## 2AC

### T – Restrictions

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

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

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

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

#### A restriction on war powers authority limits Presidential discretion

Jules Lobel 8, Professor of Law at the University of Pittsburgh  Law School, President of the Center for Constitutional Rights, represented members of Congress challenging assertions of Executive power to unilaterally initiate warfare, “Conflicts Between the Commander in Chief and Congress: Concurrent Power  over the Conduct of War,” Ohio State Law Journal, Vol 69, p 391, 2008, http://moritzlaw.osu.edu/students/groups/oslj/files/2012/04/69.3.lobel\_.pdf

So too, the congressional power to declare or authorize war has been long held to permit Congress to authorize and wage a limited war—“limited in place, in objects, and in time.” 63 When Congress places such restrictions on the President’s authority to wage war, it limits the President’s discretion to conduct battlefield operations. For example, Congress authorized President George H. W. Bush to attack Iraq in response to Iraq’s 1990 invasion of Kuwait, but it confined the President’s authority to the use of U.S. armed forces pursuant to U.N. Security Council resolutions directed to force Iraqi troops to leave Kuwait. That restriction would not have permitted the President to march into Baghdad after the Iraqi army had been decisively ejected from Kuwait, a limitation recognized by President Bush himself.64

### Case

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

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

#### Obama won’t use drones if he’s no longer forced too---sustainable detention and allies fix this

Robert Chesney 11, Charles I. Francis Professor in Law at the UT School of Law as well as a non-resident Senior Fellow at Brookings, "Examining the Evidence of a Detention-Drone Strike Tradeoff", October 17, www.lawfareblog.com/2011/10/examining-the-evidence-of-a-detention-drone-strike-tradeoff/

Yesterday Jack linked to this piece by Noah Feldman, which among other things advances the argument that the Obama administration has resorted to drone strikes at least in part in order to avoid having to grapple with the legal and political problems associated with military detention:¶ Guantanamo is still open, in part because Congress put obstacles in the way. Instead of detaining new terror suspects there, however, Obama vastly expanded the tactic of targeting them, with eight times more drone strikes in his first year than in all of Bush’s time in office.¶ Is there truly a detention-drone strike tradeoff, such that the Obama administration favors killing rather than capturing? As an initial matter, the numbers quoted above aren’t correct according to the New America Foundation database of drone strikes in Pakistan, 2008 saw a total of 33 strikes, while in 2009 there were 53 (51 subsequent to President Obama’s inauguration). Of course, you can recapture something close to the same point conveyed in the quote by looking instead to the full number of strikes conducted under Bush and Obama, respectively. There were relatively few drone strikes prior to 2008, after all, while the numbers jump to 118 for 2010 and at least 60 this year (plus an emerging Yemen drone strike campaign). But what does all this really prove?¶ Not much, I think. Most if not all of the difference in drone strike rates can be accounted for by specific policy decisions relating to the quantity of drones available for these missions, the locations in Pakistan where drones have been permitted to operate, and most notably whether drone strikes were conditioned on obtaining Pakistani permission. Here is how I summarize the matter in my forthcoming article on the legal consequences of the convergence of military and intelligence activities:¶ According to an analysis published by the New America Foundation, two more drone strikes in Pakistan’s FATA region followed in 2005, with at least two more in 2006, four more in 2007, and four more in the first half of 2008.[1] The pattern was halting at best. Yet that soon changed. U.S. policy up to that point had been to obtain Pakistan’s consent for strikes,[2] and toward that end to provide the Pakistani government with advance notification of them.[3] But intelligence suggested that on some occasions “the Pakistanis would delay planned strikes in order to warn al Qaeda and the Afghan Taliban, whose fighters would then disperse.”[4] A former official explained that in this environment, it was rare to get permission and not have the target slip away: “If you had to ask for permission, you got one of three answers: either ‘No,’ or ‘We’re thinking about it,’ or ‘Oops, where did the target go?”[5]¶ Declaring that he’d “had enough,” Bush in the summer of 2008 “ordered stepped-up Predator drone strikes on al Qaeda leaders and specific camps,” and specified that Pakistani officials going forward should receive only “‘concurrent notification’…meaning they learned of a strike as it was underway or, just to be sure, a few minutes after.”[6] Pakistani permission no longer was required.[7] ¶ The results were dramatic. The CIA conducted dozens of strikes in Pakistan over the remainder of 2008, vastly exceeding the number of strikes over the prior four years combined.[8] That pace continued in 2009, which eventually saw a total of 53 strikes.[9] And then, in 2010, the rate more than doubled, with 188 attacks (followed by 56 more as of late August 2011).[10] The further acceleration in 2010 appears to stem at least in part from a meeting in October 2009 during which President Obama granted a CIA request both for more drones and for permission to extend drone operations into areas of Pakistan’s FATA that previously had been off limits or at least discouraged.[11] ¶ There is an additional reason to doubt that the number of drone strikes tells us much about a potential detention/targeting tradeoff: most of these strikes involved circumstances in which there was no feasible option for capturing the target. These strikes are concentrated in the FATA region, after all. ¶ Having said all that: it does not follow that there is no detention-targeting tradeoff at work. I’m just saying that drone strikes in the FATA typically should not be understood in that way (though there might be limited exceptions where a capture raid could have been feasible). Where else to look, then, for evidence of a detention/targeting tradeoff?¶ Bear in mind that it is not as if we can simply assume that the same number of targets emerge in the same locations and circumstances each year, enabling an apples-to-apples comparison. But set that aside.¶ First, consider locations that (i) are outside Afghanistan (since we obviously still do conduct detention ops for new captures there) and (ii) entail host-state government control over the relevant territory plus a willingness either to enable us to conduct our own ops on their territory or to simply effectuate captures themselves and then turn the person(s) over to us. This is how most GTMO detainees captured outside Afghanistan ended up at GTMO. Think Bosnia with respect to the Boumediene petitioners, Pakistan’s non-FATA regions, and a variety of African and Asian states where such conditions obtained in years past. In such locations, we seem to be using neither drones nor detention. Rather, we either are relying on host-state intervention or we are limiting ourselves to surveillance. Very hard to know how much of each might be going on, of course. If it is occurring often, moreover, it might reflect a decline in host-state willingness to cooperate with us (in light of increased domestic and diplomatic pressure from being seen to be responsible for funneling someone into our hands, and the backdrop understanding that, in the age of wikileaks, we simply can’t promise credibly that such cooperation will be kept secret). In any event, this tradeoff is not about detention versus targeting, but something much more complex and difficult to measure.

