fundamental change is always the product of an evolutionary process and cannot be brought about by any discrete political act - by a single statute, judicial decision, or executive action, or (at the state level) by a constitutional amendment, whether adopted by majoritarian referendum or by some other means. What is true of Article V amendments may be equally true of these other acts: either they will ratify (while possibly contributing to) changes that have already taken place, or they will be ineffective until society catches up with the aspirations of the statute or decision. Alternatively, it may be that majoritarian acts (or judicial decisions), precisely because they do not require that the ground be prepared so thoroughly, can force the pace of change in a way that supermajoritarian acts cannot. A coalition sufficient to enact legislation might be assembled - or a judicial decision rendered - at a point when a society for the most part has not changed, but the legislation, once enacted (or the decision, once made), might be an important factor in bringing about more comprehensive change. The difference between majoritarian legislation and a supermajoritarian constitutional amendment is that the latter is far more likely to occur only after the change has, for all practical purposes, already taken place. Whatever one thinks of these broader speculations, however, they certainly do not entail a general skepticism about whether political activity matters at all. On the contrary, legislation and judicial decisions - as well as activity in the private realm that may not even be explicitly political - can accumulate to bring about fundamental and lasting changes that are then, sometimes, ratified in a textual amendment. Sustained political and nonpolitical activity of that kind is precisely what does bring about changes of constitutional magnitude. My claim is that such changes seldom come about, in a mature democracy, as the result of a formal amendment adopted by a supermajority.

#### Timing of trials is key – otherwise the CP does nothing to resolve the status quo.

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

¶ Second, a re-articulation of detention policies under the DTC model will limit procedural burdens on detainees to a greater degree. The DTC model requires that detainees be brought before a judge without unnecessary delay. [n182](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#n182) This should occur within seven days unless exigent circumstances arise. [n183](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#n183) Detentions must be independently reviewed at periodic intervals to ensure that the process is progressing either toward trial or release. [n184](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#n184) Fairness and efficiency are maximized by a system adapted specifically to detainees, and holding individuals for years without trial would become the rare exception under this model rather than the norm

#### Fiat abuse --- amending requires multi-actor fiat --- not reciprocal, destroys predictability --- voting issue

Sullivan 95 (Kathleen M., Professor of Constitutional Law, Stanford Law School, and author of the influential Sullivan & Gunther Constitutional Law Casebook, Fall. (“Constitutional Amendments” – American Prospect) http://www.albionmonitor.com/1-12-96/amendmentitis.html)

Our Constitution is extraordinarily difficult to amend. Article V of the Constitution provides two routes, but both both require large supermajorities. First, Congress may propose amendments by a two-thirds vote of both houses. Second, the legislatures of two-thirds of the states may request that Congress call a constitutional convention. Amendments proposed by either route become valid only when ratified by three-fourths of the states. Once an amendment clears these hurdles into the Constitution, it is equally difficult to remove. The amendment that imposed Prohibition is the only one in our history ever to be repealed. The Constitution thus remains a remarkably pristine document. More than 11,000 amendments have been proposed, but only 33 have received the necessary congressional supermajorities and only 27 have been ratified by the states. Half of these amendments were enacted under extraordinary circumstances.

#### Turn --- amendments crush public confidence --- tanks Constitutional credibility

Sullivan 95 (Kathleen M., Professor of Constitutional Law, Stanford Law School, and author of the influential Sullivan & Gunther Constitutional Law Casebook, Fall. (“Constitutional Amendments” – American Prospect) http://www.albionmonitor.com/1-12-96/amendmentitis.html)

