# 1NC Round 1 Neg v Vanderbilt BP

### 1

OBAMA DA

#### Obama strategically avoided defeat on Syria and Summers-the plan signals weakness the GOP will exploit on debt ceiling

**Garrett, National Journal, 9-17-13**

(Major, “A September to Surrender: Syria and Summers Spell Second-Term Slump”, <http://www.nationaljournal.com/all-powers/a-september-to-surrender-syria-and-summers-spell-second-term-slump-20130917>, ldg)

And Senate Democrats were Obama’s undoing in both cases. Among the reasons Obama sought an eleventh-hour deal with Russia over Syria’s chemical weapons was the certainty he would lose a vote in the Democratically controlled Senate to authorize military force. Majority Leader Harry Reid was a distant and uncertain trumpet. Sen. Chuck Schumer, D-N.Y., gave wide and therefore dismissive berth to Obama. Senate Majority Whip Dick Durbin of Illinois, who has lost clout by degrees to Schumer in the past two years, was deeply reluctant but came around. Meanwhile, rank-and-file Democrats were either silent on, or sprinting away from, Syria. The weekend before Obama’s address to the nation, at least 16 Senate Democrats were solidly in the “no” or “lean no” column. Some whip counts had the number in the low 20s. Even after Obama pleaded with publicly undecided Democrats to remain silent, Sen. Tammy Baldwin of Wisconsin announced her opposition. The White House was not close in the Senate. Suddenly, all the brave West Wing puffery about winning in the Senate and not waiting for action in the House (the 1999 “Kosovo precedent” became the policy shop’s retro “Blurred Lines” smash hit of the late summer) began to wilt. By the time Senate Minority Leader Mitch McConnell announced his opposition on Syria, it was as anticlimactic as the new Crossfire. Senate Democrats would not follow Obama into battle—no matter how much Syria wasn’t Afghanistan, Iraq, or Libya. (Hell, it wasn’t even Grenada.) Democrats would not follow Obama to uphold human rights, advance nonproliferation, or avenge a sarin massacre hauntingly reminiscent of World War I. And they would not follow Obama on naming Lawrence Summers the next Federal Reserve chairman. Senate Democrats, led by Sherrod Brown of Ohio, had for months organized against Summers. Brown’s office collected upward of 20 Democratic signatures urging Obama to appoint Summers’s top rival, Federal Reserve Vice Chair Janet Yellen. The letter and incessant yammering from Senate Democrats infuriated Obama and transformed his preference for Summers from a notion to an imperative. White House aides had been told (and Reid said so publicly) that if Obama nominated Summers, even pro-Yellen Democrats would vote to confirm. But that was on confirmation, not committee consideration. Senate Banking Committee Democrats refused to give up their prerogatives, and when Sen. Jon Tester, D-Mont., announced Friday that he would become the fourth committee Democrats to oppose Summers, the die was cast. There are no “obstructionist” Republican fingerprints on the conspicuous and power-depleting defeats for Obama. He never sought a vote on Syria and therefore was not humiliated. The same is true for Summers. But Obama lost ground on both fronts and ultimately surrendered to political realities that, for the first time in his presidency, were determined by his own obdurate party. This does not mean Obama will lose coming fights over the sequester, shutdown, or debt ceiling. But he is visibly weaker, and even his sense of victory in Syria is so unidimensional, it has no lasting sway in either Democratic cloakroom. More important, Democrats are no longer afraid to defy him or to disregard the will of their constituents—broadly defined in the case of Syria; activist and money-driving in the case of Summers. This, of course, indirectly announces the beginning of the 2016 presidential campaign and an intra-party struggle over the post-Obama Democratic matrix. This shift—a tectonic one—will give Republicans new opportunities on the fiscal issues and in coming debates over immigration and implementation of Obamacare. Republicans have never known a world where Democratic defections were so unyielding and damaging.

#### <<Link>>

#### Failure to raise the debt ceiling ensures collapse of the global economy, U.S. economic leadership, and free trade

**Davidson, NPR’s Planet Money co-founder, 9-10-13**

(Adam, “Our Debt to Society”, http://www.nytimes.com/2013/09/15/magazine/our-debt-to-society.html?pagewanted=all&\_r=0, ldg)

If the debt ceiling isn’t lifted again this fall, some serious financial decisions will have to be made. Perhaps the government can skimp on its foreign aid or furlough all of NASA, but eventually the big-ticket items, like Social Security and Medicare, will have to be cut. At some point, the government won’t be able to pay interest on its bonds and will enter what’s known as sovereign default, the ultimate national financial disaster achieved by countries like Zimbabwe, Ecuador and Argentina (and now Greece). In the case of the United States, though, it won’t be an isolated national crisis. If the American government can’t stand behind the dollar, the world’s benchmark currency, then the global financial system will very likely enter a new era in which there is much less trade and much less economic growth. It would be, by most accounts, the largest self-imposed financial disaster in history. Nearly everyone involved predicts that someone will blink before this disaster occurs. Yet a small number of House Republicans (one political analyst told me it’s no more than 20) appear willing to see what happens if the debt ceiling isn’t raised — at least for a bit. This could be used as leverage to force Democrats to drastically cut government spending and eliminate President Obama’s signature health-care-reform plan. In fact, Representative Tom Price, a Georgia Republican, told me that the whole problem could be avoided if the president agreed to drastically cut spending and lower taxes. Still, it is hard to put this act of game theory into historic context. Plenty of countries — and some cities, like Detroit — have defaulted on their financial obligations, but only because their governments ran out of money to pay their bills. No wealthy country has ever voluntarily decided — in the middle of an economic recovery, no less — to default. And there’s certainly no record of that happening to the country that controls the global reserve currency. Like many, I assumed a self-imposed U.S. debt crisis might unfold like most involuntary ones. If the debt ceiling isn’t raised by X-Day, I figured, the world’s investors would begin to see America as an unstable investment and rush to sell their Treasury bonds. The U.S. government, desperate to hold on to investment, would then raise interest rates far higher, hurtling up rates on credit cards, student loans, mortgages and corporate borrowing — which would effectively put a clamp on all trade and spending. The U.S. economy would collapse far worse than anything we’ve seen in the past several years. Instead, Robert Auwaerter, head of bond investing for Vanguard, the world’s largest mutual-fund company, told me that the collapse might be more insidious. “You know what happens when the market gets upset?” he said. “There’s a flight to quality. Investors buy Treasury bonds. It’s a bit perverse.” In other words, if the U.S. comes within shouting distance of a default (which Auwaerter is confident won’t happen), the world’s investors — absent a safer alternative, given the recent fates of the euro and the yen — might actually buy even more Treasury bonds. Indeed, interest rates would fall and the bond markets would soar. While this possibility might not sound so bad, it’s really far more damaging than the apocalyptic one I imagined. Rather than resulting in a sudden crisis, failure to raise the debt ceiling would lead to a slow bleed. Scott Mather, head of the global portfolio at Pimco, the world’s largest private bond fund, explained that while governments and institutions might go on a U.S.-bond buying frenzy in the wake of a debt-ceiling panic, they would eventually recognize that the U.S. government was not going through an odd, temporary bit of insanity. They would eventually conclude that it had become permanently less reliable. Mather imagines institutional investors and governments turning to a basket of currencies, putting their savings in a mix of U.S., European, Canadian, Australian and Japanese bonds. Over the course of decades, the U.S. would lose its unique role in the global economy. The U.S. benefits enormously from its status as global reserve currency and safe haven. Our interest and mortgage rates are lower; companies are able to borrow money to finance their new products more cheaply. As a result, there is much more economic activity and more wealth in America than there would be otherwise. If that status erodes, the U.S. economy’s peaks will be lower and recessions deeper; future generations will have fewer job opportunities and suffer more when the economy falters. And, Mather points out, no other country would benefit from America’s diminished status. When you make the base risk-free asset more risky, the entire global economy becomes riskier and costlier.

#### Nuclear war

Kemp 2010

Geoffrey, Director of Regional Strategic Programs at The Nixon Center, served in the White House under Ronald Reagan, special assistant to the president for national security affairs and senior director for Near East and South Asian affairs on the National Security Council Staff, Former Director, Middle East Arms Control Project at the Carnegie Endowment for International Peace, 2010, The East Moves West: India, China, and Asia’s Growing Presence in the Middle East, pg. 233-4

The second scenario, called Mayhem and Chaos, is the opposite of the first scenario; everything that can go wrong does go wrong. The world economic situation weakens rather than strengthens, and India, China, and Japan suffer a major reduction in their growth rates, further weakening the global economy. As a result, energy demand falls and the price of fossil fuels plummets, leading to a financial crisis for the energy-producing states, which are forced to cut back dramatically on expansion programs and social welfare. That in turn leads to political unrest: and nurtures different radical groups, including, but not limited to, Islamic extremists. The internal stability of some countries is challenged, and there are more “failed states.” Most serious is the collapse of the democratic government in Pakistan and its takeover by Muslim extremists, who then take possession of a large number of nuclear weapons. The danger of war between India and Pakistan increases significantly. Iran, always worried about an extremist Pakistan, expands and weaponizes its nuclear program. That further enhances nuclear proliferation in the Middle East, with Saudi Arabia, Turkey, and Egypt joining Israel and Iran as nuclear states. Under these circumstances, the potential for nuclear terrorism increases, and the possibility of a nuclear terrorist attack in either the Western world or in the oil-producing states may lead to a further devastating collapse of the world economic market, with a tsunami-like impact on stability. In this scenario, major disruptions can be expected, with dire consequences for two-thirds of the planet’s population.

### 2

COUNTERPLAN

#### Text

#### The federal judiciary should determine that The United States District Court for the District of Columbia has exclusive jurisdiction over the United States’ indefinite detention policy.

#### New legislation would inevitably become politicized, lead to court challenges, create delays and incoherent jurisprudence-the CP solves clarity better by designating the D.C. Court as the locus of detention oversight

Nesbitt-JD Candidate Minnesota-10 95 Minn. L. Rev. 244

Note: Meeting Boumediene's Challenge: The Emergence of an Effective Habeas Jurisprudence and Obsolescence of New Detention Legislation

Furthermore, even if, from an abstracted institutional perspective, Congress is better suited to the task, there is good reason to doubt that Congress would, in fact, produce reasoned, sensible detention legislation. New legislation is likely to be less the result of reasonable deliberation and more a function of interest group politics. 195 A habeas reform bill introduced by Lindsey Graham in early August 2010 illustrates this point. 196 The bill would require the D.C. district courts to give "utmost deference" to the executive's determination as to whether a particular organization is associated with al Qaeda or the Taliban. 197 [\*280] In essence, this provision would take from Congress its constitutional power to determine the entities with which the United States is at war. 198 The criticism, then, is that even if institutionally competent, Congress may not be politically competent to pass detention legislation that would be any more effective than the habeas litigation has proven to be. 199 And, like the Graham bill, resulting legislation may well raise serious constitutional concerns, the resolution of which would only further delay the habeas proceedings. In any case, new legislation would also be subject to interpretation by courts, and so - rather than clarifying the law - may only destabilize the increasingly coherent jurisprudence. 200 It bears emphasizing that the political branches could pass new detention legislation that appropriately reckoned with the implications of Boumediene, ensuring that detainees have a prompt, meaningful chance to contest their status, to assess the evidence against them, and so on. 201 The suggestion here, however, is that the game would not be worth the candle: the federal courts in Washington, D.C. have already done this work for them. C. Congressional Inaction The best option is, in the end, the simplest one. The political branches should allow the courts to continue to adjudicate habeas petitions on the basis of the AUMF as construed in Hamdi and in light of the Court's guidance in Boumediene. As has happened over the last two years, remaining differences among judges will likely narrow over time as the jurisprudence matures. 202 True, as Judge Brown pointed out in urging congressional [\*281] action, the common-law process depends on incrementalism and eventual correction, and may be most effective where there are a significant number of cases brought before a large number of courts; by contrast, the number of Guantanamo detainees is limited, the circumstances of their confinement are unique, and all cases are heard before the D.C. courts. 203 Yet, as Part II demonstrated, even as district court judges have rejected the alternative approaches of their colleagues on both substantive and procedural issues, 204 the common-law process has already worked to resolve many of these disagreements. And that all habeas cases are heard before the federal courts in Washington, D.C. is a virtue rather than a vice, as it allows the D.C. judges to rapidly accumulate expertise. 205 A central purpose of the habeas litigation is to allow each detainee a fair and equal chance to challenge his confinement. The early months of litigation gave reasons to doubt whether that was happening. But times have changed. Detainees need not wait for the law to cohere on some future date; it is already beginning to do so. While detainees do not benefit from all aspects of the jurisprudence emerging from the D.C. Circuit, the law is at least becoming coherent and consistent enough to provide every detainee the same, genuine opportunity to challenge his detention. The D.C. Circuit has not resolved every divergence, nor could it. Some disagreements, rooted in different conceptions of the appropriate amount of deference to accord the government in light of Boumediene, will persist. 206 Given the convergence of [\*282] substantive detention standards discussed above, such disagreements may increasingly be about procedural matters. From a uniformity standpoint this result is less of a problem. Procedure is an area of unique judicial expertise; district court judges are well suited to develop procedures that ensure accurate fact-finding and a fair - or at least reasoned and public - resolution of each habeas case. 207 It would be unwise to mandate a one-size-fits-all procedural framework for cases that are widely recognized to be "unique" and "unprecedented." 208 CONCLUSION The Guantanamo habeas cases have challenged our court system. With little guidance from Congress or the Supreme Court, federal judges have been muddling through the habeas cases for over two years. But while district court judges have disagreed about both substantive and procedural issues, the D.C. Circuit has resolved the most salient of these disagreements. As a result, the habeas jurisprudence is increasingly coherent, and effectively provides each detainee with the same, meaningful chance to challenge his detention. Moreover, the many detainee wins have not come at the expense of laying precedent that threatens U.S. national security. Indeed, the standards emerging from the D.C. Circuit are, if anything, overly protective of national security prerogatives at the expense of detainee liberty. For detainees as well as for the government, then, habeas works. Many eight-or-more-year denizens of Guantanamo never belonged there, and the story of their detention will no doubt long stain the reputation of the United States as a champion of individual liberty and human rights. But the story recounted [\*283] here is not an unmitigated failure of these principles. Boumediene gave detainees access to a process that has led many to freedom; Fouad Al-Rabiah, the aviation engineer discussed in the Introduction, is now at home in Kuwait. 209 In sum, the habeas cases decided so far suggest that the wisest course of action is also the simplest and most politically attractive. Congress should stand back and allow the habeas litigation to proceed.

The plan re-creates legal chaos surrounding detention-Federal Courts have a proven track record of success

Zabel and Benjamin-former Assistant U.S. Attorneys-8

In Pursuit of Justice Prosecuting Terrorism Cases in the Federal Courts

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

Recently, some commentators have proposed an entirely new “national security court” to handle some or all international terrorism prosecutions. Although proposals vary, many offer novel features that would give the government more power and make it easier for the government to secure convictions. However, creating a brand new court system from scratch would be expensive, uncertain, and almost certainly controversial. Indeed, there is the risk that the very same issues now debated simply would be transferred to a new arena for resolution. In our view, before dramatic changes are imposed—such as the creation of an entirely new court or new detention scheme—it is important to take a step back and evaluate the capability of the existing federal courts and the existing body of federal law to handle criminal cases arising from international terrorism. Given the strength and vitality of our existing court system—and the fact that it reflects in many ways the best aspects of our legal and cultural traditions—there are obvious advantages to relying on the existing system, provided that it is up to the job. Our analysis of the capability of the federal courts to handle criminal cases arising from international terrorism is based heavily on the actual experience of more than 100 international terrorism cases that have been prosecuted in federal courts over the past fifteen years. Based on our review of that data and our other research and analysis, we conclude that, contrary to the views of some critics, the court system is generally well-equipped to handle most terrorism cases. We reach this conclusion based on the broad analysis conducted in this White Paper. A high-level summary of that analysis follows immediately below.

