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#### Congress will successfully avert a government shutdown now, but time is super tight

Fox News, 9-11-2013, “House pulls spending bill amid backlash as government shutdown looms,” http://www.foxnews.com/politics/2013/09/11/house-leaders-pull-temporary-spending-bill-after-conservative-backlash/

House Republican leaders pulled their plan Wednesday to temporarily fund the federal government after rank-and-file party members said it sidestepped “defunding” ObamaCare. The action further narrowed Congress’ time to strike a budget deal before an Oct. 1 government shutdown. House Speaker John Boehner and his team pulled the plan, which could have gotten a full chamber vote as early as Thursday, after a conservative backlash led by the Tea Party movement and Heritage Action for America. The plan essentially called for the House to vote on defunding ObamaCare and the temporary spending bill, then send the package to the Democrat-controlled Senate, which almost certainly would have jettisoned the defund part and allowed the chambers to negotiate on a “clean” funding bill. “The Ruling Elite is up to it again,” the Tea Party Patriots group said Wednesday. “They want you to think they have voted for defunding ObamaCare. But it’s another shell game.” Meanwhile, Congress must also work on several other pressing issues, especially agreeing to increase the debt ceiling, which the government could hit as soon as mid-October, according to a recent Treasury Department assessment. Boehner defended his defund-spending plan Tuesday, saying his chamber has already voted 40 times to “defund, repeal and change” ObamaCare, so the Senate must now take up the fight. Although Boehner pulled the bill because he didn’t have the votes, sources tell Fox News the speaker has no intention of changing the plan and might revisit it next week -- after members realize its strengths. Meanwhile members from both parties appear optimistic about avoiding a partial government shutdown, despite the looming deadline and the potential for another internal House struggle. “We've got some time left,” Kentucky Republican Rep. Hal Rogers, chairman of the House Appropriations Committee, told Fox News. “It's not time to panic.” The postponement of a Capitol Hill vote on a military strike on Syria will indeed eliminate the related hearings and classified briefings that slowed work on other pending issues, including immigration reform, the Farm Bill and whether to limit the extent to which the National Security Agency can collect data on Americans in its efforts to thwart terrorism.

#### The plan would trade off with Congress’s ability to avert the shutdown - GOP has momentum and will, but they need literally every hour to get it done

Frank James, 9-13-2013, “Congress Searches For A Shutdown-Free Future,” NPR, http://www.npr.org/blogs/itsallpolitics/2013/09/13/221809062/congress-searches-for-a-shutdown-free-future

The only thing found Thursday seemed to be more time for negotiations and vote-wrangling. Republican leaders recall how their party was blamed for the shutdowns of the mid-1990s and earnestly want to avoid a repeat, especially heading into a midterm election year. Cantor alerted members Thursday that during the last week of September, when they are supposed to be on recess, they will now most likely find themselves in Washington voting on a continuing resolution to fund the government into October. It looks like lawmakers will need every hour of that additional time. While talking to reporters Thursday, Boehner strongly suggested that House Republicans weren't exactly coalescing around any one legislative strategy. "There are a lot of discussions going on about how — about how to deal with the [continuing resolution] and the issue of 'Obamacare,' and so we're continuing to work with our members," Boehner said. "There are a million options that are being discussed by a lot of people. When we have something to report, we'll let you know."

#### Shutdown wrecks the economy

Yi Wu, 8-27-2013, “Government Shutdown 2013: Still a Terrible Idea,” PolicyMic, http://www.policymic.com/articles/60837/government-shutdown-2013-still-a-terrible-idea

Around a third of House Republicans, many Tea Party-backed, sent a letter last week calling on Speaker John Boehner to reject any spending bills that include implementation of the Affordable Care Act, otherwise known as Obamacare. Some Senate Republicans echo their House colleagues in pondering this extreme tactic, which is nothing other than a threat of government shutdown as neither congressional Democrats nor President Obama would ever agree on a budget that abolishes the new health care law. Unleashing this threat would amount to holding a large number of of the federal government's functions, including processing Social Security checks and running the Centers for Disease Control, hostage in order to score partisan points. It would be an irresponsible move inflicting enormous damage to the U.S. economy while providing no benefit whatsoever for the country, and Boehner is rightly disinclined to pursue it. Government shutdowns are deleterious to the economy. Two years ago in February 2011, a similar government shutdown was looming due to a budget impasse, and a research firm estimated that quater's GDP growth would be reduced by 0.2 percentage points if the shutdown lasted a week. After the budget is restored from the hypothetical shutdown, growth would only be "partially recouped," and a longer shutdown would result in deeper slowdowns. Further, the uncertainties resulting from a shutdown would also discourage business. A shutdown was avoided last-minute that year, unlike in 1995 during the Clinton administration where it actually took place for four weeks and resulted in a 0.5 percentage-point dent in GDP growth. Billions of dollars were cut from the budget, but neither Boehner nor the Republicans at the time were reckless enough to demand cancellation of the entire health care reform enacted a year before.

#### Global nuclear war

Harris & Burrows 9 Mathew, PhD European History @ Cambridge, counselor of the U.S. National Intelligence Council (NIC) and Jennifer, member of the NIC’s Long Range Analysis Unit “Revisiting the Future: Geopolitical Effects of the Financial Crisis” http://www.ciaonet.org/journals/twq/v32i2/f\_0016178\_13952.pdf

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

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### Waiver CP---1NC

#### The Executive branch should take all necessary measures to expedite the Guantanamo Bay Periodic Review Board's formation and review of indefinitely detained prisoners' cases. The Executive Branch should issue national security waivers for the transfer or repatriation of the eighty-six Guantanamo prisoners currently cleared for release and any prisoners who successfully challenge their status as indefinite detainees. The Executive should direct the Attorney General to inform the D.C. Circuit Court of Appeals that the Department of Justice no longer considers the cleared detainees to be detainable. Any necessary funds that the Executive cannot obtain from the Defense Department should be taken from the Departments of Justice or Homeland Security.

#### Counterplan solves the case without Congressional action and solves backlash against Guantanamo

Nedra Pickler 13, Real Clear Politics writer, Gitmo Closure Elusive, Obama Looks at Other Steps, http://www.realclearpolitics.com/articles/2013/05/02/gitmo\_closure\_elusive\_obama\_looks\_at\_other\_steps\_118219.html#ixzz2dJmceB4s - \* [y] added

Despite President Barack Obama's new vow, closing the Guantanamo Bay prison is still a tough sell in Congress. So the White House may look instead toward smaller steps like transferring some terror suspects back overseas.

Shutting down the prison at the U.S. naval base in Cuba is a goal that has eluded Obama since he took office. In his first week, he signed an executive order for its closure, but Congress has used its budgetary power to block detainees from being moved to the United States.

Now, with 100 of the 166 prisoners on a hunger strike in protest of their indefinite detention and prison conditions, Obama is promising a renewed push before Congress and has ordered a review of his administrative options. The White House is acknowledging its process to review prisoner cases for possible release has not been implemented quickly enough and says the president is considering reappointing a senior official at the State Department to focus on transfers out of the prison.

Guantanamo had slipped down the agenda of the president who promised to close it during his campaign five years ago but has transferred few prisoners out in recent years. Conditions at the camp are tense, with 23 prisoners who are in danger of starving themselves now being force-fed through nasal tubes and some 40 naval medical personnel arriving over the weekend to deal with the strike that shows no sign of ending. While the global community has pressured the United States to shut Guantanamo, most of the American public and their representatives in Congress have been opposed to removing the terror suspects from their isolated captivity.

"Guantanamo is not necessary to keep America safe," the president argued at a White House news conference Tuesday. "It is expensive. It is inefficient. It hurts us in terms of our international standing. It lessens cooperation with our allies on counterterrorism efforts. It is a recruitment tool for extremists. It needs to be closed."

Obama's comments revived an issue that hasn't been prominent in recent political debate, with some of the most recent national polling more than a year old. An ABC News/Washington Post survey in February 2012 found 70 percent of the public approving of keeping the prison open and a quarter disapproving. Five percent had no opinion.

Sen. Lindsey Graham, R-S.C., a leading opponent of closure, responded to Obama's latest call by citing last year's administration report that 28 percent of the roughly 600 released detainees were either confirmed or suspected of later engaging in militant activity.

"They're individuals hell-bent on our destruction and destroying our way of life," Graham said in a statement. "There is bipartisan opposition to closing Gitmo."

Republicans and several Democrats have repeatedly blocked efforts by Obama to take the initial steps toward closure. The law that Congress passed and Obama signed in March to keep the government running includes a longstanding provision that prohibits any money for the transfer of Guantanamo detainees to the United States or its territories. It also bars spending to overhaul any U.S. facility in the U.S. to house detainees.

That makes it essentially illegal for the government to transfer the men it wants to continue holding, including five who were charged before a military tribunal with orchestrating the Sept. 11 attacks. But that doesn't mean the administration's hands are completely tied.

Eight[y]-six prisoners at Guantanamo have been cleared for transfer to other countries. Such transfers were common under President George W. Bush and at the beginning of the Obama administration. They stopped after Congress imposed new security restrictions over concerns that some prisoners might be released by foreign governments and return to the battlefield.

The administration could get around the restriction by issuing a national security waiver through the Pentagon, something it hasn't done so far.

Obama signed an executive order two years ago establishing review procedures for detainees to determine if continued detention was warranted, beginning with hearings before an interagency Periodic Review Board. The order required the reviews to begin by March 2012, but the administration has yet to announce any hearings.

Obama spokesman Jay Carney said Wednesday that the administration plans to get the board running, "which has not moved forward quickly enough." He also said Obama is considering the reappointment of a special envoy for closing Guantanamo at the State Department, responsible for trying to persuade countries to accept inmates approved for release. The former envoy, Ambassador Daniel Fried, was reassigned earlier this year and not replaced.

But Carney said help from Congress is needed to close the prison. "We have to work with Congress and try to convince members of Congress that the overriding interest here, in terms of our national security as well as our budget, is to close Guantanamo Bay," Carney said.

House Armed Services Chairman Howard "Buck" McKeon, R-Calif., objected to Obama blaming Congress. "The president faces bipartisan opposition to closing Guantanamo Bay's detention center because he has offered no alternative plan regarding the detainees there, nor a plan for future terrorist captures," McKeon said in a statement.

A tough issue is where to send detainees cleared for transfer, particularly the majority who are Yemeni nationals. Obama has banned the transfer of Guantanamo detainees to Yemen since January 2010 because of security concerns after a would-be bomber attempted to blow up a U.S.-bound flight on instructions from al-Qaida operatives in Yemen.

Senate Intelligence Chairwoman Dianne Feinstein, D-Calif., who initially supported the suspension of transfers to Yemen, wrote the White House last week urging reconsideration of that policy as part of a renewed effort to transfer all 86 of the cleared detainees. Obama spokesman Carney said Wednesday the Yemen moratorium was among the Guantanamo policies under review.

Vijay Padmanabhan, who was a State Department lawyer responsible for Guantanamo-related cases in the Bush administration, said Obama faces three major questions to achieve his goal of shutting Guantanamo. Padmanabhan said Obama needs to figure out what level of risk he's willing to accept in Yemen, come up with a strategy for prosecuting detainees and determine how to handle those who are considered dangerous but for whom there isn't sufficient evidence for prosecution.

Obama said Tuesday, "The idea that we would still maintain forever a group of individuals who have not been tried, that is contrary to who we are, it is contrary to our interests, and it needs to stop." Padmanabhan saw that as a potential shift in Obama's thinking.

"He's always supported the idea that you should be able to nevertheless detain people indefinitely as combatants," said Padmanabhan, now a professor at Vanderbilt Law School. "For the first time, he's challenging a little bit that later proposition. He's suggesting that maybe it's the case we should be thinking about whether we should be detaining anyone that we aren't capable of prosecuting for the rest of their life."

Resuming transfers through the waivers could help ease some of the despair among the men held at the U.S. base in Cuba, said Jennifer Daskal, a fellow and adjunct law professor at Georgetown University who worked on an Obama administration task force addressing detainee policy issues. The administration could also increase its efforts to find other countries willing to accept Guantanamo prisoners and begin reevaluating whether it's possible now to release any of the 46 men who are slated for indefinite detention, Daskal said.

"The idea that it could be closed tomorrow is completely unrealistic," she said. "But there certainly are things that the administration can do even without congressional action that would begin the process of at least winnowing down the numbers at Guantanamo and hopefully alleviating some of the tension."

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#### Security is a psychological construct—the aff’s scenarios for conflict are products of paranoia that project our violent impulses onto the other

Mack 91 – Doctor of Psychiatry and a professor at Harvard University (John, “The Enemy System” http://www.johnemackinstitute.org/eJournal/article.asp?id=23 \*Gender modified)

**The** **threat of nuclear annihilation** has stimulated us to try to **understand what it is about (hu)mankind that has led to** such self-destroying behavior. Central to this inquiry is an exploration of the adversarial relationships between ethnic or national groups. It is out of such enmities that war, including nuclear war should it occur, has always arisen. Enmity between groups of people stems from the interaction of psychological, economic, and cultural elements. These include fear and hostility (which are often closely related), competition over perceived scarce resources,[3] the need for individuals to identify with a large group or cause,[4] a tendency to disclaim and assign elsewhere responsibility for unwelcome impulses and intentions, and a peculiar susceptibility to emotional manipulation by leaders who play upon our more savage inclinations in the name of national security or the national interest. A full understanding of the "enemy system"[3] requires insights from many specialities, including psychology, anthropology, history, political science, and the humanities. In their statement on violence[5] twenty social and behavioral scientists, who met in Seville, Spain, to examine the roots of war, declared that there was **no scientific basis for regarding (hu)man(s) as** an **innately aggressive** animal, inevitably committed to war. The Seville statement implies that we have real choices. It also points to a hopeful paradox of the nuclear age: threat of nuclear war may have provoked our capacity for fear-driven polarization but at the same time it has inspired unprecedented efforts towards cooperation and settlement of differences without violence. The Real and the Created Enemy Attempts to **explore the psychological roots of enmity** are frequently met with responses on the following lines: "**I can accept psychological explanations of things,** but my enemy is real. The Russians [or Germans, Arabs, Israelis, Americans] are armed, threaten us, and intend us harm. Furthermore, there are real differences between us and our national interests, such as competition over oil, land, or other scarce resources, and genuine conflicts of values between our two nations. It is essential that we be strong and maintain a balance or superiority of **military and political power**, lest the other side take advantage of our weakness". This argument does not address the distinction between the enemy threat and one's own contribution to that threat-**by distortions of perception**, provocative words, and actions. In short, the enemy is real, but **we have not learned to understand how** we have created that enemy, or how the threatening image we hold of the enemy relates to its actual intentions. "We never see our enemy's motives and we never labor to assess his will, with anything approaching objectivity".[6] Individuals may have little to do with the choice of national enemies. Most Americans, for example, know only what has been reported in the mass media about the Soviet Union. We are largely unaware of the forces that operate within our institutions, affecting the thinking of our leaders and ourselves, and which determine how the Soviet Union will be represented to us. Ill-will and a desire for revenge are transmitted from one generation to another, and **we are not taught to** think critically **about how** our assigned enemies are selected for us. In the relations between potential adversarial nations there will have been, inevitably, real grievances that are grounds for enmity. But the attitude of one people towards another is usually determined by leaders who manipulate the minds of citizens for domestic political reasons which are generally unknown to the public. As Israeli sociologist Alouph Haveran has said, in times of conflict between nations **historical accuracy is the first victim**.[8] The Image of the Enemy and How We Sustain It Vietnam veteran William Broyles wrote: "War begins in the mind, with the idea of the enemy."[9] But to sustain that idea in war and peacetime a nation's leaders must maintain public support for the massive expenditures that are required. Studies of enmity have revealed susceptibilities, though not necessarily recognized as such by the governing elites that provide raw material upon which the leaders may draw to sustain the image of an enemy.[7,10] Freud[11] in his examination of mass psychology identified the proclivity of individuals to **surrender personal responsibility to the leaders of large groups**. This surrender takes place in both totalitarian and democratic societies, and without coercion. Leaders can therefore designate outside enemies and take actions against them with little opposition. Much further research is needed to understand the psychological mechanisms that impel individuals to kill or allow killing in their name, often with little questioning of the **morality or consequences** of such actions. Philosopher and psychologist Sam Keen asks why it is that in virtually every war "The enemy is seen as less than human? He's faceless. He's an animal"." Keen tries to answer his question: "The image of the enemy is not only the soldier's most powerful weapon; it is society's most powerful weapon. **It enables people en masse to** participate in acts of violence they would never consider doing as individuals".[12] National leaders become skilled in presenting the adversary in dehumanized images. The mass media, taking their cues from the leadership, contribute powerfully to the process.