For there are strong structural reasons for amending the Constitution only reluctantly and as a last resort. This strong presumption against constitutional amendment has been bedrock in our constitutional history, and there is no good reason for overturning it now. Proponents of the current wave of amendments suggest that it simply represents the appropriate product of a mobilized citizenry exercising popular sovereignty. We the People created the Constitution and, they imply, We the People are free to rewrite it as We please. Amendment advocates could, if they wished, cite Thomas Jefferson in their cause. Jefferson wrote in an 1816 letter, "Some men look at constitutions with sanctimonious reverence, and deem them like the ark of the covenant, too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human, and suppose what they did to be beyond amendment." But, he urged, one should not "believe that one generation is not as capable as another of taking care of itself, and of ordering its own affairs." As Jefferson had put it years earlier in a letter to James Madison, "I hold that a little rebellion now and then is a good thing." Constitutional idolatry, of course, is not an attractive organizing principle. But Jefferson's position lost out in our constitutional history for good reasons that do not depend on fetishizing the Constitution or treating it as mystically sacred. Stability is a key virtue of a Constitution 1. Stability. James Madison, one of the principal architects of Article V, disagreed with Jefferson. In Madison's view, "a little rebellion now and then" is to be avoided. To be sure, Madison acknowledged in Federalist No. 43 that "useful alterations will be suggested by experience," and that amending the Constitution must not be made so difficult as to "perpetuate its discovered faults." But Madison cautioned too "against that extreme facility" of constitutional amendment "which would render the Constitution too mutable." Implicit in this caution is the view that stability is a key virtue of a Constitution, and that excessive "mutability" would thus undercut the whole point of having a Constitution in the first place. As Chief Justice John Marshall put the point similarly in McCulloch v. Maryland, the Constitution is "intended to endure for ages to come." Keeping amendment relatively infrequent thus preserves public confidence in the stability of the basic constitutional structure.  While the Framers had to take the argument from stability on faith, the argument looks stronger two centuries later. The relative success of the American constitutional regime, one bloody civil war excepted, supports arguments along the lines of "if it ain't broke don't fix it." Our spare Constitution has withstood the test of time. Anyone with a Burkean trust in the collective wisdom embodied in custom and tradition ought to be wary of a sudden shift to rapid constitutional revision.  Prohibition, the only modern amendment to enact a social policy, is also the only modern amendment to have been repealed.

#### Extend Chesney – only legislative credibility solves LEGITIMACY – impact of constitutional decline is Nuclear war

Hemesath 00 (Paul A., Georgetown Law Journal, August, 88 Geo. L.J. 2473, Lexis)

In the case of an offensive nuclear attack, the importance of a coherent and legitimate decision cannot be overestimated. Even with the force of a congressional declaration of war, Harry Truman still faced critics that questioned the sagacity of his atomic decision in World War II. 183 Although the wisdom of any nuclear use may always remain open to criticism, the legality of such a decision should be beyond reproach. As previously noted, the potentially "unlimited costs" of a nuclear war are extremely difficult to fathom, both physically and politically. 184 A legitimate decision to utilize a nuclear weapon thus requires a high level of legality and consensus--two qualities that cannot be attained with a Congress plausibly asserting the nonexistence of the Executive's very constitutional authority to carry out the act.   Finding a resolution to nuclear war powers uncertainty is not an obvious endeavor. However, the harms associated with an unprepared and contentious "on-the-fly" decisionmaking process are serious enough to demand a principled solution based on the Constitution and not on improvised convenience. To reach such a solution, Congress must cohere in an attempt to draft an unambiguous War Powers Act and proceed to pursue remedies in the courts well in advance of a nuclear crisis. In return, the courts must either deign to decide the issue on its merits, or provide a definitive jurisdictional holding upon which the courts and the President may come to rely.

#### Amendments destroy SOP

Schaffner 5 (Joan, Associate Professor of Law – George Washington University Law School, “The Federal Marriage Amendment: To Protect the Sanctity of Marriage or Destroy Constitutional Democracy?”, American University Law Review , August, 54 Am. U.L. Rev. 1487, August, Lexis)

[\*1525] Through amendment, the legislative branch has the power to enact laws that establish societal standards only so long as the laws enacted do not violate the constitutional rights of individuals. 222 The legislature is not empowered to draft laws to enshrine illegitimate prejudices of the majority. Allowing the legislature, with the endorsement of the executive, to amend the Constitution to expressly overrule a decision of the judiciary, which acted consistently with democratic principles by protecting the rights of a minority of the people, destroys the delicate balance of power among the branches.