### 3

COURT CAPITAL DA

#### Court will uphold treaty power in Bond now but it’s close.

Greve 2013

Michael S., professor at George Mason University School of Law, Straight Up, With Multiple Twists: Bond v. United States, January 21 2013, http://www.libertylawsite.org/2013/01/21/straight-up-with-multiple-twists-bond-v-united-states/

In truth, you don’t have to read Missouri so broadly. The treaty at issue dealt with things that cross international and national borders. There was no daylight between the treaty and the implementing legislation. And the state’s federalism argument was, as Holmes noted, a “thin reed.” There, in a nutshell, you have “proper” bounds of the treaty power. (For more on this, see the exchange between Rick Pildes, Nick Rosenkranz and Ilya Somin on the volokhconspiracy.) Having articulated those bounds, you could then say—as the Bond cert petition argues—that at the very least, courts should read treaties and implementing statutes to avoid constitutional doubts. The exemption for “peaceful” uses indicates that Congress intended to combat the spread of chemical weapons and materials for war-like purposes, as opposed to arming criminal prosecutors with yet another all-purpose club. The argument is more difficult than one might think. The government’s ready reply is that you can’t use a constitutional avoidance canon to create doubt where none exists. Holland isn’t really an issue here because Congress didn’t do anything that it could not also do under the Commerce Clause. Congress in its infinite wisdom decided that it needed a closed and complete regulatory system, just as it does for purposes of, say, the Controlled Substances Act. Under that statute, the plants on your window sill are fair game for the feds, see Raich. Well then: so is the stuff under your kitchen sink. No point in speculating about the outcome. This much, one can say with a tolerable degree of confidence: The justices know this case. Four justices on one side or the other voted to grant because they want to get to the grand themes of Missouri, and they would not have done so if they weren’t reasonably sure of a fifth vote on the merits. The difficulty of obtaining at least an implicit “fifth” precommitment is to my mind the readiest explanation for the multiple relists. (If someone has a better guess, let’s hear it.) If that’s right, the briefing and argument task is to shake or hold that vote, however it cuts. One more point of near-certainty: whichever way the case goes, what the justices say along the way will shape the contours of treaty law and its constitutional boundaries for many, many years to come.

#### Public backlash means the court won’t pursue its agenda – numerous historical examples. Turns the case, no enforcement or judicial independence.

Clark 2009

Tom, Assistant Professor of Political Science at Emory, The Separation of Powers, Court Curbing, and Judicial Legitimacy, American Journal of Political Science,Vol. 53, No. 4, October 2009 http://userwww.service.emory.edu/~tclark7/constitutional.pdf

That the Court has preferences over policy outcomes is an uncontroversial claim resting on a large body of empirical scholarship, the paradigmatic example of which is Segal and Spaeth (2002).Moreover, that courts have preferences for institutional legitimacy is similarly well demonstrated in the literature (Baum 2006; Caldeira 1987; Caldeira and Gibson 1992, 1995; Carrubba 2009; Hausseger and Baum 1999; Lasser 1988; Rogers 2001; Staton 2006; Stephenson 2004; Vanberg 2005). This study departs from the literature on institutional legitimacy in an important way—I argue that congressional hostility towards, and attacks on, the judiciary indicate a lack of judicial legitimacy and public prestige. In particular, the justices believe that legislative attacks on the Court are signals about a lack of public support for the Court. Thus, while the justices have their own information about public opinion and the Court, they can, and do, update their beliefs by observing political activity concerning the Court. In an interview, one Supreme Court justice commented, “The Court is pretty good about knowing how far it can go.... Congress is better than we are, especially the House. They really have their finger on the pulse of the public.” Similarly, another justice commented, “We read the newspapers and see what is being said—probably more than most people do....We know if there is a lot of public interest; we have to be careful not to reach too far,” a sentiment echoed by numerous other Court insiders. Further, considerable evidence demonstrates that the Court is concerned about political criticism.Research on the importance of institutional legitimacy for judicial power provides evidence that the Court is sensitive to how it is perceived by the public and members of the bar (Baum 2006; see also Epstein and Knight 1998, chap. 5; Klein and Morrisroe 1999; Staton 2006), while other scholarship demonstrates that the Court has an incentive to protect its institutional legitimacy by avoiding institutional confrontations and acts on that incentive (Caldeira 1987; Carrubba 2009; Hausseger and Baum 1999; Lasser 1988; Stephenson 2004; Vanberg 2005; see also Marshall 1989, 2004). The scholarly literature distinguishes between diffuse support and specific support for the Court. Whereas diffuse support refers to broad institutional support for the Court as an institution (possibly despite unpopular rulings), specific support refers to public support for a particular decision. Court curbing may simply be a signal of a loss of specific support, but that is important information for the Court, because continued losses of specific support may have a deleterious effect on the Court’s diffuse support in the aggregate. One Supreme Court justice commented, “Once the public ceases to believe that the Court is not a political institution, they will no longer support the Court.” Another justice observed that the Court’s being “perceived as acting legitimately...[is] predicated on whether the public understands that we are a court and act [in] a legitimate way.” Indeed, the scholarly literature similarly shows that when public support for the Court declines, the public will increasingly support efforts to politically sanction the Court and restrict judicial power (Caldeira and Gibson 1995; Gibson and Caldeira 1995, 1998, 2003; Gibson, Caldeira, and Baird 1998). For example, Caldeira and Gibson claim that individuals who have no diffuse support, or institutional loyalty, for the Court will be willing to “accept, make, or countenance major changes in the fundamental attributes of how the high bench functions or fits into the U.S. constitutional system” (1992, 638). Using the rubric of “rational anticipation,” McGuire and Stimson suggest “a Court that strays too far from the broad boundaries imposed by public mood risks having its decisions rejected” (2004, 1019). Mondak and Smithey summarize the point nicely: “A disgruntled public may not only refuse to cooperate with a Supreme Court decision but may also pressure elected officials to resist implementation of judicial orders” (1997, 1114). That is, the judiciary is given no positive powers and depends heavily upon political will to give effect to its decisions. The Court is thereforefaced with an implementation problem. Scholars of the courts cite diffuse support as a resource necessary for overcoming this implementation problem (Caldeira 1986; Murphy and Tanenhaus 1990; Stephenson 2004; Weingast 1997; see also Carrubba 2009). As such, despite Supreme Court’s nominal insulation from the American people, the justices have strong incentives to be concerned with their public standing. They recognize that erosion of public support and institutional legitimacy has negative consequences for the Court’s power and institutional integrity. The justices themselves corroborate the claim that a loss of public support leads to an erosion of institutional legitimacy that negatively affects the Court’s efficacy as a governing institution. Speaking at a conference on judicial independence in 2003, former Chief Justice William Rehnquist (2003) noted that past preservation of the independence and integrity of the Court has been “dependent upon the public’s respect for the judiciary” and that “[t]he degree to which that independence will be preserved will depend again in some measure on the public’s respect for the judiciary.” Indeed, historical examples suggest the Court does at times recognize the limits of its independence and exercises self-restraint for fear of acting without public support and inflicting irreparable institutional damage. Notable examples include the Supreme Court’s reluctance to consider the constitutionality of anti-miscegenation laws in the wake of Brown v. Board of Education(Klarman 2004, 321) and its continued reluctance to address widespread prayer in public schools, despite the Court’s declaration that such practices violate the constitution. This point is made generally by Lasser (1988), who argues that the historical pattern has infact been one of judicial self-restraint precisely at those times when it is aware that the political situation is too perilous. For my purposes here, though, it is important not that the Court has at any point lost public support but rather that the justices behavein anticipation of a lack of public support. The historical record suggests the Court has at times been reluctant to forge ahead with its policy agenda for fear of acting outside of the broad contours of public support. Thus, while justices have preferences over policy outcomes, they also have a preference for institutional legitimacy. Importantly, members of the Court believe that political attacks on the judiciary evince an erosion of public support and a decline in the Court’s institutional efficacy. For this reason, political attacks on the Court serve as signals of a lack of specific support for the Court, which in turn indicates that further judicial recalcitrance will not be tolerated and that the Court will not be able to effectively set policy. The mechanisms by which this may take place are several, but, primarily, continued judicial recalcitrance could lead to the impeachment of justices, the reluctance of lower court judges to heed Supreme Court precedent, or the refusal of elected officials to implement judicial decisions. For example, for fear of electoral reprisal, an elected official would find it in her interest to disregard a judicial decision perceived as illegitimate by the public.

#### Upholding Missouri v Holland is key to treaties but capital is key.

Spiro 2008

Peter J., Professor of Law, Temple University, Resurrecting Missouri v. Holland, Missouri Law Review http://law.missouri.edu/lawreview/files/2012/11/Spiro.pdf

Even with respect to the Children’s Rights Convention, the balance may change. At both levels, the game is dynamic. On the international plane, as more attention is focused on human rights regimes, the costs of nonparticipation rise. Other countries and other international actors (human rights NGOs, for example) will train a more focused spotlight on U.S. nonparticipation.28 From a human rights perspective, it’s low-hanging fruit; the mere fact that the United States finds itself alone with Somalia outside the regime suffices to demonstrate the error of the American stance as a leading example of deplored American exceptionalism. For progressive advocacy groups focusing on children’s rights, the Convention is emerging as an agenda item.29 More powerful actors, including states and such major human rights groups as Amnesty International and Human Rights Watch, may be unlikely to put significant political resources into the effort, but there is the prospect of a drumbeat effect and accompanying stress to U.S. decisionmakers. 30 In the wake of international opprobrium associated with post-9/11 antiterror strategies, U.S. conformity with human rights has come under intensive international scrutiny. That scrutiny is spilling over into other human rights-related issues; there will be no more free passes for the United States when it comes to rights.31 Human rights may present the most obvious flash point along the Holland front, but it will not be the only one. As Antonia Chayes notes, “resentment runs deep” against U.S. treaty behavior.32 International pressure on the United States to fully participate in widely-subscribed international treaty regimes, some of which could constitutionally ride on the Treaty Power alone, will grow more intense. At the same time that the international price of non-participation rises, a subtle socialization may be working to lower the domestic cost of exercising Holland-like powers. Globalization is massaging international law into the sinews of American political culture. The United States may not have ratified the Convention on the Rights of the Child, for example, but it has acceded to Hague Conventions on abduction33 and adoption,34 as well as optional protocols to the Children’s Rights Convention itself,35 and has enthusiastically pursued an agreement on the transboundary recovery of child support.36 As international law becomes familiar as a tool of family law, the Children’s Convention will inevitably look less threatening even against America’s robust sentiments regarding federalism. Regimes in other areas should be to similar effect and will span the political divide. It is highly significant, for instance, that conservative Americans have become vocal advocates of international regimes against religious persecution, a key factor in the aggressive U.S. stance on Darfur.37 To the extent that conservatives see utility in one regime they will lose traction with respect to principled category arguments against others. Which is not at all to say that Holland will be activated with consensus support. A clear assertion of the Treaty Power against state prerogatives would surely provoke stiff opposition in the Senate and among anti-internationalist conservatives, setting the scene for a constitutional showdown.38 The adoption of a treaty regime invading protected state powers would require the expenditure of substantial political capital. Any president taking the Treaty Power plunge would be well advised to choose a battle to minimize policy controversy on top of the constitutional one. A substantively controversial regime depending on Holland’s authority (say, relating to the death penalty) would increase the risk of senatorial rebuke. Perhaps the best strategy would be to plant the seeds of constitutional precedent in the context of substantively obscure treaties, ones unlikely to attract sovereigntist flak. If a higher profile treaty implicating Holland were then put on the table, earlier deployments would undermine opposition framed in constitutional terms. Such was the case with the innovation of congressional-executive agreements, which, before their use in adopting major institutional regimes in the wake of World War II, had been used with respect to minor agreements in the interwar years.39 In contrast to the story of congressional-executive agreements, advocates of an expansive Treaty Power will have the advantage of Holland itself, that is, a Supreme Court decision on point and not superseded by a subsequent ruling. That would lend constitutional credibility to the proposed adoption of any agreement requiring the Treaty Power by way of constitutional support. But it wouldn’t settle the question in the face of the consistent practice described above. Holland is an old, orphaned decision, creating ample space for contemporary rejection. An anti-Holland posture, the decision’s status as good law notwithstanding, would also be bolstered by the highly credentialed revisionist critique.40 That of course begs the question of what the Supreme Court would do with the question were it presented. The Court could reaffirm Holland, in which case its resurrection would be official and the constitutional question settled, this time (one suspects) for good. That result would comfortably fit within the tradition of the foreign affairs differential (in which Holland itself is featured).41 One can imagine the riffs on Holmes, playing heavily to the imperatives of foreign relations and the increasing need to manage global challenges effectively. The opinion might not write itself, but it would require minimal creativity. Recent decisions, Garamendi notably among them,42 would supply an updated doctrinal pedigree. And since the question would come to the Court only after a treaty had garnered the requisite two-thirds’ support in the Senate, the decision would not likely require much in the way of political fortitude on the Court’s part. It would also likely draw favorable international attention, reaffirming the justices’ membership in the global community of courts.43 IV. CONCLUSION:CONSTITUTIONAL LIFE WITHOUT MISSOURI V. HOLLAND Holland’s judicial validation would hardly be a foregone conclusion. The Supreme Court has grown bolder in the realm of foreign relations. Much of this boldness has been applied to advance the application of international norms to U.S. lawmaking, the post-9/11 terror cases most notably among them.44 The VCCR decisions, on the other hand, have demonstrated the Court’s continued resistance to the application of treaty obligations on the states. In Medellín, where the Court found the President powerless to enforce the ICJ’s Avena decision on state courts, that resistance exhibited itself over executive branch objections. The Court rebuffed the President with the result of retarding the imposition of international law on the states and at the risk of offending powerful international actors.

#### Treaties are key to cooperation on every issue – solve extinction

Koh and Smith 2003

Harold Hongju Koh, Professor of International Law, and Bernice Latrobe Smith, Yale Law School; Assistant Secretary of State for Democracy, Human Rights and Labor, “FOREWORD: On American Exceptionalism,” May 2003, 55 Stan. L. Rev. 1479

Similarly, the oxymoronic concept of "imposed democracy" authorizes top-down regime change in the name of democracy. Yet the United States has always argued that genuine democracy must flow from the will of the people, not from military occupation. 67 Finally, a policy of strategic unilateralism seems unsustainable in an interdependent world. For over the past two centuries, the United States has become party not just to a few treaties, but to a global network of closely interconnected treaties enmeshed in multiple frameworks of international institutions. Unilateral administration decisions to break or bend one treaty commitment thus rarely end the matter, but more usually trigger vicious cycles of treaty violation. In an interdependent world, [\*1501] the United States simply cannot afford to ignore its treaty obligations while at the same time expecting its treaty partners to help it solve the myriad global problems that extend far beyond any one nation's control: the global AIDS and SARS crises, climate change, international debt, drug smuggling, trade imbalances, currency coordination, and trafficking in human beings, to name just a few. Repeated incidents of American treaty-breaking create the damaging impression of a United States contemptuous of both its treaty obligations and treaty partners. That impression undermines American soft power at the exact moment that the United States is trying to use that soft power to mobilize those same partners to help it solve problems it simply cannot solve alone: most obviously, the war against global terrorism, but also the postwar construction of Iraq, the Middle East crisis, or the renewed nuclear militarization of North Korea.