#### US can’t outsource detention

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

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

### CP-Executive

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

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

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

#### Future presidents prevent solvency

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

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

#### Congress key to democratic legitimacy and preventing future vacillation in executive policy

Benjamin Wittes 9, senior fellow and research director in public law at the Brookings Institution, Stuart Taylor, an American journalist, graduated from Princeton University and Harvard Law School, “Legislating the War on Terror: An Agenda for Reform”, November 3, Book, p. 329-330

While President Obama’s policy makes a clean break with the Bush record, it actually does not effectively answer the question of how best to handle this group. Indeed, the new policy seems likely to fail on both a substantive and a procedural level. First, it goes too far by banning all coercion all the time. Second, the rule is unstable because it can so easily be changed at the whim of the president, whether Obama or, perhaps, a successor more like Bush. An administration down the road that wanted to resume waterboarding could rescind the current order and adopt legal positions like those of the prior administration. Unless the Obama administration and Congress hammer out rules that provide interrogators with clear guidance about what is and is not allowed and write those rules into statute, the United States risks vacillating under the vagaries of current law between overly permissive and overly restrictive guidance. The general goals of new legislation should be threefold: —To make it a crime beyond cavil to use interrogation methods considered by reasonable people to be torture. The torture statute already does that to some degree, but the fact that it arguably permitted techniques as severe as waterboarding suggests that it may require some tightening. The key here is that the statute should cover all techniques the use of which ought to prompt criminal prosecution. —To subject CIA interrogators in almost all cases to rules that, without relaxing current law’s ban on cruel, inhuman, and degrading treatment, permit relatively mild forms of coercion that are properly off limits to military interrogators. —To allow the president, subject to strict safeguards, to authorize use of harsher methods short of torture (as defined in the revised criminal statute) in true emergencies or on extraordinarily high-value captives such as KSM. Only Congress can provide the democratic legitimacy and the fine-tuning of criminal laws that can deliver such a regime. Only Congress can, for example, pass a new law making it clear that waterboarding— or any other technique of comparable severity— will henceforth be a federal crime. Only Congress can offer clear assurances to operatives in the field that there exists a safe harbor against prosecution for conduct ordered by higher-ups in a crisis in the genuine belief that an attack may be around the corner. Only Congress, in other words, can create a regime that plausibly turns away from the past without giving up what the United States will need in the future.

#### Exec fiat is a voter---aff authors assume the exec WON’T act---no comparative lit kills aff ground and real world education

Richard H. Pildes 13, J.D. candidate at NYU school of law, and Samuel Issacharoff, J.D. candidate at NYU school of law, June 1st, 2013, "Drones and the Dilemma of Modern Warfare,"lsr.nellco.org/cgi/viewcontent.cgi?article=1408&context=nyu\_plltwp

As with all use of lethal force, there must be procedures in place to maximize the likelihood of correct identification and minimize risk to innocents. In the absence of form al legal processes, sophisticated institutional entities engaged in repeated, sensitive actions – including the military – will gravitate toward their own internal analogues to legal process, even without the compulsion or shadow of formal judicial review. This is the role of bureaucratic legalism 63 in developing sustained institutional practices, even with the dim shadow of unclear legal commands. These forms of self- regulation are generated by programmatic needs to enable the entity’s own aims to be accomplished effectively; at times, that necessity will share an overlapping converge with humanitarian concerns to generate internal protocols or process-like protections that minimize the use of force and its collateral consequences, in contexts in which the use of force itself is otherwise justified. But because these process-oriented protections are not codified in statute or reflected in judicial decisions, they typically are too invisible to draw the eye of constitutional law scholars who survey these issues from much higher levels of generality.

#### Only judicial review offsets cognitive biases and is credible---psychology proves

Cassandra Burke Robertson 12, Associate Professor, Case Western Reserve University School of Law, 2012, “ARTICLE: DUE PROCESS IN THE AMERICAN IDENTITY,” Alabama Law Review, 64 Ala. L. Rev. 255, p. lexis