#### There’s no solvency advocate for amending about indefinite detention --- voting issues --- it means we have no literature to answer, makes counterplan mechanisms unpredictable, and divorces debate from real-world issues – also just means there’s no CP solvency

#### CP spurs future amendments --- undermines rule of law

Sullivan 95 (Kathleen M., Professor of Constitutional Law, Stanford Law School, and author of the influential Sullivan & Gunther Constitutional Law Casebook, Fall, “Constitutional Amendments”, American Prospect, http://www.albionmonitor.com/1-12-96/amendmentitis.html)

2. The Rule of Law. The very idea of a constitution turns on the separation of the legal and the political realms. The Constitution sets up the framework of government. It also sets forth a few fundamental political ideals (equality, representation, individual liberties) that place limits on how far any short-term majority may go. This is our higher law. All the rest is left to politics. Those who lose in the short run of ordinary politics obey the winners out of respect for the long-run rules and boundaries set forth in the Constitution. Without such respect for the constitutional framework, the peaceful operation of ordinary politics would degenerate into fractious war. Frequent constitutional amendment can be expected to undermine this respect by breaking down the boundary between law and politics. The more you amend the Constitution, the more it seems like ordinary legislation. And the more the Constitution is cluttered up with specific regulatory directives, the less it looks like a fundamental charter of government. Picture the Ten Commandments with a few parking regulations thrown in. This is why opponents of new amendments often argue that they would tend to trivialize or politicize the Constitution. They trivialize it in the sense that they clutter it up and diminish its fundamentality. Consider the experience of the state constitutions. Most state constitutions are amendable by simple majority, including by popular initiative and referendum. While the federal Constitution has been amended only 27 times in over 200 years, the fifty state constitutions have had a total of nearly 6,000 amendments added to them. They have thus taken on what Marshall called in McCulloch "the prolixity of a legal code" -- a vice he praised the federal Constitution for avoiding. Many of these state constitutional amendments are products of pure interest-group politics. State constitutions thus are difficult to distinguish from general state legislation, and they water down the notion of fundamental rights in the process: The California constitution, for example, protects not only the right to speak but also the right to fish. Amendments politicize a constitution to the extent that they embed in it a controversial substantive choice. Here the experience of Prohibition is instructive: The only modern amendment to enact a social policy into the Constitution, it is also the only modern amendment to have been repealed. Amendments that embody a specific and controversial social or economic policy allow one generation to tie the hands of another, entrenching approaches that ought to be revisable in the crucible of ordinary politics.

#### Extinction

Sadat 4 (Henry H. Oberschelp Professor of Law, “An American Vision for Global Justice” Sept 7, <http://www.google.com/search?q=importance+of+supreme+court+legitimacy+poverty&num=20&hl=en&hs=277&lr=&client=firefox-a&rls=org.mozilla:en-US:official&start=20&sa=N>)

Bringing the rule of law back into American thinking about foreign policy will take time. But it is inevitable. Without rules, human civilization cannot survive; without rules, there is no true freedom. Law is, of course, only one element of foreign policy, but it is a powerful one. By appealing to principle, we can better persuade. By acquiring legitimacy, our actions take on a new authority. By delivering justice, we win hearts and minds. From Thomas Jefferson to Warren Christopher, the tradition of the lawyer statesman persists. The challenge ahead is formidable – it is hard to live in a global age. But we can take comfort in the words of Jean Monnet, one of the most passionate advocates of a United States of Europe after the war, and one of the chief architects of the European Community – although I should, in all fairness, disclose that he was a cognac merchant, not a lawyer! Monnet was never discouraged in his efforts to create the European Economic Community, and he later wrote in his memoirs, “Resistance is proportional to the scale of the change one seeks to bring about. It is even the surest sign that change is on the way. . . To abandon a project because it meets too many obstacles is often a grave mistake: the obstacles themselves provide the friction to make movement possible.”

