## 2AC

### Case

#### Syria doesn’t undermine cred but indefinite detention does

Daily Kos 9/8/13 “Red Lines, Deadlines, and "Credibility" on the World Stage: Syria vs. Gitmo,” http://www.dailykos.com/story/2013/09/08/1237401/-Red-Lines-Deadlines-and-Credibility-on-the-World-Stage-Syria-vs-Gitmo

There's an argument out there, favored by many of the usual hawks, that asserts Obama simply must bomb Syria lest he and the United lose "credibility." He set a "red line," and the failure to adhere to it would make the U.S. look weak, never mind the U.S.'s unnecessarily large arsenal of nuclear weapons and massive defense budget. Those, of course, are insufficient deterrents.¶ Obama has been trying to weasel out of his past statement, not by changing the definition of "red line" (which should come easy to a legally trained mind), but by claiming that "humanity" set the red line. Humanity, insofar as it has ever been organized, established the UN Charter, and that bans threatening to attack other nations when not in self-defense. But, for the purpose of this discussion, let's look at the UN conventions as moral commands established by "humanity."¶ If you want an example of lost "credibility" along with the flouting of red lines set by "humanity" and deadlines set by the president, look at Gitmo.¶ On January 22, 2009, after taking office, one of the first things that President Barack Obama did was issue an executive order calling for the closure of the detention facility in Guantanamo Bay in one year:¶ Sec. 3. Closure of Detention Facilities at Guantánamo. The detention facilities at Guantánamo for individuals covered by this order shall be closed as soon as practicable, and no later than 1 year from the date of this order. If any individuals covered by this order remain in detention at Guantánamo at the time of closure of those detention facilities, they shall be returned to their home country, released, transferred to a third country, or transferred to another United States detention facility in a manner consistent with law and the national security and foreign policy interests of the United States.¶ The Guantanamo Bay detention facility had long been violating the United Nations Convention Against Torture, of which the U.S. is one of 153 parties. Back in 2006, United Nations human rights investigators called for the facility to be closed:¶ UNITED NATIONS, Feb. 16 — United Nations human rights investigators called on the United States today to shut down the Guantánamo Bay camp and give detainees quick trials or release them, but the White House promptly dismissed the report.¶ Arguing that many of the interrogation and detention practices constituted abuses amounting to torture, the report stated, "The United States government should close the Guantánamo Bay detention facilities without further delay."¶ ....¶ It also expresses "utmost concern" at "attempts by the United States administration to redefine 'torture' in the framework of the struggle against terrorism in order to allow certain interrogation techniques that would not be permitted under the internationally accepted definition of torture."¶ ....¶ The report said that the "executive branch of the United States government operates as judge, prosecutor and defense counsel of the Guantánamo Bay detainees" and asserted that this constituted "serious violations of various guarantees of the right to a fair trial."¶ If Obama thinks that "humanity" set a "red line" with the Chemical Weapons Convention, then he must think that "humanity" did so with the Convention against Torture (and Other Cruel, Inhuman or Degrading Treatment or Punishment).¶ As of the date of Obama's executive order, the U.S. had faced no punishment for violating this "red line" set by humanity. It still has not.¶ What came after Obama set a firm goal of closing Guantanamo in one year? Did the President and his cabinet engage in a vigorous lobbying campaign to get Democrats in the House and Senate on board?¶ No.¶ “Rahm Emmanuel’s basic view was that he thought this was a crazy waste of political capital. That was a signal to the rest of the bureaucracy, ‘Don’t expose yourself on this,’” one person involved in the discussions said. “There was more that could be done. But once it became clear that the White House was no longer investing, everyone got the message.”¶ The White House forbade Justice and State Department officials from even going to Capitol Hill to meet with Democrats for much of 2009, over the objections of senior officials in those departments.¶ Did the President and his advisers aggressively use the media to push for the closure of the detention facility, booking prime-time interviews with every major outlet, sending surrogates to all of the Sunday shows, and speaking to the public directly from the Oval Office? No.¶ The Senate did, as you probably remember, vote down a proposal sent to them by Obama to close Gitmo. However, his proposal would have just relocated the facility without changing the practices. Here's Glenn Greenwald in Salon:¶ When the President finally unveiled his plan for “closing Guantanamo,” it became clear that it wasn’t a plan to “close” the camp as much as it was a plan simply to re-locate it — import it — onto American soil, at a newly purchased federal prison in Thompson, Illinois. William Lynn, Obama’s Deputy Defense Secretary, sent a letter to inquiring Senators that expressly stated that the Obama administration intended to continue indefinitely to imprison some of the detainees with no charges of any kind. The plan was classic Obama: a pretty, feel-good, empty symbolic gesture (get rid of the symbolic face of Bush War on Terror excesses) while preserving the core abuses (the powers of indefinite detention ), even strengthening and expanding those abuses by bringing them into the U.S.¶ But did he even need to go to the Senate? Earlier this year, legal scholar Eric Posner wrote an article for Slate entitled "President Obama Can Shut Guantanamo Whenever He Wants". Here's what he had to say:¶ President Obama can lawfully release the detainees if he wants to. Congress has made it difficult, but not impossible. Whatever he’s saying, the president does not want to close the detention center—at least not yet.¶ The relevant law is the National Defense Authorization Act of 2012 (NDAA). This statute confirms the president’s power to wage war against al-Qaida and its associates, which was initially given to him in the Authorization for Use of Military Force (AUMF) passed shortly after 9/11. The NDAA also authorizes the president to detain enemy combatants, and bans him from transferring Guantanamo detainees to American soil.¶ The NDAA does not, however, ban the president from releasing detainees. Section 1028 authorizes him to release them to foreign countries that will accept them—the problem is that most countries won’t, and others, like Yemen, where about 90 of the 166 detainees are from, can’t guarantee that they will maintain control over detainees, as required by the law.¶ There is another section of the NDAA, however, which has been overlooked. In section 1021(a), Congress “affirms” the authority of the U.S. armed forces under the AUMF to detain members of al-Qaida and affiliated groups “pending disposition under the law of war.” Section 1021(c)(1) further provides that “disposition under the law of war” includes “Detention under the law of war without trial until the end of the hostilities authorized by” the AUMF. Thus, when hostilities end, the detainees may be released.¶ The president has the power to end the hostilities with al-Qaida—simply by declaring their end. This is not a controversial sort of power. Numerous presidents have ended hostilities without any legislative action from Congress—this happened with the Vietnam War, the Korean War, World War II, and World War I. The Supreme Court has confirmed that the president has this authority.¶ (You can go to Slate to read the full article).¶ In other words, through his powers as commander-in-chief, he could do quite a lot to realize his past commitment to close Gitmo. He has chosen not to use such powers.¶ If the president wanted to restore his and the nation's "credibility" on the world stage and show that the president's deadlines have weight and human rights rhetoric has substance, then he should be making the closure of Guantanamo an immediate priority. There would be far more "credibility"--constitutional, moral, international--gained than would be by bombing a new country.