As a policy matter, offering a heightened level of due process may have positive effects. First, it better accounts for the true costs and benefits of counterterrorism practices, offsetting cognitive biases that affect this calculation. Second, it also likely increases the perceived legitimacy of U.S. government action--at least when such action does not violate individuals' sense of identity. Finally, heightened due process can also reconcile deontological and consequentialist views of due process and preserve the centrality of process in the American identity.¶ Providing a higher level of due process can guard against cognitive biases that cause us to overestimate the risks of events that are catastrophic and outside our direct control--two hallmarks of the terrorist threat. n154 First, the risk of a terrorist strike is perceived as a more short-term and immediate risk than the potential harm to judicial process in the long run, and "in a period of crisis, long-term costs are easily overshadowed by perceived short-term gains." n155 Second, the terrorist threat raises existential fears--it "threatens to change the way we experience our lives, draining meaning from relationships of trust and community, and coloring life with the awful hues of suspicion, intimidation, and fear." n156 Thus, we are predisposed to misjudge the risk of terrorism in a due process calculus, and as a result, "we have all too often" realized only with hindsight that we overestimated the potential emergency "after civil liberties have been sacrificed at the altar of national security." n157 By maintaining and even increasing traditional elements of procedural due process, we may offset [\*285] this cognitive bias to some degree by forcing a more reasoned analysis of long-term risks. n158¶ In addition to guarding against cognitive bias, heightened due process may also increase institutional legitimacy over time. This benefit would not be immediate; nevertheless, as Professor Lawrence Solum has noted, even a consequentialist approach to due process need not confine itself to a calculation of only the most obvious or short-term costs and benefits. n159 Instead, it should account for more far-reaching effects, including political legitimacy. n160 And a respect for procedural justice, in particular, can increase institutional legitimacy; as scholars have noted, "procedural fairness plays a key role in shaping the legitimacy that citizens grant to government authority." n161¶ Institutional legitimacy can have significant value in the fight against terrorism. n162 When institutions have a high level of political legitimacy, they possess "a reservoir of goodwill that allows the institutions of government to go against what people may want at the moment without suffering debilitating consequences." n163 Without this reservoir, governments must spend additional resources to monitor compliance and to create incentives for desired behavior. n164 But with such a reservoir, it is easier to encourage global cooperation in specific counterterrorism initiatives and to foster "the development of international legal norms against terrorism." n165¶ This legitimacy benefit only accrues when procedures comport with identity, however. n166 It has long been noted that fair procedures can improve participants' reactions to decisional outcomes--that is, even when [\*286] those decisions go against them, the existence of fair procedures minimizes people's negative reaction. n167 Recently, however, work in experimental psychology has revealed an exception to this "fair process effect"; namely, when individuals "have their identity violated by a decision outcome," they "will be motivated to find flaws in the procedure to justify being upset about the decision outcome." n168 That is, "if a decision damages a central part of an individual (i.e., one's identity), it is unlikely that providing a voice or having consistent procedures can remedy the situation." n169¶ This "identity violation effect" suggests that in considering whether to increase reliance on traditional mechanisms of judicial due process, we should explicitly consider questions of identity. The recent data on public opinion may indicate that a majority of Americans do not currently feel that counterterrorism policy violates their sense of identity. For some, in fact, extending due process to accused terrorists may violate their sense of self. n170¶ But for that portion of the population who opposes such tactics, the identity violation effect may come into play when considering executive-branch alternatives to judicial process. To the extent that extrajudicial counterterrorism measures violate some individuals' sense of what it means to be American, it may be impossible to persuade them that alternative processes such as military commissions or executive-branch level review of targeted killings offer sufficient protection. Indeed, those who oppose such procedures often frame their objections in terms of identity, suggesting that the identity violation effect is felt at least by a significant minority. n171 Even without a majority, this group can have a significant impact on public policy, especially in influencing others who attach both a "due process" and "strength" meaning to the American identity but who have found the "strength" meaning to be more salient up till now. n172¶ As a policy matter, a legal doctrine of due process will be most robust when it is informed by sociological realities as well as political realities. n173 Due process serves a truth-seeking function and protects against the abuse of governmental power. n174 But it also serves a political role "designed to engage the litigant qua citizen in an important governmental institution for [\*287] deciding rights." n175 This political function can only work effectively if our due process rights conform to our national identity.¶ A fundamental reliance on due process--even to the detriment of competing goals such as access to justice--is woven into the fabric of both American law and American identity. n176 This Article has argued that such considerations already run through the public dialogue regarding counterterrorism policy, albeit often at an unacknowledged and unconscious level. n177 Those implicit considerations should be made explicit and brought to the forefront of public debate.¶ CONCLUSION¶ Due process is a fundamental American value, and it is a value that deserves a role in the national debate over security. Perhaps harkening back to Immanuel Kant, the protagonists in Real Genius responsible for stopping the weapon deployment repeated the catchphrase "It's a moral imperative!" n178 In the debate over due process in the war on terror, however, commentators have frequently merged the moral view with the legal. This blending is understandable; although due process is a legal doctrine with consequentialist roots, it is also a deontological value with a significant place in the American identity.¶ Separating these strands in the public debate on the war on terror can facilitate the conscious consideration of our national identity. In turn, this explicit recognition of the intertwining of identity and policy can create the opportunity to intentionally shape this identity. As Professor (now Legal Adviser to the State Department) Harold Koh has noted, "national identities are not givens, but rather, socially constructed products of learning, knowledge, cultural practices, and ideology." n179 Reinforcing a deontological commitment to an identity founded on the rule of law--and to judicial process as an expression of that commitment--helps to create such a social construction by establishing "a shared cultural belief" that people can "take . . . for granted as a necessary and proper aspect of their [\*288] society." n180 In order to do so, however, we must broaden the discussion beyond the legality of the policies--or even their instrumental value--and move the discussion into an examination of more fundamental questions of who we are as a nation and who we want to be.