#### ConCon creates a nightmarish political thunderstorm and independently wrecks the global economy

Eidsmoe ‘92

(John Eidsmoe, Professor of Law, Faulkner University; Constitutional Attorney; Lieutenant Colonel, United States Air Force Reserve, “A New Constitutional Convention?” 3 USAFA J. Leg. Stud. 35, l/n)

However, one could imagine the politics, the jockeying for position, the trade-offs, etc., that would take place as each state prepared to select its delegation. Sensing that the very fabric and future of the nation is at stake, Americans of all political stripes and interests would work for the selection of delegates favorable to their positions. One could easily imagine "I'll support your amendment if you'll support mine" deals  [\*51]  being made between right-to-life forces, school prayer forces, and balanced budget forces, and perhaps similar deals between equal rights amendment advocates and gun control advocates. / Once the convention is assembled, what rules are to be followed? Does Congress make the rules, or do the delegates simply follow Robert's Rules of Order, Newly Revised? Or do they make their own rules as they go along? Does Congress designate who shall preside over the convention and who shall serve as convention officers? What if most delegates are dissatisfied with Congress's choice and want someone else? Will the proceedings be open to the public and the press, or will they be closed like the Convention of 1787? If people believe the convention is acting unwisely or illegally or in excess of its authority, may they petition to Congress or to the courts to bring the convention back in line? Which of these bodies -- Congress or the courts -- would have final authority over the convention? And what if the convention ignores orders from the Congress or the courts? / It is no wonder, then, that Lawrence Tribe, Professor of Constitutional Law at Harvard, warns that a new constitutional convention could lead to domestic political confrontations of **"nightmarish dimension"** between Congress and the Convention, between Congress and the Supreme Court, and between Congress and the states -- not to mention between the Supreme Court and the Convention. Tribe continues, Particularly in a period of recovery from a decade ruptured by war, political assassination, near impeachment and economic upheaval, and particularly in a time when such recovery has already been interrupted by new domestic and international crises, it is **vital** that the means we choose for amending the Constitution be generally understood and, above all, widely understood as legitimate. **An Article V convention, however, would today provoke controversy and debate unparalleled in recent constitutional history**. For the device is shrouded in legal mysteries of the most fundamental sort, mysteries yielding to no ready mechanism of solution. n34 / Given the significance of the United States Constitution both for our nation and for others, it would not be surprising if a convention of this magnitude were to result in **serious economic instability at home and abroad**, as well as substantial disruption of America's relations abroad.

#### Extinction

Lewis ‘98

(Chris H., Ph.D. Sewall Academic Program, The Coming Age of Scarcity, p.56)

Most critics would argue, probably correctly, that instead of allowing underdeveloped countries to withdraw from the global economy and undermine the economies of the developed world, the United States, Europe, and Japan and others will fight neocolonial wars to force these countries to remain within this collapsing global economy. These neocolonial wars will result in mass death, suffering, and even regional nuclear wars. If First World countries choose military confrontation and political repression to maintain the global economy, then we may see mass death and genocide on a global scale that will make the deaths of World War II pale in comparison. However, these neocolonial wars, fought to maintain the developed nations’ economic and political hegemony, will cause the final collapse of our global industrial civilization. These wars will so damage the complex, economic and trading networks and squander material, biological, and energy resources that they will undermine the global economy and its ability to support the earth’s 6 to 8 billion people. This would be the worst-case scenario for the collapse of global civilization.

#### Fiating states is a voter --- robs our best offense, no solvency advocate exists, and they don’t specify which so we can’t read DAs

### Deference DA

#### The plan is not a judicial decision that reverses the political question doctrine or rules on a constitutional issue

#### Creating a fair process for detainees preserves executive flexibility – results 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.