#### It’s try or die---orthodox IR’s atomistic approach to global problems makes extinction inevitable

Ahmed 12 Dr. Nafeez Mosaddeq Ahmed is Executive Director of the Institute for Policy Research and Development (IPRD), an independent think tank focused on the study of violent conflict, he has taught at the Department of International Relations, University of Sussex "The international relations of crisis and the crisis of international relations: from the securitisation of scarcity to the militarisation of society" Global Change, Peace & Security Volume 23, Issue 3, 2011 Taylor Francis

3. From securitisation to militarisation 3.1 Complicity

This analysis thus calls for a broader approach to environmental security based on retrieving the manner in which political actors construct discourses of 'scarcity' in response to ecological, energy and economic crises (critical security studies) in the context of the historically-specific socio-political and geopolitical relations of domination by which their power is constituted, and which are often implicated in the acceleration of these very crises (historical sociology and historical materialism).

Instead, both realist and liberal orthodox IR approaches focus on different aspects of interstate behaviour, conflictual and cooperative respectively, but each lacks the capacity to grasp that the unsustainable trajectory of state and inter-state behaviour is only explicable in the context of a wider global system concurrently over-exploiting the biophysical environment in which it is embedded. They are, in other words, unable to address the relationship of the inter-state system itself to the biophysical environment as a key analytical category for understanding the acceleration of global crises. They simultaneously therefore cannot recognise the embeddedness of the economy in society and the concomitant politically-constituted nature of economics.

Hence, they neglect the profound irrationality of collective state behaviour, which systematically erodes this relationship, globalising insecurity on a massive scale - in the very process of seeking security.85 In Cox's words, because positivist IR theory 'does not question the present order [it instead] has the effect of legitimising and reifying it'.86 Orthodox IR sanitises globally-destructive collective inter-state behaviour as a normal function of instrumental reason -thus rationalising what are clearly deeply irrational collective human actions that threaten to permanently erode state power and security by destroying the very conditions of human existence. Indeed, the prevalence of orthodox IR as a body of disciplinary beliefs, norms and prescriptions organically conjoined with actual policy-making in the international system highlights the extent to which both realism and liberalism are ideologically implicated in the acceleration of global systemic crises.

By the same token, the incapacity to recognise and critically interrogate how prevailing social, political and economic structures are driving global crisis acceleration has led to the proliferation of symptom-led solutions focused on the expansion of state/regime military-political power rather than any attempt to transform root structural causes.88 It is in this context that, as the prospects for meaningful reform through inter-state cooperation appear increasingly nullified under the pressure of actors with a vested interest in sustaining prevailing geopolitical and economic structures, states have resorted progressively more to militarised responses designed to protect the concurrent structure of the international system from dangerous new threats. In effect, the failure of orthodox approaches to accurately diagnose global crises, directly accentuates a tendency to 'securitise' them - and this, ironically, fuels the proliferation of violent conflict and militarisation responsible for magnified global insecurity.

'Securitisation' refers to a 'speech act' - an act of labelling - whereby political authorities identify particular issues or incidents as an existential threat which, because of their extreme nature, justify going beyond the normal security measures that are within the rule of law. It thus legitimises resort to special extra-legal powers. By labelling issues a matter of 'security', therefore, states are able to move them outside the remit of democratic decision-making and into the realm of emergency powers, all in the name of survival itself. Far from representing a mere aberration from democratic state practice, this discloses a deeper 'dual' structure of the state in its institutionalisation of the capacity to mobilise extraordinary extra-legal military-police measures in purported response to an existential danger.

The problem in the context of global ecological, economic and energy crises is that such levels of emergency mobilisation and militarisation have no positive impact on the very global crises generating 'new security challenges', and are thus entirely disproportionate.90 All that remains to examine is on the 'surface' of the international system (geopolitical competition, the balance of power, international regimes, globalisation and so on), phenomena which are dislocated from their structural causes by way of being unable to recognise the biophysically-embedded and politically-constituted social relations of which they are comprised. The consequence is that orthodox IR has no means of responding to global systemic crises other than to reduce them to their symptoms.

Indeed, orthodox IR theory has largely responded to global systemic crises not with new theory, but with the expanded application of existing theory to 'new security challenges' such as 'low-intensity' intra-state conflicts; inequality and poverty; environmental degradation; international criminal activities including drugs and arms trafficking; proliferation of weapons of mass destruction; and international terrorism.91 Although the majority of such 'new security challenges' are non-military in origin - whether their referents are states or individuals - the inadequacy of systemic theoretical frameworks to diagnose them means they are primarily examined through the lenses of military-political power.92 In other words, the escalation of global ecological, energy and economic crises is recognised not as evidence that the current organisation of the global political economy is fundamentally unsustainable, requiring urgent transformation, but as vindicating the necessity for states to radicalise the exertion of their military-political capacities to maintain existing power structures, to keep the lid on.93

Global crises are thus viewed as amplifying factors that could mobilise the popular will in ways that challenge existing political and economic structures, which it is presumed (given that state power itself is constituted by these structures) deserve protection. This justifies the state's adoption of extra-legal measures outside the normal sphere of democratic politics. In the context of global crisis impacts, this counter-democratic trend-line can result in a growing propensity to problematise potentially recalcitrant populations - rationalising violence toward them as a control mechanism.

Consequently, for the most part, the policy implications of orthodox IR approaches involve a redundant conceptualisation of global systemic crises purely as potential 'threat-multipliers' of traditional security issues such as 'political instability around the world, the collapse of governments and the creation of terrorist safe havens'. Climate change will serve to amplify the threat of international terrorism, particularly in regions with large populations and scarce resources. The US Army, for instance, depicts climate change as a 'stress-multiplier' that will 'exacerbate tensions' and 'complicate American foreign policy'; while the EU perceives it as a 'threat-multiplier which exacerbates existing trends, tensions and instability'.95

In practice, this generates an excessive preoccupation not with the causes of global crisis acceleration and how to ameliorate them through structural transformation, but with their purportedly inevitable impacts, and how to prepare for them by controlling problematic populations. Paradoxically, this 'securitisation' of global crises does not render us safer. Instead, by necessitating more violence, while inhibiting preventive action, it guarantees greater insecurity. Thus, a recent US Department of Defense report explores the future of international conflict up to 2050. It warns of 'resource competition induced by growing populations and expanding economies', particularly due to a projected 'youth bulge' in the South, which 'will consume ever increasing amounts of food, water and energy'. This will prompt a 'return to traditional security threats posed by emerging near-peers as we compete globally for depleting natural resources and overseas markets'. Finally, climate change will 'compound' these stressors by generating humanitarian crises, population migrations and other complex emergencies.96

A similar study by the US Joint Forces Command draws attention to the danger of global energy depletion through to 2030. Warning of ‘the dangerous vulnerabilities the growing energy crisis presents’, the report concludes that ‘The implications for future conflict are ominous.’97 Once again, the subject turns to demographics: ‘In total, the world will add approximately 60 million people each year and reach a total of 8 billion by the 2030s’, 95 per cent accruing to developing countries, while populations in developed countries slow or decline. ‘Regions such as the Middle East and Sub-Saharan Africa, where the youth bulge will reach over 50% of the population, will possess fewer inhibitions about engaging in conflict.’98 The assumption is that regions which happen to be both energy-rich and Muslim-majority will also be sites of violent conflict due to their rapidly growing populations. A British Ministry of Defence report concurs with this assessment, highlighting an inevitable ‘youth bulge’ by 2035, with some 87 per cent of all people under the age of 25 inhabiting developing countries. In particular, the Middle East population will increase by 132 per cent and sub-Saharan Africa by 81 per cent. Growing resentment due to ‘endemic unemployment’ will be channelled through ‘political militancy, including radical political Islam whose concept of Umma, the global Islamic community, and resistance to capitalism may lie uneasily in an international system based on nation-states and global market forces’. More strangely, predicting an intensifying global divide between a super-rich elite, the middle classes and an urban under-class, the report warns: ‘The world’s middle classes might unite, using access to knowledge, resources and skills to shape transnational processes in their own class interest.’99

Thus, the securitisation of global crisis leads not only to the problematisation of particular religious and ethnic groups in foreign regions of geopolitical interest, but potentially extends this problematisation to any social group which might challenge prevailing global political economic structures across racial, national and class lines. The previous examples illustrate how secur-itisation paradoxically generates insecurity by reifying a process of militarization against social groups that are constructed as external to the prevailing geopolitical and economic order. In other words, the internal reductionism, fragmentation and compartmentalisation that plagues orthodox theory and policy reproduces precisely these characteristics by externalising global crises from one another, externalising states from one another, externalising the inter-state system from its biophysical environment, and externalising new social groups as dangerous 'outsiders\*. Hence, a simple discursive analysis of state militarisation and the construction of new "outsider\* identities is insufficient to understand the causal dynamics driving the process of 'Otherisation'. As Doug Stokes points out, the Western state preoccupation with the ongoing military struggle against international terrorism reveals an underlying 'discursive complex", where representations about terrorism and non-Western populations are premised on 'the construction of stark boundaries\* that 'operate to exclude and include\*. Yet these exclusionary discourses are 'intimately bound up with political and economic processes', such as strategic interests in proliferating military bases in the Middle East, economic interests in control of oil, and the wider political goal of 'maintaining American hegemony\* by dominating a resource-rich region critical for global capitalism.100

But even this does not go far enough, for arguably the construction of certain hegemonic discourses is mutually constituted by these geopolitical, strategic and economic interests — exclusionary discourses are politically constituted. New conceptual developments in genocide studies throw further light on this in terms of the concrete socio-political dynamics of securitisation processes. It is now widely recognised, for instance, that the distinguishing criterion of genocide is not the pre-existence of primordial groups, one of which destroys the other on the basis of a preeminence in bureaucratic military-political power. Rather, genocide is the intentional attempt to destroy a particular social group that has been socially constructed as different. As Hinton observes, genocides precisely constitute a process of 'othering\* in which an imagined community becomes reshaped so that previously 'included\* groups become 'ideologically recast' and dehumanised as threatening and dangerous outsiders, be it along ethnic, religious, political or economic lines — eventually legitimising their annihilation.102

In other words, genocidal violence is inherently rooted in a prior and ongoing ideological process, whereby exclusionary group categories are innovated, constructed and 'Otherised' in accordance with a specific socio-political programme. The very process of identifying and classifying particular groups as outside the boundaries of an imagined community of 'inclusion\*, justifying exculpatory violence toward them, is itself a political act without which genocide would be impossible.1 3 This recalls Lemkin's recognition that the intention to destroy a group is integrally connected with a wider socio-political project - or colonial project — designed to perpetuate the political, economic, cultural and ideological relations of the perpetrators in the place of that of the victims, by interrupting or eradicating their means of social reproduction. Only by interrogating the dynamic and origins of this programme to uncover the social relations from which that programme derives can the emergence of genocidal intent become explicable.

Building on this insight, Semelin demonstrates that the process of exclusionary social group construction invariably derives from political processes emerging from deep-seated sociopolitical crises that undermine the prevailing framework of civil order and social norms; and which can, for one social group, be seemingly resolved by projecting anxieties onto a new 'outsider' group deemed to be somehow responsible for crisis conditions. It is in this context that various forms of mass violence, which may or may not eventually culminate in actual genocide, can become legitimised as contributing to the resolution of crises.105

This does not imply that the securitisation of global crises by Western defence agencies is genocidal. Rather, the same essential dynamics of social polarisation and exclusionary group identity formation evident in genocides are highly relevant in understanding the radicalisation processes behind mass violence. This highlights the fundamental connection between social crisis, the breakdown of prevailing norms, the formation of new exclusionary group identities, and the projection of blame for crisis onto a newly constructed 'outsider' group vindicating various forms of violence.

#### Don’t call it an alternative---our response is to interrogate the epistemological failures of the 1ac---this is a prereq to successful policy

Ahmed 12 Dr. Nafeez Mosaddeq Ahmed is Executive Director of the Institute for Policy Research and Development (IPRD), an independent think tank focused on the study of violent conflict, he has taught at the Department of International Relations, University of Sussex "The international relations of crisis and the crisis of international relations: from the securitisation of scarcity to the militarisation of society" Global Change, Peace & Security Volume 23, Issue 3, 2011 Taylor Francis

While recommendations to shift our frame of orientation away from conventional state-centrism toward a 'human security' approach are valid, this cannot be achieved without confronting the deeper theoretical assumptions underlying conventional approaches to 'non-traditional' security issues.106 By occluding the structural origin and systemic dynamic of global ecological, energy and economic crises, orthodox approaches are incapable of transforming them. Coupled with their excessive state-centrism, this means they operate largely at the level of 'surface' impacts of global crises in terms of how they will affect quite traditional security issues relative to sustaining state integrity, such as international terrorism, violent conflict and population movements. Global crises end up fuelling the projection of risk onto social networks, groups and countries that cross the geopolitical fault-lines of these 'surface' impacts - which happen to intersect largely with Muslim communities. Hence, regions particularly vulnerable to climate change impacts, containing large repositories of hydrocarbon energy resources, or subject to demographic transformations in the context of rising population pressures, have become the focus of state security planning in the context of counter-terrorism operations abroad.

The intensifying problematisation and externalisation of Muslim-majority regions and populations by Western security agencies - as a discourse - is therefore not only interwoven with growing state perceptions of global crisis acceleration, but driven ultimately by an epistemological failure to interrogate the systemic causes of this acceleration in collective state policies (which themselves occur in the context of particular social, political and economic structures). This expansion of militarisation is thus coeval with the subliminal normative presumption that the social relations of the perpetrators, in this case Western states, must be protected and perpetuated at any cost - precisely because the efficacy of the prevailing geopolitical and economic order is ideologically beyond question.

As much as this analysis highlights a direct link between global systemic crises, social polarisation and state militarisation, it fundamentally undermines the idea of a symbiotic link between natural resources and conflict per se. Neither 'resource shortages' nor 'resource abundance' (in ecological, energy, food and monetary terms) necessitate conflict by themselves.

There are two key operative factors that determine whether either condition could lead to conflict. The first is the extent to which either condition can generate socio-political crises that challenge or undermine the prevailing order. The second is the way in which stakeholder actors choose to actually respond to the latter crises. To understand these factors accurately requires close attention to the political, economic and ideological strictures of resource exploitation, consumption and distribution between different social groups and classes. Overlooking the systematic causes of social crisis leads to a heightened tendency to problematise its symptoms, in the forms of challenges from particular social groups. This can lead to externalisation of those groups, and the legitimisation of violence towards them.

Ultimately, this systems approach to global crises strongly suggests that conventional policy 'reform' is woefully inadequate. Global warming and energy depletion are manifestations of a civilisation which is in overshoot. The current scale and organisation of human activities is breaching the limits of the wider environmental and natural resource systems in which industrial civilisation is embedded. This breach is now increasingly visible in the form of two interlinked crises in global food production and the global financial system. In short, industrial civilisation in its current form is unsustainable. This calls for a process of wholesale civilisational transition to adapt to the inevitable arrival of the post-carbon era through social, political and economic transformation.

Yet conventional theoretical and policy approaches fail to (1) fully engage with the gravity of research in the natural sciences and (2) translate the social science implications of this research in terms of the embeddedness of human social systems in natural systems. Hence, lacking capacity for epistemological self-reflection and inhibiting the transformative responses urgently required, they reify and normalise mass violence against diverse 'Others', newly constructed as traditional security threats enormously amplified by global crises - a process that guarantees the intensification and globalisation of insecurity on the road to ecological, energy and economic catastrophe. Such an outcome, of course, is not inevitable, but extensive new transdisciplinary research in IR and the wider social sciences - drawing on and integrating human and critical security studies, political ecology, historical sociology and historical materialism, while engaging directly with developments in the natural sciences - is urgently required to develop coherent conceptual frameworks which could inform more sober, effective, and joined-up policy-making on these issues.

## Case

## Solvency

### Circumvention

#### The president will circumvent the aff

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3. Executive Forum-Discretion--Any reform which allows for adjudication of guilt in different forums, each with differing procedural protections, raises serious questions of legitimacy and also incentivizes the Executive to use "lesser" forms of justice--nonprosecution or prosecutions by military commission. In this section, my focus is on the incentives which compel the Executive to not prosecute, or to prosecute in military commissions rather than Article III courts. Understanding the reason for these discretionary decisions will guide reformers pondering whether a new system will actually be used by the next President.¶ There are two primary concerns that executive actors face when selecting a forum: protecting intelligence and ensuring trial outcomes. Executive forum-discretion is a different form of prosecutorial discretion with a different balancing inquiry from the one engaged in by courts. Where prosecutorial discretion largely deals with the charges a defendant will face, executive forum-discretion impacts the procedural protections a defendant can expect at both the pretrial and trial phase. Where balancing by Courts largely focuses on ensuring a just outcome which protects rights, the balancing engaged in by executive actors has inwardly directed objectives [\*50] which value rights only to the degree they impact the Executive's self interest.¶Given the unique implications flowing from forum determinations, reformers can benefit from understanding why an executive actor chooses one trial forum over another. I contend that there are seven predictive factors that influence executive discretion; national security court reformers should be aware of at least the two most salient predictive factors: trial outcomes and protection of intelligence equities. n112 The Executive's balancing of factors yields outcomes with direct implications for fundamental notions of due process and substantial justice. Any proposed reform is incomplete without thoroughly addressing the factors that the Executive balances.