**Obama believes he is constrained by statute – won’t circumvent**

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

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

### CP

#### It’s a rubber stamp---external oversight key

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

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

#### CP gets overruled and circumvented---data goes aff

Bruce Ackerman 11, Sterling Professor of Law and Political Science at Yale University, “LOST INSIDE THE BELTWAY: A REPLY TO PROFESSOR MORRISON,” Harvard Law Review Forum Vol 124:13, http://www.harvardlawreview.org/media/pdf/vol124forum\_ackerman.pdf

The problem is confirmed by Morrison’s very useful data analysis, which shows that only thirteen percent of OLC opinions have provided a more- or- less clear “no” to the White House during the past generation.34 Morrison’s data- set doesn’t include OLC’s unpublished opinions — which typically involve confidential matters involving national security. Since OLC is almost- certainly more deferential to the White House in these sensitive areas, the percentage of “no’s” would likely sink into the single- digits if these secret opinions could be included in Morrison’s data set.35 And remember, quantitative data can’t take into account the occasions on which the White House is especially exigent in its telephonic demands.36 ¶ \*\*\*TO FOOTNOTES\*\*\*¶ 36 Morrison is undoubtedly right in suggesting that stare decisis plays a restraining role in garden-variety cases. But he also notes that the OLC overrules (or substantially modifies) its own decisions in more than five percent of the opinions in his sample. See Alarmism, supra note P, at NTOP n.NPN. This is a significant percentage, given my focus on the likely way the OLC will function in high-stress situations. It indicates that stare decisis is by no means a rigid rule, and that the OLC cannot credibly claim that its hands are tied when the White House is pressuring it to overrule existing case- law to vindicate a high-priority presidential initiative. ¶ Similarly, Morrison is undoubtedly correct in suggesting that his data fails to reflect the fact that the OLC sometimes informally deflects the White House from a legally problematic initiative. See Alarmism, supra note P, at NTNV. But on high-priority initiatives, the White House won’t easily take an informal “no” for an answer — it will either push the OLC to write a formal opinion saying “yes” or it will withdraw the issue from its jurisdiction and rely on the WHC to uphold the legality of the President’s plan. As a consequence, I believe that Morrison’s data provides an overestimate, not an under-estimate, of likely OLC resistance: it fails to count unreported national security opinions (on which the OLC is probably extremely deferential), and this failure is not mitigated by its additional failure to detect informal modes of OLC resistance.

#### No compliance

Bruce Ackerman 11, Sterling Professor of Law and Political Science at Yale University, “LOST INSIDE THE BELTWAY: A REPLY TO PROFESSOR MORRISON,” Harvard Law Review Forum Vol 124:13, http://www.harvardlawreview.org/media/pdf/vol124forum\_ackerman.pdf

To see why, consider that the relationship between the WHC and the OLC is utterly mysterious to most lawyers, let alone to most Americans. So imagine the scene when some future White House Counsel issues a legal opinion, rubberstamping the President’s latest power- grab, with the peroration: “Ever since Lloyd Cutler assumed the position as White House Counsel in NVTV, this office has, from to time, taken the lead in explaining the constitutional foundations for major presidential initiatives . . . .” ¶ Given pervasive ignorance dealing with Beltway arcana, this famous precedent will go a long way toward legitimating the White House decision to cut out the OLC. Instead of conceding impropriety, our hypothetical Counsel can summon up the great spirit of Lloyd Cutler in support of his leading role. After establishing his distinguished pedigree, Counsel can reinforce his claim to authority with a host of additional arguments: After all, there’s nothing in the Constitution that requires the President to prefer the OLC to the WHC. Article II simply tells the President to “take Care that the Laws be faithfully executed”69 — it doesn’t tell him where to get his legal advice. Moreover, as Morrison acknowledges, the OLC’s traditional role is principally based on executive order, not Congressional statutes.70 If the President prefers to treat his Counsel as a modern-day Cutler, there can be no question that the bureaucracy and military will follow his lead — at least until the courts enter into the field. ¶ Undoubtedly, the Cutler precedent won’t stifle all grumbling from Beltway cognoscenti.71 But it will make it much tougher to convince the generality of lawyerdom, as well as the broader public, that they are witnessing a dreadful act of legal usurpation — even if that’s precisely what is happening.72

#### No institutional memory

Bruce Ackerman 11, Sterling Professor of Law and Political Science at Yale University, “LOST INSIDE THE BELTWAY: A REPLY TO PROFESSOR MORRISON,” Harvard Law Review Forum Vol 124:13, http://www.harvardlawreview.org/media/pdf/vol124forum\_ackerman.pdf

Which leads to a fundamental question. Morrison relies heavily on the “norms” and “longstanding traditions” of the OLC to serve as a bulwark against presidential overreaching. But given the composition of the Office, precisely who is supposed to be safeguarding this tradition? ¶ If we credit Madison’s maxim, we can’t count on the Administration’s appointees to do the job — “enlightened statesmen” will only sometimes manipulate the political networks required to get these plum jobs. And surely youngish up-and-comers are unlikely repositories of the very complex “tradition” Morrison describes — by definition, it takes a good deal of time to master the practice of providing opinions that, in the words of Jack Goldsmith, are “neither like advice from a private attorney nor like a politically neutral ruling from a court. It is something inevitably, and uncomfortably, in between.”15 As his memoirs suggest, even Goldsmith had trouble enacting this “awkward” role during the nine months he served as head of the OLC before he quit under pressure from the Bush White House.16 It’s a bit much to ask young attorney-advisers to serve as the principal guardians of these “cultural norms.” This puts an enormous burden on the (very) small number of senior counsel. ¶ Morrison assures us “that Senior Counsels play a vital role in OLC precisely because they are such rich repositories of institutional memory.”17 While they surely help the transient- lawyers “resist the importuning of . . . clients”18 in garden variety cases, it is unrealistic to expect them effectively to defend entrenched constitutional principles against high-priority presidential initiatives — especially when political appointees, aided by able attorney-advisers, think up all sorts of clever legal arguments to evade and undercut these principles. ¶ The senior counsel’s position is particularly problematic at present. Granting their role as keepers of institutional memory, precisely what are they supposed to be remembering about the operation of the Office during the Bush years? ¶ To be sure, Goldsmith’s legalistic scruples, and the Abu Ghraib scandal, forced the White House to accept the repudiation of a couple of “torture memos.”19 But as Morrison recognizes, the OLC replaced Yoo’s memos “with a more modestly phrased opinion in late 2004 . . . [which] maintained its basic position on the legality of . . . ‘waterboarding’”20 throughout the rest of the Bush Administration. So if the oldtimers act as memory- keepers, are they supposed to tell the transients that the OLC continued to give the Bush White House what it wanted to the bitter end, merely toning down John Yoo’s extravagant legal arguments?