#### Starting with the US modeling is key – Solves Rule of Law credibility and the Afghan Justice System

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

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

#### That’s key to long-term stability

The Nation 9 (Nov. 11, 2009, http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/International/11-Nov-2009/UN-body-urges-Karzai-to-fight-corruption)

UNITED NATIONS - The UN General Assembly has urged the government of re-elected Afghan President Hamid Karzai to press ahead with “strengthening of the rule of law and democratic processes, the fight against corruption (and) the acceleration of justice sector reform.” The 192-member assembly made that call Monday night by unanimously adopting a resolution that also declared that Afghanistan’s presidential election “credible” and “legitimate”, despite allegations of widespread fraud that led Karzai’s main challenger Abdullah Abdullah to pull out of the run-off round of the election. But the UN assembly raised no doubts about Karzai’s mandate or his right to continue leading the war-torn country. The resolution welcomed “the efforts of the relevant institutions to address irregularities identified by the electoral institutions in Afghanistan and to ensure a credible and legitimate process in accordance with the Afghan Election Law and in the framework of the Afghan Constitution.” It appealed to the international community to help Afghanistan in countering the challenges of the militants’ attacks that threaten its democratic process and and economic development. Before the assembly approved the resolution, 24 countries, including Pakistan, spoke in the debate on the deteriorating situation in Afghanistan in which they stressed the need for the Afghan Government and the global community to work closely together. Pakistan’s Acting Permanent Representative Amjad Hussain Sial said the core of violence and conflict in Afghanistan emanated from terrorist groups, foreign militants such as Al-Qaeda, and militant Taliban who were not prepared to reconcile and give up fighting. The nexus with drug traders was increasingly discernable. The key to long-term stability in Afghanistan, he said, was reformation of the country’s corrupt governmental systems. Equally important was building the civilian institutions at the central and subnational levels.

### Debt Ceiling

#### 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.

#### Debt ceiling doesn’t collapse the economy

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

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

#### Won’t pass – no compromise

Mattingly, 10/6 (“Boehner Says he Doesn’t have Votes to Increase Debt Limit” Bloomberg Business Week. http://www.businessweek.com/news/2013-10-06/boehner-says-he-doesn-t-have-votes-to-increase-debt-limit-1

U.S. Speaker John Boehner said the House can’t pass an increase to the U.S. debt ceiling without packaging it with other provisions -- a nonstarter for President Barack Obama. “We are not going to pass a clean debt limit,” Boehner said in an interview on ABC’s “This Week” program. “The votes are not in the House to pass a clean debt limit.” Boehner’s comments came as the government remains partially shut down for the sixth day and just 11 days from when Treasury Secretary Jacob J. Lew told lawmakers the U.S. will exhaust measures to avoid breaching the debt ceiling. The Obama administration has said it won’t negotiate with Republicans over funding the government or raising the debt ceiling, arguing that it is part of the basic functions of Congress and shouldn’t be used as point of leverage. Obama, in an interview with the Associated Press, said he expects Congress will reach an agreement to raise the nation’s $16.7 trillion debt limit in time to avert a default. “The nation’s credit is at risk because of the administration’s refusal to sit down and have a conversation,” Boehner said. Asked if he’d consider putting a clean debt ceiling increase on the floor, Boehner said the House would not be “going down that path.” Remaining Cash The U.S. will run out of borrowing authority on Oct. 17 and will have $30 billion in cash after that. The country would be unable to pay all of its bills, including benefits, salaries and interest, sometime between Oct. 22 and Oct. 31, according to the Congressional Budget Office. “Congress is playing with fire,” Lew said on CNN’s “State of the Union” today. “If the United States government, for the first time in its history, chooses not to pay its bills on time, we will be in default, there is no option that prevents us from being in default if we don’t have enough cash to pay our bills.” Unlike past fiscal feuds, this dispute is more about Obama’s signature health law and less about the amount of spending. The U.S. budget deficit in June was 4.3 percent of gross domestic product, down from 10.1 percent in February 2010 and the narrowest since November 2008, when Obama was elected to his first term, according to data compiled by Bloomberg from the Treasury Department and the Bureau of Economic Analysis. So far, the financial-market response to the political gridlock has been muted. The Standard & Poor’s 500 Index climbed 0.7 percent in New York Oct 4. The yield on the benchmark 10-year Treasury increased two basis points last week, trading between 2.66 percent and 2.58 percent. While the yield is up from the record low of 1.38 percent in July 2012, it’s below the average of about 6.7 percent since the early 1980s, the start of the three-decade long bull market in bonds.