### 1NC Solvency

#### No solvency—wouldn’t be seen as different from the squo

Benjamin Davis 07, professor at the University of Toledo College of Law, 7/12/07, “Against a US 'Terrorists' Court',” <http://jurist.law.pitt.edu/forumy/2007/07/against-us-terrorist-court.php>

What a sad day! I am amazed! Law professors who are preventive detention advocates! A National Security Court! Have things gone this far in this country that people are really mulling seriously the merits of a preventive detention regime? Is the hysteria this crazy? ¶ I would ask all people of goodwill to take a quick look through the various cases that the federal courts have dismissed on state secret, federal officer immunity, political question etc. doctrines where people held in detention have complained of "horrendous" treatment and the courts have shown absolutely no interest in exploring those claims. I would ask you to look at the recent “standing” decision of the Court of Appeals in the ACLU vs. NSA case and recognize that, once an issue is presented in this environment in a national security context, if one complains the courts does not want to hear you as those fearful of having lost rights are not considered sufficiently harmed. All of those decisions have been made by eminent federal judges and the necklace of decisions from the perspective of vindication of basic rules of international law or constitutional law (as the lower court did in the case of ACLU vs. NSA but the Appeals Court did not) is terribly troubling. And with the decisions that appear to be shifting against the “little guy” in this term of the Supreme Court I as one am terribly concerned that ultimate appellate review will not be better.¶ Might I suggest that this is a further iteration from the Presidential Military Order, through the CSRTs and MCAs, through centralizing in the DC Court of Appeal, now into a fourth mutation to keep moving the ball on what we are doing. It is like an intoxication with improvisation.

## Terrorism Adv

### WoT DA

#### Exec flexibility on detention powers now

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President Obama signed the NDAA "despite having serious reservations with certain provisions that regulate the detention, interrogation, and prosecution of suspected terrorists." n114 While the Administration voiced concerns throughout the legislative process, those concerns were addressed and ultimately resulted in a bill that preserves the flexibility needed to adapt to changing circumstances and upholds America's values. The President reiterated his support for language in Section 1021 making clear that the new legislation does not limit or expand the scope of Presidential authority under the AUMF or affect existing authorities "relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States." n115¶ The President underscored his Administration "will not authorize the indefinite military detention without trial of American citizens" and will ensure any authorized detention "complies with the Constitution, the laws of war, and all other applicable law." n116 Yet understanding fully the Administration's position requires recourse to its prior insistence that the Senate Armed Services Committee remove language in the original bill which provided that U.S. citizens and lawful resident aliens captured in the United States would not be subject to Section 1021. n117 There appears to be a balancing process at work here. On the one hand, the Administration is in lock-step with Congress that the NDAA should neither expand nor diminish the President's detention authority. On the other hand, policy considerations led the President to express an intention to narrowly exercise this detention authority over American citizens.¶ The overriding point is that the legislation preserves the full breadth and depth of detention authority existent in the AUMF, to include the detention of American citizens who join forces with Al Qaida. This is a dynamic and changing conflict. If a home-grown terrorist destroys a U.S. target, the FBI gathers the evidence, and a U.S. Attorney prosecutes, traditional civilian criminal laws govern, and the military detention authority resident in the NDAA need never come into play. This is a reasonable and expected outcome in many cases. The pending strike on rail targets posited in this paper's introduction, where intelligence sources reveal an inchoate attack involving American and foreign nationals operating overseas and at home, however, may be precisely the type of scenario where military detention is not only preferred but vital to thwarting the attack, conducting interrogations about known and hidden dangers, and preventing terrorists from continuing the fight.

#### Reforms result in catastrophic terrorism---releases them and kills intel gathering

Jack Goldsmith 09, Henry L. Shattuck Professor at Harvard Law School, 2/4/09, “Long-Term Terrorist Detention and Our National Security Court,” http://www.brookings.edu/~/media/research/files/papers/2009/2/09%20detention%20goldsmith/0209\_detention\_goldsmith.pdf

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

### Intel DA

#### Any reforms to detention policy kill intel coop

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Intelligence agencies seek to control the dissemination of information that they have collected through classification and use procedures. When an intelligence agency shares information with an allied power it often does so by placing requirements on how the recipient will protect and use that information. n102 The most appropriate method that exists for sharing information is the concept of originator controlled information. This method ensures that intelligence labeled as such "cannot be used or disseminated without the consent of the originator." n103¶ This approach requires time consuming negotiations in order to gain the information. n104 For national security courts a problem arises when restricted [\*48] foreign evidence shared by an allied power for use in detention of suspected terrorists or intelligence that was shared for use in military commissions was shared conditionally. Allied nations may refuse to allow U.S. officials to use such evidence in any other forum such as courts-martial, federal courts, or a national security court. This phenomenon of originator controlled information presents a significant yet unaddressed obstacle which may prevent a transition to a system other than military commissions. Unless a reform system has protections at least as robust as military commissions that convinces allies their information is secure, some defendants may be beyond prosecution.

#### Intelligence cooperation solves WMD use

John Yoo 4, Emanuel S. Heller Professor of Law @ UC-Berkeley Law, visiting scholar @ the American Enterprise Institute, former Fulbright Distinguished Chair in Law @ the University of Trento, served as a deputy assistant attorney general in the Office of Legal Council at the U.S. Department of Justice between 2001 and 2003, received his J.D. from Yale and his undergraduate degree from Harvard, “War, Responsibility, and the Age of Terrorism,” UC-Berkeley Public Law and Legal Theory Research Paper Series, http://works.bepress.com/cgi/viewcontent.cgi?article=1015&context=johnyoo

Third, the nature of warfare against such unconventional enemies may well be different from the set-piece battlefield matches between nation-states. Gathering intelligence, from both electronic and human sources, about the future plans of terrorist groups may be the only way to prevent September 11-style attacks from occurring again. Covert action by the Central Intelligence Agency or unconventional measures by special forces may prove to be the most effective tool for acting on that intelligence. Similarly, the least dangerous means for preventing rogue nations from acquiring WMD may depend on secret intelligence gathering and covert action, rather than open military intervention. A public revelation of the means of gathering intelligence, or the discussion of the nature of covert actions taken to forestall the threat by terrorist organizations or rogue nations, could render the use of force ineffectual or sources of information useless. Suppose, for example, that American intelligence agencies detected through intercepted phone calls that a terrorist group had built headquarters and training facilities in Yemen. A public discussion in Congress about a resolution to use force against Yemeni territory and how Yemen was identified could tip-off the group, allowing terrorists to disperse and to prevent further interception of their communications.

### AT: Terrorism Impact

#### No terrorism impact

Zenko & Cohen 12 – Micah Zenko, Fellow in the Center for Preventive Action at the Council on Foreign Relations; and Michael A. Cohen, Fellow at the Century Foundation, March/April 2012, “Clear and Present Safety,” Foreign Affairs, Vol. 91, No. 2, p. 79-93

Take terrorism. Since 9/11, no security threat has been hyped more. Considering the horrors of that day, that is not surprising. But the result has been a level of fear that is completely out of proportion to both the capabilities of terrorist organizations and the United States' vulnerability. On 9/11, al Qaeda got tragically lucky. Since then, the United States has been preparing for the one percent chance (and likely even less) that it might get lucky again. But al Qaeda lost its safe haven after the U.S.-led invasion of Afghanistan in 2001, and further military, diplomatic, intelligence, and law enforcement efforts have decimated the organization, which has essentially lost whatever ability it once had to seriously threaten the United States.¶ According to U.S. officials, al Qaeda's leadership has been reduced to two top lieutenants: Ayman al-Zawahiri and his second-in-command, Abu Yahya al-Libi. Panetta has even said that the defeat of al Qaeda is "within reach." The near collapse of the original al Qaeda organization is one reason why, in the decade since 9/11, the U.S. homeland has not suffered any large-scale terrorist assaults. All subsequent attempts have failed or been thwarted, owing in part to the incompetence of their perpetrators. Although there are undoubtedly still some terrorists who wish to kill Americans, their dreams will likely continue to be frustrated by their own limitations and by the intelligence and law enforcement agencies of the United States and its allies.

#### No impact---super unlikely

Schneidmiller 9(Chris, Experts Debate Threat of Nuclear, Biological Terrorism, 13 January 2009, http://www.globalsecuritynewswire.org/gsn/nw\_20090113\_7105.php)

There is an "almost vanishinglysmall" likelihood that terrorists would ever be able to acquire and detonate a nuclear weapon, one expert said here yesterday (see GSN, Dec. 2, 2008). In even the most likely scenario of nuclear terrorism, there are 20 barriers between extremists and a successful nuclear strike on a major city, said John Mueller, a political science professor at Ohio State University. The process itself is seemingly straightforward but exceedingly difficult -- buy or steal highly enriched uranium, manufacture a weapon, take the bomb to the target site and blow it up. Meanwhile, variables strewn across the path to an attack would increase the complexity of the effort, Mueller argued. Terrorists would have to bribe officials in a state nuclear program to acquire the material, while avoiding a sting by authorities or a scam by the sellers. The material itself could also turn out to be bad. "Once the purloined material is purloined, [police are] going to be chasing after you. They are also going to put on a high reward, extremely high reward, on getting the weapon back or getting the fissile material back," Mueller said during a panel discussion at a two-day Cato Institute conference on counterterrorism issues facing the incoming Obama administration. Smuggling the material out of a country would mean relying on criminals who "are very good at extortion" and might have to be killed to avoid a double-cross, Mueller said. The terrorists would then have to find scientists and engineers willing to give up their normal lives to manufacture a bomb, which would require an expensive and sophisticated machine shop. Finally, further technological expertise would be needed to sneak the weapon across national borders to its destination point and conduct a successful detonation, Mueller said. Every obstacle is "difficult but not impossible" to overcome, Mueller said, putting the chance of success at no less than one in three for each. The likelihood of successfully passing through each obstacle, in sequence, would be roughly one in 3 1/2 billion, he said, but for argument's sake dropped it to 3 1/2 million. "It's a total gamble. This is a very expensive and difficult thing to do," said Mueller, who addresses the issue at greater length in an upcoming book, *Atomic Obsession*. "So unlike buying a ticket to the lottery ... you're basically putting everything, including your life, at stake for a gamble that's maybe one in 3 1/2 million or 3 1/2 billion." Other scenarios are even less probable, Mueller said. A nuclear-armed state is "exceedingly unlikely" to hand a weapon to a terrorist group, he argued: "States just simply won't give it to somebody they can't control." Terrorists are also not likely to be able to steal a whole weapon, Mueller asserted, dismissing the idea of "loose nukes." Even Pakistan, which today is perhaps the nation of greatest concern regarding nuclear security, keeps its bombs in two segments that are stored at different locations, he said (see *GSN*, Jan. 12). Fear of an "extremely improbable event" such as nuclear terrorism produces support for a wide range of homeland security activities, Mueller said. He argued that there has been a major and costly overreaction to the terrorism threat -- noting that the Sept. 11 attacks helped to precipitate the invasion of Iraq, which has led to far more deaths than the original event. Panel moderator Benjamin Friedman, a research fellow at the Cato Institute, said academic and governmental discussions of acts of nuclear or biological terrorism have tended to focus on "worst-case assumptions about terrorists' ability to use these weapons to kill us." There is need for consideration for what is probable rather than simply what is possible, he said. Friedman took issue with the finding late last year of an experts' report that an act of WMD terrorism would "more likely than not" occur in the next half decade unless the international community takes greater action. "I would say that the report, if you read it, actually offers no analysis to justify that claim**,** which seems to have been made to change policy by generating alarm in headlines." One panel speaker offered a partial rebuttal to Mueller's presentation. Jim Walsh, principal research scientist for the Security Studies Program at the Massachusetts Institute of Technology, said he agreed that nations would almost certainly not give a nuclear weapon to a nonstate group, that most terrorist organizations have no interest in seeking out the bomb, and that it would be difficult to build a weapon or use one that has been stolen.

#### No impact

John Mueller and Mark G. Stewart 12, Senior Research Scientist at the Mershon Center for International Security Studies and Adjunct Professor in the Department of Political Science, both at Ohio State University, and Senior Fellow at the Cato Institute AND Australian Research Council Professorial Fellow and Professor and Director at the Centre for Infrastructure Performance and Reliability at the University of Newcastle, "The Terrorism Delusion," Summer, International Security, Vol. 37, No. 1, politicalscience.osu.edu/faculty/jmueller//absisfin.pdf

In 2009, the U.S. Department of Homeland Security (DHS) issued a lengthy report on protecting the homeland. Key to achieving such an objective should be a careful assessment of the character, capacities, and desires of potential terrorists targeting that homeland. Although the report contains a section dealing with what its authors call “the nature of the terrorist adversary,” the section devotes only two sentences to assessing that nature: “The number and high profile of international and domestic terrorist attacks and disrupted plots during the last two decades underscore the determination and persistence of terrorist organizations. Terrorists have proven to be relentless, patient, opportunistic, and flexible, learning from experience and modifying tactics and targets to exploit perceived vulnerabilities and avoid observed strengths.”8¶ This description may apply to some terrorists somewhere, including at least a few of those involved in the September 11 attacks. Yet, it scarcely describes the vast majority of those individuals picked up on terrorism charges in the United States since those attacks. The inability of the DHS to consider this fact even parenthetically in its fleeting discussion is not only amazing but perhaps delusional in its single-minded preoccupation with the extreme.¶ In sharp contrast, the authors of the case studies, with remarkably few exceptions, describe their subjects with such words as incompetent, ineffective, unintelligent, idiotic, ignorant, inadequate, unorganized, misguided, muddled, amateurish, dopey, unrealistic, moronic, irrational, and foolish.9 And in nearly all of the cases where an operative from the police or from the Federal Bureau of Investigation was at work (almost half of the total), the most appropriate descriptor would be “gullible.”¶ In all, as Shikha Dalmia has put it, would-be terrorists need to be “radicalized enough to die for their cause; Westernized enough to move around without raising red flags; ingenious enough to exploit loopholes in the security apparatus; meticulous enough to attend to the myriad logistical details that could torpedo the operation; self-sufficient enough to make all the preparations without enlisting outsiders who might give them away; disciplined enough to maintain complete secrecy; and—above all—psychologically tough enough to keep functioning at a high level without cracking in the face of their own impending death.”10 The case studies examined in this article certainly do not abound with people with such characteristics. ¶ In the eleven years since the September 11 attacks, no terrorist has been able to detonate even a primitive bomb in the United States, and except for the four explosions in the London transportation system in 2005, neither has any in the United Kingdom. Indeed, the only method by which Islamist terrorists have managed to kill anyone in the United States since September 11 has been with gunfire—inflicting a total of perhaps sixteen deaths over the period (cases 4, 26, 32).11 This limited capacity is impressive because, at one time, small-scale terrorists in the United States were quite successful in setting off bombs. Noting that the scale of the September 11 attacks has “tended to obliterate America’s memory of pre-9/11 terrorism,” Brian Jenkins reminds us (and we clearly do need reminding) that the 1970s witnessed sixty to seventy terrorist incidents, mostly bombings, on U.S. soil every year.12¶ The situation seems scarcely different in Europe and other Western locales. Michael Kenney, who has interviewed dozens of government officials and intelligence agents and analyzed court documents, has found that, in sharp contrast with the boilerplate characterizations favored by the DHS and with the imperatives listed by Dalmia, Islamist militants in those locations are operationally unsophisticated, short on know-how, prone to making mistakes, poor at planning, and limited in their capacity to learn.13 Another study documents the difficulties of network coordination that continually threaten the terrorists’ operational unity, trust, cohesion, and ability to act collectively.14¶ In addition, although some of the plotters in the cases targeting the United States harbored visions of toppling large buildings, destroying airports, setting off dirty bombs, or bringing down the Brooklyn Bridge (cases 2, 8, 12, 19, 23, 30, 42), all were nothing more than wild fantasies, far beyond the plotters’ capacities however much they may have been encouraged in some instances by FBI operatives. Indeed, in many of the cases, target selection is effectively a random process, lacking guile and careful planning. Often, it seems, targets have been chosen almost capriciously and simply for their convenience. For example, a would-be bomber targeted a mall in Rockford, Illinois, because it was nearby (case 21). Terrorist plotters in Los Angeles in 2005 drew up a list of targets that were all within a 20-mile radius of their shared apartment, some of which did not even exist (case 15). In Norway, a neo-Nazi terrorist on his way to bomb a synagogue took a tram going the wrong way and dynamited a mosque instead.15