#### Links to politics through bypassing debate

Billy Hallowell 13, writer for The Blaze, B.A. in journalism and broadcasting from the College of Mount Saint Vincent in Riverdale, New York and an M.S. in social research from Hunter College in Manhattan, “HERE’S HOW OBAMA IS USING EXECUTIVE POWER TO BYPASS LEGISLATIVE PROCESS” Feb. 11, 2013, <http://www.theblaze.com/stories/2013/02/11/heres-how-obamas-using-executive-power-to-bylass-legislative-process-plus-a-brief-history-of-executive-orders/>

“In an era of polarized parties and a fragmented Congress, the opportunities to legislate are few and far between,” Howell said. “So presidents have powerful incentive to go it alone. And they do.”¶ And the political opposition howls.¶ Sen. Marco Rubio, R-Fla., a possible contender for the Republican presidential nomination in 2016, said that on the gun-control front in particular, Obama is “abusing his power by imposing his policies via executive fiat instead of allowing them to be debated in Congress.”¶ The Republican reaction is to be expected, said John Woolley, co-director of the American Presidency Project at the University of California in Santa Barbara.¶ “For years there has been a growing concern about unchecked executive power,” Woolley said. “It tends to have a partisan content, with contemporary complaints coming from the incumbent president’s opponents.”

### Flex DA

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

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

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

#### \*Cred matters more than flexibility

Schwarz 7 senior counsel, and Huq, associate counsel at the Brennan Center for Justice at NYU School of Law, (Frederick A.O., Jr., partner at Cravath, Swaine & Moore, chief counsel to the Church Committee, and Aziz Z, former clerk for the U.S. Supreme Court, Unchecked and Unbalanced: Presidential Power in a Time of Terror, p. 201)

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

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

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

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

#### \*No impact--- unchecked flex is self-defeating

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Here it is worth reviewing the positions Yoo advocated while in the executive branch and since, and their consequences in the "war on terror." At every turn, Yoo has sought to exploit the "flexibility" he finds in the Constitution to advocate an approach to the "war on terror" in which legal limits are either interpreted away or rejected outright. Just two weeks after the September 11 attacks, Yoo sent an extensive memo to Tim Flanigan, deputy White House counsel, arguing that the President had unilateral authority to use military force not only against the terrorists responsible for the September 11 attacks but against terrorists anywhere on the globe, with or without congressional authorization.¶ Yoo followed that opinion with a series of memos in January 2002 maintaining, against the strong objections of the State Department, that the Geneva Conventions should not be applied to any detainees captured in the conflict in Afghanistan. Yoo argued that the president could unilaterally suspend the conventions; that al-Qaeda was not party to the treaty; that Afghanistan was a "failed state" and therefore the president could ignore the fact that it had signed the conventions; and that the Taliban had failed to adhere to the requirements of the Geneva Conventions regarding the conduct of war and therefore deserved no protection. Nor, he argued, was the president bound by customary international law, which insists on humane treatment for all wartime detainees. Relying on Yoo's reasoning, the Bush administration claimed that it could capture and detain any person who the president said was a member or supporter of al-Qaeda or the Taliban, and could categorically deny all detainees the protections of the Geneva Conventions, including a hearing to permit them to challenge their status and restrictions on inhumane interrogation practices.¶ Echoing Yoo, Alberto Gonzales, then White House counsel, argued at the time that one of the principal reasons for denying detainees protection under the Geneva Conventions was to "preserve flexibility" and make it easier to "quickly obtain information from captured terrorists and their sponsors." When CIA officials reportedly raised concerns that the methods they were using to interrogate high-level al-Qaeda detainees -- such as waterboarding -- might subject them to criminal liability, Yoo was again consulted. In response, he drafted the August 1, 2002, torture memo, signed by his superior, Jay Bybee, and delivered to Gonzales. In that memo, Yoo "interpreted" the criminal and international law bans on torture in as narrow and legalistic a way as possible; his evident purpose was to allow government officials to use as much coercion as possible in interrogations.¶ Yoo wrote that threats of death are permissible if they do not threaten "imminent death," and that drugs designed to disrupt the personality may be administered so long as they do not "penetrate to the core of an individual's ability to perceive the world around him." He said that the law prohibiting torture did not prevent interrogators from inflicting mental harm so long as it was not "prolonged." Physical pain could be inflicted so long as it was less severe than the pain associated with "serious physical injury, such as organ failure, impairment of bodily function, or even death."¶ Even this interpretation did not preserve enough executive "flexibility" for Yoo. In a separate section of the memo, he argued that if these loopholes were not sufficient, the president was free to order outright torture. Any law limiting the president's authority to order torture during wartime, the memo claimed, would "violate the Constitution's sole vesting of the Commander-in-Chief authority in the President."¶ Since leaving the Justice Department, Yoo has also defended the practice of "extraordinary renditions," in which the United States has kidnapped numerous "suspects" in the war on terror and "rendered" them to third countries with records of torturing detainees. He has argued that the federal courts have no right to review actions by the president that are said to violate the War Powers Clause. And he has defended the practice of targeted assassinations, otherwise known as "summary executions."¶ In short, the flexibility Yoo advocates allows the administration to lock up human beings indefinitely without charges or hearings, to subject them to brutally coercive interrogation tactics, to send them to other countries with a record of doing worse, to assassinate persons it describes as the enemy without trial, and to keep the courts from interfering with all such actions.¶ Has such flexibility actually aided the U.S. in dealing with terrorism? In all likelihood, the policies and attitudes Yoo has advanced have made the country less secure. The abuses at Guantánamo and Abu Ghraib have become international embarrassments for the United States, and by many accounts have helped to recruit young people to join al-Qaeda. The U.S. has squandered the sympathy it had on September 12, 2001, and we now find ourselves in a world perhaps more hostile than ever before.¶ With respect to detainees, thanks to Yoo, the U.S. is now in an untenable bind: on the one hand, it has become increasingly unacceptable for the U.S. to hold hundreds of prisoners indefinitely without trying them; on the other hand our coercive and inhumane interrogation tactics have effectively granted many of the prisoners immunity from trial. Because the evidence we might use against them is tainted by their mistreatment, trials would likely turn into occasions for exposing the United States' brutal interrogation tactics. This predicament was entirely avoidable. Had we given alleged al-Qaeda detainees the fair hearings required by the Geneva Conventions at the outset, and had we conducted humane interrogations at Guantánamo, Abu Ghraib, Camp Mercury, and elsewhere, few would have objected to the U.S. holding some detainees for the duration of the military conflict, and we could have tried those responsible for war crimes. What has been so objectionable to many in the U.S. and abroad is the government's refusal to accept even the limited constraints of the laws of war.¶ The consequences of Yoo's vaunted "flexibility" have been self-destructive for the U.S. -- we have turned a world in which international law was on our side into one in which we see it as our enemy. The Pentagon's National Defense Strategy, issued in March 2005, states,¶ "Our strength as a nation state will continue to be challenged by those who employ a strategy of the weak, using international fora, judicial processes, and terrorism."¶ The proposition that judicial processes -- the very essence of the rule of law -- are to be dismissed as a strategy of the weak, akin to terrorism, suggests the continuing strength of Yoo's influence. When the rule of law is seen simply as a device used by terrorists, something has gone perilously wrong. Michael Ignatieff has written that "it is the very nature of a democracy that it not only does, but should, fight with one hand tied behind its back. It is also in the nature of democracy that it prevails against its enemies precisely because it does." Yoo persuaded the Bush administration to untie its hand and abandon the constraints of the rule of law. Perhaps that is why we are not prevailing.