#### Temporary extension solves

CNN, 10-5-’13 (“GOP floats six-week funding and debt ceiling extension” http://politicalticker.blogs.cnn.com/2013/10/05/gop-floats-six-week-funding-and-debt-ceiling-extension/)

One idea being considered to end the immediate fiscal impasse is a bill to fund the government and extend the nation's borrowing authority for six weeks, a senior Republican member of the House told CNN Chief Political Analyst Gloria Borger. The congressman agreed to speak with CNN on the condition of anonymity. The GOP lawmaker said a committee could then be set up to negotiate the fiscal issues dividing the two parties and negotiate a plan to keep the government funded for the rest of the year without the proverbial gun to their heads. This idea of an extension being floated among Republicans would give everyone a temporary political reprieve. It would give them a way to reopen the government but bypass the issue of tying it to a change in Obamacare, as well as avert a crisis over whether to raise the nation's debt limit by Oct. 17 when the Treasury Department has said it will run out of money to pay its bills. The House Republican told Borger it is "unfair" to promise conservatives in the country something Republicans in Congress just cannot deliver - the defunding of Obamacare.

#### Non unique – 1ac rogin evidence says Obama has given speeches in support of the plan but it’s on congress to act

**Obama’s already negotiating and the GOP demanded new cuts---markets already perceive default as likely which means they’ve factored in their impacts**

Peter **Schroeder 10-3**, The Hill, “GOP puts new price on debt hike (Video),” http://thehill.com/homenews/news/326271-gop-puts-new-price-on-debt-hike#ixzz2gh1fRpw7

GOP puts new price on debt hike (Video)

Rank-and-file members want Speaker John Boehner (R-Ohio) to return to the so-called “Boehner Rule,” which they say means any debt limit hike must be matched by an equal amount of spending cuts.

An earlier GOP measure to raise the debt ceiling included a host of GOP priorities, including defunding ObamaCare and constructing the Keystone XL pipeline, but not dollar-for-dollar spending cuts.

Now, as it looks increasingly like the government shutdown fight will be paired with raising the debt ceiling, Republicans are pushing hard for a strong opening bid and are adamant that changes to entitlement programs be included in any final deal.

“The American people are realizing that spending has got to be brought under control,” said Rep. Marsha Blackburn (R-Tenn.). “I want three dollars’ worth of cuts for any dollar [of debt limit increase.]”

Washington is struggling to find a way out of the standoff over the government shutdown with the Oct. 17 deadline for raising the debt ceiling fast approaching.

The earlier GOP plan has been shelved, but a spokesman for Boehner on Wednesday said it technically met the Boehner Rule when taking into account both cuts and economic growth.

Rep. Kevin Brady (R-Texas), who released an economic report touting the benefits of the earlier plan, told The Hill on Wednesday that his colleagues are looking for more “meaningful” cuts, particularly on entitlements.

“It’s very much in play,” he said of the dollar-for-dollar approach. “Discretionary savings were modest but important, but really to get a handle on our finances, we’ve got to really start to save the entitlements.”

Asked what he wants on the debt ceiling deal, Rep. Marlin Stutzman (R-Ind.) quickly replied, “dollar-for-dollar cuts.”

“We’ve got to start getting control of our spending,” he added. “I’d like to see us even address entitlement programs.”

In private, many in the financial industry are growing increasingly concerned about a possible default, given the broad gap between the two parties and the shrinking timeline for action.

President Obama has repeatedly said he will not negotiate over raising the debt limit even as he called congressional leaders to the White House on Wednesday to discuss both the shutdown and debt ceiling.

Some speculate stocks must crash to get the sides to compromise.

“People are willing to risk it all, the credibility of the country … for political reasons,” said one banking lobbyist. “You let the market fall by 400 or 500 points and watch the constituent calls start to come in.”

The president huddled Wednesday with the heads of the nation’s largest financial institutions, who reiterated their concern over using the debt limit as a political tool.

“Individual members of our group represent every point on the political spectrum,” Goldman Sachs head Lloyd Blankfein told reporters after the private meeting. “You can litigate these policy issues, you can re-litigate these policy issues in a public forum, but they shouldn’t use the threat of causing the U.S. to fail on its obligation to repay debt as a cudgel.”