### 4

DETENTION K

#### Detention reform is a tactic that masks the inscription of individual lives in state order granting victory to the sovereign power they want to ward off; they can only relate with the other violently reducing them to objects of knowledge

Shomura 10 (Chad Shomura received his MA from the political science department at the University of Hawai`i at Manoa and is currently in the first year of a doctoral program in the same field at the Johns Hopkins University. "These Are Bad People" Enemy Combatants and the Homopolitics of the "War on Terror" Project Muse)

While certainly important to advocates of political liberalism, these legal benefits disregard the subjectivization of supposedly dangerous, inhuman terrorists as enemy combatants before the law through the mechanisms of sovereignty. Butler notes that subjects of juridical structures "are, by virtue of being subject to them, formed, defined, and reproduced in accordance with the requirements of those structures."xxxv Similarly, Agamben argues that bestowal of rights functions as "a tacit but increasing inscription of individuals' lives within the state order, thus offering a new and more dreadful foundation for the very sovereign power from which they wanted to liberate themselves." xxxvi Observing that any mode of legal representation, even when viewed as "liberating" from the standpoint of political liberalism, reinforces those normative structures given juridical force by sovereignty, both Butler and Agamben compel us to consider how Hamdi, by granting due process rights to enemy combatants, grants victory to the sovereign power it supposedly wards off. Because satisfaction with political liberalism further legitimizes the operations of sovereignty and thus enables and perpetuates homopolitical violence, only a more radical critique of Hamdi may contest the interpellation as "enemy combatants" of those figured as dangerous, inhuman terrorists and ultimately disrupt the sovereign operations of homopolitics.xxxvii In its majority decision, the Court inscribes the space in which sovereignty emerges directly within the figure of the enemy combatant. The Court acknowledges "enemy combatant" as a proper legal category while noting that "there is some debate as to the proper scope of this term."xxxviii Because "the Government has never provided any court with the full criteria it uses in classifying individuals as such,"xxxix enemy combatant determinations are made partially, or perhaps entirely, without judicial oversight (of course, "partially" becomes indistinguishable from "entirely" when the government withholds determinative criteria). The inaccessibility of those "standards" constituting one as an "enemy combatant" leaves the term loosely defined - the equivalent of not being defined at all. In light of the state's secrecy, the Court observes that the government indeed has made available some of the standards it used to classify Hamdi as an "enemy combatant." It writes that: [The Government] has made clear, however, that, for the purposes of this case, the "enemy combatant that it is seeking to detain is an individual who, it alleges, was "part of or supporting forces hostile to the United States or coalition partners" in Afghanistan and who "engaged in an armed conflict against the United States" there.xl The Court's language here indicates that "enemy combatant" lacks strict definitional boundaries. "In this case" implies that the meaning of "enemy combatant" is case-specific and varies according to particular determinations. That the government "has made clear" what qualifies one to be an "enemy combatant" indicates that that term, previously opaque, becomes transparent through its articulation in "this case." Finally, the idea that "enemy combatant" has to be made clear reveals that the enemy combatant is and can only be obscure. Because it is essentially without an essence, the enemy combatant emerges through its temporary stabilization as a legal concept (and not a category) only at its moment of enunciation.xli

#### The 1AC’s securitization and obsession with American military dominance create a form of social relations that make extinction inevitable. Their knowledge production has been bankrupted by this system; and their epistemological underpinnings should be evaluated prior to the advantages.

Willson 13 (Brain, is a Ph.D New College San Fransisco, Humanities, JD, American University, “Developing Nonviolent Bioregional Revolutionary Strategies,” http://www.brianwillson.com/developing-nonviolent-bioregional-revolutionary-strategies/)

I. Industrial civilization is on a collision course with life itself. Facilitating its collapse is a deserved and welcomed correction, long overdue. Collapse is inevitable whether we seek to facilitate it or not. Nonetheless, whatever we do, industrial civilization, based as it is on mining and burning finite and polluting fossil fuels, cannot last because it is destroying the ecosystem and the basis of local, cooperative life itself. It knows no limits in a physically finite world and thus is unsustainable. And the numbers of our human species on earth, which have proliferated from 1.6 billion in 1900 to 7 billion today, is the consequence of mindlessly eating oil – tractors, fertilizers, pesticides, herbicides – while destroying human culture in the process. Our food system itself is not sustainable. Dramatic die-off is part of the inevitable correction in the very near future, whether we like it or not. Human and political culture has become totally subservient to a near religion of economics and market forces. Technologies are never neutral, with some being seriously detrimental. Technologies come with an intrinsic character representing the purposes and values of the prevailing political economy that births it. The Industrialism process itself is traumatic. It is likely that only when we experience an apprenticeship in nature can we be trusted with machines, especially when they capital intensive & complicated. The nation-state, intertwined more than ever with corporate industrialism, will always come to its aid and rescue. Withdrawal of popular support enables new imagination and energy for re-creating local human food sufficient communities conforming with bioregional limits. II. The United States of America is irredeemable and unreformable, a Pretend Society. The USA as a nation state, as a recent culture, is irredeemable, unreformable, an anti-democratic, vertical, over-sized imperial unmanageable monster, sustained by the obedience and cooperation, even if reluctant, of the vast majority of its non-autonomous population. Virtually all of us are complicit in this imperial plunder even as many of us are increasingly repulsed by it and speak out against it. Lofty rhetoric has conditioned us to believe in our national exceptionalism, despite it being dramatically at odds with the empirically revealed pattern of our plundering cultural behavior totally dependent upon outsourcing the pain and suffering elsewhere. We cling to living a life based on the social myth of US America being committed to justice for all, even as we increasingly know this has always served as a cover for the social secret that the US is committed to prosperity for a minority thru expansion at ANY cost. Our Eurocentric origins have been built on an extraordinary and forceful but rationalized dispossession of hundreds of Indigenous nations (a genocide) assuring acquisition of free land, murdering millions with total impunity. This still unaddressed crime against humanity assured that our eyes themselves are the wool. Our addiction to the comfort and convenience brought to us by centuries of forceful theft of land, labor, and resources is very difficult to break, as with any addiction. However, our survival, and healing, requires a commitment to recovery of our humanity, ceasing our obedience to the national state. This is the (r)evolution begging us. Original wool is in our eyes: Eurocentric values were established with the invasion by Columbus: Cruelty never before seen, nor heard of, nor read of – Bartolome de las Casas describing the behavior of the Spaniards inflicted on the Indigenous of the West Indies in the 1500s. In fact the Indigenous had no vocabulary words to describe the behavior inflicted on them (A Short Account of the Destruction of the Indies, 1552). Eurocentric racism (hatred driven by fear) and arrogant religious ethnocentrism (self-righteous superiority) have never been honestly addressed or overcome. Thus, our foundational values and behaviors, if not radically transformed from arrogance to caring, will prove fatal to our modern species. Wool has remained uncleansed from our eyes: I personally discovered the continued vigorous U.S. application of the “Columbus Enterprise” in Viet Nam, discovering that Viet Nam was no aberration after learning of more than 500 previous US military interventions beginning in the late 1790s. Our business is killing, and business is good was a slogan painted on the front of a 9th Infantry Division helicopter in Viet Nam’s Mekong Delta in 1969. We, not the Indigenous, were and remain the savages. The US has been built on three genocides: violent and arrogant dispossession of hundreds of Indigenous nations in North America (Genocide #1), and in Africa (Genocide #2), stealing land and labor, respectively, with total impunity, murdering and maiming millions, amounting to genocide. It is morally unsustainable, now ecologically, politically, economically, and socially unsustainable as well. Further, in the 20th Century, the Republic of the US intervened several hundred times in well over a hundred nations stealing resources and labor, while imposing US-friendly markets, killing millions, impoverishing perhaps billions (Genocide #3). Since 1798, the US military forces have militarily intervened over 560 times in dozens of nations, nearly 400 of which have occurred since World War II. And since WWII, the US has bombed 28 countries, while covertly intervening thousands of times in the majority of nations on the earth. It is not helpful to continue believing in the social myth that the USA is a society committed to justice for all , in fact a convenient mask (since our origins) of our social secret being a society committed to prosperity for a few through expansion at ANY cost. (See William Appleman Williams). Always possessing oligarchic tendencies, it is now an outright corrupt corporatocracy owned lock stock and barrel by big money made obscenely rich from war making with our consent, even if reluctant. The Cold War and its nuclear and conventional arms race with the exaggerated “red menace”, was an insidious cover for a war preserving the Haves from the Have-Nots, in effect, ironically preserving a western, consumptive way of life that itself is killing us. Pretty amazing! Our way of life has produced so much carbon in the water, soil, and atmosphere, that it may in the end be equivalent to having caused nuclear winter. The war OF wholesale terror on retail terror has replaced the “red menace” as the rhetorical justification for the continued imperial plunder of the earth and the riches it brings to the military-industrial-intelligence-congressional-executive-information complex. Our cooperation with and addiction to the American Way Of Life provides the political energy that guarantees continuation of U.S. polices of imperial plunder. III. The American Way Of Life (AWOL), and the Western Way of Life in general, is the most dangerous force that exists on the earth. Our insatiable consumption patterns on a finite earth, enabled by but a one-century blip in burning energy efficient liquid fossil fuels, have made virtually all of us addicted to our way of life as we have been conditioned to be in denial about the egregious consequences outsourced outside our view or feeling fields. Of course, this trend began 2 centuries earlier with the advent of the industrial revolution. With 4.6% of the world’s population, we consume anywhere from 25% to nearly half the world’s resources. This kind of theft can only occur by force or its threat, justifying it with noble sounding rhetoric, over and over and over. Our insatiable individual and collective human demands for energy inputs originating from outside our bioregions, furnish the political-economic profit motives for the energy extractors, which in turn own the political process obsessed with preserving “national (in)security”, e.g., maintaining a very class-based life of affluence and comfort for a minority of the world’s people. This, in turn, requires a huge military to assure control of resources for our use, protecting corporate plunder, and to eliminate perceived threats from competing political agendas. The U.S. War department’s policy of “full spectrum dominance” is intended to control the world’s seas, airspaces, land bases, outer spaces, our “inner” mental spaces, and cyberspaces. Resources everywhere are constantly needed to supply our delusional modern life demands on a finite planet as the system seeks to dumb us down ever more. Thus, we are terribly complicit in the current severe dilemmas coming to a head due to (1) climate instability largely caused by mindless human activities; (2) from our dependence upon national currencies; and (3) dependence upon rapidly depleting finite resources. We have become addicts in a classical sense. Recovery requires a deep psychological, spiritual, and physical commitment to break our addiction to materialism, as we embark on a radical healing journey, individually and collectively, where less and local becomes a mantra, as does sharing and caring, I call it the Neolithic or Indigenous model. Sharing and caring replace individualism and competition. Therefore, A Radical Prescription Understanding these facts requires a radical paradigmatic shift in our thinking and behavior, equivalent to an evolutionary shift in our epistemology where our knowledge/thinking framework shifts: arrogant separateness from and domination over nature (ending a post-Ice Age 10,000 year cycle of thought structure among moderns) morphs to integration with nature, i.e., an eco-consciousness felt deeply in the viscera, more powerful than a cognitive idea. Thus, we re-discover ancient, archetypal Indigenous thought patterns. It requires creative disobedience to and strategic noncooperation with the prevailing political economy, while re-constructing locally reliant communities patterned on instructive models of historic Indigenous and Neolithic villages.

#### Reject the state assigned binary of good/evil in its totality and listen to the other instead of trying to know it—this creates an ethical relationship solving the root of violence they describe---ethical relationships to the other are a prior question

Shomura 10 (Chad Shomura received his MA from the political science department at the University of Hawai`i at Manoa and is currently in the first year of a doctoral program in the same field at the Johns Hopkins University. "These Are Bad People" Enemy Combatants and the Homopolitics of the "War on Terror" Project Muse)