### K

#### Legal reforms restrain the cycle of violence and prevent error replication

Colm O’Cinneide 8, Senior Lecturer in Law at University College London, “Strapped to the Mast: The Siren Song of Dreadful Necessity, the United Kingdom Human Rights Act and the Terrorist Threat,” Ch 15 in Fresh Perspectives on the ‘War on Terror,’ ed. Miriam Gani and Penelope Mathew, <http://epress.anu.edu.au/war_terror/mobile_devices/ch15s07.html>

This ‘symbiotic’ relationship between counter-terrorism measures and political violence, and the apparently inevitable negative impact of the use of emergency powers upon ‘target’ communities, would indicate that it makes sense to be very cautious in the use of such powers. However, the impact on individuals and ‘target’ communities can be too easily disregarded when set against the apparent demands of the greater good. Justice Jackson’s famous quote in Terminiello v Chicago [111] that the United States Bill of Rights should not be turned into a ‘suicide pact’ has considerable resonance in times of crisis, and often is used as a catch-all response to the ‘bleatings’ of civil libertarians.[112] The structural factors discussed above that appear to drive the response of successive UK governments to terrorist acts seem to invariably result in a depressing repetition of mistakes.¶ However, certain legal processes appear to have some capacity to slow down the excesses of the counter-terrorism cycle. What is becoming apparent in the UK context since 9/11 is that there are factors at play this time round that were not in play in the early years of the Northern Irish crisis. A series of parliamentary, judicial and transnational mechanisms are now in place that appear to have some moderate ‘dampening’ effect on the application of emergency powers.¶ This phrase ‘dampening’ is borrowed from Campbell and Connolly, who have recently suggested that law can play a ‘dampening’ role on the progression of the counter-terrorism cycle before it reaches its end. Legal processes can provide an avenue of political opportunity and mobilisation in their own right, whereby the ‘relatively autonomous’ framework of a legal system can be used to moderate the impact of the cycle of repression and backlash. They also suggest that this ‘dampening’ effect can ‘re-frame’ conflicts in a manner that shifts perceptions about the need for the use of violence or extreme state repression.[113] State responses that have been subject to this dampening effect may have more legitimacy and generate less repression: the need for mobilisation in response may therefore also be diluted.

#### Perm do the plan and all non-competitive parts of the alt – the state coopts the alt

McCormack 10 (Tara, is Lecturer in International Politics at the University of Leicester and has a PhD in International Relations from the University of Westminster. 2010, (Critique, Security and Power: The political limits to emancipatory approaches, page 59-61)