#### Doesn’t solve---external oversight is vital to a credible signal of legitimacy in the context of reinvigorating multilateralism

#### Congress key to solve legal uncertainty and political friction

Chesney & Wittes 13 –Prof of Law @ Texas School of Law & Sr. Fellow @ Brookings

“Protecting U.S. Citizens’ Constitutional Rights During the War on Terror”, Robert Chesney, <http://www.brookings.edu/research/testimony/2013/05/22-war-on-terror-chesney-wittes>

Aside from a Padilla-like scenario, a ban on military detention in domestic capture scenarios thus would foreclose no course of action that is realistically available to the executive branch at this stage given its own preferences. It would, rather, merely codify the existing understanding reflected in executive branch policy and practice—policy and practice reinforced over the years by well-informed expectations about the likely views of the justices on the underlying legal issues. Adopting such a change, it is worth emphasizing, would run with the grain of America’s traditional wariness when it comes to a domestic security role for the U.S. military. There have unfortunately been times in our nation’s history when it has been necessary and proper for the military to play such a role. It is far from clear that this is the case today, however, given the demonstrated capacity of the criminal justice system in the counterterrorism context. In the final analysis, we conclude that the manifest legal uncertainty and political friction overhanging the domestic military detention option entail costs that, in our view, outweigh the hypothetical benefits of continuing to leave that option open as a statutory matter. We therefore favor legislation that would clarify that military detention in counterterrorism under the AUMF is not available with respect to any persons--whether United States citizens or aliens--arrested within the United States.

#### Failure to codify de facto Obama policy on domestic detention into law triggers suits and massive political conflicts – Only Congress solves

Chesney & Wittes 13 –Prof of Law @ Texas School of Law & Sr. Fellow @ Brookings

“Protecting U.S. Citizens’ Constitutional Rights During the War on Terror”, Robert Chesney, <http://www.brookings.edu/research/testimony/2013/05/22-war-on-terror-chesney-wittes>

In our view, Congress should put this issue to rest at last by clarifying that neither the AUMF nor the NDAA FY’12 should be read to confer detention authority over persons captured in the United States (regardless of citizenship). The benefits of keeping the option open in theory are slim, while the offsetting costs are substantial. We say the benefits are slim chiefly because the executive branch has so little interest in using detention authority domestically. The Bush administration had little appetite for military detention in such cases all along, preferring in almost all instances involving al Qaeda suspects in the United States to stick with the civilian criminal justice system. The experiment of military detention with Padilla and al-Marri did little to encourage a different course, given the legal uncertainty the cases exposed. That uncertainty has, in turn, created an enormous disincentive for any administration—of whatever political stripe—to attempt this sort of detention again. A de facto policy thus developed in favor of using the criminal justice apparatus whenever humanly possible for terrorist suspects apprehended in the United States. And whenever humanly possible turned out to mean always; while military detention may remain potentially available as a theoretical matter, it is not functionally available for the simple reasons that (i) executive branch lawyers are not adequately confident that the Supreme Court would affirm its legality and (ii) in any event, they have a viable and far-more-reliable alternative in the criminal justice apparatus. In September 2010, the Obama administration made this unstated policy official, announcing that it would use the criminal justice system exclusively both for domestic captures and for citizens captured anywhere in the world. In a speech at the Harvard Law School, then-White House official John Brennan stated: it is the firm position of the Obama Administration that suspected terrorists arrested inside the United States will—in keeping with long-standing tradition—be processed through our Article III courts. As they should be. Our military does not patrol our streets or enforce our laws—nor should it. . . . Similarly, when it comes to U.S. citizens involved in terrorist-related activity, whether they are captured overseas or at home, we will prosecute them in our criminal justice system. To put the matter simply, military detention for citizens or for terrorist suspects captured domestically, was tried a handful of times early in the Bush administration; the strategy was abandoned; it has been many years since there was any appetite in the executive branch—under the control of either party—for trying it again; and it has for some time been the stated policy of the executive branch not to attempt it under any circumstances. We do not expect any administration of either party to break blithely with the consensus that has developed absent some dramatically changed circumstance. The litigation risk is simply too great, and the criminal justice system’s performance has been too strong to warrant assuming this risk. But ironically, even as this strong executive norm against military detention of domestic captures and citizens has developed, a fierce commitment to this type of detention has also developed in some quarters. The fact that the norm against detention is not currently written into law has helped fuel this commitment, enabling the persistent perception that there is greater policy latitude than functionally exists. The result is that every time a major terrorist suspect has been taken into custody domestically in recent years—the arrest of Djokhar Tsarnaev is only the most recent example—the country explodes in the exact same unproductive and divisive political debate. To caricature it only slightly, one side argues that the suspect should have been held in military custody, instead of being processed through the criminal justice system; it decries the reading of the suspect his Miranda rights; and it criticizes the administration, more generally, for a supposed return to a pre-9/11 law enforcement paradigm. The other side, meanwhile, defends the civilian justice system, while also demanding the closure of Guantánamo and attacking the performance of military commissions for good measure. This kabuki dance of a debate is not merely a matter of rhetoric. Separate and apart from the U.S. citizen detention language we described above, in the course of producing the 2012 NDAA Congress also explored the option of mandating military detention for suspects (citizen or not) taken into custody within the United States. The administration resisted these efforts, and the resulting language in conference committee ultimately stopped far short of requiring military detention. The administration further softened the effects of that language, moreover, through its subsequent interpretation of the new language. All of which brings us back to our point: there is a big gulf between the real, functional state of play (in which the criminal justice system provides the exclusive means of processing terrorist suspects captured within the United States) and the perception in some quarters that military detention remains a viable option, perhaps even a norm, for domestic and citizen terrorist captures. That gulf has real costs. Most obviously, it generates significant political friction every time a major terrorist arrest happens in the United States. It increases the apparent political polarization of an area that should be above politics—and in which the counterterrorism reality is far less polarized than the inter-branch relations over the issue would suggest. And it reinforces the perception that domestic military detention remains a viable option, needlessly alarming those who fear it and needlessly misleading those who wish to see it. The resulting confusion fuels sharp debate over something that is no longer meaningfully an option in functional terms. That debate even spills over at times into litigation, most notably—and disruptively—in the context of the Hedges case in New York (in which journalists and activists persuaded a district judge to enjoin enforcement of detention authority, despite the utter implausibility of the claim that they might be subjected to it).