### AT: Taboo

## Leadership Adv

### Drone Shift DA

#### Obama is prioritizing capture over drone strikes now

David Corn 13, Washington Bureau Chief at Mother Jones, 5/23/13, “Obama's Counterterrorism Speech: A Pivot Point on Drones and More?,” http://www.motherjones.com/mojo/2013/05/obama-speech-drones-civil-liberties

So Obama's speech Thursday on counterterrorism policies—which follows his administration's acknowledgment yesterday that it had killed four Americans (including Anwar al-Awlaki, an Al Qaeda leader in Yemen)—is a big deal, for with this address, Obama is self-restricting his use of drones and shifting control of them from the CIA to the military. And the president has approved making public the rules governing drone strikes.¶ The New York Times received the customary pre-speech leak and reported:¶ A new classified policy guidance signed by Mr. Obama will sharply curtail the instances when unmanned aircraft can be used to attack in places that are not overt war zones, countries like Pakistan, Yemen and Somalia. The rules will impose the same standard for strikes on foreign enemies now used only for American citizens deemed to be terrorists.¶ Lethal force will be used only against targets who pose "a continuing, imminent threat to Americans" and cannot feasibly be captured, Attorney General Eric H. Holder Jr. said in a letter to Congress, suggesting that threats to a partner like Afghanistan or Yemen alone would not be enough to justify being targeted.¶ These moves may not satisfy civil-liberties-minded critics on sthe right and the left. Obama is not declaring an end to indefinite detention or announcing the closing of Gitmo—though he is echoing his State of the Union vow to revive efforts to shut down that prison. Still, these moves would be unimaginable in the Bush years. Bush and Cheney essentially believed the commander in chief had unchallenged power during wartime, and the United States, as they saw it, remained at war against terrorism. Yet here is Obama subjecting the drone program to a more restrictive set of rules—and doing so publicly. This is very un-Cheney-like. (How soon before the ex-veep arises from his undisclosed location to accuse Obama of placing the nation at risk yet again?)¶ Despite Obama's embrace of certain Bush-Cheney practices and his robust use of drones, the president has tried since taking office to shift US foreign policy from a fixation on terrorism. During his first days in office, he shied away from using the "war on terrorism" phrase. And his national security advisers have long talked of Obama's desire to reorient US foreign policy toward challenges in the Pacific region. By handing responsibility for drone strikes to the military, Obama is helping CIA chief John Brennan, who would like to see his agency move out of the paramilitary business and devote more resources to its traditional tasks of intelligence gathering and analysis.¶ With this speech, Obama is not renouncing his administration's claim that it possesses the authority to kill an American overseas without full due process. The target, as Holder noted in that letter to Congress, must be a senior operational leader of Al Qaeda or an associated group who poses an "imminent threat of violent attack against the United States" and who cannot be captured, and Holder stated that foreign suspects now can only be targeted if they pose "a continuing, imminent threat to Americans." (Certainly, there will be debates over the meaning of "imminent," especially given that the Obama administration has previously used an elastic definition of imminence.) And Obama is not declaring an end to the dicey practice of indefinite detention or a conclusion to the fight against terrorism.

#### Restricting detention policies means we kill and extradite prisoners

Jack Goldsmith 09, a professor at Harvard Law School and a member of the Hoover Institution Task Force on National Security and Law, assistant attorney general in the Bush administration, 5/31/09, “The Shell Game on Detainees and Interrogation,” <http://www.washingtonpost.com/wp-dyn/content/article/2009/05/29/AR2009052902989.html>

The cat-and-mouse game does not end there. As detentions at Bagram and traditional renditions have come under increasing legal and political scrutiny, the Bush and Obama administrations have relied more on other tactics. They have secured foreign intelligence services to do all the work -- capture, incarceration and interrogation -- for all but the highest-level detainees. And they have increasingly employed targeted killings, a tactic that eliminates the need to interrogate or incarcerate terrorists but at the cost of killing or maiming suspected terrorists and innocent civilians alike without notice or due process.¶ There are at least two problems with this general approach to incapacitating terrorists. First, it is not ideal for security. Sometimes it would be more useful for the United States to capture and interrogate a terrorist (if possible) than to kill him with a Predator drone. Often the United States could get better information if it, rather than another country, detained and interrogated a terrorist suspect. Detentions at Guantanamo are more secure than detentions in Bagram or in third countries.¶ The second problem is that terrorist suspects often end up in less favorable places. Detainees in Bagram have fewer rights than prisoners at Guantanamo, and many in Middle East and South Asian prisons have fewer yet. Likewise, most detainees would rather be in one of these detention facilities than be killed by a Predator drone. We congratulate ourselves when we raise legal standards for detainees, but in many respects all we are really doing is driving the terrorist incapacitation problem out of sight, to a place where terrorist suspects are treated worse.¶ It is tempting to say that we should end this pattern and raise standards everywhere. Perhaps we should extend habeas corpus globally, eliminate targeted killing and cease cooperating with intelligence services from countries that have poor human rights records. This sentiment, however, is unrealistic. The imperative to stop the terrorists is not going away. The government will find and exploit legal loopholes to ensure it can keep up our defenses.¶ This approach to detention policy reflects a sharp disjunction between the public's view of the terrorist threat and the government's. After nearly eight years without a follow-up attack, the public (or at least an influential sliver) is growing doubtful about the threat of terrorism and skeptical about using the lower-than-normal standards of wartime justice.¶ The government, however, sees the terrorist threat every day and is under enormous pressure to keep the country safe. When one of its approaches to terrorist incapacitation becomes too costly legally or politically, it shifts to others that raise fewer legal and political problems. This doesn't increase our safety or help the terrorists. But it does make us feel better about ourselves.

### AT: Human Rights Impact

#### Authoritarian states don’t follow norms — their “US justifies others” arg is naive

John O. McGinnis 7, Professor of Law, Northwestern University School of Law. \*\* Ilya Somin \*\* Assistant Professor of Law, George Mason University School of Law. GLOBAL CONSTITUTIONALISM: GLOBAL INFLUENCE ON U.S. JURISPRUDENCE: Should International Law Be Part of Our Law? 59 Stan. L. Rev. 1175

The second benefit to foreigners of distinctive U.S. legal norms is information. The costs and benefits of our norms will be visible for all to see. n268 Particularly in an era of increased empirical social science testing, over time we will be able to analyze and identify the effects of differences in norms between the United States and other nations. n269 Such diversity benefits foreigners as foreign nations can decide to adopt our good norms and avoid our bad ones.

The only noteworthy counterargument is the claim that U.S. norms will have more harmful effects than those of raw international law, yet other nations will still copy them. But both parts of this proposition seem doubtful. First, U.S. law emerges from a democratic process that creates a likelihood that it will cause less harm than rules that emerge from the nondemocratic processes [\*1235] that create international law. Second, other democratic nations can use their own political processes to screen out American norms that might cause harm if copied.

Of course, many nations remain authoritarian. n270 But our norms are not likely to have much influence on their choice of norms. Authoritarian states are likely to select norms that serve the interests of those in power, regardless of the norms we adopt. It is true that sometimes they might cite our norms as cover for their decisions. But the crucial word here is "cover." They would have adopted the same rules, anyway. The cover may bamboozle some and thus be counted a cost. But this would seem marginal compared to the harm of allowing raw international law to trump domestic law.

#### Human Rights Cred is irrelevant — public opinion, global norms, and NGO networks outweigh US policy

Andrew Moravcsik 5, PhD and a Professor of Politics and International Affairs at Princeton, 2005, "The Paradox of U.S. Human Rights Policy," American Exceptionalism and Human Rights, http://www.princeton.edu/~amoravcs/library/paradox.pdf

It is natural to ask: What are the consequences of U.S. "exemptionalism” and noncompliance? International lawyers and human rights activists regularly issue dire warnings about the ways in which the apparent hypocrisy of the United States encourages foreign governments to violate human rights, ignore international pressure, and undermine international human rights institutions. In Patricia Derian's oft-cited statement before the Senate in I979: "Ratification by the United States significantly will enhance the legitimacy and acceptance of these standards. It will encourage other countries to join those which have already accepted the treaties. And, in countries where human rights generally are not respected, it will aid citizens in raising human rights issues.""' One constantly hears this refrain. Yet there is little empirical reason to accept it. Human rights norms have in fact spread widely without much attention to U.S. domestic policy. In the wake of the "third wave" democratization in Eastern Europe, East Asia, and Latin America, government after government moved ahead toward more active domestic and international human rights policies without attending to U.S. domestic or international practice." The human rights movement has firmly embedded itself in public opinion and NGO networks, in the United States as well as elsewhere, despite the dubious legal status of international norms in the United States. One reads occasional quotations from recalcitrant governments citing American noncompliance in their own defense-most recently Israel and Australia-but there is little evidence that this was more than a redundant justification for policies made on other grounds. Other governments adhere or do not adhere to global norms, comply or do not comply with judgments of tribunals, for reasons that seem to have little to do with U.S. multilateral policy.

#### Broader CT practices gut legitimacy/credibility/HR/due process

Thomas Hilde 09, professor at the University of Maryland School of Public Policy, “Beyond Guantanamo. Restoring U.S. Credibility on Human Rights,” Heinrich Böll Foundation, http://www.boell.org/downloads/hbf\_Beyond\_Guantanamo\_Thomas\_Hilde(2).pdf

One should be cautious of jumping too quickly to condemnation. No country has a perfect record on human rights. Indeed, as Darius Rejali and others have documented, modern torture techniques have been perfected not only by totalitarian states but also by the grand liberal democracies, particularly the UK, France, and the U.S. 6 But the scope and magnitude of the post-9/11 institutionalization of torture and other abuses is unique in modern history among the liberal democratic states. The institution undermines the principles of equality before the law, universal human dignity and autonomy, and basic liberties are the moral-philosophical core of the liberal democratic state. ¶ The system of torture and its legal arguments created in its defense have damaged international human rights standards and diminished credibility and legitimacy of the United States as a lead advocate for human rights. It is likely to have compromised national security as well. Is it possible to reverse this damage to credibility and security? A number of tenuous balancing acts are involved. Each of these elements stands on their own as a nest of complex issues in need of resolution and for which present options are suboptimal. Credibility, however, depends on each of them taken as an interrelated whole. these critical balancing acts include: 1) legally and humanely processing Guantanamo detainees and other detainees in light of the abuses, while also ensuring national and international security; 2) pursuing the moral and legal accountability required in a representational democracy, while mitigating other resulting political and social injuries; and 3) reinforcing international human rights standards and ensuring the rule of law in tandem with the pursuit of national interests. Furthermore, the events compel us to revisit a larger and older question addressed briefly in the final section: what must be said about the contemporary status and nature of human rights and their enforcement if powerful countries may ignore them or rewrite their content to accommodate the perceived interests of that country?

### 1NC — Middle East

#### American hypocrisy in the Middle East destroys credibility

Neil Macdonald 9/5/13, Senior Washington Correspondent for CBC News, “Obama's indecision on Syria strains U.S. credibility: Neil Macdonald,” http://www.cbc.ca/news/world/story/2013/09/04/f-vp-obama-congress-syria-missile-strike-neil-macdonald.html

In fact, “red lines” are old hat in the Middle East. They are constantly being set, violated and moved. The term was popular there before it ever entered the American lexicon.¶ But in a region where people remember the betrayal of the Sykes-Picot agreement as though it was yesterday (Great Britain and France secretly carved up the Middle East between them after World War One), and regard the Crusades as though they happened last week, it is the long history of American and other Western actions that burdens the U.S.¶ Americans might move on after a week or so; the rest of the world doesn’t.¶ Take chemical weapons. Obama and Kerry are boiling righteously about their use in Syria, but Washington was considerably less outraged just a few decades ago.¶ There is ample evidence America supplied Saddam Hussein with the precursors for the chemical weapons he used in battle against Iran in the 1980s. Even when he turned them on his own citizens, and the U.S. Senate was finally persuaded to pass economic sanctions, the House of Representatives stopped them dead.¶ The Reagan administration, which propped up tyrants throughout the region, opposed taking any action.¶ “I always found it ironic,” Rep. Chris Van Hollen said last week, “that the United States went to war on false pretenses that Saddam Hussein had chemical weapons and weapons of mass destruction in 2003, when he did not have them, but failed to take any action in 1988 when he actually used them.”¶ One suspects Iraqis felt that irony, too. Certainly they remember George H.W. Bush telling them to rise up after the first Gulf War, before leaving them to Saddam’s tender mercies.¶ Going back much further, there is still debate over whether British colonial authorities deployed chemical weapons as part of the wholesale slaughter its air force carried out to suppress Iraqi uprisings after the First World War.¶ Certainly Winston Churchill was keen. "I am strongly in favour of using poisoned gas against uncivilised tribes . . . [to] spread a lively terror,” wrote the great man.¶ Empty declarations¶ In any event, does anyone think the average Syrian distinguishes between the rape and torture and bombs and bullets Assad’s executioners have used to dispatch their wives and husbands and children, and the sarin gas he’s alleged to have dropped in the suburbs of Damascus last month?¶ It’s just as likely they recall George W. Bush’s empty inaugural declarations in 2005 about protecting the oppressed of the world from dictators. And of course, Barack Obama’s words as he went to war against Muammar Ghaddafi two and a half years ago: “As President, I refused to wait for the images of slaughter and mass graves before taking action.”¶ More than 100,000 Syrian corpses later, Obama has done nothing.¶ Yes, the White House did announce in June that as a result of earlier chemical weapons attacks by Assad, it was authorizing the CIA to arm the Syrian rebels. But as of today, those arms remain undelivered.¶ More than two years ago, Obama and his officials began declaring that Assad must go. Now, fearing who might come next, “regime change” in Syria is out, and “containment” is in. Any military strikes will somehow be limited to deterring use of chemical weapons without influencing the outcome of the civil war — as though such a thing is possible.¶ In Egypt, the United States is now backing and financially supporting the military junta that removed a democratically elected president from office and massacred his supporters. Because American law forbids the provision of financial aid to any government installed by a coup, Obama has simply chosen not to call it a coup.¶ The list goes on. And on.

### 1NC — Credibility Frontline

#### No spillover — lack of credibility in one commitment doesn’t affect others at all

Paul K. MacDonald 11, Assistant Professor of Political Science at Williams College, and Joseph M. Parent, Assistant Professor of Political Science at the University of Miami, Spring 2011, “Graceful Decline?: The Surprising Success of Great Power Retrenchment,” International Security, Vol. 35, No. 4, p. 7-44

Second, pessimists overstate the extent to which a policy of retrenchment can damage a great power's capabilities or prestige. Gilpin, in particular, assumes that a great power's commitments are on equal footing and interdependent. In practice, however, great powers make commitments of varying degrees that are functionally independent of one another. Concession in one area need not be seen as influencing a commitment in another area.25 Far from being perceived as interdependent, great power commitments are often seen as being rivalrous, so that abandoning commitments in one area may actually bolster the strength of a commitment in another area. During the Korean War, for instance, President Harry Truman's administration explicitly backed away from total victory on the peninsula to strengthen deterrence in Europe.26 Retreat in an area of lesser importance freed up resources and signaled a strong commitment to an area of greater significance.

#### Credibility theory is incoherent — empirically denied

Jonathan Mercer 8/28, 2013, associate professor of political science at the University of Washington in Seattle and a Fellow at the Center for International Studies at the London School of Economics. Bad Reputation, 28 August 2013, www.foreignaffairs.com/articles/139376/jonathan-mercer/bad-reputation

Even if Assad were so simpleminded, the administration’s critics are wrong to suggest that the president should have acted sooner to protect U.S. credibility. After the red line was first crossed, Obama could have taken the United States to war to prevent Assad from concluding that an irresolute Obama would not respond to any further attacks -- a perception on Syria’s part that seems to have now made a U.S. military response all but certain. But going to war to prevent a possible misperception that might later cause a war is, to paraphrase Bismarck, like committing suicide out of fear that others might later wrongly think one is dead.

It is also possible that the United States did not factor into Assad’s calculations. A few months before the United States invaded Iraq, Saddam Hussein’s primary concerns were avoiding a Shia rebellion and deterring Iran. Shortsighted, yes, but also a good reminder that although the United States is at the center of the universe for Americans, it is not for everyone else. Assad has a regime to protect and he will commit any crime to win the war. Finally, it is possible that Assad never doubted Obama’s resolve -- he just expects that he can survive any American response. After all, if overthrowing Assad were easy, it would already have been done.