Republicans have long argued they have public opinion on their side in the debt fight, but a new poll released Wednesday by CNN/ORC International found that a majority of the public believe failing to raise the debt limit would be a bad thing for the nation. Only 38 percent said it would be a positive.

A Quinnipiac University poll released one day earlier found 64 percent opposed blocking a debt-limit boost, while 27 percent favored it.

Those results suggest a significant shift from earlier polling, which typically found a large number of Americans opposed to hiking the borrowing limit. A Sept. 13 poll from NBC News and The Wall Street Journal found twice as many Americans opposed a debt limit boost than supported it.

Republicans insist they will have leverage in the debt-ceiling talks with the White House.

**PC low and fails for fiscal fights**

Greg **Sargent 9-12**, September 12th, 2013, "The Morning Plum: Senate conservatives stick the knife in House GOP leaders," Washington Post, factiva

All of this underscores a basic fact about this fall's fiscal fights: Far and away **the dominant factor** shaping how they play out will be the divisions among Republicans. There's a great deal of chatter (see Senator Bob Corker for one of the most absurd examples yet) to the effect that **Obama's mishandling of Syria has diminished his standing on Capitol Hill and will weaken him in coming fights**. But those battles at bottom will be about whether the Republican Party can resolve its **internal differences**. Obama's "standing" with Republicans -- if it even could sink any lower -- is **utterly irrelevant to that question**.¶ The bottom line is that, when it comes to how aggressively to prosecute the war against Obamacare, **internal GOP differences may be unbridgeable**. Conservatives have adopted a deliberate strategy of deceiving untold numbers of base voters into believing Obamacare will be stopped outside normal electoral channels. Central to maintaining this fantasy is the idea that any Republican leader who breaks with this sacred mission can only be doing so because he or she is too weak and cowardly to endure the slings and arrows that persevering against the law must entail. GOP leaders, having themselves spent years feeding the base all sorts of lies and distortions about the law, are now desperately trying to inject a does of reality into the debate by pointing out that the defund-Obamacare crusade is, in political and practical terms alike, insane. But it may be too late. The time for injecting reality into the debate has long since passed.

**Obama will unilaterally resolve the crisis if Congress fails---game theory proves**

**IHT 10-4** – International Herald Tribune, 10/4/13 edition, “White House has options if impasse arises on debt ceiling,” p. lexis

As a result, economists and investors have quietly begun to explore the options the White House might have in the event Congress fails to act.

The most widely discussed strategy would be for President Barack Obama to invoke authority under the 14th Amendment and essentially order the federal government to keep borrowing, an option that was endorsed by former President Bill Clinton during an earlier debt standoff in 2011.

And in recent days, prominent Democrats like Senator Max Baucus, chairman of the Senate Finance Committee, and Representative Nancy Pelosi, the House minority leader, have urged the White House to seriously consider such a route, even if it might provoke a threat of impeachment from House Republicans and ultimately require the Supreme Court to rule on its legitimacy.

Other potential October surprises range from the logistically forbidding, like prioritizing payments, issuing i.o.u.'s or selling off gold and other assets, to more fanciful ideas, like minting a trillion-dollar platinum coin.

So far, administration officials have continued to insist that there is no plausible alternative to congressional action on the debt limit.

In December 2012, Jay Carney, the White House spokesman, flatly renounced the 14th Amendment option, saying: ''I can say that this administration does not believe that the 14th Amendment gives the president the power to ignore the debt ceiling - period.'' And on Wednesday, a senior administration lawyer said that remained the administration's view.

Still, some observers outside government in Washington and on Wall Street, citing an approach resembling game theory, suggest that the president's position is more tactical than fundamental, since raising the possibility of a way out for the White House like the constitutional gambit would take the heat off Republicans in Congress to act on their own before the Oct. 17 deadline.

''If a default is imminent, the option of raising the debt limit by executive fiat has to be on the table,'' said Greg Valliere, chief political strategist at Potomac Research. ''Desperate times require desperate measures.''