In chapter 7 I engaged with the human security framework and some of the problematic implications of ‘emancipatory’ security policy frameworks. In this chapter I argued that the shift away from the pluralist security framework and the elevation of cosmopolitan and emancipatory goals has served to enforce international power inequalities rather than lessen them. Weak or unstable states are subjected to greater international scrutiny and international institutions and other states have greater freedom to intervene, but the citizens of these states have no way of controlling or influencing these international institutions or powerful states. This shift away from the pluralist security framework has not challenged the status quo, which may help to explain why major international institutions and states can easily adopt a more cosmopolitan rhetoric in their security policies. As we have seen, the shift away from the pluralist security framework has entailed a shift towards a more openly hierarchical international system, in which states are differentiated according to, for example, their ability to provide human security for their citizens or their supposed democratic commitments. In this shift, the old pluralist international norms of (formal) international sovereign equality, non-intervention and ‘blindness’ to the content of a state are overturned. Instead, international institutions and states have more freedom to intervene in weak or unstable states in order to ‘protect’ and emancipate individuals globally. Critical and emancipatory security theorists argue that the goal of the emancipation of the individual means that security must be reconceptualised away from the state. As the domestic sphere is understood to be the sphere of insecurity and disorder, the international sphere represents greater emancipatory possibilities, as Tickner argues, ‘if security is to start with the individual, its ties to state sovereignty must be severed’ (1995: 189). For critical and emancipatory theorists there must be a shift towards a ‘cosmopolitan’ legal framework, for example Mary Kaldor (2001: 10), Martin Shaw (2003: 104) and Andrew Linklater (2005). For critical theorists, one of the fundamental problems with Realism is that it is unrealistic. Because it prioritises order and the existing status quo, Realism attempts to impose a particular security framework onto a complex world, ignoring the myriad threats to people emerging from their own governments and societies. Moreover, traditional international theory serves to obscure power relations and omits a study of why the system is as it is: [O]mitting myriad strands of power amounts to exaggerating the simplicity of the entire political system. Today’s conventional portrait of international politics thus too often ends up looking like a Superman comic strip, whereas it probably should resemble a Jackson Pollock. (Enloe, 2002 [1996]: 189) Yet as I have argued, contemporary critical security theorists seem to show a marked lack of engagement with their problematic (whether the international security context, or the Yugoslav break-up and wars). Without concrete engagement and analysis, however, the critical project is undermined and critical theory becomes nothing more than a request that people behave in a nicer way to each other. Furthermore, whilst contemporary critical security theorists argue that they present a more realistic image of the world, through exposing power relations, for example, their lack of concrete analysis of the problematic considered renders them actually unable to engage with existing power structures and the way in which power is being exercised in the contemporary international system. For critical and emancipatory theorists the central place of the values of the theorist mean that it cannot fulfil its promise to critically engage with contemporary power relations and emancipatory possibilities. Values must be joined with engagement with the material circumstances of the time.

#### Prior questions fail and paralyze politics

Owen 2 (David Owen, Reader of Political Theory at the Univ. of Southampton, Millennium Vol 31 No 3 2002 p. 655-7)

Commenting on the ‘philosophical turn’ in IR, Wæver remarks that ‘[a] frenzy for words like “epistemology” and “ontology” often signals this philosophical turn’, although he goes on to comment that these terms are often used loosely.4 However, loosely deployed or not, it is clear that debates concerning ontology and epistemology play a central role in the contemporary IR theory wars. In one respect, this is unsurprising since it is a characteristic feature of the social sciences that periods of disciplinary disorientation involve recourse to reflection on the philosophical commitments of different theoretical approaches, and there is no doubt that such reflection can play a valuable role in making explicit the commitments that characterise (and help individuate) diverse theoretical positions. Yet, such a philosophical turn is not without its dangers and I will briefly mention three before turning to consider a confusion that has, I will suggest, helped to promote the IR theory wars by motivating this philosophical turn. The first danger with the philosophical turn is that it has an inbuilt tendency to prioritise issues of ontology and epistemology over explanatory and/or interpretive power as if the latter two were merely a simple function of the former. But while the explanatory and/or interpretive power of a theoretical account is not wholly independent of its ontological and/or epistemological commitments (otherwise criticism of these features would not be a criticism that had any value), it is by no means clear that it is, in contrast, wholly dependent on these philosophical commitments. Thus, for example, one need not be sympathetic to rational choice theory to recognise that it can provide powerful accounts of certain kinds of problems, such as the tragedy of the commons in which dilemmas of collective action are foregrounded. It may, of course, be the case that the advocates of rational choice theory cannot give a good account of why this type of theory is powerful in accounting for this class of problems (i.e., how it is that the relevant actors come to exhibit features in these circumstances that approximate the assumptions of rational choice theory) and, if this is the case, it is a philosophical weakness—but this does not undermine the point that, for a certain class of problems, rational choice theory may provide the best account available to us. In other words, while the critical judgement of theoretical accounts in terms of their ontological and/or epistemological sophistication is one kind of critical judgement, it is not the only or even necessarily the most important kind. The second danger run by the philosophical turn is that because prioritisation of ontology and epistemology promotes theory-construction from philosophical first principles, it cultivates a theory-driven rather than problem-driven approach to IR. Paraphrasing Ian Shapiro, the point can be put like this: since it is the case that there is always a plurality of possible true descriptions of a given action, event or phenomenon, the challenge is to decide which is the most apt in terms of getting a perspicuous grip on the action, event or phenomenon in question given the purposes of the inquiry; yet, from this standpoint, ‘theory-driven work is part of a reductionist program’ in that it ‘dictates always opting for the description that calls for the explanation that flows from the preferred model or theory’.5 The justification offered for this strategy rests on the mistaken belief that it is necessary for social science because general explanations are required to characterise the classes of phenomena studied in similar terms. However, as Shapiro points out, this is to misunderstand the enterprise of science since ‘whether there are general explanations for classes of phenomena is a question for social-scientific inquiry, not to be prejudged before conducting that inquiry’.6 Moreover, this strategy easily slips into the promotion of the pursuit of generality over that of empirical validity. The third danger is that the preceding two combine to encourage the formation of a particular image of disciplinary debate in IR—what might be called (only slightly tongue in cheek) ‘the Highlander view’—namely, an image of warring theoretical approaches with each, despite occasional temporary tactical alliances, dedicated to the strategic achievement of sovereignty over the disciplinary field. It encourages this view because the turn to, and prioritisation of, ontology and epistemology stimulates the idea that there can only be one theoretical approach which gets things right, namely, the theoretical approach that gets its ontology and epistemology right. This image feeds back into IR exacerbating the first and second dangers, and so a potentially vicious circle arises.