#### Capability outweighs credibility — US actions appear irrational, so countries don’t interpret our signals

Steve Chapman 9/5/13, columnist and editorial writer for the Chicago Tribune, “War in Syria: The Endless Quest for Credibility,” http://reason.com/archives/2013/09/05/war-in-syria-the-endless-quest-for-credi

The United States boasts the most powerful military on Earth. We have 1.4 million active-duty personnel, thousands of tanks, ships and planes, and 5,000 nuclear warheads. We spend more on defense than the next 13 countries combined. Yet we are told we have to bomb Syria to preserve our credibility in world affairs.¶ Really? You'd think it would be every other country that would need to confirm its seriousness. Since 1991, notes University of Chicago security scholar John Mearsheimer, the U.S. has been at war in two out of every three years. If we haven't secured our reputation by now, it's hard to imagine we ever could.¶ On the surface, American credibility resembles a mammoth fortress, impervious to anything an enemy could inflict. But to crusading internationalists, both liberal and conservative, it's a house of cards: The tiniest wrong move, and it collapses.¶ In a sense, though, they're right. The U.S. government doesn't have to impress the rest of the world with its willingness to defend against actual attacks or direct threats. But it does have to continually persuade everyone that we will lavish blood and treasure for purposes that are irrelevant to our security.¶ Syria illustrates the problem. Most governments don't fight unless they are attacked or have dreams of conquest and expansion. War is often expensive and debilitating even for the winners, and it's usually catastrophic for losers. Most leaders do their best to avoid it.¶ So even though the Syrian government is a vicious, repressive dictatorship with a serious grudge against Israel, it has mostly steered clear of military conflict. Not since 1982 has it dared to challenge Israel on the battlefield. When Israeli warplanes vaporized a Syrian nuclear reactor in 2007, Bashar al-Assad did nothing. The risks of responding were too dire.¶ But the U.S. never faces such sobering considerations. We are more secure than any country in the history of the world. What almost all of our recent military interventions have in common is that they involved countries that had not attacked us: Libya, Iraq, Serbia, Haiti, Somalia, Panama, Grenada and North Vietnam.¶ With the notable exception of the Afghanistan invasion, we don't fight wars of necessity. We fight wars of choice.¶ That's why we have such an insatiable hunger for credibility. In our case, it connotes an undisputed commitment to go into harm's way even when -- especially when -- we have no compelling need to do so. But it's a sale we can never quite close.¶ Using force in Iraq or Libya provides no guarantee we'll do the same in Syria or Iran or Lower Slobbovia. Because we always have the option of staying out, there's no way to make everyone totally believe we'll jump into the next crisis.¶ The parallel claim of Washington hawks is that we have to punish Assad for using nerve gas, because otherwise Iran will conclude it can acquire nuclear weapons. Again, our credibility is at stake. But how could the Tehran regime draw any certain conclusions based on what happens in Syria?¶ Two American presidents let a troublesome Saddam Hussein stay in power, but a third one decided to take him out. George W. Bush tolerated Moammar Gadhafi, but Barack Obama didn't. Ronald Reagan let us be chased out of Lebanon, only to turn around and invade Grenada. If you've seen one U.S. intervention, you've seen one.¶ What should be plain to Iran is that Washington sees nuclear proliferation as a unique threat to its security, which Syria's chemical weapons are not. Just because we might let Assad get away with gassing his people doesn't mean we will let Iran acquire weapons of mass destruction that would be used only against other countries. Heck, we not only let Saddam get away with using chemical weapons against Iran -- we took his side.¶ Figuring out the U.S. government's future impulses is hard even for Americans. There's no real rhyme or reason. But because we're so powerful, other governments can ill afford to be wrong. What foreigners have to keep in the front of their minds is not our inclination to act but our capacity to act -- which remains unparalleled whatever we do in Syria.¶ Credibility is overrated. Sure, it's possible for hostile governments to watch us squabble over Syria and conclude that they can safely do things we regard as dangerous. But there are graveyards full of people who made that bet.

#### No impact — allies won’t abandon us and adversaries can’t exploit it

Stephen M. Walt 11, the Robert and Renée Belfer professor of international relations at Harvard University, December 5, 2011, “Does the U.S. still need to reassure its allies?,” online: <http://walt.foreignpolicy.com/posts/2011/12/05/us_credibility_is_not_our_problem>

A perennial preoccupation of U.S. diplomacy has been the perceived need to reassure allies of our reliability. Throughout the Cold War, U.S. leaders worried that any loss of credibility might cause dominoes to fall, lead key allies to "bandwagon" with the Soviet Union, or result in some form of "Finlandization." Such concerns justified fighting so-called "credibility wars" (including Vietnam), where the main concern was not the direct stakes of the contest but rather the need to retain a reputation for resolve and capability. Similar fears also led the United States to deploy thousands of nuclear weapons in Europe, as a supposed counter to Soviet missiles targeted against our NATO allies.

The possibility that key allies would abandon us was almost always exaggerated, but U.S. leaders remain overly sensitive to the possibility. So Vice President Joe Biden has been out on the road this past week, telling various U.S. allies that "the United States isn't going anywhere." (He wasn't suggesting we're stuck in a rut, of course, but saying that the imminent withdrawal from Iraq doesn't mean a retreat to isolationism or anything like that.)

There's nothing really wrong with offering up this sort of comforting rhetoric, but I've never really understood why U.S. leaders were so worried about the credibility of our commitments to others. For starters, given our remarkably secure geopolitical position, whether U.S. pledges are credible is first and foremost a problem for those who are dependent on U.S. help. We should therefore take our allies' occasional hints about realignment or neutrality with some skepticism; they have every incentive to try to make us worry about it, but in most cases little incentive to actually do it.

#### Obama won’t capitalize on the plan to bolster U.S. cred — and just funding assistance doesn’t solve

Jackson Diehl 11, Deputy Editorial Page Editor at The Washington Post, December 11, 2011, “Obama is lagging on Egypt,” online: http://www.washingtonpost.com/opinions/obama-lagging-on-the-arab-spring/2011/12/08/gIQApQzCoO\_story.html

Early on the morning of Nov. 25, the Obama administration significantly shifted its public position in the then-ongoing standoff between Egypt’s ruling military and pro-democracy demonstrators in Cairo’s Tahrir square. Dropping its weak appeals for “restraint on all sides,” the White House “condemned the excessive use of force” against the protesters and sided with their main demand by asserting that “the full transfer of power to a civilian government must take place . . . as soon as possible.”

The generals got the message and reacted furiously. But most other Egyptians were oblivious — including the young revolutionaries and civilian political elite the administration was trying to support. When I spoke to a range of politicians and demonstrators in Cairo several days later, most were still fuming over the wishy-washy words of press secretary Jay Carney on Nov. 21. Maybe that’s because Carney’s comments were televised — while the subsequent statement was issued off camera, in the name of “the press secretary,” at 3 a.m. Washington time.

The story of that statement is a good example of how President Obama continues to lag on what his own top advisers have called the greatest foreign policy challenge of his administration. A president who began his presidency with a much-promoted public address to the Muslim world from Cairo has rarely found his voice since Egypt and other Arab states tumbled into a new era in which public opinion — the proverbial “Arab street” — matters more than ever.

In the past half-year Obama has given two big set-piece speeches about the events in the Middle East, at the State Department and the United Nations. In both cases he made headlines for what he said about the frozen Israeli-Palestinian conflict, rather than the revolutionary change underway in Arab states. Outside those addresses the president has rarely spoken about the roller-coaster of change underway in Egypt, or the violent repression in Bahrain, or the pivotal civil conflict in Syria. Months of presidential silence go by, while the press shops at State and the White House issue perfunctory statements.

It’s hard to escape the conclusion that Obama simply isn’t much engaged by the fight for freedom in the Middle East or sees it as a distraction from his own priorities. After all, he continues to speak frequently and often provocatively about the causes of Palestinian statehood and nuclear nonproliferation, which he brought with him to office. He recently launched a much-promoted “pivot” of his foreign policy to Asia — a critically important area for the United States but one where no crisis, much less an epochal upheaval, is underway.

Why does this matter? Because for the first time in a generation, the United States needs to reforge its strategic relations with countries such as Egypt — and it can no longer do it by writing checks or supplying tanks. Over the next couple of years the 80 million people of Egypt, and their elected representatives, will need to be convinced that an alliance with the United States is worth preserving.

So far the trend is not good. According to the 2011 Arab Opinion poll, conducted by Shibley Telhami of the University of Maryland with Zogby International, the share of Arabs saying they have a positive view of Obama stands at 34 percent, compared with 39 percent in 2009. The president’s ratings have increased since the Arab Spring began, but when people were asked which countries have “played the most constructive role,” Turkey and France finished first; the United States barely edged out China for third.

Administration officials often argue that Washington is better off keeping a low public profile on Mideast events. Yet France has clearly benefited from Nicolas Sarkozy’s aggressive public support for the revolutions. And the reality is that a large number of Arabs either don’t know what U.S. policy is or misunderstand it. Most Egyptians I talked to during a recent visit to Cairo — including sophisticated political players — believed that Obama’s priorities are to support the Egyptian military and Israel, regardless of what they do.

There are, of course, ways for the United States to demonstrate its continuing value to Egypt and its neighbors that may be more important than public statements. Help for economies devasted by revolution could be crucial in the next couple of years. Security cooperation in places such as the Sinai Peninsula, where al-Qaeda may be seeking a foothold, may also pay off.

But Arabs also need to hear and see that American leaders support their democratic aspirations. The administration is slowly moving in that direction: Secretary of State Hillary Rodham Clinton, for example, has recently prodded both Egypt’s Islamists and the military about sticking to democratic principles. The message, however, needs to be more consistent. And more often than it has, it needs to come from the president.

### AT: Russia Revolution/Miscalc

#### Russia won’t model US human rights policy – laughable

#### No war

Ryabikhin et al 9 [Dr. Leonid Ryabikhin, expert of the Russian Science Committee for Global Security, General (Ret.) Viktor Koltunov, Dr. Eugene Miasnikov, June 2009, “De-alerting: Decreasing the Operational Readiness of Strategic Nuclear Forces,” http://www.ewi.info/system/files/RyabikhinKoltunovMiasnikov.pdf]

The issue of the possibility of an “accidental” nuclear war itself is hypothetical. Both states have developed and implemented constructive organizational and technical measures that practically exclude launches resulting from unauthorized action of personnel or terrorists. Nuclear weapons are maintained under very strict system of control that excludes any accidental or unauthorized use and guarantees that these weapons can only be used provided that there is an appropriate authorization by the national leadership. Besides that it should be mentioned that even the Soviet Union and the United States had taken important bilateral steps toward decreasing the risk of accidental nuclear conflict. Direct emergency telephone “red line” has been established between the White House and the Kremlin in 1963. In 1971 the USSR and USA signed the Agreement on Measures to Reduce the Nuclear War Threat. This Agreement established the actions of each side in case of even a hypothetical accidental missile launch and it contains the requirements for the owner of the launched missile to deactivate and eliminate the missile. Both the Soviet Union and 5 the United States have developed proper measures to observe the agreed requirements.

#### Communications check

Ford 8 [Christopher, Senior Fellow at the Hudson Institute in Washington, D.C. former U.S. Special Representative for Nuclear Nonproliferation and former Principal Deputy Assistant Secretary of State for Verification, Compliance, and Implementation “Dilemmas of Nuclear Force ‘De-Alerting,’” <http://www.hudson.org/files/documents/De-Alerting%20FINAL2%20%282%29.pdf>]

The United States and Russia have also worked for years to improve communications, reduce misunderstandings, and develop ways to lessen the risk of inadvertent launch or other errors in their strategic relationship. Most readers will be familiar with the Direct Communications Link (the famous “hotline”) established in 1963. 27 In 1971, however, Washington and Moscow also signed an agreement establishing basic procedures to increase mutual consultation and notification regarding relatively innocent but potentially alarming activities – thereby reducing the risk of accidental nuclear war. 28 Since 1987, the two parties have also operated securely linked 24-hour communications centers – the U.S. node of which is the Nuclear Risk Reduction Center (NRRC) operated by the State Department 29 – which specialize in transmitting such things as the notifications required under arms control treaties. Pursuant to a 1988 memorandum, NRRC transmittals, which go directly to the Russian Ministry of Defense, include ballistic missile launch notifications. This link also proved useful to help prevent strategic tensions after the terrorist assault of September 11, 2001 – at which point U.S. officials used the NRRC to reassure their Russian counterparts that the sudden American security alert in the wake of the Manhattan and Pentagon attacks was not in any way an indication of impending U.S. belligerence vis-à-vis Russia.

### AT: Russia Relations

#### Relations resilient

Sawczak 11 [Dr. Peter Sawczak, Adjunct Research Fellow at Monash University, “Obama’s Russia Policy: The Wages and Pitfalls of the Reset,” peer reviewed paper presented at the 10th Biennial Conference of the Australasian Association for Communist and Post-Communist Studies, Feb 3-4 2011, <http://cais.anu.edu.au/sites/default/files/Sawczak_Obama.pdf>]

As a measure of their optimism, US officials like to point – cautiously – to a discernible shift in Russian foreign policy towards a more pragmatic, cooperative approach. Whether or not the Obama administration can claim credit for this, the United States has at least shown Russia the dividends which could flow from enhanced cooperation. This is most palpably reflected in the Russian foreign policy paper leaked in May 2010, which identifies a “need to strengthen relations of mutual interdependence with the leading world powers, such as the European Union and the US,” 5 as well as, more indirectly, in Medvedev’s modernisation agenda. The fact that Russia has sought, in the tragic circumstances attending commemoration ceremonies at Katyn, rapprochement with Poland and moved to demarcate its border with Norway, in addition to partnering with the US on arms control, Iran and Afghanistan, suggests to US policy-makers that a rethink, however tenuous, is underway. Noteworthy also is the fact that Russia, gladdened by the emergence of more compliant leaders in Ukraine and Kyrgyzstan, has been remarkably restrained of late in its dealings closer to home, not having waged any major gas wars, threatened leaders, or incited civil war. ¶ How Russia engages on looming challenges – which McFaul has prioritised as cooperation on missile defence, Russia’s WTO accession, future European security architecture and Medvedev’s modernisation agenda 6 – will demonstrate the extent of its willingness to comply with the Obama administration’s preferred modus operandi of identifying shared interests as a means of pursuing US national interests. There will be temptation on Russia's part to push the United States to entertain grand bargains in certain areas, especially - and however unrealistically - on its perceived privileged interests in former Soviet states. Both sides, however, have demonstrated a relatively high level of comfort with agreeing to disagree, and there is now an increasingly even mix of interests on both sides. Immediate impediments that will need to be worked through include reluctance by the Pentagon to share sensitive military technology in relation to missile defence and Russia's slowness to create favourable conditions for foreign investment.

### AT: Geneva Convention

#### The broader US legal system has tanked

Jonathan Turley 10, the Shapiro Professor of Public Interest Law at George Washington University, member of USA TODAY's Board of Contributors, 6/14/10, “Do laws even matter today?,” http://usatoday30.usatoday.com/news/opinion/forum/2010-06-15-column15\_ST\_N.htm

Though I am a critic of the Arizona law, I do not view its supporters in such one-dimensional terms. Indeed, I do not view the public response in purely immigration terms. Whether it is illegal immigration or the mortgage crisis or corporate bailouts, there seems to be a growing sense among many citizens that they are expected to play by the rules while others are exempt.¶ With polls showing about 60% of people supporting the Arizona law and almost half supporting similar laws in their states, it is implausible to suggest that all these people are racists or extremists — let alone fascists. Notably, a majority of Americans also opposed the bank bailouts and mortgage forgiveness. In each of these controversies, there is a sense that the government was stepping in to protect people from the consequences of their actions.¶ In the mortgage crisis, tens of thousands of people accepted high-risk, low-interest loans while other citizens either declined to buy homes or agreed to higher monthly payments to avoid such deals. When Congress intervened with mortgage relief, some of those who had acted responsibly wondered whether they acted stupidly by rejecting low rates and later federal support.¶ Bailouts and immigration¶ Then there were the corporate bailouts. For citizens to secure a loan, they have to meet exacting terms and disclosures. Yet, when banks and firms concealed risks or engaged in financial wrongdoing, Congress bailed them out and allowed their executives to reap fat bonuses. The laws on fraud and deceptive practices simply did not seem to apply to them. Just as several companies were declared "too big to fail," many of their executives appeared too big to lose money — unlike the millions of citizens burned by their business practices.¶ Those prior controversies coalesced with the immigration debate. The last time Congress granted amnesty to illegal immigrants was 1986 — and it was criticized at the time for rewarding those who had evaded deportation. Complaints over the lack of federal enforcement had been percolating for years but exploded along Arizona's long desert border. When a law mandated state enforcement of federal laws, the Obama administration moved to block it.¶ Indeed, high-ranking Obama officials such as John Morton, head of the Immigration and Customs Enforcement, have suggested that they might refuse to deport those arrested under the Arizona law. While we continue to tell millions around the world that they must wait for years to immigrate legally, Congress and the White House are considering a new amnesty proposal to benefit an additional 11 million illegal immigrants.¶ In each of these areas, the perception is that the law says one thing but actually means different things for different people. It is a dangerous perception, and it is not entirely unfounded. Such double-standards have become common as Congress and presidents seek to avoid unpopular legal problems.¶ •Torture: While acknowledging that waterboarding is torture and that torture violates domestic and international law, President Obama and members of Congress have barred any investigation or prosecution of those crimes.¶ •Pollution: While citizens are subject to pay for the full damage they cause to their neighbors and are routinely fined for their environmental damage for everything from dumping in rivers to leaf burning, Congress capped the liability for massive corporations such as BP and Exxon at a ridiculous $75 million. Though BP is likely to spend much more in litigation (particularly if prosecuted criminally), the current law requires citizens to pay the full cost of their environmental damage while capping the costs for companies producing massive destruction.¶ •Privacy: When the telecommunications companies found themselves on the losing end of citizen suits over the violation of privacy laws, Congress (including then-Sen. Obama) and President Bush simply changed the law to legislatively kill the citizen suits and protect the companies.¶ An arbitrary system¶ The message across these areas is troubling. To paraphrase Animal Farm, all people are equal, but some people are more equal than others.¶ A legal system cannot demand the faith and fealty of the governed when rules are seen as arbitrary and deceptive. Our leaders have led us not to an economic crisis or an immigration crisis or an environmental crisis or a civil liberties crisis. They have led us to a crisis of faith where citizens no longer believe that laws have any determinant meaning. It is politics, not the law, that appears to drive outcomes — a self-destructive trend for a nation supposedly defined by the rule of law.