The Theatrics of Wicked, or Changing the Logic of Sovereignty "For Good" Hoping for an ethical reality shaped to foreclose the contemporary nightmares of an indefinite detention evoked by Kafka and implemented by the Bush administration in its "'war' on terror" homopolitics, we may heed the lessons of an alternative fictional universe by juxtaposing Bush's understanding of "wicked" with one expounded in a musical bearing that name. A story beginning prior to but eventually running concomitant with the Wonderful Wizard of Oz, Stephen Schwartz's multiple-award-winning Broadway hit Wicked (2003), as a genealogical account of the moralizing narratives governing the exclusionist politics of Oz, views Good and Evil, contra Bush, not as mutually exclusive, transcendental identity categories, but rather, deconstructable terms ascribed to subjects by those political structures to which they are immanent. Displacing a discourse of binarized morality, which opens to violence the subjects it inhumanizes, with an ethics respecting Otherness in an affirmation of relationality, Wicked offers a political reality inconsistent with that of the "'war' on terror," one in which the practice of indefinite detention would be morally bankrupt. The musical begins with a celebration of the Wicked Witch of the West's death in which citizens of Oz along with Glinda the Good expound what "goodness knows" in a song entitled "No One Mourns the Wicked." When singing "Let us rejoiceify that goodness could subdue / The wicked workings of you-know-who / Isn't it nice to know / That good will conquer evil," Glinda announces the hoped-for happy ending that Bush assures will conclude the "'war' on terror:" "This will be a monumental struggle of good versus evil. But good will prevail."xciiWicked then follows the initially averse but eventually convivial relationship between Elphaba (later renamed the "Wicked Witch of the West") and Glinda to displace a moralizing narrative with an account of friendship. Our two heroes, once roommates at Shiz University, eventually split paths when Elphaba refuses to aid the Wizard of Oz's campaign to strip the Animals of language capacities. xciii The Wizard thus univocally decrees "Wicked Witch of the West" and "Glinda the Good" as the official names of Elphaba and Glinda respectively. Branded a terrorist, Elphaba becomes the subject of a witch hunt and, as far as the Ozians know, eventually falls victim to Dorothy's holy water (Elphaba actually escapes death in this musical). The friendship narrative stages a critical intervention in the moralized binary ordering of subjects by supplanting a logic of moral opposition with one of ethical relation. Although once thinking she would be happy with her nomination as "the Good," Glinda soon laments that "There's a kind of a sort of cost / There's a couple of things get lost." Glinda realizes that she became "the Good" only by undergoing a loss unable to be specified. The differential production of subjects along moralizing lines repudiates the fundamental relationality tying the self to the Other which the Wizard of Oz notes is the utility of those identity "labels" emergent in a logic of the "or": "There are precious few at ease / With moral ambiguities / So we pretend as though they don't exist." While this relational tie may be concealed by ontological discourses purporting an epistemic certainty that they can never secure, it nevertheless cannot be wished away. Glinda and Elphaba realize this ethical lesson when, in "For Good," the two sing of the contributions they have made to the each other: "Who can say / If I've been changed for the better? / But because I knew you / I have been changed for good." The meaning of this "good" is ambiguous (does it carry temporal connotations? Ethical ones? Others?), and perhaps within that ambiguity we may discover what Gayatri Chakravorty Spivak calls an "eruption of the ethical;" in the song, to "know" is not to "construct the other as object of knowledge" but "to listen to the other as if it were a self"xciv by recognizing one's debts to alterity.xcv The Other registers changes in the self such that subjectivity must be understood through relationality, and the changes initiated by and through that relationality orients subjectivity toward not the but a good. Together, Elphaba and Glinda enact a politics of becoming; moving beyond their state-ascribed identities of "Wicked" and "Good," they affirm a good conceived as the acknowledgment of a persisting relationality in which the self is always indebted to the Other for "its" subjectivity. This ethical lesson expresses itself both lyrically and musically in the finale which, although returning to the musical's introductory scene, foregrounds mourning as opposed to celebrating the (supposed) death of Elphaba. Beginning with a soft feeling of triumph during which the Ozians sing a few lines of "No One Mourns the Wicked," the melody of "Finale" soon becomes solemn as Glinda reprises her last duet while Elphaba's overlapping voice can be heard. The scene's musicality produces effects not found within the sung lyrics; Glinda and Elphaba sing together at the same pitch, reflecting the "one" that they are. Staging Glinda's mourning alongside and against the Ozians' insistence that "no one mourns the wicked" implies that one indeed can mourn the wicked to the extent that the "one" is not really just one at all; no one mourns the wicked insofar as no one mourns the wicked. The act of mourning demands acknowledgment of the relationality between the mourner and the mourned such that the supposedly lost "object" persists as a constitutive feature of the "subject."xcvi Glinda's mourning of Elphaba affirms a relational subjectivity, an "ease with moral ambiguities," by acknowledging a shared indebtedness that cannot be conjured away by the Ozian state's decrees. The musicality of the scene also obstructs the Wizard's sovereign attempt to definitively entrap Elphaba and Glinda within the macropolitics of discursively reified moral oppositions by locating a micropolitics of ethical relationality vis-à-vis a musical mourning not exclusively found within language and its corollary representational limits, xcvii but also upon a plane of dialogical vocals, resonating tonalities, and contrapuntal melodies which thus descend below the rhetorical to reach the affective. XcviiiWicked thus unsettles the conceptualization of Good and Evil expressed by Bush to suspend the juridical's suspension in a drastic rupture of the homopolitical architecture of indefinite detention, consecrated through the legalization of a moralizing imagination of the in/human, in the "'war' on terror." The ethics of relationality confound the state's ability to categorically delineate between the human and inhuman, the legally qualified subject and bare life, the civilized and the terrorist, the Good and the Evil. Transformed from what is to be vanquished to what demands ethical respect, the fundamental opacity of the Other, "listened to" rather than "known," renders impossible the inscription within law of particular figurations that would permit the state's abjection of bodies before the law. Rancière writes that an ethics of relationality replaces the abjected inhuman, detained as an enemy combatant, with what Jean-François Lyotard terms the "Inhuman," or "Otherness as such. It is the part in us that we do not control." xcix Shifting the focus of contemporary homopolitics from the inhuman to the Inhuman resignifies the human from being a figure ontologically segmented off from Others to one affirming its fundamental debt to alterity; Lyotard himself writes, "what else is left to resist with but the debt which each soul has contracted with the miserable and admirable indetermination from which it was born and does not cease to be born? - which is to say, with [the Inhuman]?"c This orientation by which we attend to the ethical demand for respect by Otherness may be how current configurations of Kafkaesque state power, mediated by an overly moralized homopolitical abstract machine and for which the extralegal capacities of unbridled sovereignty are so essential, could be changed for good.

### 1NC – Geneva

#### Violations of international law don’t spillover – changing variables.

Brewster 2009

Rachel, Assistant Professor of Law, Harvard Law School, Unpacking the State’s Reputation, Harvard International Law Journal VOLUME 50, NUMBER 2, SUMMER 2009 http://dash.harvard.edu/bitstream/handle/1/3353696/unpackingstatesrep.pdf?...

The second question addresses the informational content of specific violations of international law for predicting future violations. Say that the U.S. administration violates an arms control agreement. The reputational costs to the United States will depend on the inferences the international audience draws from that violation about whether the United States will comply with other international obligations. This turns out to be difficult to predict. For one thing, the arms control violation may not provide very much information about how the United States will behave with respect to international obligations in other areas, such as human rights, trade, or environment, where the domestic political considerations may be very different. It may not even provide much information about future compliance with other arms control agreements, because, again, the domestic political considerations in a future period may be different. Much depends on how the state’s reputation is bundled, both topically and temporally. For another, legal compliance with an agreement may not be particularly predictive of how cooperative the state will be in future interactions. States can be poor treaty partners while maintaining strict legal compliance with an agreement by attaching reservations or withdrawing from their commitments, as the United States did with the Anti-Ballistic Missile Treaty (“ABM Treaty”). Other variables, such as the alignment of interests in domestic or international politics, are likely to be better predictors. For instance, the likelihood that the United States will comply with future arms control agreements depends far more on the strategic situation of the moment (for example, the present threat from international terrorist groups) than whether it complied with the ABM Treaty in very different political contexts in the past (for example, during the Cold War). Recognizing that reputational costs are limited to the political conditions of the time, governments are probably not overly concerned about the reputational costs of discrete violations of international rules. For better or worse, bad actions that are not predictive of future behavior, because the regime has changed or because the strategic situation is different, do not lead to reputational costs.

#### No bioweapons prolif – tacit knowledge gap and organization failure – assumes new tech advances

**Ouagrham-Gormley, GMU biodefense program assistant professor, 2012**

(Sonia Ben, “Barriers to Bioweapons”, International Security, Spring, lexis, ldg)

Conclusion The U.S. and Soviet bioweapons programs offer valuable insights for assessing future bioweapons proliferation threats. Certainly, the globalization of the pharmaceutical and biotechnology industries has enabled an increasingly widespread diffusion of information, materials, and equipment that could prove beneªcial to states or terrorist groups interested in developing biological weapons. But although such inputs are necessary, they are hardly sufficient to produce a signiªcant weapons capability. As demonstrated in the U.S. and Soviet cases, such intangible factors as organizational makeup and management style greatly affect the use of acquired knowledge, the creation of tacit knowledge, and its transfer within the organization to enable ultimate success. Importantly, these intangible elements are local in character and cannot be easily transferred among individuals or from one place to another. Although the effects of intangible factors are more pronounced in large-scale bioweapons programs, given the increasing complexity introduced by the need to produce a tested weapon with repeatable results, they also affect smaller-scale state and terrorist group programs, as illustrated by South Africa’s and Aum Shinrikyo’s programs. Even programs with more modest ambitions need to acquire the expertise required to handle, manipulate, and disseminate the agents selected, create an environment conducive to teamwork and learning, integrate the acquired knowledge into the existing knowledge base, and adapt the technology to their environment. These are complex and time-consuming tasks for programs operating in a stable environment. For covert programs fearful of detection, the task is made more challenging as the imperatives of maintaining covertness directly contradict the requirement of efficient knowledge use and production. The revolution in biotechnology has not reduced the importance of the intangible factors that shape bioweapons program outcomes. Although new breakthroughs in biotechnology can frequently accelerate progress in laboratory work, these new techniques still depend heavily on teams of scientists and technicians developing new sets of skills through extensive experimentation. Only in this way can they demonstrate the utility of these new breakthroughs for particular applications. Thus, by taking into account the intangible dimension of proliferation, intelligence and policy ofªcials can understand more holistically how a state or terrorist group can actually use the tangible resources they may have acquired. Ideally, developing a more thorough understanding of a program’s existing research and knowledge base, as well as how the program is organized and managed, will provide intelligence and policy ofªcials with a better analytical basis for determining the time required for the program to achieve its goal. This in turn will help policymakers fashion interventions that are most appropriate to respond to speciªc threats. Gathering information about these intangible factors is dependent on intelligence efforts, and this article provides insights into how better collection and analysis on WMD threats might be accomplished. However, actions against a suspected program can beneªcially be implemented even in the absence of detailed information about its knowledge base and organizational makeup. A policy aimed at frustrating the acquisition of skills, the collective interpretation and integration of data and individual knowledge, and the accumulation of knowledge can delay progress in a suspected program and possibly cause its failure.

### 1NC – Credibility

#### Turn-New Court wrecks US credibility and alliances

Ratner-Center for Constitutional Rights-7/11/7

A New Court for Terror Suspects? (5 Letters)

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

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

#### Can’t leverage hegemony

**Maher, Brown political science professor, 2011**

(Richard, “The Paradox of American Unipolarity: Why the United States May Be Better Off in a Post-Unipolar World”, Orbis, 55.1, Science Direct, ldg)

At the same time, preeminence creates burdens and facilitates imprudent behavior. Indeed, because of America’s unique political ideology, which sees its own domestic values and ideals as universal, and the relative openness of the foreign policymaking process, the United States is particularly susceptible to both the temptations and burdens of preponderance. For decades, perhaps since its very founding, the United States has viewed what is good for itself as good for the world. During its period of preeminence, the United States has both tried to maintain its position at the top and to transform world politics in fundamental ways, combining elements of realpolitik and liberal universalism (democratic government, free trade, basic human rights). At times, these desires have conflicted with each other but they also capture the enduring tensions of America’s role in the world. The absence of constraints and America’s overestimation of its own ability to shape outcomes has served to weaken its overall position. And because foreign policy is not the reserved and exclusive domain of the president---who presumably calculates strategy according to the pursuit of the state’s enduring national interests---the policymaking process is open to special interests and outside influences and, thus, susceptible to the cultivation of misperceptions, miscalculations, and misunderstandings. Five features in particular, each a consequence of how America has used its power in the unipolar era, have worked to diminish America’s long-term material and strategic position. Overextension. During its period of preeminence, the United States has found it difficult to stand aloof from threats (real or imagined) to its security, interests, and values. Most states are concerned with what happens in their immediate neighborhoods. The United States has interests that span virtually the entire globe, from its own Western Hemisphere, to Europe, the Middle East, Persian Gulf, South Asia, and East Asia. As its preeminence enters its third decade, the United States continues to define its interests in increasingly expansive terms. This has been facilitated by the massive forward presence of the American military, even when excluding the tens of thousands of troops stationed in Iraq and Afghanistan. The U.S. military has permanent bases in over 30 countries and maintains a troop presence in dozens more.13 There are two logics that lead a preeminent state to overextend, and these logics of overextension lead to goals and policies that exceed even the considerable capabilities of a superpower. First, by definition, preeminent states face few external constraints. Unlike in bipolar or multipolar systems, there are no other states that can serve to reliably check or counterbalance the power and influence of a single hegemon. This gives preeminent states a staggering freedom of action and provides a tempting opportunity to shape world politics in fundamental ways. Rather than pursuing its own narrow interests, preeminence provides an opportunity to mix ideology, values, and normative beliefs with foreign policy. The United States has been susceptible to this temptation, going to great lengths to slay dragons abroad, and even to remake whole societies in its own (liberal democratic) image.14 The costs and risks of taking such bold action or pursuing transformative foreign policies often seem manageable or even remote. We know from both theory and history that external powers can impose important checks on calculated risk-taking and serve as a moderating influence. The bipolar system of the Cold War forced policymakers in both the United States and the Soviet Union to exercise extreme caution and prudence. One wrong move could have led to a crisis that quickly spiraled out of policymakers’ control. Second, preeminent states have a strong incentive to seek to maintain their preeminence in the international system. Being number one has clear strategic, political, and psychological benefits. Preeminent states may, therefore, overestimate the intensity and immediacy of threats, or to fundamentally redefine what constitutes an acceptable level of threat to live with. To protect itself from emerging or even future threats, preeminent states may be more likely to take unilateral action, particularly compared to when power is distributed more evenly in the international system. Preeminence has not only made it possible for the United States to overestimate its power, but also to overestimate the degree to which other states and societies see American power as legitimate and even as worthy of emulation. There is almost a belief in historical determinism, or the feeling that one was destined to stand atop world politics as a colossus, and this preeminence gives one a special prerogative for one’s role and purpose in world politics. The security doctrine that the George W. Bush administration adopted took an aggressive approach to maintaining American preeminence and eliminating threats to American security, including waging preventive war. The invasion of Iraq, based on claims that Saddam Hussein possessed weapons of mass destruction (WMD) and had ties to al Qaeda, both of which turned out to be false, produced huge costs for the United States---in political, material, and human terms. After seven years of war, tens of thousands of American military personnel remain in Iraq. Estimates of its long-term cost are in the trillions of dollars.15 At the same time, the United States has fought a parallel conflict in Afghanistan. While the Obama administration looks to dramatically reduce the American military presence in Iraq, President Obama has committed tens of thousands of additional U.S. troops to Afghanistan. Distraction. Preeminent states have a tendency to seek to shape world politics in fundamental ways, which can lead to conflicting priorities and unnecessary diversions. As resources, attention, and prestige are devoted to one issue or set of issues, others are necessarily disregarded or given reduced importance. There are always trade-offs and opportunity costs in international politics, even for a state as powerful as the United States. Most states are required to define their priorities in highly specific terms. Because the preeminent state has such a large stake in world politics, it feels the need to be vigilant against any changes that could impact its short-, medium-, or longterm interests. The result is taking on commitments on an expansive number of issues all over the globe. The United States has been very active in its ambition to shape the postCold War world. It has expanded NATO to Russia’s doorstep; waged war in Bosnia, Kosovo, Iraq, and Afghanistan; sought to export its own democratic principles and institutions around the world; assembled an international coalition against transnational terrorism; imposed sanctions on North Korea and Iran for their nuclear programs; undertaken ‘‘nation building’’ in Iraq and Afghanistan; announced plans for a missile defense system to be stationed in Poland and the Czech Republic; and, with the United Kingdom, led the response to the recent global financial and economic crisis. By being so involved in so many parts of the world, there often emerges ambiguity over priorities. The United States defines its interests and obligations in global terms, and defending all of them simultaneously is beyond the pale even for a superpower like the United States. Issues that may have received benign neglect during the Cold War, for example, when U.S. attention and resources were almost exclusively devoted to its strategic competition with the Soviet Union, are now viewed as central to U.S. interests. Bearing Disproportionate Costs of Maintaining the Status Quo. As the preeminent power, the United States has the largest stake in maintaining the status quo. The world the United States took the lead in creating---one based on open markets and free trade, democratic norms and institutions, private property rights and the rule of law---has created enormous benefits for the United States. This is true both in terms of reaching unprecedented levels of domestic prosperity and in institutionalizing U.S. preferences, norms, and values globally. But at the same time, this system has proven costly to maintain. Smaller, less powerful states have a strong incentive to free ride, meaning that preeminent states bear a disproportionate share of the costs of maintaining the basic rules and institutions that give world politics order, stability, and predictability. While this might be frustrating to U.S. policymakers, it is perfectly understandable. Other countries know that the United States will continue to provide these goods out of its own self-interest, so there is little incentive for these other states to contribute significant resources to help maintain these public goods.16 The U.S. Navy patrols the oceans keeping vital sea lanes open. During financial crises around the globe---such as in Asia in 1997-1998, Mexico in 1994, or the global financial and economic crisis that began in October 2008--- the U.S. Treasury rather than the IMF takes the lead in setting out and implementing a plan to stabilize global financial markets. The United States has spent massive amounts on defense in part to prevent great power war. The United States, therefore, provides an indisputable collective good---a world, particularly compared to past eras, that is marked by order, stability, and predictability. A number of countries---in Europe, the Middle East, and East Asia---continue to rely on the American security guarantee for their own security. Rather than devoting more resources to defense, they are able to finance generous social welfare programs. To maintain these commitments, the United States has accumulated staggering budget deficits and national debt. As the sole superpower, the United States bears an additional though different kind of weight. From the Israeli-Palestinian dispute to the India Pakistan rivalry over Kashmir, the United States is expected to assert leadership to bring these disagreements to a peaceful resolution. The United States puts its reputation on the line, and as years and decades pass without lasting settlements, U.S. prestige and influence is further eroded. The only way to get other states to contribute more to the provision of public goods is if the United States dramatically decreases its share. At the same time, the United States would have to give other states an expanded role and greater responsibility given the proportionate increase in paying for public goods. This is a political decision for the United States---maintain predominant control over the provision of collective goods or reduce its burden but lose influence in how these public goods are used. Creation of Feelings of Enmity and Anti-Americanism. It is not necessary that everyone admire the United States or accept its ideals, values, and goals. Indeed, such dramatic imbalances of power that characterize world politics today almost always produce in others feelings of mistrust, resentment, and outright hostility. At the same time, it is easier for the United States to realize its own goals and values when these are shared by others, and are viewed as legitimate and in the common interest. As a result of both its vast power but also some of the decisions it has made, particularly over the past eight years, feelings of resentment and hostility toward the United States have grown, and perceptions of the legitimacy of its role and place in the world have correspondingly declined. Multiple factors give rise toanti-American sentiment, and anti-Americanism takes different shapes and forms.17 It emerges partly as a response to the vast disparity in power the United States enjoys over other states. Taking satisfaction in themissteps and indiscretions of the imposing Gulliver is a natural reaction. In societies that globalization (which in many parts of the world is interpreted as equivalent to Americanization) has largely passed over, resentment and alienation are felt when comparing one’s own impoverished, ill-governed, unstable society with the wealth, stability, and influence enjoyed by the United States.18 Anti-Americanism also emerges as a consequence of specific American actions and certain values and principles to which the United States ascribes. Opinion polls showed that a dramatic rise in anti-American sentiment followed the perceived unilateral decision to invade Iraq (under pretences that failed to convince much of the rest of the world) and to depose Saddam Hussein and his government and replace itwith a governmentmuchmore friendly to the United States. To many, this appeared as an arrogant and completely unilateral decision by a single state to decide for itselfwhen---and under what conditions---military force could be used. A number of other policy decisions by not just the George W. Bush but also the Clinton and Obama administrations have provoked feelings of anti-American sentiment. However, it seemed that a large portion of theworld had a particular animus for GeorgeW. Bush and a number of policy decisions of his administration, from voiding the U.S. signature on the International Criminal Court (ICC), resisting a global climate change treaty, detainee abuse at Abu Ghraib in Iraq and at Guantanamo Bay in Cuba, and what many viewed as a simplistic worldview that declared a ‘‘war’’ on terrorism and the division of theworld between goodand evil.Withpopulations around theworld mobilized and politicized to a degree never before seen---let alone barely contemplated---such feelings of anti-American sentiment makes it more difficult for the United States to convince other governments that the U.S.’ own preferences and priorities are legitimate and worthy of emulation. Decreased Allied Dependence. It is counterintuitive to think that America’s unprecedented power decreases its allies’ dependence on it. During the Cold War, for example, America’s allies were highly dependent on the United States for their own security. The security relationship that the United States had with Western Europe and Japan allowed these societies to rebuild and reach a stunning level of economic prosperity in the decades following World War II. Now that the United States is the sole superpower and the threat posed by the Soviet Union no longer exists, these countries have charted more autonomous courses in foreign and security policy. A reversion to a bipolar or multipolar system could change that, making these allies more dependent on the United States for their security. Russia’s reemergence could unnerve America’s European allies, just as China’s continued ascent could provoke unease in Japan. Either possibility would disrupt the equilibrium in Europe and East Asia that the United States has cultivated over the past several decades. New geopolitical rivalries could serve to create incentives for America’s allies to reduce the disagreements they have with Washington and to reinforce their security relationships with the United States.