#### Threats real and not constructed—rational risk assessment goes aff

**Knudsen 1**– PoliSci Professor at Sodertorn (Olav, Post-Copenhagen Security Studies, Security Dialogue 32:3)

Moreover, I have a problem with the underlying implication that it is unimportant whether states 'really' face dangers from other states or groups. In the Copenhagen school, threats are seen as coming mainly from the actors' own fears, or from what happens when the fears of individuals turn into paranoid political action. In my view, this emphasis on the subjective is a **misleading conception of threat**, in that it discounts an independent existence for what- ever is perceived as a threat. Granted, political life is often marked by misperceptions, mistakes, pure imaginations, ghosts, or mirages, but such phenomena **do not occur simultaneously** to large numbers of politicians, and **hardly most of the time**. During the Cold War, threats - in the sense of plausible possibilities of danger - referred to 'real' phenomena, and they **refer to 'real' phenomena** now. The objects referred to are often not the same, but that is a different matter. Threats have to be dealt with both ín terms of perceptions and in terms of the phenomena which are perceived to be threatening. The point of Waever’s concept of security is not the potential existence of danger somewhere but the use of the word itself by political elites. In his 1997 PhD dissertation, he writes, ’One can View “security” as that which is in language theory called a speech act: it is not interesting as a sign referring to something more real - it is the utterance itself that is the act.’24 The deliberate disregard of objective factors is even more explicitly stated in Buzan & WaeVer’s joint article of the same year.” As a consequence, the phenomenon of threat is reduced to a matter of pure domestic politics.” It seems to me that the security dilemma, as a central notion in security studies, then loses its foundation. Yet I see that Waever himself has no compunction about referring to the security dilemma in a recent article." This discounting of the objective aspect of threats shifts security studies to insignificant concerns. What has long made 'threats' and ’threat perceptions’ important phenomena in the study of IR is the implication that **urgent action may be required**. Urgency, of course, is where Waever first began his argument in favor of an alternative security conception, because a convincing sense of urgency has been the chief culprit behind the abuse of 'security' and the consequent ’politics of panic', as Waever aptly calls it.” Now, here - in the case of urgency - another baby is thrown out with the Waeverian bathwater. When real situations of urgency arise, those situations are challenges to democracy; they are actually at the core of the problematic arising with the process of making security policy in parliamentary democracy. But in Waever’s world, threats are merely more or less persuasive, and the claim of urgency is just another argument. I hold that instead of 'abolishing' threatening phenomena ’out there’ by reconceptualizing them, as Waever does, we should continue paying attention to them, because **situations with a credible claim to urgency will keep coming back** and then we need to know more about how they work in the interrelations of groups and states (such as civil wars, for instance), not least to find adequate democratic procedures for dealing with them.

#### This proves their method is bankrupt

Tara McCormack 10, Lecturer in International Politics at the University of Leicester, PhD in IR from the University of Westminster, “Critique, Security and Power: The Political Limits to Emancipatory Approaches,” p. 59, google books

In his criticism of constructivist theorist Alexander Wendt, Neufeld argues that because of Wendt’s supposedly positivist and objectivist commitments, Wendt’s theory may end up serving political agendas very different to those that Wendt might intend to support. For Neufeld, Wendt cannot ask the crucial critical question, what and whom is Wendt’s constructivism for? (2001: 133). However, Neufeld gets the problem exactly the wrong way round. The theoretical problem that Neufeld has identified in Wendt is actually one that lies at the heart of critical and emancipatory approaches. Because of the critical refusal to separate facts and values and the conflation between theory and political action there is no room to consider the way in which critical theory may serve political and normative agendas independent of their value commitments.¶ Theorists, as human beings, naturally have certain values and normative commitments. These values and normative commitments of course direct one’s questions and research but contemporary critical theorists seem to assume that because their heart is in the right place their work is done. However, values cannot be a methodology for critical engagement with social reality. The core of contemporary critical and emancipatory approaches is an assertion of normative intent and a belief that this is a substantive part of critical work. In light of this assumption, accusations of normative idealism or even fantasy theory are reasonably justly earned. And whilst we might reject naïve empiricist claims that facts are just, to paraphrase EH Carr’s witty critique of such approaches, like fish lying on a fishmonger’s slab, ready and accessible with their meanings clear (Carr, 2001 [1961]: 18), none the less it must surely be fundamental to critical theory that it can go beyond the ‘given framework for action’ to establish the ‘facts’ or the real social relations that lie behind this framework that the problem-solving theorist takes to be a natural fact, an ontological reality. This entails an engagement with and substantive analysis of contemporary power structures and discourse.