Some professional investors echoed his view, which is a reason Wall Street remains hopeful that the economic and financial disaster a government default could usher in will be avoided.

''At the end of the day if there is no action and the United States has a default looming, I think President Obama can issue an executive order authorizing the Treasury secretary to make payments,'' said David Kotok, chief investment officer of Cumberland Advisors in Sarasota, Florida, which has just over $2 billion under management. ''There's always been more flexibility in the hands of Treasury than they've acknowledged.''

According to some legal theorists, the president could essentially ignore the debt limit imposed by Congress, because the 14th Amendment states that the ''validity of the public debt of the United States, authorized by law,'' including debts like pensions and bounties to suppress insurrections, ''shall not be questioned.''

Plan is popular with the GOP – being used as a rallying call to attract different demographics.

McLaughlin, 8/9 (Rand Paul: GOP Can grow base by opposing indefinite detention” The Washington Times. Web, Acc 8/15/2013. <http://m.washingtontimes.com/news/2013/aug/9/rand-paul-gop-can-grow-base-opposing-indefinite-de/>)

Sen. Rand Paul says that one of the ways he can bring more minority and younger voters into the party is to push back against indefinite detention.¶ Speaking with [Bloomberg Businessweek](http://m.washingtontimes.com/admin/stories/story/add/(http:/www.businessweek.com/articles/2013-08-08/rand-paul-on-republicans-voter-appeal-and-the-federal-reserve), Mr. Paul, a likely 2016 presidential candidate, said this week that young blacks and Hispanics have a sense of justice and often mistrust government.¶ “So one of the big issues that I’ve fought here is getting rid of the provision called indefinite detention,” the Kentucky Republican said. “This is the idea that an American citizen could be accused of a crime, held indefinitely without charge, and actually sent from America to Guantanamo Bay and kept forever. I think there is something in that message of justice and a right to a trial by jury and a right to a lawyer that resonate beyond the traditional Republican Party and will help us to grow the Republican Party with the youth.”¶ Mr. Paul has argued that his libertarian brand of politics can help the GOP reach out to young voters and minorities who have supported Democrats in recent elections.¶ He has stopped short of calling for the closure of the controversial prison in Cuba, but has railed against locking up U.S. citizens on American soil without a trial.¶ As part of his effort to expand the GOP, Mr. Paul spoke this year at Howard University in Washington, D.C., and Simmons College in Louisville, where he urged blacks to give the GOP another look, while touting his opposition to military adventurism and desire to reduce sentences for non-violent drug possession¶ “We should stand and loudly proclaim enough is enough,” Mr. Paul said at Howard. “We should not have laws that ruin the lives of young men and women who have committed no violence. That’s why I have introduced a bill to repeal federal mandatory minimum sentences. We should not have drug laws or a court system that disproportionately punishes the black community.”

#### 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 voters on board for th 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

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.

#### That’s after (fiscal debate/Syria debate)

GSN, 9/11 (Global Security Newswire, “Levin: NDAA Won’t Pass Before Fiscal Year Starts” Web, Acc 9/12/2013 at <http://www.nationaljournal.com/global-security-newswire/levin-ndaa-won-t-pass-before-fiscal-year-starts-20130911>

Senate Armed Services Committee Chairman Carl Levin (D-Mich.) on Wednesday predicted the Defense Department’s policy-setting bill will not be considered by the full Senate until after fiscal 2014 starts, according to [The Hill](http://thehill.com/blogs/defcon-hill/budget-appropriations/321617-levin-defense-bill-headed-toward-end-of-year-cliffhanger-) newspaper.¶ The Senate will likely spend September, the final month of fiscal 2013, debating the federal budget deficit and potential U.S. intervention in Syria, the senior lawmaker reportedly told journalists in Washington. The fiscal 2014 defense authorization bill probably will not be passed by the Senate, and then reconciled with a competing House version, until the final days of this calendar year, he predicted.¶ “It’ll be another cliffhanger, probably,” Levin said, referring to how in the past the defense bill has not received Congress’ blessing until the final days of the legislative session in December. “It will probably end up closer to the end of the session than I’d like.”

#### 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.