#### Detention will shift overseas-takes out the case

**Ross, FDD Center for the Study of Terrorist Radicalization director, 2012**

(David Garnstein, “Gitmo’s Troubling Afterlife: The Global Consequences of U.S. Detention Policy”, 12-4, <http://www.defenddemocracy.org/media-hit/gitmos-troubling-afterlife-the-global-consequences-of-us-detention-policy/>, ldg)

Moreover, if the U.S. tries to wash its hands of preventive detention, detainees will almost certainly end up in worse conditions as a result. The idea has seemingly taken hold that because detention of violent non-state actors by Western governments is unjustifiable and immoral, "local" detention is preferable. So, for example, the United States supported recent military efforts by African Union, Somali, and Kenyan forces to push back the al Qaeda-aligned Shabaab militant group in southern Somalia. The U.S. did not take the lead in detaining enemy fighters, and instead its Somali allies did so. But when one compares, say, detention conditions in Somalia to those in Gitmo, the latter is far more humane. If the U.S. and other Western countries eschew detention when fighting violent non-state actors, somebody is going to have to do it, and that alternative is almost certainly going to be worse for the detainees themselves.

#### New detention scheme won’t get used

**Huq, Chicago law professor, 2007**

(Aziz, “Can a Foreign System of Preventive Detention Work in the United States?”, 7-23, <http://www.brennancenter.org/analysis/can-foreign-system-preventive-detention-work-united-states>, ldg)

There are, however, powerful reasons not to adopt the British model. The claim that Britain's system of preventive detention has worked there and thus will work here is too facile. Legal systems are not like Legos, to be broken into pieces and rebuilt elsewhere. The applicability in the United States of the U.K.'s preventive detention scheme must be considered in its legal, cultural, and political context. First, while there is nothing in U.S. federal statutes that resembles Britain's detention scheme, the executive branch does in fact read the law to allow sweeping detention in the absence of criminal charges. Long before 9/11, Alan Dershowitz pointed out that American law has "stretch points," ambiguous provisions and principles that can be torqued to new and unexpected purposes. Preventive detention in American law has been a matter of squeezing two stretch points drafted for very different purposes--immigration law and the "material witness" statute. Under a regulation issued six days after 9/11, the then-Immigration and Naturalization Service was given the authority to seize and detain indefinitely non-citizens without charges of any violation of immigration law. Against U.S. citizens, the government invoked the "material witness" law, which dates back to the Founding and is used to detain witnesses temporarily to secure testimony for some other case. Innovatively, the government argued that people could be detained to secure testimony for their own trial. Neither of these approaches is ideal to say the least. According to the Justice Department's inspector general, post-9/11 detainees were held by the INS, on average, more than 80 days--an excessive amount, by international standards. None were found to be involved in ongoing terrorist conspiracies. The material witness law similarly led to prolonged detentions. One U.S. citizen, Abdullah Al Kidd, was held for 16 months before prosecutors decided not to charge him. A new, formal detention system might seem to staunch the unpredictable application of these ad hoc tactics and reduce abuse. This sunny prospect, though, is at odds with historical practice and political theory. More likely, new powers provided through a formal detention system would simply supplement--rather than supplant--existing ad hoc powers. The immediate post-9/11 experience provides a historical example. In section 412 of the 2001 Patriot Act, Congress authorized the detention of non-citizens for security reasons--for seven days. But the Bush administration ignored this limitation in favor of using the stretch points in the immigration and material witness laws to detain suspects for much longer. Establishing a new preventive detention system based on the British model would do nothing to limit the stretch points now in place. And even if Congress recognizes this danger, there is reason to worry that limits on executive power would prove harder to impose than extensions. At present, the executive branch can take the initiative in exploiting other stretch points in the law by issuing regulations and executive orders either based on its (perhaps dubious) interpretation of statutes or its (certainly dubious) conception of "inherent" executive power. The presidential veto also makes it hard for Congress to reverse these power-grabs. Indeed, it is generally easy for Congress, by majority vote, to grant new powers to the executive--but systemically hard for it to reduce executive power, since the latter demands well-nigh impossible super-majorities.

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#### Court standards are too high to secure prosecutions-that leads to circumvention which takes out the AFF

**Goldsmith, Harvard law school professor, 2009**

(Jack, “Long-Term Terrorist Detention and Our National Security Court”, 2-4, <http://www.brookings.edu/~/media/research/files/papers/2009/2/09%20detention%20goldsmith/0209_detention_goldsmith.pdf>, ldg)

These three concerns challenge the detention paradigm. They do nothing to eliminate the need for detention to prevent detainees returning to the battlefield. But many believe that we can meet this need by giving trials to everyone we want to detain and then incarcerating them under a theory of conviction rather than of military detention. I disagree. For many reasons, it is too risky for the U.S. government to deny itself the traditional military detention power altogether, and to commit itself instead to try or release every suspected terrorist. For one thing, military detention will be necessary in Iraq and Afghanistan for the foreseeable future. For another, we likely cannot secure convictions of all of the dangerous terrorists at Guantánamo, much less all future dangerous terrorists, who legitimately qualify for non-criminal military detention. The evidentiary and procedural standards of trials, civilian and military alike, are much higher than the analogous standards for detention. With some terrorists too menacing to set free, the standards will prove difficult to satisfy. Key evidence in a given case may come from overseas and verifying it, understanding its provenance, or establishing its chain of custody in the manners required by criminal trials may be difficult. This problem is exacerbated when evidence was gathered on a battlefield or during an armed skirmish. The problem only grows when the evidence is old. And perhaps most importantly, the use of such evidence in a criminal process may compromise intelligence sources and methods, requiring the disclosure of the identities of confidential sources or the nature of intelligence-gathering techniques, such as a sophisticated electronic interception capability. Opponents of non-criminal detention observe that despite these considerations, the government has successfully prosecuted some Al Qaeda terrorists—in particular, Zacharias Moussaoui and Jose Padilla. This is true, but it does not follow that prosecutions are achievable in every case in which disabling a terrorist suspect represents a surpassing government interest. Moreover, the Moussaoui and Padilla prosecutions highlight an under-appreciated cost of trials, at least in civilian courts. The Moussaoui and Padilla trials were messy affairs that stretched, and some observers believe broke, our ordinary criminal trial conceptions of conspiracy law and the rights of the accused, among other things. The Moussaoui trial, for example, watered down the important constitutional right of the defendant to confront witnesses against him in court, and the Padilla trial rested on an unprecedentedly broad conception of conspiracy.15 An important but under-appreciated cost of using trials in all cases is that these prosecutions will invariably bend the law in ways unfavorable to civil liberties and due process, and these changes, in turn, will invariably spill over into non-terrorist prosecutions and thus skew the larger criminal justice process.16 A final problem with using any trial system, civilian or military, as the sole lawful basis for terrorist detention is that the trials can result in short sentences (as the first military commission trial did) or even acquittal of a dangerous terrorist.17 In criminal trials, guilty defendants often go free because of legal technicalities, government inability to introduce probative evidence, and other factors beyond the defendant's innocence. These factors are all exacerbated in terrorist trials by the difficulties of getting information from the place of capture, by classified information restrictions, and by stale or tainted evidence. One way to get around this problem is to assert the authority, as the Bush administration did, to use non-criminal detention for persons acquitted or given sentences too short to neutralize the danger they pose. But such an authority would undermine the whole purpose of trials and would render them a sham. As a result, putting a suspect on trial can make it hard to detain terrorists the government deems dangerous. For example, the government would have had little trouble defending the indefinite detention of Salim Hamdan, Osama Bin Laden's driver, under a military detention rationale. Having put him on trial before a military commission, however, it was stuck with the light sentence that Hamdan is completing at home in Yemen. As a result of these considerations, insistence on the exclusive use of criminal trials and the elimination of non-criminal detention would significantly raise the chances of releasing dangerous terrorists who would return to kill Americans or others. Since non-criminal military detention is clearly a legally available option—at least if it is expressly authorized by Congress and contains adequate procedural guarantees—this risk should be unacceptable. In past military conflicts, the release of an enemy soldier posed risks. But they were not dramatic risks, for there was only so much damage a lone actor or small group of individuals could do.18 Today, however, that lone actor can cause far more destruction and mayhem because technological advances are creating ever-smaller and ever-deadlier weapons. It would be astounding if the American system, before the advent of modern terrorism, struck the balance between security and liberty in a manner that precisely reflected the new threats posed by asymmetric warfare. We face threats from individuals today that are of a different magnitude than threats by individuals in the past; having government authorities that reflect that change makes sense.

## Capital

### t/ case

#### Treaties are key to international law.

Kraus 2011

Don, chief executive officer of Citizens for Global Solutions and a contributor to Foreign Policy In Focus, A New Start on Treaties http://fpif.org/a\_new\_start\_on\_treaties/

It’s about national security and global leadership: Nations do not sign treaties for altruistic reasons. They must enhance U.S. national security, the U.S. ability to establish global policy that supports our values, or both. New START messaging addressed both. It identified nuclear warhead reduction and verification as a national security interest. It also portrayed New START as improving U.S credibility to lead future disarmament and nonproliferation efforts. The Treaty Queue Treaties are the bedrock of international law. U.S. accession to a convention increases its credibility while bolstering U.S. global leadership. It’s long past time for the Senate to take up incredibly important agreements that have languished for decades, such as the Convention on the Law of the Sea, the Comprehensive Nuclear Test Ban Treaty and The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). New treaties, like the Convention on the Rights of Persons with Disabilities that the administration signed this summer, will soon be added to the list. Challenges to the U.S. vision of a world based on democracy and human rights are coming from emerging economies and fundamentalist regimes. Renewed U.S. reinforcement of the web of international laws and norms is our best means of parrying such attacks. This is not a Democratic or a Republican priority –it’s a national priority. New START ratification proves that the U.S. Senate still can get the “advise and consent” job done. A concrete next step is ratification of at least one more treaty during the next six months, so that the lessons sink in.