### AT: Bioterror

#### No impact

O’Neill 4O’Neill 8/19/2004 [Brendan, “Weapons of Minimum Destruction” http://www.spiked-online.com/Articles/0000000CA694.htm]

David C Rapoport, professor of political science at University of California, Los Angeles and editor of the Journal of Terrorism and Political Violence, has examined what he calls 'easily available evidence' relating to the historic use of chemical and biological weapons. He found something surprising - such weapons do not cause mass destruction. Indeed, whether used by states, terror groups or dispersed in industrial accidents, they tend to be far less destructive than conventional weapons. 'If we stopped speculating about things that might happen in the future and looked instead at what has happened in the past, we'd see that our fears about WMD are misplaced', he says. Yet such fears remain widespread. Post-9/11, American and British leaders have issued dire warnings about terrorists getting hold of WMD and causing mass murder and mayhem. President George W Bush has spoken of terrorists who, 'if they ever gained weapons of mass destruction', would 'kill hundreds of thousands, without hesitation and without mercy' (1). The British government has spent £28million on stockpiling millions of smallpox vaccines, even though there's no evidence that terrorists have got access to smallpox, which was eradicated as a natural disease in the 1970s and now exists only in two high-security labs in America and Russia (2). In 2002, British nurses became the first in the world to get training in how to deal with the victims of bioterrorism (3). The UK Home Office's 22-page pamphlet on how to survive a terror attack, published last month, included tips on what to do in the event of a 'chemical, biological or radiological attack' ('Move away from the immediate source of danger', it usefully advised). Spine-chilling books such as Plague Wars: A True Story of Biological Warfare, The New Face of Terrorism: Threats From Weapons of Mass Destruction and The Survival Guide: What to Do in a Biological, Chemical or Nuclear Emergency speculate over what kind of horrors WMD might wreak. TV docudramas, meanwhile, explore how Britain might cope with a smallpox assault and what would happen if London were 'dirty nuked' (4). The term 'weapons of mass destruction' refers to three types of weapons: nuclear, chemical and biological. A chemical weapon is any weapon that uses a manufactured chemical, such as sarin, mustard gas or hydrogen cyanide, to kill or injure. A biological weapon uses bacteria or viruses, such as smallpox or anthrax, to cause destruction - inducing sickness and disease as a means of undermining enemy forces or inflicting civilian casualties. We find such weapons repulsive, because of the horrible way in which the victims convulse and die - but they appear to be less 'destructive' than conventional weapons. 'We know that nukes are massively destructive, there is a lot of evidence for that', says Rapoport. But when it comes to chemical and biological weapons, 'the evidence suggests that we should call them "weapons of minimum destruction", not mass destruction', he says. Chemical weapons have most commonly been used by states, in military warfare. Rapoport explored various state uses of chemicals over the past hundred years: both sides used them in the First World War; Italy deployed chemicals against the Ethiopians in the 1930s; the Japanese used chemicals against the Chinese in the 1930s and again in the Second World War; Egypt and Libya used them in the Yemen and Chad in the postwar period; most recently, Saddam Hussein's Iraq used chemical weapons, first in the war against Iran (1980-1988) and then against its own Kurdish population at the tail-end of the Iran-Iraq war. In each instance, says Rapoport, chemical weapons were used more in desperation than from a position of strength or a desire to cause mass destruction. 'The evidence is that states rarely use them even when they have them', he has written. 'Only when a military stalemate has developed, which belligerents who have become desperate want to break, are they used.' (5) As to whether such use of chemicals was effective, Rapoport says that at best it blunted an offensive - but this very rarely, if ever, translated into a decisive strategic shift in the war, because the original stalemate continued after the chemical weapons had been deployed. He points to the example of Iraq. The Baathists used chemicals against Iran when that nasty trench-fought war had reached yet another stalemate. As Efraim Karsh argues in his paper 'The Iran-Iraq War: A Military Analysis': 'Iraq employed [chemical weapons] only in vital segments of the front and only when it saw no other way to check Iranian offensives. Chemical weapons had a negligible impact on the war, limited to tactical rather than strategic [effects].' (6) According to Rapoport, this 'negligible' impact of chemical weapons on the direction of a war is reflected in the disparity between the numbers of casualties caused by chemicals and the numbers caused by conventional weapons. It is estimated that the use of gas in the Iran-Iraq war killed 5,000 - but the Iranian side suffered around 600,000 dead in total, meaning that gas killed less than one per cent. The deadliest use of gas occurred in the First World War but, as Rapoport points out, it still only accounted for five per cent of casualties. Studying the amount of gas used by both sides from1914-1918 relative to the number of fatalities gas caused, Rapoport has written: 'It took a ton of gas in that war to achieve a single enemy fatality. Wind and sun regularly dissipated the lethality of the gases. Furthermore, those gassed were 10 to 12 times as likely to recover than those casualties produced by traditional weapons.' (7) Indeed, Rapoport discovered that some earlier documenters of the First World War had a vastly different assessment of chemical weapons than we have today - they considered the use of such weapons to be preferable to bombs and guns, because chemicals caused fewer fatalities. One wrote: 'Instead of being the most horrible form of warfare, it is the most humane, because it disables far more than it kills, ie, it has a low fatality ratio.' (8) 'Imagine that', says Rapoport, 'WMD being referred to as more humane'. He says that the contrast between such assessments and today's fears shows that actually looking at the evidence has benefits, allowing 'you to see things more rationally'. According to Rapoport, even Saddam's use of gas against the Kurds of Halabja in 1988 - the most recent use by a state of chemical weapons and the most commonly cited as evidence of the dangers of 'rogue states' getting their hands on WMD - does not show that unconventional weapons are more destructive than conventional ones. Of course the attack on Halabja was horrific, but he points out that the circumstances surrounding the assault remain unclear. 'The estimates of how many were killed vary greatly', he tells me. 'Some say 400, others say 5,000, others say more than 5,000. The fighter planes that attacked the civilians used conventional as well as unconventional weapons; I have seen no study which explores how many were killed by chemicals and how many were killed by firepower. We all find these attacks repulsive, but the death toll may actually have been greater if conventional bombs only were used. We know that conventional weapons can be more destructive.' Rapoport says that terrorist use of chemical and biological weapons is similar to state use - in that it is rare and, in terms of causing mass destruction, not very effective. He cites the work of journalist and author John Parachini, who says that over the past 25 years only four significant attempts by terrorists to use WMD have been recorded. The most effective WMD-attack by a non-state group, from a military perspective, was carried out by the Tamil Tigers of Sri Lanka in 1990. They used chlorine gas against Sri Lankan soldiers guarding a fort, injuring over 60 soldiers but killing none. The Tamil Tigers' use of chemicals angered their support base, when some of the chlorine drifted back into Tamil territory - confirming Rapoport's view that one problem with using unpredictable and unwieldy chemical and biological weapons over conventional weapons is that the cost can be as great 'to the attacker as to the attacked'. The Tigers have not used WMD since.

#### No chance the Courts enforce I-Law

Daniel Abebe & Eric A. Posner 11, Assistant Professor and Kirkland & Ellis Professor, University of Chicago Law School, The Flaws of Foreign Affairs Legalism, 51 Va. J. Int'l L. 507

Foreign affairs legalists make sweeping claims about the American judiciary's promotion of international law, but the support for these claims is weak. In this section, we discuss some examples of contributions to international law by Congress, the courts and the executive. We then evaluate the institutional capacities and incentives of the different branches to promote international law. As we will show, the evidence points to the executive, not the judiciary, as the branch most responsible for advancing international law.

[\*528]

1. The American Judiciary's Contribution to International Law

Foreign affairs legalists celebrate the American judiciary's contributions to international law, but they can only point to a few concrete accomplishments. A handful of judge-made doctrines put limited pressure on the political branches to comply with international law. For example, the Charming Betsy canon makes it more difficult for Congress to pass a statute that violates international law by requiring Congress to be clearer than it would otherwise be. n101 International comity rules, in limited circumstances, avoid violations of international jurisdictional law that suggest that certain types of disputes are best resolved in the state with the most contacts to the litigation. n102 The federal courts' admiralty jurisprudence has developed in tandem with admiralty cases in other states, and in this way it could be considered a contribution to international law. One could also point to the willingness of the federal courts to suspend federalism constraints in order to enforce treaties in cases like Missouri v. Holland, n103 but these cases are weak and inconsistent. n104

Moreover, the empirical literature regarding the judiciary's support of international law is thin. Benvenisti cites a handful of cases that suggest that national courts - mainly in developing countries - have used international law in an effort to constrain their executives. n105 Koh also cites a very small number of cases n106 - his best examples are American ATS cases, which we discuss below. n107 Slaughter rests much of her argument on the rise of international judicial conferences, where judges from different countries meet and exchange ideas. n108 She does not provide evidence that these conferences have affected judicial outcomes. Another possibility is that judges enjoy meeting each other and learning about foreign judicial decisions, but they do not, as a matter of pragmatics or principle, allow what they learn to affect the way that they decide cases. n109

In contrast, many court decisions and judge-made doctrines cut against the claims of foreign affairs legalism. The early decision in Foster [\*529] v. Neilson n110 to distinguish between self-executing and non-self-executing treaties, n111 recently reaffirmed in Medellin v. Texas, n112 ensures that many treaties cannot be judicially enforced. These rules have been reinforced by the reluctance to find judicially enforceable rights even in treaties that are self-executing. The tradition of executive deference also limits the judiciary's ability to contribute to international law. The judiciary generally follows the executive's lead instead of pushing the executive toward greater international engagement. In treaty interpretation cases, courts frequently defer to the executive. n113

On questions of international law - the area most important to foreign affairs legalists - the judiciary's record is poor. In the notable federal common law case The Paquete Habana, n114 the Supreme Court made clear that the executive could unilaterally decide that the United States would not comply with CIL, in which case the victims of the legal violation would have had no remedy. n115 Courts have held that both the executive and Congress have the authority to violate international law n116 and that violations of international law cannot be a basis for federal-question jurisdiction. n117 For example, the Supreme Court found that an illegal, extrajudicial abduction that circumvented the terms of an international extradition treaty did not preclude a U.S. trial court's jurisdiction over the abductee. n118

The Supreme Court's treatment of international law in Medellin v. Texas n119 is also instructive. Here, the Court held that the Vienna Convention [\*530] on Consular Relations n120 was not self-executing or judicially enforceable in U.S. courts. n121 That case involved a Mexican national who had been deprived of his right to consular notification under the Convention after he was arrested. He was later sentenced to death. n122 The International Court of Justice held that the United States violated international law by failing to provide the Mexican national with access to his consulate. n123 What is striking in the Medellin context is that not only did the Supreme Court refuse to intervene in order to vindicate rights under international law (earlier, it had held that the ICJ judgment was not binding on U.S. courts), n124 but it also prevented President Bush from vindicating those rights. n125 Bush had tried to order state courts to take account of the ICJ ruling, but the Supreme Court held that he did not have the power to do so. n126

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### UQ---ID WP High

#### Both Congress and the Courts have given Obama full authority to indefinitely detain

RT 7/18/13, Russia Today, “Obama wins back the right to indefinitely detain under NDAA,” http://rt.com/usa/obama-ndaa-appeal-suit-229/