#### 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.”

### 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.

#### Rejecting sovereignty exacerbates inequalities and prevents emancipation

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,” p139, google books

Critics of critical and emancipatory theory have raised pertinent problems in terms both of the idealism of critical approaches and their problematic relationship to contemporary liberal intervention. Critical theorists themselves are aware that their prescriptions seem to be hard to separate from contemporary discourses and practices of power, yet critical theorists do not seem to be able to offer any understanding of why this might be. However, the limitations to critical and emancipatory approaches cannot be overcome by distinguishing themselves from liberal internationalist policy. In fact a closer engagement with contemporary security policies and discourse would show the similarities with critical theory and that both suffer from the same limitations.¶ The limitations of critical and emancipatory approaches are to be found in critical prescriptions in the contemporary political context. Jahn is right to argue that critical theory is idealistic, but this needs to be explained why. Douzinas is right to argue that critical theory becomes a justification for power and this needs to be explained why. The reasons for this remain undertheorised. I argue here that critical and emancipatory approaches lack a fundamental understanding of what is at stake in the political realm. For critical theorists the state and sovereignty represent oppressive structures that work against human freedom. There is much merit to this critique of the inequities of the state system. However, the problem is that freedom or emancipation are not simply words that can breathe life into international affairs but in the material circumstances of the contemporary world must be linked to political constituencies, that is men and women who can give content to that freedom and make freedom a reality. ¶ Critical and emancipatory theorists fail to understand that there must be a political content to emancipation and new forms of social organisation. Critical theorists seek emancipation and argue for new forms of political community above and beyond the state, yet there is nothing at the moment beyond the state that can give real content to those wishes. There is no democratic world government and it is simply nonsensical to argue that the UN, for example, is a step towards global democracy. Major international institutions are essentially controlled by powerful states. To welcome challenges to sovereignty in the present political context cannot hasten any kind of more just world order in which people really matter (to paraphrase Lynch). Whatever the limitations of the state, and there are many, at the moment the state represents the only framework in which people might have a chance to have some meaningful control over their lives.

**No impact to militarism and no global war**

David **Chandler 9**, Professor of International Relations at the Department of Politics and International Relations, University of Westminster, War Without End(s): Grounding the Discourse of `Global War', Security Dialogue 2009; 40; 243

Western governments appear to portray some of the distinctive characteristics that Schmitt attributed to ‘motorized partisans’, in that the shift from narrowly strategic concepts of security to more abstract concerns reflects the fact that Western states have tended to fight free-floating and non-strategic wars of aggression without real enemies at the same time as professing to have the highest values and the absolute enmity that accompanies these. The government policy documents and critical frameworks of ‘global war’ have been so accepted that it is assumed that it is the strategic interests of Western actors that lie behind the often irrational policy responses, with ‘global war’ thereby being understood as merely the extension of instrumental struggles for control. This perspective seems unable to contemplate the possibility that it is the lack of a strategic desire for control that drives and defines ‘global’ war today. ¶ Very few studies of the ‘war on terror’ start from a study of the Western actors themselves rather than from their declarations of intent with regard to the international sphere itself. This methodological framing inevitably makes assumptions about strategic interactions and grounded interests of domestic or international regulation and control, which are then revealed to explain the proliferation of enemies and the abstract and metaphysical discourse of the ‘war on terror’ (Chandler, 2009a). For its radical critics, the abstract, global discourse merely reveals the global intent of the hegemonizing designs of biopower or neoliberal empire, as critiques of liberal projections of power are ‘scaled up’ from the international to the global.¶ Radical critics working within a broadly Foucauldian problematic have no problem grounding global war in the needs of neoliberal or biopolitical governance or US hegemonic designs. These critics have produced numerous frameworks, which seek to assert that global war is somehow inevitable, based on their view of the needs of late capitalism, late modernity, neoliberalism or biopolitical frameworks of rule or domination. From the declarations of global war and practices of military intervention, rationality, instrumentality and strategic interests are read in a variety of ways (Chandler, 2007). Global war is taken very much on its own terms, with the declarations of Western governments explaining and giving power to radical abstract theories of the global power and regulatory might of the new global order of domination, hegemony or empire¶ The alternative reading of ‘global war’ rendered here seeks to clarify that the declarations of global war are a sign of the lack of political stakes and strategic structuring of the international sphere rather than frameworks for asserting global domination. We increasingly see Western diplomatic and military interventions presented as justified on the basis of value-based declarations, rather than in traditional terms of interest-based outcomes. This was as apparent in the wars of humanitarian intervention in Bosnia, Somalia and Kosovo – where there was no clarity of objectives and therefore little possibility of strategic planning in terms of the military intervention or the post-conflict political outcomes – as it is in the ‘war on terror’ campaigns, still ongoing, in Afghanistan and Iraq. ¶ There would appear to be a direct relationship between the lack of strategic clarity shaping and structuring interventions and the lack of political stakes involved in their outcome. In fact, the globalization of security discourses seems to reflect the lack of political stakes rather than the urgency of the security threat or of the intervention. Since the end of the Cold War, the central problematic could well be grasped as one of withdrawal and the emptying of contestation from the international sphere rather than as intervention and the contestation for control. The disengagement of the USA and Russia from sub-Saharan Africa and the Balkans forms the backdrop to the policy debates about sharing responsibility for stability and the management of failed or failing states (see, for example, Deng et al., 1996). It is the lack of political stakes in the international sphere that has meant that the latter has become more open to ad hoc and arbitrary interventions as states and international institutions use the lack of strategic imperatives to construct their own meaning through intervention. As Zaki Laïdi (1998: 95) explains:¶ war is not waged necessarily to achieve predefined objectives, and it is in waging war that the motivation needed to continue it is found. In these cases – of which there are very many – war is no longer a continuation of politics by other means, as in Clausewitz’s classic model – but sometimes the initial expression of forms of activity or organization in search of meaning. . . . War becomes not the ultimate means to achieve an objective, but the most ‘efficient’ way of finding one. ¶ The lack of political stakes in the international sphere would appear to be the precondition for the globalization of security discourses and the ad hoc and often arbitrary decisions to go to ‘war’. In this sense, global wars reflect the fact that the international sphere has been reduced to little more than a vanity mirror for globalized actors who are freed from strategic necessities and whose concerns are no longer structured in the form of political struggles against ‘real enemies’. The mainstream critical approaches to global wars, with their heavy reliance on recycling the work of Foucault, Schmitt and Agamben, appear to invert this reality, portraying the use of military firepower and the implosion of international law as a product of the high stakes involved in global struggle, rather than the lack of clear contestation involving the strategic accommodation of diverse powers and interests.