#### ---Extinction.

Muchiri 2000

Michael Kibaara, Staff Member at Ministry of Education in Nairobi, “Will Annan finally put out Africa’s fires?” Jakarta Post, March 6, https://www.thejakartapost.com/news/2000/03/06/will-annan-finally-put-out-africa039s-fires.html

Statistics show that AIDS is the leading killer in sub-Saharan Africa, surpassing people killed in warfare. In 1998, 200,000 people died from armed conflicts compared to 2.2 million from AIDS. Some 33.6 million people have HIV around the world, 70 percent of them in Africa, thereby robbing countries of their most productive members and decimating entire villages. About 13 million of the 16 million people who have died of AIDS are in Africa, according to the UN. What barometer is used to proclaim a holocaustif this number is not a sure measure? There is no doubt that AIDS is the most serious threat to humankind, moreserious than hurricanes, earthquakes, economic crises, capital crashes or floods. It has no cure yet. We are watching a whole continent degenerate into ghostly skeletons that finally succumb to a most excruciating, dehumanizing death. Gore said that his new initiative, if approved by the U.S. Congress, would bring U.S. contributions to fighting AIDS and other infectious diseases to $325 million. Does this mean that the UN Security Council and the U.S. in particular have at last decided to remember Africa? Suddenly, AIDS was seen as threat to world peace, and Gore would ask the congress to set up millions of dollars on this case. The hope is that Gore does not intend to make political capital out of this by painting the usually disagreeable Republican-controlled Congress as the bad guy and hope the buck stops on the whole of current and future U.S. governments' conscience. Maybe there is nothing left to salvage in Africa after all and this talk is about the African-American vote in November's U.S. presidential vote. Although the UN and the Security Council cannot solve all African problems, the AIDS challenge is a fundamental one in that it threatens to wipe out man. The challenge is not one of a single continent alone because Africa cannot be quarantined. The trouble is that AIDS has no cure -- and thus even the West has stakes in the AIDS challenge. Once sub-Saharan Africa is wiped out, it shall not be long before another continent is on the brink of extinction. Sure as death, Africa's time has run out, signaling the beginning of the end of theblack race and maybe the human race.

#### ---Middle East instability causes nuclear war --- A variety of factors make traditional deterrence models inapplicable.

Russell 2009

James A., senior lecturer in the Department of National Security Affairs at the Naval Postgraduate School, “Strategic Stability Reconsidered: Prospects for Escalation and Nuclear War in the Middle East,” Institut Français des Relations Internationales, Spring, http://www.analyst-network.com/articles/141/StrategicStabilityReconsideredProspectsforEscalationandNuclearWarintheMiddleEast.pdf

Strategic stability in the region is thus undermined by various factors: (1) asymmetric interests in the bargaining framework that can introduce unpredictable behavior from actors; (2) the presence of non-state actors that introduce unpredictability into relationships between the antagonists; (3) incompatible assumptions about the structure of the deterrent relationship that makes the bargaining framework strategically unstable; (4) perceptions by Israel and the United States that its window of opportunity for military action is closing, which could prompt a preventive attack; (5) the prospect that Iran’s response to pre-emptive attacks could involve unconventional weapons, which could prompt escalation by Israel and/or the United States; (6) the lack of a communications framework to build trust and cooperation among framework participants. These systemic weaknesses in the coercive bargaining framework all suggest that escalation by any the parties could happen either on purpose or as a result of miscalculation or the pressures of wartime circumstance. Given these factors, it is disturbingly easy to imagine scenarios under which a conflict could quickly escalate in which the regional antagonists would consider the use of chemical, biological, or nuclear weapons. It would be a mistake to believe the nuclear taboo can somehow magically keep nuclear weapons from being used in the context of an unstable strategic framework. Systemic asymmetries between actors in fact suggest a certain increase in the probability of war – a war in which escalation could happen quickly and from a variety of participants. Once such a war starts, events would likely develop a momentum all their own and decision-making would consequently be shaped in unpredictable ways. The international community must take this possibility seriously, and muster every tool at its disposal to prevent such an outcome, which would be an unprecedented disaster for the peoples of the region, with substantial risk for the entire world.

### At ideology

#### Not true for prez powers cases – extremely visible.

Curry 2006

Todd, PoliSci Master’s Thesis, THE ADJUDICATION OF PRESIDENTIAL POWER IN THE U.S. SUPREME COURT: A PREDICTIVE MODEL OF INDIVIDUAL JUSTICE VOTING, University of Central Florida Summer 2006

If the predominant theory of Supreme Court decision-making, the attitudinal model, were applied to this subset of cases, despite the uniqueness of the political ramifications (which amount to direct judicial interaction with the executive branch), the balance of power issues that arise, and the distinct constitutional questions, it may be expected that justices would still simply vote their policy preferences because the attitudinal model assumes that all individual level decision-making by the Supreme Court justices is a function of ideology. This theory is too simplistic to account for the complexities that arise in separation of power cases, in particular in cases that involve presidential power. Therefore, while acknowledging the importance of a justice’s attitude in decision-making, this study postulates that there are multiple attitudinal and extra-attitudinal factors that may influence a justice’s individual level decision-making. Following the research of Yates (2002) and others, this study theorizes that, Supreme Court cases in which the president or presidential power is being adjudicated, the attitudinal model of judicial decision-making may not completely account for the justices’ individual decision-making process because in these highly salient cases, the presence of external and political cues may influence the justices because highly salient cases such as these may call into question the very legitimacy of the Court. Since there are numerous political and external factors that can affect the justices’ decision-making process in cases involving presidential power, there will be numerous hypotheses in order to test this theory.

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### Warming

#### Ilaw fails and no impact – tech solves independently.

Bueno de Mesquita 2009

Bruce, professor of political science at New York University and author of The Predictioneer's Game, Recipe for Failue, Foreign Policy http://www.foreignpolicy.com/articles/2009/10/16/recipe\_for\_failure

All of this may be leaving you rather depressed, but perhaps it shouldn't. As for me, I am most optimistic for the future, despite- - yup, despite -- agreements like the ones struck in Bali and Kyoto, or the one to be struck in Copenhagen. These will be forgotten in the twinkling of an eye. They will hardly make a dent in global warming; they could even cause hurt by delaying serious changes. Road maps like the one set out at Bali make us feel good about ourselves because we did something. The trouble is, deals like Bali and Kyoto include just about every country in the world. To get everyone to agree to something potentially costly, the something they actually agree to must be neither very demanding nor very costly. If it is, many will refuse to join because for them the costs are greater than the benefits, or else they will join while free-riding on the costs paid by the few who are willing to bear them. To get people to sign a universal agreement and not cheat, the deal must not ask them to change their behavior much from whatever they are already doing. It is a race to the bottom, to the lowest common denominator. More demanding agreements weed out prospective members or encourage lies. Kyoto's demands weeded out the United States, ensuring that it could not succeed. Maybe that is what those who signed on -- or at least some of them -- were hoping for. They can look good and then not deliver, because after all it wouldn't be fair for them to cut back when the biggest polluter, the United States, does not. Sacrificing self-interest for the greater good just doesn't happen very often. Governments don't throw themselves on hand grenades. There is a natural division between the rich countries whose prosperity does not depend so much on toasting our planet and the poor countries that really have no affordable alternative (yet) to fossil fuels and carbon emissions. They have an incentive to do whatever it takes to improve the quality of life of the people they govern. The rich have an incentive to encourage the fast-growing poor to be greener, but the fast-growing poor have little incentive to listen as long as they are still poor. As the Indian government is fond of noting, sure, India is growing rapidly in income and in carbon dioxide emissions, but it is still a pale shadow of what rich countries like the United States have emitted over the centuries when going from poor to rich. But when the fast-growing poor surpass the rich, the tables will turn. China, India, Brazil, and Mexico will then cry out for environmental change because that will protect their future advantaged position, while the relatively poor of one or two or three hundred years from now will resist policies that hinder their efforts to climb to the top. The rich will even fight wars to keep the rising poor from getting so rich that they threaten the old political order. (The rising poor will win those wars, by the way.) So how might we solve global warming and make the world in 500 years look attractive to our future selves? My short answer: New technologies will solve the problem for us. There is an equilibrium at which enough global warming -- a very modest amount more than we may already have, probably enough to be here in 50 to 100 years -- will create enough additional sunshine in cold places, enough additional rain in dry places, enough additional wind in still places, and, most importantly, enough additional incentives for humankind that solar panels, hydroelectricity, windmills, and as yet undiscovered technologies will be good and cheap enough to replace fossil fuels. We have already warmed enough for there to be all kinds of interesting research going on, but today such pursuits take more sacrifice than most people seem willing to make. Tomorrow that might not be true, and at that point, I doubt it'll be too late. And, looking out 500 years, we'll probably have figured out how to beam ourselves to distant planets where we can start all over, warming our solar system, our galaxy, and beyond with abandon.

### 2NC – Human Rights Cred

#### No incentive to obey and no spillover in credibility.

Hill 2010

Daniel W., PhD Candidate at Florida State University, Estimating the Effects of Human Rights Treaties on State Behavior The Journal of Politics, Vol. 72, No. 4, October 2010 http://myweb.fsu.edu/dwh06c/pages/documents/Hill10\_jop.pdf

Some scholars may not worry that formal enforcement mechanisms within the human rights regime are weak; after all, the majority of the work on state behavior vis-a´ -vis international institutions has focused primarily on how informal enforcement mechanisms can alter the behavior of recalcitrant states. Unfortunately, the usual set of tenable self-enforcement mechanisms are simply not suitable in the context of the human rights regime (See Simmons (2009) for a thorough discussion). The shadow of the future and fear of reciprocal violation cannot induce compliance in the area of human rights, since it is not clear that states have anything to gain by jointly observing human rights or anything to lose should each (or any) party fail to do so. States should hardly be expected to behave strategically in the realm of human rights, which is to say that their human rights behavior is not the result of expectations that other states are, or are not, going to commit human rights violations (Koremenos 2007). Incentives to violate human rights do not arise from the nature of interactions in the international arena but rather from circumstances at the domestic level. Another informal enforcement mechanism thought to operate in international regimes is fear of damage to one’s reputation (Keohane 1984; Lipson 1991; Simmons 2000). In theory, once states have made formal, public commitments to obey the rules of the regime noncompliance may result in a loss of credibility that is costly enough to deter violations. This mechanism is similar to fear of reciprocal violation in that it depends on the violating state expecting to be deprived of something in the future, namely any number of international agreements it could make with other states had it only proven itself to be trustworthy. In practice, however, it is unlikely that states will be shunned by potential partners because of a bad human rights record. Noncompliance in one area of international law does not necessarily signal an inability or unwillingness to comply in other areas, and this may be especially true of noncompliance with human rights regimes (Downes and Jones 2002).

#### Human rights violations don’t spillover specifically.

Downs and Jones 2002

Downs is Professor, Department of Politics, New York University. Jones is Assistant Professor, Department of Mathematics, Montclair State University, and Visiting Scholar, Department of Politics, New York University, Reputation, Compliance, and International Law, Journal of Legal Studies 31 S1

The connection between the value of a relationship and the perceived opportunity costs associated with a contemplated defection has two effects on the extent to which reputation sustains international law. The first is perverse, if unremarkable. The fact that the reputational consequences of defecting from an important relationship are larger than those of defecting from a less important relationship means that reputation protects strong states more than weak states. This is really not so surprising. The reputational implications of a firm’s violating a contract with its most important client are greater than they would be if the client were unimportant. However, the fact that reputation protects most those who require the least protection is still disconcerting. The tendency of the magnitude of the reputational implications of a defection to be directly proportionate to the value of a relationship also implies that the contribution that reputation makes to sustain international law cooperation is greatest in connection with agreements that states think are the most beneficial.37 Conversely, it has the least effect in connection with agreements that produce the smallest amount of benefits. This predicts that the average compliance rate will be somewhat higher in connection with relatively important agreements. It also may help account for why the quality of the compliance data that are available is so frequently related to the importance of the agreement. From a reputational standpoint, the utility of the cooperation that an agreement represents or the opportunity cost of defecting from it is only half the story. Its reputational consequences are also a function of the extent to which the stochastic cost function that leads to defection from it is correlated with those connected with other regimes. While little is known about this, it seems likely that trade agreements are quite “central” in this respect, since many of the shocks that affect trade agreements such as recessions also affect compliance with agreements in other areas. Security agreements also have a claim to centrality. Major shocks in that area are likely to affect trade agreements as well as human rights agreements.38 Defections from environmental agreements, at least at the present time, seem to have more narrow implications for treaties in other areas, as have human rights treaties. Hence, their reputational consequences, at least in the rational choice sense, should be more restricted.39 It follows, ceteris paribus, that reputation promotes compliance with international law most in trade and security and least in environmental regulation and human rights. The most important reputational consequences are those connected with the most important agreements in these areas.

### 2NC – NSC

#### Court will strike down the plan-history is on our side

Colson-Acting Director, Law & Security Program, Human Rights First-9

The Case Against A Special Terrorism Court

<http://www.humanrightsfirst.org/wp-content/uploads/pdf/090323-LS-nsc-policy-paper.pdf>

The Problems with Creating a New System from Scratch A practical yet equally serious problem with a special terrorism court is that it would require devising from scratch the procedures, precedents and body of law governing prosecutions. The United States has already walked down that path twice since September 11, both times without any success. The original military commissions, created by the Bush Administration in November 2001, were struck down by the Supreme Court in Hamdan v. Rumsfeld in June 2006. The Hamdan Court held that President Bush did not have unilateral authority to set up the military commissions and found the commissions illegal under the Uniform Code of Military Justice and the Geneva Conventions.40 A second generation of military commissions received congressional approval with the passage of the Military Commissions Act (MCA) in December 2006.41 But this system was also plagued by disarray, with abundant litigation over the legality of trying individuals for offenses that do not actually constitute war crimes, the potential ex post facto problems with prosecuting conduct not considered criminal until the passage of the MCA, and the scope and meaning of the rules and procedures applicable during military commission trials. These rules included permitting the introduction of coerced evidence, expressly permitting the admission of second-hand or hearsay evidence, and rules for classified information that allowed the government to withhold evidence tending to show innocence or lack of responsibility. The MCA itself was just one component of the problem. Military commissions proved vulnerable at every turn to unlawful command influence, manipulation, and political pressure. Air Force Brig. Gen. Hartmann, formerly the Pentagon’s chief advisor to the military commissions, was disqualified from his role in three Guantánamo cases because of the perception that he was biased toward the prosecution.42 He eventually stepped down from his post. The military commissions also were an expensive use of scarce government resources. As of November 2007, the estimated annual cost of operating Guantánamo was 90 to 100 million dollars, an unspecified percentage of which was spent on staffing and resourcing the military commissions. The high-security detention facilities at Guantánamo cost 54 million dollars.43 And the high-security court complex alone—built specifically for the 9/11 defendants who were charged but never tried—cost 12 million dollars. Not one trial was held in the high-security courtroom. The two trials that did occur both took place in a second, less expensive courtroom nearby. None of this bodes well for the creation of another new system. Human Rights First urges Congress and the Obama Administration to weigh the inevitable costs of a new system against the benefits of trying cases in the federal courts. Terrorism prosecutions would be challenging in any court, but the federal courts have a proven record of success. We should not underestimate the value of adhering to a system with experienced judges, established rules and procedures, and a broadly experienced bar to litigate the complex issues arising in terrorism cases.