The Obama administration has won the latest battle in their fight to indefinitely detain US citizens and foreigners suspected of being affiliated with terrorists under the National Defense Authorization Act of 2012.¶ ¶ Congress granted the president the authority to arrest and hold individuals accused of terrorism without due process under the NDAA, but Mr. Obama said in an accompanying signing statement that he will not abuse these privileges to keep American citizens imprisoned indefinitely. These assurances, however, were not enough to keep a group of journalists and human rights activists from filing a federal lawsuit last year, which contested the constitutionality of Section 1021, the particular provision that provides for such broad power.¶ ¶ A federal judge sided with the plaintiffs originally by granting an injunction against Section 1021, prompting the Obama administration to request an appeal last year. On Wednesday this week, an appeals court in New York ruled in favor of the government and once again allowed the White House to legally indefinitely detain persons that fit in the category of enemy combatants or merely provide them with support. ¶Now with this week’s appellate decision, plaintiffs intend on taking their case to the Supreme Court. Should the high court agree to hear their argument, the top justices in the US may finally weigh in on the controversial counterterrorism law.¶ The so-called “indefinite detention” provision of last year’s National Defense Authorization Act has been at the center of debate since before President Barack Obama autographed the bill in December 2011, but a federal lawsuit filed by Pulitzer Prize-winning war correspondent Chris Hedges and others only two weeks after it went into effect remains as relevant as ever in light of a decision delivered Wednesday by the US Court of Appeals for the Second Circuit. ¶ The plaintiffs in case had previously been successful in convincing a federal district judge to keep Section 1021 from being put on the books, but the latest ruling negates an earlier injunction and once again reestablished the government’s right to indefinitely detain people under the NDAA.¶ Tangerine Bolen, a co-plaintiff in the case alongside Hedges, told RT, “Losing one battle is not losing the war. This war is an assault on truth itself. It flaunts reason, sanity and basic decency. We will not stand down in the face of these egregious assaults on our rights and liberties.”¶ In a statement published to TruthDig, Hedges called the ruling “distressing” and said, “It means there is no recourse now either within the Executive, Legislative or Judicial branches of government to halt the steady assault on our civil liberties and most basic Constitutional rights.”¶ Section 1021 of the NDAA reads in part that the president of the US can indefinitely imprison any person who was part of or substantially supported al-Qaeda, the Taliban or associated forces engaged in hostilities against the US or its coalition partners, as well as anyone who commits a "belligerent act" against the US under the law of war, "without trial, until the end of the hostilities.” The power to do as much was allegedly granted to the commander-in-chief after the Authorization to Use Military Force was signed into law shortly after the September 11, 2001 terrorist attacks, but a team of plaintiffs have argued that Section 1021 provides the White House with broad, sweeping powers that put the First Amendment-guaranteed rights to free speech and assembly at risk while also opening the door for the unlawful prosecution of anyone who can be linked to an enemy of the state.¶ Only two weeks after the 2012 NDAA was signed into law, Hedges filed a lawsuit against the Obama administration challenging the constitutional validity of Section 1021.¶ “I have had dinner more times than I can count with people whom this country brands as terrorists … but that does not make me one,” he said at the time.¶ Naomi Wolf, an American author, told the Guardian last year that she has skipped meetings with individuals and dropped stories that she believed are newsworthy “for no other reason than to avoid potential repercussions under the bill.” ¶ Hedges first filed suit on Jan 13, 2012, and was eventually joined by a number of activists, reporters and human rights workers from both the US and abroad, including Pentagon Papers leaker Daniel Ellsberg, journalist Alexa O’Brien, Revolution Truth founder Bolen and Icelandic PM Birgitta Jónsdóttir. District Court Judge Katherine Forrest granted the plaintiffs a preliminary injunction against Section 1021 that May, only to make that decision permanent four months later. The Obama administration filed a stay against that injunction just days after, though, and the appeals court ruled this week that Judge Forrest’s decision must be vacated.¶ Carl Mayer, an attorney for the plaintiffs, previously told RT that he expected the White House to lose the appeal. “The Obama administration has now lost three times. They lost the temporary injunction, they lost the motion for reconsideration and they lost the hearing for permanent injunction. I say three strikes and you’re out,” he said. ¶ But with the court’s 3-0 ruling this week, a federal panel concluded that the plaintiffs involved in the suit do not have standing to challenge Section 1021. In doing so, however, they offered what is the most official interpretation yet of a law that has continuously attracted criticism for nearly two years now.¶ After years of debate, the appeals court said once and for all that the NDAA does not apply to American citizens, and rehashed the Obama administration’s insistence that it simply reaffirmed rights afforded to the government through the AUMF.¶ “Section 1021(e) provides that Section 1021 just does not speak — one way or the other — to the government’s authority to detain citizens, lawful resident aliens or any other persons captured or arrested in the United States,” the court ruled.¶ “We thus conclude, consistent with the text and buttressed in part by the legislative history, that Section 1021 means this: With respect to individuals who are not citizens, are not lawful resident aliens and are not captured or arrested within the United States, the President’s AUMF authority includes the authority to detain those responsible for 9/11 as well as those who were a part of, or substantially supported, al-Qaeda, the Taliban or associated forces that are engaged in hostilities against the United States or its coalition partners — a detention authority that Section 1021 concludes was granted by the original AUMF.”¶ “But with respect to citizens, lawful resident aliens, or individuals captured or arrested in the United States, Section 1021 simply says nothing at all,” it concluded.¶ The AUMF, however, is still open to interpretation. An earlier legal ruling concluded that the AUMF “clearly and unmistakable” authorized detaining those who were “part of or supporting forces hostile to the US.” Then a memo issued in March 2009 just weeks’ into Pres. Obama’s first term even added that the government has the authority “to detain persons who were part of or substantially supported” anyone engaged in hostilities against US or its partners.¶ “In any event, the March 2009 Memo took the view that ‘the AUMF is not limited to persons captured on the battlefields of Afghanistan’ nor to those ‘directly participating in hostilities,’” the appeals court noted. When the DC Circuit weighed in further down the road, it determined that the AUMF authorized detention for those who “purposefully and materially support” those hostile forces, although this week’s ruling makes note that the Circuit Court has failed to ever figure out what “support” exactly means.¶ “The government contends that Section 1021 simply reaffirms authority that the government already had under the AUMF, suggesting at times that the statute does next to nothing at all. Plaintiffs take a different view,” wrote the court this week.¶ Definitions aside, however, the appeals court wrote that Hedges and his American co-plaintiffs lack standing to challenge the indefinite detention provisions since a subsection of that rule, 1021(e), frees US citizens from detention under the NDAA.¶ “We recognize that Section 1021 perhaps could have been drafted in a way that would have made this clearer and that the absence of any reference to American citizens in Section 1021(b) led the district court astray in this case. Perhaps the last-minute inclusion of Section 1021(e) as an amendment introduced on the floor of the Senate explains the somewhat awkward construction,” wrote the court. “But that is neither here nor there. It is only our construction, just described, that properly gives effect to the text of all of the parts of Section 1021 and thus reflects congressional intent.”¶ At the same time, though, the appeals court acknowledged that Iceland’s Jónsdóttir, co-plaintiff Kai Wargalla of Germany and other foreign persons could be detained indefinitely under the NDAA. Although Jónsdóttir has argued that her well-documented affiliation with the anti-secrecy group WikiLeaks — particularly with regards to classified material its published much to the chagrin of the US government — is enough to land her in hot water, the court said indefinite imprisonment in a military jail cell is an unrealistic fear and she therefore lacks standing.¶ Jónsdóttir, 46, has been a member of the Iceland parliament since 2009, the same year that US Army Private first class Bradley Manning began supplying materials to WikiLeaks. Jónsdóttir and WikiLeaks founder Julian Assange worked directly with raw video footage supplied by Manning showing a US helicopter fatally wounding innocent civilians and journalists, which the website later released under the name “Collateral Murder.” And although Pfc. Manning is currently on trial for “aiding the enemy” by supplying WikiLeaks — and indirectly al-Qaeda — with that intelligence, the court said Jónsdóttir herself has nothing to fear. ¶ “The claims of Jónsdóttir and Wargalla stand differently. Whereas Section 1021 says nothing about the government’s authority to detain citizens, it does have real meaning regarding the authority to detain individuals who are not citizens or lawful resident aliens and are apprehended abroad,” the court ruled.¶ Elsewhere, the judges wrote that the government insists that WikiLeaks and Manning provided “some support” to hostile forces by publishing classified intelligence, and that the 25-year-old Army private is indeed facing prosecution for such that could put him away for life.¶ “One perhaps might fear that Jónsdóttir’s and Wargalla’s efforts on behalf of WikiLeaks could be construed as making them indirect supporters of al-Qaeda and the Taliban as well,” wrote the court. “The government rejoins that the term ‘substantial support’ cannot be construed so in this particular context. Rather, it contends that the term must be understood — and limited — by reference to who would be detainable in analogous circumstances under the laws of war.”¶ Because “plaintiffs have provided no basis for believing that the government will place Jónsdóttir and Wargalla in military detention for their supposed substantial support,” the court has rejected their lawsuit.¶ “In sum, Hedges and O’Brien do not have Article III standing to challenge the statute because Section 1021 simply says nothing about the government’s authority to detain citizens,” concluded the court. “While Section 1021 does have meaningful effect regarding the authority to detain individuals who are not citizens or lawful resident aliens and are apprehended abroad, Jónsdóttir and Wargalla have not established standing on this record. We vacate the permanent injunction and remand for further proceedings consistent with this opinion.”¶ Meanwhile, the court’s decision did little to resolve what actually is allowed under the AUMF. In fact, the court said Section 1021 “does not foreclose the possibility that previous 'existing law' may permit the detention of American citizens,” making note of American Yaser Esam Hamdi and a three-year ordeal that left him without the right to habeas corpus or an attorney after he was picked up in post-9/11 Afghanistan on suspicion of terroristic ties. Instead, it confirmed that foreign citizens engaged with substantially supporting hostile forces— neither of which term is still properly defined — can be locked up in military jails.

#### Courts and the courts have preserved detention powers

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Through a growing series of habeas challenges, the D.C. Circuit has fleshed out habeas requirements in these wartime cases, addressing a number of procedural, definitional and evidentiary considerations. In Al-Bihani v. Obama, the Circuit Court considered the definition under which a person may be detained pursuant to the AUMF. The D.C. Circuit accepted the earlier definition offered: "an individual who was part of or supporting Taliban or al-Qaeda force, or associated forces ... and [\*51] the modified definition offered by the Obama administration requiring "substantial support." n311 Regarding the boundaries of who qualifies under the definition, the Circuit observed that "wherever the outer bounds may lie" they include individuals who engage in "traditional food operations essential to a fighting force and the carrying of arms." They concluded that "Al-Bihani was part of and supported a group--prior to and after September 11-- that was affiliated with al-Qaeda and Taliban forces and engaged in hostilities against a U.S. Coalition partner. Al-Bihani, therefore, falls squarely within the scope of the President's statutory detention powers. n312¶ Al-Bihani next argued that law of war detention authority exists only until the end of hostilities and in this instance, he asserted relevant hostilities had ended. The Circuit cogently rejected this argument. If the election of President Karzai or the installation of a post-Taliban regime required the release of detainees, then¶ . . . each successful campaign of a long war [would be] but a Pyrrhic prelude to defeat. The initial success of the United States and its Coalition partners in ousting the Taliban from the seat of government and establishing a young democracy would trigger an obligation to release Taliban fighters captured in earlier clashes. Thus, the victors would be commanded to constantly refresh the ranks of the fledgling democracy's most likely saboteurs. n313¶ Further, the D.C. Circuit concluded that the determination of when hostilities have ceased is fundamentally a political decision, at least absent a congressional declaration terminating the war. n314 The recent Congressional affirmation of the AUMF's detention authority confirms Congress's view that hostilities against al-Qaeda remain ongoing and constitute a persistent, global military threat.¶ Regarding procedural safeguards, Al Bihani raised a host of issues ranging from the standard of proof to the requirement for a separate evidentiary hearing. n315 [\*52] The D.C. Circuit found that habeas review for military detainees "need not match the procedures developed by Congress and the courts specifically for habeas challenges to criminal convictions." n316 Relying on Boumediene, the court instead embraced innovative, pragmatic procedures that would not unduly burden the military. n317 Further, the D.C. Circuit rejected the contention that proof beyond a reasonable doubt or proof by clear and convincing evidence was necessary to hold a detainee. The court expressly declined to articulate the minimum proof standard required, but found the preponderance standard constitutionally permissible. n318¶ Other cases demonstrate the D.C. Circuit's pragmatic approach. In Bensayah v. Obama, the court recognized the amorphous nature of the al-Qaeda threat and rejected formalistic criteria for determining whether a person is part of al-Qaeda. n319 In Barhoumi v. Obama, the court upheld Barhoumi's detention as a member of an "associated force" based on diary records singling him out as a member of Zubaydah's associated militia organization. n320 In Awad v. Obama, the D.C. Circuit reviewed the district court's factual finding for "clear error," weighing each piece of evidence, not in isolation, but "taken as a whole." n321 In reversing the lower court's ruling in Al-Adahi v. Obama, the court found the district judge failed to take into account the "conditional probability" of the evidence, n322 leading the lower court to reject evidence erroneously because each particular fact did not by itself prove the ultimate fact that Al-Adahi was part of al-Qaeda. The mistake of requiring each [\*53] piece of evidence to bear independent weight constituted a "fundamental mistake that infected the lower court's entire analysis." n323¶ The D.C. Circuit addressed discovery issues in Al Odah v. U.S. n324 For habeas purposes, the touchstone for discovery it developed was enabling a "meaningful review"; thus, access to classified material by detainees' counsel must be necessary to facilitate such a review. n325 A naked declaration or mere certification by the government regarding sensitive information will not suffice. n326 The D.C. Circuit supported a presumption favoring release of most classified information to detainees' counsel and rejected the contention that submission of classified evidence to the court for in camera, ex parte review, in itself, resolved the discovery burden. n327 The court suggested that its opinion in Bismullah v. Gates requiring the district court's ex parte review of "highly sensitive information" n328 did not end the inquiry regarding release to detainees' counsel. In Al Odah, the court concluded that habeas court should proceed further by determining whether "classified information is material and counsel's access to it is necessary to facilitate meaningful review." n329 If no alternatives would afford a detaining the meaningful review required by Boumediene, even sensitive classified information may need to be released to counsel.¶ Much has been written about hearsay in relation to war crimes trials and military commissions. Post-Boumediene, the D.C. Circuit determined hearsay evidence is not automatically invalid, nor is a traditional Confrontation Clause objection sustainable because habeas reviews are not criminal prosecutions. n330 The court explained, "hearsay is always admissible." The issue is what "probative weight to ascribe" to the evidence and whether there is "sufficient indicia of reliability." n331 The D.C. Circuit applied similar logic in Parhat v. Gates, a case involving a Chinese citizen of Uighur heritage. There it required evaluation of the raw evidence, which must be sufficiently reliable and probative to demonstrate the truth of the asserted proposition. n332¶ In summary, the D.C. Circuit has carved out a tailored, pragmatic approach in these detainee cases. Habeas proceedings for law of war detainees are not criminal [\*54] trials. Each habeas-eligible detainee enjoys the benefit of an independent judicial review, but the parameters differ categorically from a criminal trial. The definition of who may be detained is not dependent on formalistic criteria. Proof beyond a reasonable doubt is not required. There is no jury. Confrontation is different--hearsay, for example, is admissible when reliable. The process of weighing evidence must account for the exigencies of military operations. Through this evolving process, some detainees have been released. Others have been continued in law of war detention consistent with the AUMF. Ardent proponents of habeas may find this promised panacea somewhat unsatisfying. Those who feared judicial meddling in military affairs likely would agree habeas has not been the disaster some feared. Thus far, the D.C. Circuit has taken its duty seriously and made some tough calls designed to balance the inevitable tension between liberty and security. The next section briefly considers application of a purely civilian criminal law framework in law of war detainee cases.

#### The President has complete discretion --- Courts have struck down injunctions on ID

Thomas Eddlem 7/19/13, writer for The New American, “ NDAA Indefinite Detention Without Trial Approved by Appeals Court,” http://www.thenewamerican.com/usnews/constitution/item/16026-ndaa-indefinite-detention-without-trial-approved-by-appeals-court

The U.S. Court of Appeals for the Second District struck down an injunction against indefinite detention of U.S. citizens by the president under the National Defense Authorization Act of 2012 in a July 17 ruling that is a blow to civil liberties protected by the U.S. Constitution. The appellate court ruled:¶ Plaintiffs lack standing to seek preenforcement review of Section 1021 and vacate the permanent injunction. The American citizen plaintiffs lack standing because Section 1021 says nothing at all about the President’s authority to detain American citizens.¶ The Section 1021 of the NDAA allows “detention under the law of war without trial until the end of the hostilities” for “a person who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act or has directly supported such hostilities in aid of such enemy forces.” The court is technically correct in stating that the law does not specifically mention U.S. citizens when it uses the term “person,” but like the vaguely worded “supported such hostilities in aid of such enemy forces,” it appears to be all-encompassing and subject solely to the president's discretionary whims.

### Generic

#### Restrictions on detention kill exec flex—key to prevent terrorism

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Reading the tea leaves of judicial dicta may be fraught with difficulty, but one certainly discerns from these pragmatic guidelines a view that the Executive should be accorded reasonable deference in matters of preventive detention. This deference is strongest during the early phases of detention, when facts are unclear, when the risks of release are acute, and the dangers of substituting a judicial judgment for that of the military or the Commander-in-Chief is greatest. If the Government learns that al-Qaeda operatives have invaded the U.S. bent on detonating explosives near chemical-laden rail cars, the overwhelming national effort must be directed toward destroying or detaining those forces intent on harming the country. This is not the time for Miranda and presentment but for concerted, decisive action bounded by the law of war. Every instrument of national power must be brought to bear, both military and civilian. If it makes the most sense for the FBI to detain someone, they should do so. If the military has the most information and can most quickly and effectively detain and interrogate, then consistent with military regulations, they should do so.¶ The process of understanding the depth and breadth of the danger, connecting the web of those involved, determining the possibility of future attacks takes time. It remains essential to afford the Commander-in-Chief adequate time and decision space to maximize the opportunity to defeat the threat and prevent future attacks.That is why the NDAA imposes no temporal limits, why it avoids geographic restrictions and why it grants no special protections to citizens who take up arms with the enemy. As Hamdan and Boumerdiene make clear, there are limits to the Court's deference. The more time that passes, the greater the consequences of an erroneous deprivation of liberty and the greater the risk of not affording someone a reasonable opportunity to challenge the basis for their detention. If there is consensus on the matter of process in preventive detention, it appears to mean reasonable deference followed by increased scrutiny with the passage of time. It means judicial review bounded by pragmatism, and it means balancing very real security concerns against the need to protect individuals from arbitrary deprivation of liberty.

#### Unrestricted authority is key to combat terrorism

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Recent statements by Administration officials reflect these principles. This begins with a core recognition, shared by Congress, the President and the judiciary that the United States is in an armed conflict with al-Qaeda, the Taliban and associated forces. As the State Department's Legal Advisor Harold Koh emphasized in his March 2010 speech to the Annual Meeting of the American Society of International Law, as a matter of international law, the United States has acted in accordance with the inherent right of self-defense within the United Nations Charter. n344 This right, moreover, was explicitly recognized by the U.N. Security Council in its first post-9/11 U.N. Security Council Resolution. n345 As Mr. Koh also pointed out, as a matter of domestic law, Congress, through the AUMF, expressly authorized the use of all necessary and appropriate force to counter al-Qaeda. This link to legislative authority is critically important because "when the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate." n346 Further, the Supreme Court as early as Hamdi viewed the AUMF as invoking law of war authority, and as Mr. Koh noted, the habeas cases endorse the "overall proposition that individuals who are part of an organized armed group like al-Qaeda can be [\*58] subject to law of war detention for the duration of the current conflict." n347 This evidences a strong meeting of the minds that the grave threat posed by al-Qaeda and its associated forces wholly justified the Government's recourse to the right of self-defense and law of war authorities, and a resounding rejection of a purely domestic law enforcement model.¶ In his February 2012 speech at Yale Law School, Department of Defense General Counsel Jeh Johnson offered cogent insight into counterterrorism principles about "which the top national security lawyers in [the] Administration broadly agree." n348 First, the AUMF is the "bedrock of the military's domestic legal authority." Second, the statutory authorization in the AUMF is "not open-ended" in that the definition of those against whom force may be authorized is specifically tailored to target al-Qaeda, Taliban or associated forces directly involved in the 9/11 attacks or persons who were part of, or substantially supported, those forces that are engaging in hostilities against the United States or its coalition partners. As Mr. Johnson then explained, Congress, the Executive and Judicial branches have all joined in embracing this interpretation. n349 Additionally, he noted that the AUMF is without geographic limitation to Afghanistan, a legal fact that is crucial given that "over the last 10 years al-Qaeda has not only become more decentralized, [but has also] migrated away from Afghanistan to other parts of the world." n350 Finally, he stated that where a U.S. citizen becomes a belligerent fighting against the United States, under Quirin and Hamdi that individual, like their non-citizen counterpart, becomes a valid military objective. n351 Though Jeh Johnson was referring to the justification for targeted killing, n352 as a legal matter, the justification for targeting a U.S. citizen enemy belligerent equally justifies his or her preventive detention under the law of war.