### Politics

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

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

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

#### Winner’s win

Hirsh 13 Michael, chief correspondent for National Journal; citing Ornstein, a political scientist and scholar at the American Enterprise Institute and Bensel, gov’t prof at Cornell, "There's No Such Thing as Political Capital", 2/7, [www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207](http://www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207)

But the abrupt emergence of the immigration and gun-control issues illustrates how suddenly shifts in mood can occur and how political interests can align in new ways just as suddenly. Indeed, the pseudo-concept of political capital masks a larger truth about Washington that is kindergarten simple: You just don’t know what you can do until you try. Or as Ornstein himself once wrote years ago, “Winning wins.” In theory, and in practice, depending on Obama’s handling of any particular issue, even in a polarized time, he could still deliver on a lot of his second-term goals, depending on his skill and the breaks. Unforeseen catalysts can appear, like Newtown. Epiphanies can dawn, such as when many Republican Party leaders suddenly woke up in panic to the huge disparity in the Hispanic vote.¶ Some political scientists who study the elusive calculus of how to pass legislation and run successful presidencies say that political capital is, at best, an empty concept, and that almost nothing in the academic literature successfully quantifies or even defines it. “It can refer to a very abstract thing, like a president’s popularity, but there’s no mechanism there. That makes it kind of useless,” says Richard Bensel, a government professor at Cornell University. Even Ornstein concedes that the calculus is far more complex than the term suggests. Winning on one issue often changes the calculation for the next issue; there is never any known amount of capital. “The idea here is, if an issue comes up where the conventional wisdom is that president is not going to get what he wants, and he gets it, then each time that happens, it changes the calculus of the other actors” Ornstein says. “If they think he’s going to win, they may change positions to get on the winning side. It’s a bandwagon effect.”

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

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

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

#### EPA regs cause firestorm against Obama

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

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

#### GOP ripping Obama for Putin diplomacy

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

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

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

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

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

#### Dems have abandoned Obama – tanks agenda

Michael Barone 9/20, Real Clear Politics, Democrats No Longer Following Obama's Agenda, 2013, www.realclearpolitics.com/articles/2013/09/20/democrats\_no\_longer\_following\_obamas\_agenda\_120006.html

Now, suddenly, we are seeing some signs of Democratic discontent. The revelations of National Security Agency surveillance disturbed many Democratic voters and a not-inconsiderable number of Democratic senators and congressmen.¶ This was not the change they were seeking.¶ In the past two weeks, congressional Democrats have done more than express dismay. They have stymied two presidential initiatives on important public policies.¶ After Obama called for a congressional authorization of the use of military force in Syria, Democrats did not line up in large numbers in support. The whip counts of various news organizations and blogs showed some Democrats opposed and many Senate Democrats and most House Democrats as uncommitted.¶ The White House might have lined up enough to pass a resolution in the Senate. But with most House Republicans opposed, that seemed impossible in the lower chamber.¶ Obama's policy turnaround might of made this academic. Perhaps the unwillingness of Democrats to accept this agenda item may have undermined the credibility of any presidential threat to use force in Syria or elsewhere.¶ Congressional Democrats also prevented Obama from nominating the person he evidently wanted for one of the most important jobs a president can fill, chairman of the Federal Reserve.¶ In a television interview in June, Obama signaled that current chairman Ben Bernanke would retire -- or at least not be renominated.¶ When attacks were launched on his former economic counselor and Clinton administration treasury secretary, Lawrence Summers, Obama responded with angry defenses. His body language suggested Summers was his choice.¶ Summers might have been confirmable in July. But there was a crescendo of opposition in left-wing blogs.¶ Many on the feminist left endorsed Janet Yellen, currently Fed vice chairman and like Summers, an economist of genuine intellectual heft.¶ Last week, four of the 14 Democrats on the Senate Banking Committee came out against Summers. That meant that confirmation would require the other 10 Democrats and at least a few of the 10 Republicans.¶ You don't have to be an economist of genuine intellectual heft to read those numbers. On Sunday, Summers withdrew -- or was persuaded to withdraw -- from consideration.¶ One reason for Democrats' discontent with Obama is that he doesn't schmooze with them. As Tip O'Neill used to say, people like to be asked. Obama doesn't like to ask.¶ Much more important, many Democrats have principled reasons for opposing Obama on NSA, Syria and Summers.¶ Critics of George W. Bush's war on terror have reason to oppose Obama on NSA and Syria. Economist populists have reason to block a Fed chairman with recent Wall Street ties who is associated with moderate Clinton policies.¶ The danger for Obama is that he may lose his party base, as Bush did after Katrina and the Supreme Court nomination of Harriet Miers. In which case, his job approval could plummet below the current 44 percent, as Bush's did.¶ A president with low approval still has executive powers. But he no longer sets the agenda for his party.

#### McConnell primary challenge will prevent a deal

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

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

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

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

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

#### PC not key and passage inevitable

Jason Easley 9-15, September 15th, 2013, "Obama Humiliates John Boehner By Laughing At His Debt Ceiling Threat," www.politicususa.com/2013/09/15/obama-humiliates-john-boehner-laughing-debt-ceiling-threat.html

Republicans might want to rethink this whole scare Obama into spending cuts with a threat not to raise the debt ceiling plan, because the president isn’t looking scared. The only person who should be scared here is Speaker John Boehner, because Obama clearly has the upper hand.¶ The president has been around the block more than a few times with Boehner and his House Republicans. He knows how this drama plays out. Despite all of their huffy warnings of doom, everyone knows that the wealthy billionaires who fund many Republican campaigns do not want their party to crash the economy (again).¶ President Obama was burned by Boehner the first time that he tried to negotiate, and he learned a valuable lesson. Unless Obama will negotiate with them, all Republicans have are empty threats. When Obama waits the House Republicans out, he wins. The president has nothing to lose. The pressure is all on the House Republicans. They are up for reelection next year. Paying the nation’s bills is their constitutional duty. House Republicans will feel the wrath of the voters if they hurt the economy.¶ The president knows that Boehner’s threats are meaningless. He can laugh them off because they are nothing more than hot air from an empty suit. House Republicans keep trying the same crisis creating tactics and failing. President Obama already knows how the debt ceiling issue is going to end, and whether they’ll admit it or not, Republicans do too.

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

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

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

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

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

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