## geneva

### Can’t Solve – 2NC

#### Too many alt causes-there is always something

**Migranyan, Institute for Democracy and Cooperation director, 2013**

(Andranik, “Scandals Harm U.S. Soft Power”, 7-5, <http://nationalinterest.org/commentary/scandals-harm-us-soft-power-8695>, ldg)

For the past few months, the United States has been rocked by a series of scandals. It all started with the events in Benghazi, when Al Qaeda-affiliated terrorists attacked the General Consulate there and murdered four diplomats, including the U.S. ambassador to Libya. Then there was the scandal exposed when it was revealed that the Justice Department was monitoring the calls of the Associated Press. The Internal Revenue Service seems to have targeted certain political groups. Finally, there was the vast National Security Agency apparatus for monitoring online activity revealed by Edward Snowden. Together, these events provoke a number of questions about the path taken by contemporary Western societies, and especially the one taken by America. Large and powerful institutions, especially those in the security sphere, have become unaccountable to the public, even to representatives of the people themselves. Have George Orwell’s cautionary tales of total government control over society been realized? At the end of the 1960s and the beginning of the 1970s, my fellow students and I read Orwell’s 1984 and other dystopian stories and believed them to portray fascist Germany or the Soviet Union—two totalitarian regimes—but today it has become increasingly apparent that Orwell, Huxley and other dystopian authors had seen in their own countries (Britain and the United States) certain trends, especially as technological capabilities grew, that would ultimately allow governments to exert total control over their societies. The potential for this type of all-knowing regime is what Edward Snowden revealed, confirming the worst fears that the dystopias are already being realized. On a practical geopolitical level, the spying scandals have seriously tarnished the reputation of the United States. They have circumscribed its ability to exert soft power; the same influence that made the U.S. model very attractive to the rest of the world. This former lustre is now diminished. The blatant everyday intrusions into the private lives of Americans, and violations of individual rights and liberties by runaway, unaccountable U.S. government agencies, have deprived the United States of its authority to dictate how others must live and what others must do. Washington can no longer lecture others when its very foundational institutions and values are being discredited—or at a minimum, when all is not well “in the state of Denmark.” Perhaps precisely because not all is well, many American politicians seem unable to adequately address the current situation. Instead of asking what isn’t working in the government and how to ensure accountability and transparency in their institutions, they try, in their annoyance, to blame the messenger—as they are doing in Snowden’s case. Some Senators hurried to blame Russia and Ecuador for anti-American behavior, and threatened to punish them should they offer asylum to Snowden. These threats could only cause confusion in sober minds, as every sovereign country retains the right to issue or deny asylum to whomever it pleases. In addition, the United States itself has a tradition of always offering political asylum to deserters of the secret services of other countries, especially in the case of the former Soviet Union and other ex-socialist countries. In those situations, the United States never gave any consideration to how those other countries might react—it considered the deserters sources of valuable information. As long as deserters have not had a criminal and murderous past, they can receive political asylum in any country that considers itself sovereign and can stand up to any pressure and blackmail. Meanwhile, the hysteria of some politicians, if the State Department or other institutions of the executive branch join it, can only accelerate the process of Snowden’s asylum. For any country he might ask will only be more willing to demonstrate its own sovereignty and dignity by standing up to a bully that tries to dictate conditions to it. In our particular case, political pressure on Russia and President Putin could turn out to be utterly counterproductive. I believe that Washington has enough levelheaded people to understand that fact, and correctly advise the White House. The administration will need sound advice, as many people in Congress fail to understand the consequences of their calls for punishment of sovereign countries or foreign political leaders that don’t dance to Washington’s tune. Judging by the latest exchange between Moscow and Washington, it appears that the executive branches of both countries will find adequate solutions to the Snowden situation without attacks on each other’s dignity and self-esteem. Russia and the United States are both Security Council members, and much hinges on their decisions, including a slew of common problems that make cooperation necessary. Yet the recent series of scandals has caused irreparable damage to the image and soft power of the United States. I do not know how soon this damage can be repaired. But gone are the days when Orwell was seen as a relic of the Cold War, as the all-powerful Leviathan of the security services has run away from all accountability to state and society. Today the world is looking at America—and its model for governance—with a more critical eye.

### Won’t Be Used – 2NC

#### Detention safeguards will be circumvented

**Cole, Georgetown law professor, 2009**

(David, “Out of the Shadows: Preventive Detention, Suspected Terrorists, and War”, May, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1407652>, ldg)

The above reforms would have at least two significant benefits. First, they would bring preventive detention out of the shadows of existing law, and subject it to a more open and accountable process. Second, they would simultaneously empower the government to employ preventive detention where it is truly necessary while limiting its ability to sweep up large numbers of people on little or no evidence of dangerousness. If all of the above reforms had been in place on 9/11—so that the government had available to it a tightly regulated preventive-detention authority but was not able to exploit existing authorities for sub rosa preventive detention without sufficient safeguards—it seems likely that fewer people would have been unnecessarily detained. Detainees would have been limited to persons as to whom there was some legitimate basis for concern, and the length of detention would have been more strictly controlled. Those detained under immigration authorities, for example, would not have been subject to preventive detention unless the government had objective evidence that they posed a terrorist threat. And many of those unnecessarily and wrongly held at Guantánamo for years might not have been detained at all. The proposed reforms would reduce the number of unnecessary detentions while ensuring that detention remains available where truly necessary. And by bringing preventive detention above board and adopting rules that apply equally to citizens and foreign nationals, the reform effort would force us to confront when preventive detention is truly justified, rather than tolerating it as an informal practice as long as it does not apply to the majority. There remain, however, good reasons to be skeptical about preventive detention. First, if a new preventive-detention law were enacted without reform of existing laws, it would not mitigate, and might well exacerbate, the abuses experienced after 9/11. The Bush administration did successfully obtain passage of one new preventive-detention law in the wake of 9/11: Section 412 of the USA PATRIOT Act, which authorized detention of foreign “terror suspects” without charges for up to seven days. But perhaps because the law included such safeguards as immediate access to federal court and a strict seven-day time limit on detention without charges (adopted over the administration’s objections), the government never used it. It found that it could lock up literally thousands of foreign nationals, often for longer than seven days, by abusing existing immigration laws, obstructing detainees’ access to court, and keeping them locked up even after judges had ordered their release. If the immigration, material-witness, and material-support laws remain unchanged, government officials may continue to exploit them in future crises, rather than invoke a new preventive-detention authority that might require a stronger showing of need for detention. Thus, under no circumstances should Congress enact a preventive-detention statute unless simultaneous reforms of existing laws are included as an integral part of the package.

### A2: National Security Court

#### NSC will devolve into military commissions-they are over politicized

**Blum, DHS attorney advisor, 2008**

(Stephanie, The Necessary Evil of Preventive Detention in the War on Terror: A Plan for a More Moderate and Sustainable Solution, 188-9, ldg)

The creation of a separate court system would pose huge organizational/ institutional costs. While there are currently specialized federal courts for bankruptcy, taxes, patents, and international trade, creating a new court system to deal with terrorists would entail significant costs in the form of (1) deciding which judges would hear the cases; (2) creating the secure facilities that Rishikof and presumably others believe are essential; (3) hiring new staff; (4) creating a new body of law for such cases (e.g., deciding whether judges would borrow from ordinary criminal law or new precedents would have to be established); and (5) as previously discussed, deciding which terrorists should be tried in ordinary criminal courts and which terrorists merit the specialized court system, as Zabel and Benjamin argue in their white paper. We note, however, that one significant downside of a new national security court would be the need to create from scratch the procedures, precedents, and body of law that would govern such a court. The disarray that has plagued the military commissions at Guantanamo — with abundant litigation as well as internal dis¬sension within the military command structure but not a single completed trial some six years after the presidential order autho¬rizing military commissions — does not bode well for those who envision creating a brand new system from scratch. By contrast, a significant advantage of the criminal justice system is the fact that the federal courts have amassed many years of experience and a reservoir of judicial wisdom as well as a broadly experienced bar—both prosecutors and defense attorneys—to guide the course of particular cases.53 Furthermore, a June 2008 report from the Constitution Project argues that national-security courts could "create a highly politicized process for nominating and confirming the judges, focusing solely on whether the nominee had sufficient 'tough on terrorism' credentials—hardly a criterion that lends itself to the appearance of fairness and impartial¬ity."54 In other words, a highly politicized process for selecting judges could detract from a national-security court's legitimacy and increase organizational inefficiency. \*

#### NSC doesn’t solve—it perpetuates the squo

**Hilde, Maryland public policy professor, 2009**

(Thomas, “Beyond Guantanamo. Restoring U.S. Credibility on Human Rights”, [http://www.boell.org/downloads/hbf\_Beyond\_Guantanamo\_Thomas\_Hilde(2).pdf](http://www.boell.org/downloads/hbf_Beyond_Guantanamo_Thomas_Hilde%282%29.pdf), ldg)

This approach suggests that a national security court would have adequate means by which to judge not the actions of detainees, as with regular courts, but the risk of detainees engaging in harmful actions, even absent evidence. Such an approach appears to deny the notion of due process. It is also difficult to see how this approach would not generate the problem it ostensibly seeks to prevent; that is, the creation of enemies through detention policy. A 2008 document signed by 27 legal scholars opposes “any effort to extend the status quo by establishing either (1) a comprehensive system of long-term “preventive” detention without trial for suspected terrorists, or (2) a specialized national security court to make “preventive” detention determinations and ultimately to try terrorism suspects….” for the basic reason that, despite “dressed up procedures, these proposals would make some of the most notorious aspects of the current failed system permanent.” The authors add that perhaps “most fundamental is the fact that the supporters of these proposals typically fail to make clear who should be detained, much less how such individuals, once designated, can prove they are no longer a threat. Without a reasonably precise definition, not only is arbitrary and indefinite detention possible, it is nearly inevitable.”33 Some of the authors, however, conclude that evidence on the part of the government that a detainee has “engaged in belligerent acts or has directly participated in hostilities against the United States” may be the exceptional case justifying “continued detention.”34 Again, however, this distinction remains fluid enough as to be an arbitrary judgment by government officials.

# 1NR

#### Decline causes retrenchment – deficits.

Khalilzad 2011

Zalmay Khalilzad was the United States ambassador to Afghanistan, Iraq, and the United Nations during the presidency of George W. Bush and the director of policy planning at the Defense Department from 1990 to 1992. The Economy and National Security. The National Review February 8th 2011 http://www.nationalreview.com/blogs/print/259024

Today, economic and fiscal trends pose the most severe long-term threat to the United States’ position as global leader. While the United States suffers from fiscal imbalances and low economic growth, the economies of rival powers are developing rapidly. The continuation of these two trends could lead to a shift from American primacy toward a multi-polar global system, leading in turn to increased geopolitical rivalry and even war among the great powers. The current recession is the result of a deep financial crisis, not a mere fluctuation in the business cycle. Recovery is likely to be protracted. The crisis was preceded by the buildup over two decades of enormous amounts of debt throughout the U.S. economy — ultimately totaling almost 350 percent of GDP — and the development of credit-fueled asset bubbles, particularly in the housing sector. When the bubbles burst, huge amounts of wealth were destroyed, and unemployment rose to over 10 percent. The decline of tax revenues and massive countercyclical spending put the U.S. government on an unsustainable fiscal path. Publicly held national debt rose from 38 to over 60 percent of GDP in three years. Without faster economic growth and actions to reduce deficits, publicly held national debt is projected to reach dangerous proportions. If interest rates were to rise significantly, annual interest payments — which already are larger than the defense budget — would crowd out other spending or require substantial tax increases that would undercut economic growth. Even worse, if unanticipated events trigger what economists call a “sudden stop” in credit markets for U.S. debt, the United States would be unable to roll over its outstanding obligations, precipitating a sovereign-debt crisis that would almost certainly compel a radical retrenchment of the United States internationally. Such scenarios would reshape the international order. It was the economic devastation of Britain and France during World War II, as well as the rise of other powers, that led both countries to relinquish their empires. In the late 1960s, British leaders concluded that they lacked the economic capacity to maintain a presence “east of Suez.” Soviet economic weakness, which crystallized under Gorbachev, contributed to their decisions to withdraw from Afghanistan, abandon Communist regimes in Eastern Europe, and allow the Soviet Union to fragment. If the U.S. debt problem goes critical, the United States would be compelled to retrench, reducing its military spending and shedding international commitments. We face this domestic challenge while other major powers are experiencing rapid economic growth. Even though countries such as China, India, and Brazil have profound political, social, demographic, and economic problems, their economies are growing faster than ours, and this could alter the global distribution of power. These trends could in the long term produce a multi-polar world. If U.S. policymakers fail to act and other powers continue to grow, it is not a question of whether but when a new international order will emerge. The closing of the gap between the United States and its rivals could intensify geopolitical competition among major powers, increase incentives for local powers to play major powers against one another, and undercut our will to preclude or respond to international crises because of the higher risk of escalation. The stakes are high. In modern history, the longest period of peace among the great powers has been the era of U.S. leadership. By contrast, multi-polar systems have been unstable, with their competitive dynamics resulting in frequent crises and major wars among the great powers. Failures of multi-polar international systems produced both world wars. American retrenchment could have devastating consequences. Without an American security blanket, regional powers could rearm in an attempt to balance against emerging threats. Under this scenario, there would be a heightened possibility of arms races, miscalculation, or other crises spiraling into all-out conflict. Alternatively, in seeking to accommodate the stronger powers, weaker powers may shift their geopolitical posture away from the United States. Either way, hostile states would be emboldened to make aggressive moves in their regions. As rival powers rise, Asia in particular is likely to emerge as a zone of great-power competition. Beijing’s economic rise has enabled a dramatic military buildup focused on acquisitions of naval, cruise, and ballistic missiles, long-range stealth aircraft, and anti-satellite capabilities. China’s strategic modernization is aimed, ultimately, at denying the United States access to the seas around China. Even as cooperative economic ties in the region have grown, China’s expansive territorial claims — and provocative statements and actions following crises in Korea and incidents at sea — have roiled its relations with South Korea, Japan, India, and Southeast Asian states. Still, the United States is the most significant barrier facing Chinese hegemony and aggression.

**Growth is good – solves disease**

**Reich 2010** (Robert Bernard, August 17th served as the 22nd United States Secretary of Labor under President Bill Clinton, from 1993 to 1997. Reich is currently Chancellor's Professor of Public Policy at the Goldman School of Public Policy at the University of California, Berkeley, a former Harvard University professor and the former Maurice B. Hexter Professor of Social and Economic Policy at the Heller School for Social Policy and Management at Brandeis University, <http://robertreich.org/post/968048444>)

Economic growth is slowing in the United States. It’s also slowing in Japan, France, Britain, Italy, Spain, and Canada. It’s even slowing in China. And it’s likely to be slowing soon in Germany. If governments keep hacking away at their budgets while consumers almost everywhere are becoming more cautious about spending, global demand will shrink to the point where a worldwide dip is inevitable. You might ask yourself: So what? Why do we need more economic growth anyway? Aren’t we ruining the planet with all this growth — destroying forests, polluting oceans and rivers, and spewing carbon into the atmosphere at a rate that’s already causing climate chaos? Let’s just stop filling our homes with so much *stuff.* The answer is economic growth isn’t just about more stuff. Growth is different from consumerism. Growth is really about the capacity of a nation to produce everything that’s wanted and needed by its inhabitants. That includes better stewardship of the environment as well as improved public health and better schools. (The Gross Domestic Product is a crude way of gauging this but it’s a guide. Nations with high and growing GDPs have more overall capacity; those with low or slowing GDPs have less.)Poorer countries tend to be more polluted than richer ones because they don’t have the capacity both to keep their people fed and clothed and also to keep their land, air and water clean. Infant mortality is higher and life spans shorter because they don’t have enough to immunize against diseases, prevent them from spreading, and cure the sick.In their quest for resources rich nations (and corporations) have too often devastated poor ones – destroying their forests, eroding their land, and fouling their water. This is intolerable, but it isn’t an indictment of growth itself. Growth doesn’t depend on plunder. Rich nations have the capacity to extract resources responsibly. That they don’t is a measure of their irresponsibility and the weakness of international law. How a nation chooses to use its productive capacity – how it defines its needs and wants — is a different matter. As China becomes a richer nation it can devote more of its capacity to its environment and to its own consumers, for example. The United States has the largest capacity in the world. But relative to other rich nations it chooses to devote a larger proportion of that capacity to consumer goods, health care, and the military. And it uses comparatively less to support people who are unemployed or destitute, pay for non-carbon fuels, keep people healthy, and provide aid to the rest of the world. Slower growth will mean even more competition among these goals. Faster growth greases the way toward more equal opportunity and a wider distribution of gains. The wealthy more easily accept a smaller share of the gains because they can still come out ahead of where they were before. Simultaneously, the middle class more willingly pays taxes to support public improvements like a cleaner environment and stronger safety nets. It’s a virtuous cycle. We had one during the Great Prosperity the lasted from 1947 to the early 1970s. Slower growth has the reverse effect. Because economic gains are small, the wealthy fight harder to maintain their share. The middle class, already burdened by high unemployment and flat or dropping wages, fights ever more furiously against any additional burdens, including tax increases to support public improvements. The poor are left worse off than before. It’s a vicious cycle. We’ve been in one most of the last thirty years. No one should celebrate slow growth. If we’re entering into a period of even slower growth, the consequences could be worse.