#### 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.

#### The state’s inevitable---reform is key

Paul A. Passavant 7, Hobart and William Smith Colleges in New York, “The Contradictory State of Giorgio Agamben”, Political Theory Volume 35, Number 2, April, SAGE

Third, any social formation is constituted by elements of both contingency and determination. By emphasizing pure potentiality, Agamben misses this and either cherishes the excessive quality of pure potentiality to the neglect of the exigent needs of the present, or neglects how the active political subjects he does defend are embedded within finite commitments that necessarily persevere through the foreclosure of other possibilities. Some contemporary political theorists concerned with injustice and the lack of democracy also emphasize contingency, excess, and potentiality over determination, finitude, and acts.49 These theorists correctly seek to disrupt oppressive patterns. Since politics-hence political change-would not be possible under conditions of absolute determination, emphasizing contingency or excess makes sense. Yet reflection upon the retraction of certain state services from places like the Bronx during the late 1970s per mits us to see how neither justice nor democracy is served by excessive eco nomic duress or violence. Not only are these contingencies unjust, but also their incapacitating effects prevent democratic practices of government where the latter necessarily presupposes some collective capacity to direct and achieve collective purposes. State actions that mitigate chaos, economic inequality, and violence, then, potentially contribute to the improved justice of outcomes and democracy. Political theorists must temper celebrating contingency with a simultaneous consideration of the complicated relation that determination has to democratic purposes.50 ¶ Fourth, the state's institutions are among the few with the capacity to respond to the exigency of human needs identified by political theorists. These actions will necessarily be finite and less than wholly adequate, but responsibility may lie on the side of acknowledging these limitations and seeking to redress what is lacking in state action rather than calling for pure potentiality and an end to the state. We may conclude that claims to justice or democracy based on the wish to rid ourselves of the state once and for all are like George W. Bush claiming to be an environmentalist because he has proposed converting all of our cars so that they will run on hydrogen.5" Meanwhile, in the here and now, there are urgent claims that demand finite acts that by definition will be both divisive and less than what a situation demands.52 In the end, the state remains. Let us defend this state of due process and equal protection against its ruinous other.

### Flex

#### Codification creates effective decision-making

#### A) Congress makes deterrence credible

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

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

#### \*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.

#### Aff still allows rapid response to crises---insularity and secrecy causes worse decisions

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

2. Unity and Insularity¶ As the new functionalists correctly anticipate, organization theorists have also recognized that strict bureaucratic control, intense socialization, and a highly developed sense of organizational culture can not only make rapid action possible**, but also ensure adherence to an identified, overarching priority**. n211 Indeed, it follows from the prior section that if formal rules and training are important, some significant level of control is absolutely necessary lest one risk effective top-down compliance.¶ At the same time, however, **institutions such as the military (and arguably aspects of the intel**ligence **community) that are defined by such insular organizational cultures have some** important disadvantages. n212 The exceptional degree of control such organizations exercise over their members has been used both to advance an organization's official goals, and to pursue the more self- serving or alternative goals of its leaders. **Members' intense organizational loyalty can foster** excessive secrecy and disdain for outside expertise**,** inhibiting the flow of information **both within and from outside the institution, and skewing attention to organizational priorities.** n213 **Especially when coupled with political incentives that impact governmental organizations, such features can** limit the institution's ability to take corrective action **or learn from past organizational mistakes**. n214¶ The post-9/11 context is rife with examples of such pathologies in organizations responsible for counterterrorism operations. Consider the U.S. response to the anthrax mailings of late 2001, which came at a time of already heightened vigilance against terrorist attack. After federal [\*1609] investigators concluded that the anthrax attacks were most likely launched by "U.S. nationals, almost certainly ones with experience in and access to the U.S. biodefense program and its facilities," and after they discovered that major U.S. biodefense facilities had been working with anthrax (including weapons-grade powder) for decades, military and intelligence agencies continued to withhold critical information from other federal agencies about the facilities and employees involved in such programs. This hamstrung post-attack efforts to identify the likely source of the attack, and therefore the likelihood of subsequent additional attacks from the same source. n215¶ Such behavior echoes that described by **the 9/11 Commission investigators studying the September 11th attacks** **themselves.** n216 Among other things, investigators concluded that one of the key problems leading to the failure to avert the attacks (despite increasingly alarming warnings) was the dearth of information sharing inside the intelligence and security communities. n217 Information was overly compartmentalized, "stove-piped" to too few decisionmakers, hidden by one executive agency from another and by one branch of government from another, and limited in its relevance and accuracy from an absence of oversight and competing analysis. n218 Such findings also emerge from studies of the generally effective Japanese response to the sarin gas attacks on the Tokyo subway system. Essential to the Japanese government's response was "a willingness to prioritize cooperation over interagency or intergovernment competition." n219 In all of these cases, it may well be that such behavior could be addressed by different incentive structures. But in the absence of such guidance, it was the organizations instinctive (and structural) insularity that prevailed.¶ The counterproductive effect of such pathologies can infect more than just real- time responsiveness; it inhibits error correction over time-a [\*1610] feature that theorists identify as central in explaining the success of those organizations that have operated effectively in chronically unpredictable environments. n220 In the nuclear safety context, for example, Scott Sagan showed that Americans had been at **greater risk than once thought from accidents involving the U.S. nuclear weapons** arsenal-threats ranging from pilot error, malfunctioning computer warnings, the miscalculation of an individual officer, and a host of other seemingly inconceivable mistakes n221 -in part because actors at every organizational level had incentives to cover up safety problems, "in order to protect the reputation of the institution." n222 While it was perhaps "not surprising that the military commands that are responsible for controlling nuclear forces would create a veil of safety to manage their image in front of the [P]resident, the Congress, and the public," Sagan found that concern for the effect of revealing mistakes skewed assessments at all levels, "influenc[ing] the reporting of near-accidents by operators, the beliefs of organizational historians about what is acceptable to record, and the public interpretation of events by senior authorities." n223 Particularly in operations where failure, when it does occur, can come at an extraordinarily high price, there is a premium on gaining (and implementing) as much insight as possible from those failures that do occur. n224¶ One finds a strikingly similar pattern in the conduct of organizations responsible for the detentions at Abu Ghraib, where organizational loyalty and a cultural disinclination to share negative information conspired to prevent the correction of systemic error. n225 In some cases, soldiers reported direct pressure to withhold unfavorable information. n226 More generally, investigators found agreement among commanders and enlisted personnel at Abu Ghraib that the early reports by outside monitors of [\*1611] serious abuses by soldiers at the facility were simply impossible to believe. n227 As General Fay's later investigation found:¶ Within this investigation's timeframe, . . . the [independent International Committee of the Red Cross (ICRC)] visited Abu Ghraib three times, notifying [the joint task force in charge] twice of their visit results, describing serious violations of international Humanitarian Law and of the Geneva Conventions. In spite of the ICRC's role as independent observers, there seemed to be a consensus among personnel at Abu Ghraib that the allegations were not true. Neither the leadership, nor [the joint task force in charge] made any attempt to verify the allegations. n228

#### No impact to Iranian prolif---they’ll be cautious and moderate

Kenneth Waltz 12, senior research scholar @ Saltzman, Poly Sci Prof @ Columbia, September/October 2012, “Iran and the Bomb – Waltz Replies,” Foreign Affairs, Vol. 91, No. 5, p. 157-162

In arguing that a nuclear-armed Iran would represent an unacceptable threat to the United States and its allies, Colin Kahl rejects my contention that states tend to become more cautious once they obtain nuclear weapons and claims that I minimize the potential threat of an emboldened Islamic Republic. He accuses me of misreading history and suggests that I overestimate the stability produced by nuclear deterrence. In fact, it is Kahl who misunderstands the historical record and who fails to grasp the ramifications of nuclear deterrence.