#### Growth is the only solution to climate change --- Recession causes rollback of environmental protections and fast resource consumption that’s comparatively worse.

Elliott 2008

Larry, Economics Editor at the Guardian, Can a dose of recession solve climate change?, http://www.guardian.co.uk/business/2008/aug/25/economicgrowth.globalrecession

There are many reasons why it is not quite as simple as that. My rudimentary understanding of the science of climate change is that concentrations of greenhouse gases have been building up over many decades, and you can't simply turn them off like a tap. Even a three- or four-year 1930s-style global slump would have little or no impact, particularly if it was followed by a period of vigorous catch-up growth. On a chart showing growth since the dawn of the industrial age 250 years ago, the Great Depression is a blip. Similarly, Britain's trade deficit always comes down in recessions because imports go down, but then widens again once the economy returns to its trend rate of growth. Politically, recessions are not helpful to the cause of environmentalism. Climate change is replaced by concerns about unemployment and stimulating growth. To be fair, politicians respond to what they hear from voters: Gordon Brown's survival as prime minister depends on how well his package of economic measures is received, not on what he does or doesn't do to limit greenhouse gases. Looking back, it is clear that every advance in the green movement has coincided with period of strong growth - the early 1970s, the late 1980s and the first half of the current decade. It was tough enough to get world leaders to make tackling climate change a priority when the world economy was experiencing its longest period of sustained growth: it will be mightily difficult to persuade them to take measures that might have a dampen growth while the dole queues are lengthening. Those most likely to suffer are workers in the most marginal jobs and pensioners who will have to pay perhaps 20% of their income on energy bills. Hence, recession does not offer even a temporary solution to the problem of climate change and it is a fantasy to imagine that it does. The real issue is whether it is possible to challenge the "growth-at-any-cost model" and come up with an alternative that is environmentally benign, economically robust and politically feasible. Hitting all three buttons is mightily difficult but attempting to do so is a heck of a lot more constructive than waiting for industrial capitalism to collapse under the weight of its own contradictions.

### No Econ Impact

#### Economic decline increases the propensity for conventional and nuclear conflict

**Harris and Burrows 09** PhD European History @ Cambridge, counselor in the National Intelligence Council (NIC) & member of the NIC’s Long Range Analysis Unit

Mathew, and Jennifer “Revisiting the Future: Geopolitical Effects of the Financial Crisis” <http://www.ciaonet.org/journals/twq/v32i2/f_0016178_13952.pdf>

Of course, the report encompasses more than economics and indeed believes the future is likely to be the result of a number of intersecting and interlocking forces. With so many possible permutations of outcomes, each with ample Revisiting the Future opportunity for unintended consequences, there is a growing sense of insecurity. Even so, history may be more instructive than ever. While we continue to believe that the Great Depression is not likely to be repeated, the lessons to be drawn from that period include the harmful effects on fledgling democracies and multiethnic societies (think Central Europe in 1920s and 1930s) and on the sustainability of multilateral institutions (think League of Nations in the same period). There is no reason to think that this would not be true in the twenty-first as much as in the twentieth century. For that reason, the ways in which the potential for greater conflict could grow would seem to be even more apt in a constantly volatile economic environment as they would be if change would be steadier. In surveying those risks, the report stressed the likelihood that terrorism and nonproliferation will remain priorities even as resource issues move up on the international agenda. Terrorism’s appeal will decline if economic growth continues in the Middle East and youth unemployment is reduced. For those terrorist groups that remain active in 2025, however, the diffusion of technologies and scientific knowledge will place some of the world’s most dangerous capabilities within their reach. Terrorist groups in 2025 will likely be a combination of descendants of long established groups\_inheriting organizational structures, command and control processes, and training procedures necessary to conduct sophisticated attacks\_and newly emergent collections of the angry and disenfranchised that become self-radicalized, particularly in the absence of economic outlets that would become narrower in an economic downturn. The most dangerous casualty of any economically-induced drawdown of U.S. military presence would almost certainly be the Middle East. Although Iran’s acquisition of nuclear weapons is not inevitable, worries about a nuclear-armed Iran could lead states in the region to develop new security arrangements with external powers, acquire additional weapons, and consider pursuing their own nuclear ambitions. It is not clear that the type of stable deterrent relationship that existed between the great powers for most of the Cold War would emerge naturally in the Middle East with a nuclear Iran. Episodes of low intensity conflict and terrorism taking place under a nuclear umbrella could lead to an unintended escalation and broader conflict if clear red lines between those states involved are not well established. The close proximity of potential nuclear rivals combined with underdeveloped surveillance capabilities and mobile dual-capable Iranian missile systems also will produce inherent difficulties in achieving reliable indications and warning of an impending nuclear attack. The lack of strategic depth in neighboring states like Israel, short warning and missile flight times, and uncertainty of Iranian intentions may place more focus on preemption rather than defense, potentially leading to escalating crises. 36 Types of conflict that the world continues to experience, such as over resources, could reemerge, particularly if protectionism grows and there is a resort to neo-mercantilist practices. Perceptions of renewed energy scarcity will drive countries to take actions to assure their future access to energy supplies. In the worst case, this could result in interstate conflicts if government leaders deem assured access to energy resources, for example, to be essential for maintaining domestic stability and the survival of their regime. Even actions short of war, however, will have important geopolitical implications. Maritime security concerns are providing a rationale for naval buildups and modernization efforts, such as China’s and India’s development of blue water naval capabilities. If the fiscal stimulus focus for these countries indeed turns inward, one of the most obvious funding targets may be military. Buildup of regional naval capabilities could lead to increased tensions, rivalries, and counterbalancing moves, but it also will create opportunities for multinational cooperation in protecting critical sea lanes. With water also becoming scarcer in Asia and the Middle East, cooperation to manage changing water resources is likely to be increasingly difficult both within and between states in a more dog-eat-dog world.

### Link Uniqueness

#### Caving to Republicans now would collapse Obama’s presidency – means he’ll focus on it – it would end his presidency-it is just a question of getting the GOP to believe it

**Lewison, Daily Kos senior policy editor, 9-18-13**

(Jed, “Obama says he will not yield an inch to GOP extortion demands on debt limit”, <http://www.dailykos.com/story/2013/09/18/1239737/-Obama-says-he-will-not-yield-an-inch-to-GOP-extortion-demands-on-debt-limit>, ldg)

Republicans who think the debt limit is a source of leverage are counting on President Obama to flip-flop back to his 2011 strategy. That would be more plausible if what happened in 2011 hadn't turned out to be such a disaster and, more importantly, if President Obama didn't realize it was a disaster—but clearly, he does. Obviously, we won't know until the ink is dry on the debt limit increase whether President Obama follows through on his commitment to reject GOP hostage-taking on the debt limit, but if Republicans haven't started contemplating what happens if their strategy fails, they had better get started wrapping their minds around it, because all indications are that's exactly what's going to happen.

#### Obama has maximized his capital to resolve the debt limit

**Bohan, Reuters correspondent, 9-11-13**

(Caren, “Delay in Syria vote frees Obama to shift to hefty domestic agenda”, <http://carnegieeurope.eu/strategiceurope/?fa=52932>, ldg)

(Reuters) - **Putting off a decision on** military strikes on **Syria allows** President Barack **Obama to** shift his attention **back to a weighty domestic agenda** for the fall **that includes budget fights**, immigration and selecting a new chairman of the Federal Reserve. Obama and his aides have immersed themselves for a week and a half in an intensive effort to win support in Congress for U.S. military action in Syria after a suspected chemical weapons attack last month killed more than 1,400 people. But the effort, which included meetings by Obama on Capitol Hill on Tuesday followed by his televised speech to Americans, seemed headed for an embarrassing defeat, with large numbers of both Democrats and Republicans expressing opposition. **The push for** a vote on **Syria** - **which has now been delayed** - had **threatened to crowd out the** busy **legislative agenda** for the final three months of 2013 **and drain Obama's** political clout, making it harder for him to press his priorities. But analysts said **a proposal floated by Russia,** which the Obama administration is now exploring, to place Syria's weapons under international control **may allow Obama to emerge from a difficult dilemma with** minimal political damage. "He dodges a tough political situation this way," **said** John Pitney, **professor of politics at Claremont McKenna College** in California. Pitney said **the delay in the Syria vote removes a big burden for Obama, given that Americans**, who overwhelmingly opposed military intervention in Syria, **will now be able to shift their attention to other matters.** He said Obama could suffer some weakening of his leverage with Congress. The administration's "full court press" to try to persuade lawmakers to approve military force on Syria was heavily criticized and did not yield much success. "He probably has suffered some damage in Congress because there are probably many people on (Capitol Hill) who have increasing doubts about the basic competence of the administration and that's a disadvantage in any kind of negotiation," Pitney said. BUDGET BATTLES **Among Obama's** most immediate challenges **are** two looming **budget fights**. By September 30, Congress and the president must agree on legislation to keep federal agencies funded or face a government shutdown. Two weeks later, **Congress must raise the limit on the country's ability to borrow or risk** a possible **debt default that could cause chaos in financial markets**. On the first budget showdown, Obama may be at a strategic advantage because of divisions among opposition Republicans about whether to use the spending bill to provoke a fight over Obama's signature health care law, known as Obamacare. House Republican leaders are trying to rally the party around a temporary spending measure that would keep the government funded until December 15 but are facing resistance within their own caucus from some conservatives who want to cut off funding for Obamacare, even if it means a government shutdown. **The debt limit fight could end up going** down to the wire and unnerving financial markets. Republicans want to use that standoff to extract concessions from the Democratic president, such as spending cuts and a delay in the health law. But **Obama** has said he **has** no intention of negotiating **over the borrowing limit**.

#### Massive political controversy over the plan

McGovern, 13

(Ray, writer for AlterNet, "Congress Turns a Blind Eye to the Deep Shame of Guantanamo Bay", May 14, [www.alternet.org/civil-liberties/congress-turns-blind-eye-deep-shame-guantanamo-bay](http://www.alternet.org/civil-liberties/congress-turns-blind-eye-deep-shame-guantanamo-bay) NL)

To be completely fair, the reigning reluctance seems, actually, to be a bipartisan affair. Moran is one of the few Democrats possessed of a conscience and enough moral courage to let the American people know what is being done in their name. For other lawmakers, it is a mite too risky. Folksy folks like Sen. Lindsey Graham, R-South Carolina, a member of the Armed Services Committee which is supposed to exercise oversight of the lethal operations carried out by the Joint Special Operations Command, make no bones about the dilemma they prefer to duck when it comes to letting detainees die at Guantanamo or letting the president blow up suspected terrorists via drone strikes. Here’s Graham [quoted](http://www.esquire.com/blogs/politics/congress-drone-strike-oversight-10520312) in Esquire magazine last summer on why Congress has engaged in so little oversight of the lethal drone program: “Who wants to be the congressman or senator holding the hearing as to whether the president should be aggressively going after terrorists? Nobody. And that’s why Congress has been AWOL in this whole area.” The same thinking applies to showing any mercy for the people held at Guantanamo

Political capital is key to the agenda and finite for Obama in the second term, he can’t do a replay of his first term

Schultz 1/22/13 (David Schultz is a professor at Hamline University School of Business, where he teaches classes on privatization and public, private and nonprofit partnerships. He is the editor of the Journal of Public Affairs Education (JPAE) “Obama's dwindling prospects in a second term” http://www.minnpost.com/community-voices/2013/01/obamas-dwindling-prospects-second-term)

Presidential power also is a finite and generally decreasing product. The first hundred days in office – so marked forever by FDR’s first 100 in 1933 – are usually a honeymoon period, during which presidents often get what they want. FDR gets the first New Deal, Ronald Reagan gets Kemp-Roth, George Bush in 2001 gets his tax cuts. Presidents lose political capital, support But, over time, presidents lose political capital. Presidents get distracted by world and domestic events, they lose support in Congress or among the American public, or they turn into lame ducks. This is the problem Obama now faces. Obama had a lot of political capital when sworn in as president in 2009. He won a decisive victory for change with strong approval ratings and had majorities in Congress — with eventually a filibuster margin in the Senate, when Al Franken finally took office in July. Obama used his political capital to secure a stimulus bill and then pass the Affordable Care Act. He eventually got rid of Don’t Ask, Don’t Tell and secured many other victories. But Obama was a lousy salesman, and he lost what little control of Congress that he had in the 2010 elections. Since then, Obama has be stymied in securing his agenda. Moreover, it is really unclear what his agenda for a second term is. Mitt Romney was essentially right on when arguing that Obama had not offered a plan for four more years beyond what we saw in the first term. A replay wouldn't work Whatever successes Obama had in the first term, simply doing a replay in the next four years will not work. First, Obama faces roughly the same hostile Congress going forward that he did for the last two years. Do not expect to see the Republicans making it easy for him. Second, the president’s party generally does badly in the sixth year of his term. This too will be the case in 2014, especially when Democrats have more seats to defend in the Senate than the GOP does. Third, the president faces a crowded and difficult agenda. All the many fiscal cliffs and demands to cut the budget will preoccupy his time and resources, depleting money he would like to spend on new programs. Obama has already signed on to an austerity budget for his next four years – big and bold is not there. Fourth, the Newtown massacre and Obama’s call for gun reform places him in conflict with the NRA. This is a major battle competing with the budget, immigration, Iran and anything else the president will want to do. Finally, the president is already a lame duck and will become more so as his second term progress. Presidential influence is waning One could go on, but the point should be clear: Obama has diminishing time, resources, support and opportunity to accomplish anything. His political capital and presidential influence is waning, challenging him to adopt a minimalist agenda for the future. What should Obama do? Among the weaknesses of his first term were inattention to filling federal judicial vacancies. Judges will survive beyond him and this should be a priority for a second term, as well as preparing for Supreme Court vacancies. He needs also to think about broader structural reform issues that will outlive his presidency, those especially that he can do with an executive order. Overall, Obama has some small opportunities to do things in the next four years – but the window is small and will rapidly close.