In Kahl's view, new nuclear states do not necessarily behave as status quo powers and can instead be highly revisionist. Seeking a precedent, he highlights the fact that the Soviet Union encouraged North Korea to launch a potentially risky invasion of South Korea in 1950, shortly after the Soviets had tested their first nuclear bomb. But Kahl neglects to explain the context of that decision. Some time before, U.S. Secretary of State Dean Acheson had publicly identified the United States' security commitments in Asia; defending South Korea was not among them. The United States had also signaled its lack of interest in protecting the South Koreans by declining to arm them with enough weapons to repel a Soviet-backed invasion by the North. The Soviet Union therefore had good reason to assume that the United States would not respond if the North Koreans attacked. In light of these facts, it is difficult to see Stalin's encouragement of the invasion as an example of bold, revisionist behavior. Contrary to Kahl's claims, the beginning of the Korean War hardly supplies evidence of Soviet nuclear adventurism, and therefore it should not be understood as a cautionary tale when considering the potential impact that possessing a nuclear arsenal would have on Iranian behavior.

Kahl seems to accept that nuclear weapons create stability -- or a form of stability, at least. But he notes -- as do most scholars of nuclear matters, myself included -- that nuclear stability permits lower-level violence. Taking advantage of the protection that their atomic arsenals provide, nuclear-armed states can feel freer to make minor incursions, deploy terrorism, and engage in generally annoying behavior. But the question is how significant these disruptive behaviors are compared with the peace and stability that nuclear weapons produce.

Kahl points to the example of Pakistan, whose nuclear weapons have probably increased its willingness to wage a low-intensity fight against India, which makes the subcontinent more prone to crises. As Kahl correctly argues, Pakistan's increased appetite for risk probably played a role in precipitating the so-called Kargil War between India and Pakistan in 1999. But the Kargil War was the fourth war fought by the two countries, and it paled in comparison to the three wars they fought before they both developed nuclear weapons. In fact, the Kargil conflict was a war only according to social scientists, who oddly define "war" as any conflict that results in 1,000 or more battlefield deaths. By historical standards, that casualty rate constitutes little more than a skirmish. Far from proving that new nuclear states are not swayed by the logic of deterrence, the Kargil War supports the proposition that nuclear weapons prevent minor conflicts from becoming major wars. Indeed, nuclear weapons are the only peace-promoting weapons that the world has ever known, and there is no reason to believe that things would be different if Iran acquired such arms.

Kahl also frets that a nuclear-armed Iran would step up its support for terrorist groups. Terrorism is tragic for those whose lives it destroys and unnerving for countries that suffer from it. But the number of annual fatalities from international terrorism is vanishingly small compared with the casualties wrought by major wars. Of course, like Kahl, I would not welcome increased Iranian support for Hezbollah or an increased supply of more potent Iranian arms to Palestinian militants. And I, too, hope for a peaceful resolution of the Israeli-Palestinian conflict and the disputes between Israel and its neighbors. But the last several decades have not offered much reason to believe those goals can be easily attained, and I would rather see the possibility of major war reduced through nuclear stability, even if the price is an increase in disruptive activities and low-level conflict.

Just a few months ago in these pages, Kahl eloquently expressed his opposition to a proposed preventive strike on suspected Iranian nuclear facilities, warning that it could spark a regional war ("Not Time to Attack Iran," March/April 2012). I agree. But Kahl and I differ on what the United States can achieve in its showdown with the Islamic Republic. Kahl appears to believe that it is possible for the United States to forgo risky military action and still prevent Iran from obtaining nuclear weapons through a combination of sanctions and diplomacy. I strongly doubt that. Short of using military force, it is difficult to imagine how Iran could be prevented from acquiring nuclear weapons if it is determined to do so. That outcome would produce a lamentable possible increase in terrorism and lower-level conflict. But the many benefits of regional stability would far outweigh the costs.

### Politics

#### Boehner will make a deal with Dems

Lewison 10/3 Jed, Daily Kos staff writer, “Reports: Boehner privately says he will let Democrats raise the debt limit,” http://www.dailykos.com/story/2013/10/03/1243823/-Reports-Boehner-privately-says-he-will-let-Democrats-raise-the-debt-limit

With a budget deal still elusive and a deadline approaching on raising the debt ceiling, Speaker John A. Boehner has told colleagues that he is determined to prevent a federal default and is willing to pass a measure through a combination of Republican and Democratic votes, according to one House Republican.¶ The lawmaker, who spoke on the condition of anonymity, said Mr. Boehner had indicated he would be willing to violate the so-called Hastert Rule if necessary to pass a debt-limit increase. The informal rule refers to a policy of not bringing to the floor any measure that does not have a majority of Republican votes.

#### PC useless

Evan Soltas 13, Washington Post, 4/17/13, Wonkbook: Obama isn’t leading on immigration, and that’s a good thing, www.washingtonpost.com/blogs/wonkblog/wp/2013/04/17/wonkbook-obama-isnt-leading-on-immigration-and-thats-a-good-thing/

A common trope in Washington is that to achieve any particular end, the president must “lead.” If the end in question is not being achieved, then it is because the president is not doing enough leading.¶ At the outset, immigration was also considered a simple question of presidential leadership.”On an issue this big, the president has to lead,” said House Speaker John Boehner.¶ The president hasn’t been leading. Or, if he’s been leading, he’s been leading from behind, permitting Sens. Chuck Schumer and John McCain and Marco Rubio to spearhead the effort. And it’s been the exact right move.¶ Presidential leadership is a polarizing force. Political scientist Frances Lee has shown that when presidents take public positions on even non-controversial subjects, the chances of a party-line vote skyrocket. By campaigning for an idea, the president associates its success with his success. Because the president’s success typically decides his party’s success in the next election, his success is the other party’s failure. And so the minority party, which understandably does not want to fail, has little reason to cooperate.¶ This creates an almost comically vicious cycle wherein presidential leadership pushes the minority party away from a bill, the minority party’s opposition throws the bill’s prospects into doubt, and so the commentariat fills with more calls for the president to lead harder and more aggressively — which only adds further fuel to the process of presidential polarization.¶ President Obama has correctly scrambled these incentives on immigration. Today, the success of immigration reform is considered the success of the Gang of Eight, not of Obama. The potential presidential candidate with the most to gain is Sen. Marco Rubio, a Republican. The immigration bill came out of Sen. Chuck Schumer’s office, not the White House.¶ This will be even more important if and when immigration reaches the House. Speaker John Boehner and his members might see real political upside in helping Sen. Marco Rubio secure a massive achievement and proving that the Republican Party is not opposed to a humane immigration system. They would not see much political upside in helping President Obama fulfill a campaign promise and prove that if you want to get immigration reform done, vote for a Democratic president.¶ Sometimes, the most effective form of presidential leadership is for the president to let someone else take the lead.

#### All their link args are non-unique

NPR 9/21, “Have Obama's Troubles Weakened Him For Fall's Fiscal Fights?” http://www.ideastream.org/news/npr/224494760

President Obama has had a tough year. He failed to pass gun legislation. Plans for an immigration overhaul have stalled in the House. He barely escaped what would have been a humiliating rejection by Congress on his plan to strike Syria.¶ Just this week, his own Democrats forced Larry Summers, the president's first choice to head the Federal Reserve, to withdraw.¶ Former Clinton White House aide Bill Galston says all these issues have weakened the unity of the president's coalition.¶ "It's not a breach, but there has been some real tension there," he says, "and that's something that neither the president nor congressional Democrats can afford as the budget battle intensifies."¶ Obama is now facing showdowns with the Republicans over a potential government shutdown and a default on the nation's debt. On Friday, the House voted to fund government operations through mid-December, while also defunding the president's signature health care law — a position that's bound to fail in the Senate.¶ As these fiscal battles proceed, Republicans have been emboldened by the president's recent troubles, says former GOP leadership aide Ron Bonjean.

#### 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 XO solves the impact

Brett Logiurato 10/5, Business Insider, "Obama Does Not Rule Out Taking Action On The Debt Ceiling By Himself", 2013, www.businessinsider.com/debt-ceiling-obama-boehner-14th-amendment-platinum-coin-2013-10

Read into this what you will, but President Barack Obama did not specifically rule out working around Congress to raise the nation's borrowing limit if Congress does not permit a hike before an Oct. 17 deadline.¶ In an interview with The Associated Press that was published on Saturday, Obama ducked the question of whether he is "willing to take other action" to prevent default. He only said that he expected Congress would pass a bill to raise it.¶ Here's the key exchange:¶ Q: But if they don't, if they get up to this deadline and they are not willing to pass this clean debt ceiling that you're asking them to do, would you be willing to take other action to prevent default?¶ THE PRESIDENT: I don't expect to get there. There were at least some quotes yesterday that Speaker Boehner is willing to make sure that we don't default. And just as is true with the government shutdown, there are enough votes in the House of Representatives to make sure that the government reopens today. And I'm pretty willing to bet that there are enough votes in the House of Representatives right now to make sure that the United States doesn't end up being a deadbeat. The only thing that's preventing that from happening is Speaker Boehner calling the vote.¶ The possibility that Obama will have to work around Congress to raise the debt has been increasingly discussed by analysts over the past week.¶ Some — including President Bill Clinton — have said he can do that by invoking the 14th Amendment, a Reconstruction-era amendment that says that "the validity of the public debt of the United States ... shall not be questioned."

#### 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.

## 1AR

### Boehner solves

#### He’ll craft a super-soft deal that Dems like

WaPo 10/4 Washington Post, Lori Montgomery, “Boehner won’t permit default on debt,” http://www.dispatch.com/content/stories/national\_world/2013/10/04/boehner-wont-permit-default.html

WASHINGTON — With the government shuttered and a deadline for raising the debt limit only two weeks off, anxious Republicans began steering the party away from a dead-end debate about the health-care law and toward discussion of a broader deal to reduce the nation’s debt.¶ In meetings with small groups of rank-and-file lawmakers, House Speaker John Boehner, R-West Chester, has emphasized that he will not permit the country to default on its debt for the first time.¶ Given that a bloc of hard-line conservatives is unlikely to vote to increase the debt limit under any circumstances, Boehner has told fellow Republicans that they must craft an agreement that can attract significant Democratic support.¶ “This needs to be a big bipartisan deal,” Rep. Tom Cole, R-Okla., a close Boehner ally, said as he emerged from a luncheon meeting in the speaker’s office yesterday. “This is much more about the debt ceiling and a larger budget agreement than it is about Obamacare.”¶ One lawmaker, speaking on the condition of anonymity, said yesterday that Boehner even has suggested that he might be willing to risk the fury of conservatives by relying on a majority of Democratic votes — and less than a majority of Republicans — to pass a debt-ceiling increase.

#### No way Boehner allows us to default

Mataconis 10/3 Doug, Outside the Beltway writer, “Boehner Won’t Allow Default Over Debt Ceiling, Still Insisting On Negotiations,” http://www.outsidethebeltway.com/boehner-wont-allow-default-over-debt-ceiling-still-insisting-on-negotiations/

It is conceivable that Mr. Boehner could pass a debt-limit increase with a slim majority of Republican votes, and Democrats making up the difference, as he has in the past on budget measures. In meetings with Republican lawmakers, the speaker appeared to be offering reassurances to members worried about the government shutdown that he would not allow a default to take place.¶ Other Republicans also said Thursday that they got the sense that Mr. Boehner would do whatever was necessary to ensure that the country did not default on its debt.

### W/W

#### Not uniqueness acts as terminal link defense

#### Timeframe arg doesn’t make sense in this context- Plan gives Obama a high-profile win---key to his agenda

Jill Lawrence 9-17**,** national correspondent at National Journal, September 17th, 2013, “Obama Says He’s Not Worried About Style Points. He Should Be,” National Journal, <http://www.nationaljournal.com/whitehouse/obama-says-he-s-not-worried-about-style-points-he-should-be-20130917>

In some ways Obama's fifth year is typical of fifth years, when reelected presidents aim high and often fail. But in some ways it is atypical, notably in the number of failures, setbacks, and incompletes Obama has piled up. Gun control and immigration reform are stalled. Two Obama favorites withdrew their names as potential nominees in the face of congressional opposition – Susan Rice, once a frontrunner for secretary of state, followed by Larry Summers, a top candidate to head the Federal Reserve. Secretary of State John Kerry's possibly offhand remark about Assad giving up his chemical weapons, and Putin's jump into the arena with a diplomatic proposal, saved him from almost certain defeat on Capitol Hill. Edward Snowden set the national security establishment on its heels, then won temporary refuge from … Putin. It's far from clear how that will be resolved.¶ And that's as true for the budget and debt-limit showdowns ahead.¶ Some of Obama's troubles are due to the intransigence of House conservatives, and some may be inevitable in a world far less black and white than the one Reagan faced. But the impression of ineffectiveness is the same.¶ "People don't like it when circumstances are dictating the way in which a president behaves. They want him to be the one in charge," says Dallek, who has written books about nine presidents, including Reagan and Franklin Roosevelt. "It's unfair… On the other hand, that's what goes with the territory. People expect presidents to be in command, and they can't always be in command, and the public is not forgiving."¶ Obama's job approval numbers remain in the mid-40s. The farther they fall below 50 percent, history suggests, the worse he can expect Democrats to do in the midterm House and Senate elections next year. Obama would likely be in worse trouble with the public, at least in the short term, if he had pushed forward with a military strike in Syria. In fact, a new Pew Research Center poll shows 67 percent approve of Obama's switch to diplomacy. But his journey to that point made him look weak and indecisive.¶ Indeed, the year's setbacks are accumulating and that is dangerous for Obama.¶ "At some point people make a collective decision and they don't listen to the president anymore. That's what happened to both Jimmy Carter and George W. Bush," Cannon says. "I don't think Obama has quite gone off the diving board yet in the way that Carter or Bush did … but he's close to the edge. He needs to have some successes and perceptions of success."

#### More warrants:

#### a) Prefer qualifications

Green 10 David Michael, professor of political science at Hofstra University, 6/11, "The Do-Nothing 44th President", <http://www.opednews.com/articles/The-Do-Nothing-44th-Presid-by-David-Michael-Gree-100611-648.html>

Moreover, there is a continuously evolving and reciprocal relationship between presidential boldness and achievement. In the same way that nothing breeds success like success, nothing sets the president up for achieving his or her next goal better than succeeding dramatically on the last go around. This is absolutely a matter of perception, and you can see it best in the way that Congress and especially the Washington press corps fawn over bold and intimidating presidents like Reagan and George W. Bush. The political teams surrounding these presidents understood the psychology of power all too well. They knew that by simultaneously creating a steamroller effect and feigning a clubby atmosphere for Congress and the press, they could leave such hapless hangers-on with only one remaining way to pretend to preserve their dignities. By jumping on board the freight train, they could be given the illusion of being next to power, of being part of the winning team. And so, with virtually the sole exception of the now retired Helen Thomas, this is precisely what they did.

#### b) True for Obama’s second term

Hirsh 2/7 Michael, chief correspondent for National Journal, previously served as the senior editor and national economics correspondent for Newsweek, has appeared many times as a commentator on Fox News, CNN, MSNBC, and National Public Radio, has written for the Associated Press, The New York Times, The Washington Post, Foreign Affairs, Harper’s, and Washington Monthly, and authored two books, "There's No Such Thing as Political Capital", 2013, [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)

In terms of Obama’s second-term agenda, what all these shifting tides of momentum and political calculation mean is this: Anything goes. Obama has no more elections to win, and he needs to worry only about the support he will have in the House and Senate after 2014. But if he picks issues that the country’s mood will support—such as, perhaps, immigration reform and gun control—there is no reason to think he can’t win far more victories than any of the careful calculators of political capital now believe is possible, including battles over tax reform and deficit reduction.¶ Amid today’s atmosphere of Republican self-doubt, a new, more mature Obama seems to be emerging, one who has his agenda clearly in mind and will ride the mood of the country more adroitly. If he can get some early wins—as he already has, apparently, on the fiscal cliff and the upper-income tax increase—that will create momentum, and one win may well lead to others. “Winning wins.”

### Politics- xo

#### He’s implicitly gone back on past statements

Mary Bruce 10/5, ABC News, “Obama Doesn’t Rule Out Using 14th Amendment To Raise The Debt Limit,” http://abcnews.go.com/blogs/politics/2013/10/obama-doesnt-rule-out-using-14th-amendment-to-raise-the-debt-limit/

With the October 17 deadline to raise the debt limit rapidly approaching, President Obama is not specifically ruling out using the 14th Amendment to increase the nation’s borrowing ability if the political impasse continues and Congress fails to do so, but says “I don’t expect to get there.”¶ “There is one way to make sure that America pays its bills, and that’s for Congress to authorize the Secretary of the Treasury, Jack Lew, to pay bills that they have already accrued,” the president told The Associated Press in an interview Friday that was released this morning.¶ “I’m pretty willing to bet that there are enough votes in the House of Representatives right now to make sure that the United States doesn’t end up being a deadbeat. The only thing that’s preventing that from happening is Speaker Boehner calling the vote,” he said.¶ The White House has long maintained that “this administration does not believe that the 14th Amendment gives the power to the president to ignore the debt ceiling,” as White House Press Secretary Jay Carney said on Thursday. “We do not believe that the 14th Amendment provides that authority to the president.”¶ Pressed about whether he would be willing to take unilateral action to prevent default, the president told the AP that the hopes the fight doesn’t get to that point.

#### Obama executive order solves

Joe Weisenthal 9/30, Executive Editor for Business Insider, “It Increasingly Looks Like Obama Will Have To Raise The Debt Ceiling All By Himself,” <http://www.businessinsider.com/it-increasingly-looks-like-obama-will-have-to-raise-the-debt-ceiling-all-by-himself-2013->9

With no movement on either side and the debt ceiling fast approaching, there's increasing talk that the solution will be for Obama to issue an executive order and require the Treasury to continue paying U.S. debt holders even if the debt ceiling isn't raised.¶ Here's Greg Valliere at Potomac Research:¶ HOW DOES THIS END? What worries many clients we talk with is the absence of a clear end-game. We think three key elements will have to be part of the final outcome: First, a nasty signal from the stock market. Second, a daring move from Barack Obama to raise the debt ceiling by executive order if default appears to be imminent. Third, a capitulation by Boehner, ending the shut-down and debt crisis in an arrangement between a third of the House GOP and virtually all of the Democrats. ¶ Valliere isn't the only one seeing this outcome.¶ Here's David Kotok at Cumberland Advisors:¶ We expect this craziness to last into October and run up against the debt limit fight. In the final gasping throes of squabbling, we expect President Obama to use the President Clinton designed executive order strategy so that the US doesn’t default. There will then ensue a protracted court fight leading to a Supreme Court decision. The impasse may go that far. This is our American way. “Man Plans and God Laughs” says the Yiddish Proverb.¶ Indeed, back in 2011, Bill Clinton said he'd raise the debt ceiling by invoking the 14th Amendment rather than negotiate with the House GOP.¶ This time around, again, Clinton is advising Obama to call the GOP's bluff.