### Internal Link—Kills Coop

#### That spills over to broader info sharing

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5. The discovery requirements endanger national security by discouraging cooperation from our allies. As illustrated by the recent investigations conducted by Congress, the Silberman/Robb Commission, and the 9/11 Commission regarding pre-9/11 intelligence failures, the United States relies heavily on cooperation from foreign intelligence services, particularly in areas of the world from which threats to American interests are known to stem and where our own human intelligence resources have been inadequate. It is vital that we keep that pipeline flowing. Clearly, however, foreign intelligence services (understandably, much like our own CIA) will necessarily be reluctant to share information with our country if they have good reason to believe that information will be revealed under the generous discovery laws that apply in U.S. criminal proceedings.

###  Internal Link—Flex (Must Read)

#### Prez flex is key to quick action and intel

Glenn Sulmasy 9, law faculty of the United States Coast Guard Academy, , Anniversary Contributions: Use of Force: Executive Power: the Last Thirty Years, 30 U. Pa. J. Int'l L. 1355

Since the attacks of 9/11, the original concerns noted by Hamilton, Jay, and Madison have been heightened. Never before in the young history of the United States has the need for an energetic executive been more vital to its national security. The need for quick action in this arena requires an executive response - particularly when fighting a shadowy enemy like al Qaeda - not the deliberative bodies opining on what and how to conduct warfare or determining how and when to respond. The threats from non-state actors, such as al Qaeda, make the need for dispatch and rapid response even greater. Jefferson's concerns about the slow and deliberative institution of Congress being prone to informational leaks are even more relevant in the twenty-first century. The advent of the twenty-four hour media only leads to an increased need for retaining enhanced levels of executive [\*1362] control of foreign policy. This is particularly true in modern warfare. In the war on international terror, intelligence is vital to ongoing operations and successful prevention of attacks. Al Qaeda now has both the will and the ability to strike with the equivalent force and might of a nation's armed forces. The need to identify these individuals before they can operationalize an attack is vital. Often international terror cells consist of only a small number of individuals - making intelligence that much more difficult to obtain and even more vital than in previous conflicts. The normal movements of tanks, ships, and aircrafts that, in traditional armed conflict are indicia of a pending attack are not the case in the current "fourth generation" war. Thus, the need for intelligence becomes an even greater concern for the commanders in the field as well as the Commander-in-Chief.¶ Supporting a strong executive in foreign affairs does not necessarily mean the legislature has no role at all. In fact, their dominance in domestic affairs remains strong. Additionally, besides the traditional roles identified in the Constitution for the legislature in foreign affairs - declaring war, ratifying treaties, overseeing appointments of ambassadors, etc. - this growth of executive power now, more than ever, necessitates an enhanced, professional, and apolitical oversight of the executive. An active, aggressive oversight of foreign affairs, and warfare in particular, by the legislature is now critical. Unfortunately, the United States - particularly over the past decade - has witnessed a legislature unable to muster the political will necessary to adequately oversee, let alone check, the executive branch's growing power. Examples are abundant: lack of enforcement of the War Powers Resolution abound the executive's unchecked invasions of Grenada, Panama, and Kosovo, and such assertions as the Authorization for the Use of Military Force, the USA Patriot Act, military commissions, and the updated Foreign Intelligence Surveillance Act ("FISA"). There have been numerous grand-standing complaints registered in the media and hearings over most, if not all, of these issues. However, in each case, the legislature has all but abdicated their constitutionally mandated role and allowed the judicial branch to serve as the only real check on alleged excesses of the executive branch. This deference is particularly dangerous and, in the current environment of foreign affairs and warfare, tends to unintentionally politicize the Court.¶ The Founders clearly intended the political branches to best serve the citizenry by functioning as the dominant forces in [\*1363] guiding the nation's foreign affairs. They had anticipated the political branches to struggle over who has primacy in this arena. In doing so, they had hoped neither branch would become too strong. The common theme articulated by Madison, ambition counters ambition, n17 intended foreign affairs to be a "give and take" between the executive and legislative branches. However, inaction by the legislative branch on myriad policy and legal issues surrounding the "war on terror" has forced the judiciary to fulfill the function of questioning, disagreeing, and "checking" the executive in areas such as wartime policy, detentions at Guantanamo Bay, and tactics and strategy of intelligence collection. The unique nature of the conflict against international terror creates many areas where law and policy are mixed. The actions by the Bush administration, in particular, led to outcries from many on the left about his intentions and desire to unconstitutionally increase the power of the Presidency. Yet, the Congress never firmly exercised the "check" on the executive in any formal manner whatsoever.¶ For example, many policymakers disagreed with the power given to the President within the Authorization to Use Military Force ("AUMF"). n18 Arguably, this legislation was broad in scope, and potentially granted sweeping powers to the President to wage the "war on terror." However, Congress could have amended or withdrawn significant portions of the powers it gave to the executive branch. This lack of withdrawal or amendment may have been understandable when Republicans controlled Congress, but as of November 2006, the Democrats gained control of both houses of the Congress. Still, other than arguing strongly against the President, the legislature did not necessarily or aggressively act on its concerns. Presumably this inaction was out of concern for being labeled "soft on terror" or "weak on national security" and thereby potentially suffering at the ballot box. This virtual paralysis is understandable but again, the political branches were, and remain, the truest voice of the people and provide the means to best represent the country's beliefs, interests, and national will in the arena of foreign affairs. It has been this way in the past but the more recent (certainly over the past thirty years and even more so in the past decade) intrusions of the judicial branch into what [\*1364] was intended to be a "tug and pull" between the political branches can properly be labeled as an unintended consequence of the lack of any real legislative oversight of the executive branch.¶ Unfortunately, now nine unelected, life-tenured justices are deeply involved in wartime policy decision making. Examples of judicial policy involvement in foreign affairs are abundant including Rasul v. Bush; n19 Hamdi v. Rumsfeld; n20 Hamdan v. Rumsfeld; n21 as well as last June's Boumediene v. Bush n22 decision by the Supreme Court, all impacting war policy and interpretation of U. S. treaty obligations. Simply, judges should not presumptively impact warfare operations or policies nor should this become acceptable practice. Without question, over the past thirty years, this is the most dramatic change in executive power. It is not necessarily the strength of the Presidency that is the change we should be concerned about - the institutional search for enhanced power was anticipated by the Founders - but they intended for Congress to check this executive tendency whenever appropriate. Unfortunately, this simply is not occurring in twenty-first century politics. Thus, the danger does not necessarily lie with the natural desire for Presidents to increase their power. The real danger is the judicial branch being forced, or compelled, to fulfill the constitutionally mandated role of the Congress in checking the executive.¶ 4. PRESIDENT OBAMA AND EXECUTIVE POWER¶ The Bush presidency was, and continues to be, criticized for having a standing agenda of increasing the power of the executive branch during its eight-year tenure. Numerous articles and books have been dedicated to discussing these allegations. n23 However, as argued earlier, the reality is that it is a natural bureaucratic tendency, and one of the Founders presciently anticipated, that each branch would seek greater powers whenever and wherever possible. As the world becomes increasingly interdependent, technology and armament become more sophisticated, and with [\*1365] the rise of twenty-first century non-state actors, the need for strong executive power is not only preferred, but also necessary. Executive power in the current world dynamic is something, regardless of policy preference or political persuasions, that the new President must maintain in order to best fulfill his constitutional role of providing for the nation's security. This is simply part of the reality of executive power in the twenty-first century. n24

### New Courts

#### Court trials hamstring the executive—triggers the link

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Empirically, judicial demands on executive branch procedural compliance, if unchecked, become steadily more demanding over time. The executive naturally responds by being more internally exacting to avoid problems. Progressively, executive compliance, initially framed and understood as a reasonably modest set of burdens to promote the integrity of judicial proceedings, becomes instead a consuming priority and expenditure, which, if permitted in the context of warfare, would inevitably detract from the military mission that is the bedrock of our national security. ¶ In the fore here, plainly, are such matters as discovery and confrontation rights. If the courts were given final authority, while hostilities are ongoing, to second-guess the executive’s decision to detain a combatant by scrutinizing reports that summarize the basis for detention, it is only a short leap to the court’s asking follow-up questions or determining that testimony, perhaps subject to cross-examination, is appropriate. Are we to make combat personnel available for these proceedings? Shall we take them away from the battle we have sent them to fight so they can justify to the satisfaction of a judge the capture of an alien enemy combatant that has already been approved by military commanders? Given the fog and anxiety of war, shall we expect them to render events as we would an FBI agent describing the circumstances of a domestic arrest? ¶ Nor is that the end of the intractable national security problems. What if capture was effected by our allies rather than our own forces (as was the case, for example, with the jihadist who was the subject of the Hamdi case)? Shall we try to compel affidavits or testimony from members of, say, the Northern Alliance? What kinds of strains will be put on our essential wartime alliances if they are freighted with requests to participate in American legal proceedings, and possibly compromise intelligence methods and sources – all for the purpose of providing heightened due process to the very terrorists who were making war on those allies? ¶ These are lines that Congress must draw. Leaving them for the courts themselves to sort out would place us on a path toward full-blown civilian trials for alien enemy combatants – the very outcome the creation of a new system was intended to avoid.

#### Military detention is key to combating terrorism

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In bringing the conference report to the Senate floor, which all 26 Senate conferees signed, Senator Carl Levin emphasized the depth and breadth of flexibility left to the Executive branch. As he explained, the final bill does not restrain law enforcement agencies from conducting investigations or interrogations. n87 "If and when a determination is made that a suspect is a foreign al-Qaeda terrorist, that person would be slated for transfer to military custody under procedures written by the Executive branch." n88 Importantly, even after transfer "all existing law enforcement tools remain available to the FBI and other law enforcement agencies." n89 Military detention and military commissions trials for foreign al-Qaeda terrorists may enjoy Congressional preference, but are not the only means of dealing with foreign terrorists in what is fundamentally an all-in approach designed to give the Executive primary and residual authorities to deal with a complex threat. A preference for military detention ensures the availability of established tactics, techniques and procedures not necessarily present in the civilian justice system, and is ultimately meant to enhance intelligence gathering and prevent dangerous enemy forces from returning to the fight.

### AT: Constraints Solve

#### Judicial oversight won’t have constraints

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2. While alien enemy combatants, who are neither U.S. citizens nor lawful aliens, have no rights under the U.S. constitution, judicial oversight of their cases without thoughtful consideration of the standards and procedures under which those cases should proceed, is a prescription for turning those cases into full-blown criminal trials. Even the Rasul decision recognized the inarguable point that persons who are neither citizens nor aliens lawfully resident in the United States do not enjoy the protections of our Constitution, including its habeas corpus provision. The majority argued that the alien combatants’ right of access to U.S. courts for the purpose of challenging their detention under habeas corpus was statutory (i.e., derived from the federal habeas statute, 28 U.S.C., 2241 et seq.).26¶ This distinction, though seemingly salient, proved in the event to be of little moment. Regardless of their lack of constitutional entitlements, experience shows that once alien combatants are permitted access to our courts, judges, under the rubric of due process, will effectively treat them as if they are every bit as vested as citizens with substantive and procedural protections – even in wartime and regardless of the what this portends for national security. Only firm instructions to the contrary could have bucked this inevitability. The Supreme Court’s decision in Rasul failed to provide any guidance to lower courts, and the guidance provided in this regard by Congress since late 2005 has been insufficient.¶ Some explanation is in order here. In the other 2004 Supreme Court case noted above, Hamdi v. Rumsfeld, at issue was the very different scenario of the rights of American citizens captured and detained in the course of fighting against the U.S. in wartime. The Justice Department did not dispute that such citizen combatants had a constitutional right to file habeas claims. To the contrary, at issue were the questions whether they could compel a judicial review of the executive’s decision to detain, and how searching that review should be. The case is instructive for present purposes because the court, in holding that judicial review was available, also indicated that the habeas proceedings in connection with U.S. citizens would be very deferential to the executive branch, to the point of indicating that a military determination would be accepted by the court as long as the citizen combatant had received adequate notice and a meaningful opportunity in the military proceeding to contest his detention.27¶ Of course, the entitlement of alien enemy combatants – assuming they have any rights (other than the right not to be tortured, which is provided by both U.S. and international law28) – should be dramatically less substantial than the very limited rights the Supreme Court accorded to American citizens in Hamdi. Predictably, however, that is not what developed in the district courts when they considered alien combatants detained at Guantanamo Bay on the basis of a decision, Rasul, which opened the courthouse doors but gave district judges no substantive or procedural guidance. Until Congress finally stepped in and put a stop to the experiment, the trajectory was toward an array of judicially fashioned rights approximating not merely those of citizens but, indeed, those accorded to American criminal defendants.

### Taboo

Nuclear taboo is a myth

Verna Gehring 2K, Assistant Professor of Philosophy, Hood College, editor at the Institute for Philosophy and Public Policy at the School of Public Affairs, University of Maryland, Summer 2000, “THE NUCLEAR TABOO,” online: http://74.125.155.132/scholar?q=cache:z6vdoMvLQjIJ:scholar.google.com/&hl=en&as\_sdt=400000

Granted, ordinary citizens do treat nuclear weapons as taboo, which reflects their emotional revulsion at their indiscriminately destructive power. However, Cold War policy planners adopted the language that described nuclear weapons as "different"—separate from the "conventional" arsenal—but not because nuclear use was taboo, as the ordinary citizen might accept. Instead, policy makers recognized that, in the scenario they feared most--the crisis of a military confrontation pitting NATO allies against the Soviet-led Warsaw Pact--crossing the threshold to employ nuclear weapons would secure NATO’s goals in war, but with catastrophic results. Since in this scenario even the "winner" loses, policy makers concluded that it was better not to step onto the "nuclear escalator" in the first place. Consequently, they rejected the option of first use.

Ordinary citizens may well consider nuclear weapons taboo, their "no use" stance resulting from their emotional revulsion at the prospect of nuclear warfare. But policy makers do not operate on this emotional plane. Mutual intimidation explains all the effects we now associate with those of a "nuclear taboo." The ban against nuclear warfare is based on a calculated reasoning of the costs and benefits of nuclear warfare, and at present this rational calculus has not tipped in favor of lifting the ban.

### AT Ayson 10 Impact

\*No internal link – Ayson’s about terror from Southeast Asia

#### Very low probability

Ayson 10 (Robert, Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand at the Victoria University of Wellington, “After a Terrorist Nuclear Attack: Envisaging Catalytic Effects,” Studies in Conflict & Terrorism, Volume 33, Issue 7, July, 2010 Available Online to Subscribing Institutions via InformaWorld)

There is also the question of how other nuclear-armed states respond to the act of nuclear terrorism on another member of that special club. It could reasonably be expected that following a nuclear terrorist attack on the United States, both Russia and China would extend immediate sympathy and support to Washington and would work alongside the United States in the Security Council. But there is just a chance, albeit a slim one, where the support of Russia and/or China is less automatic in some cases than in others. For example, what would happen if the United States wished to discuss its right to retaliate against groups based in their territory? If, for some reason, Washington found the responses of Russia and China deeply underwhelming, (neither “for us or against us”) might it also suspect that they secretly were in cahoots with the group, increasing (again perhaps ever so slightly) the chances of a major exchange. If the terrorist group had some connections to groups in Russia and China, or existed in areas of the world over which Russia and China held sway, and if Washington felt that Moscow or Beijing were placing a curiously modest level of pressure on them, what conclusions might it then draw about their culpability?

#### Their scenario rests on the US blaming China and Russia for the attack, but we won’t

Ayson 10 (Robert, Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand at the Victoria University of Wellington, “After a Terrorist Nuclear Attack: Envisaging Catalytic Effects,” Studies in Conflict & Terrorism, Volume 33, Issue 7, July, 2010 Available Online to Subscribing Institutions via InformaWorld)

It may require a considerable amount of imagination to depict an especially plausible situation where an act of nuclear terrorism could lead to such a massive inter-state nuclear war. For example, in the event of a terrorist nuclear attack on the United States, it might well be wondered just how Russia and/or China could plausibly be brought into the picture, not least because they seem unlikely to befingered as the most obvious state sponsors or encouragers of terrorist groups. They would seem far too responsible to be involved in supporting that sort of terrorist behavior that could just as easily threaten them as well.

## Other adv

### Geneva

#### No chance the Courts enforce I-Law

Daniel Abebe & Eric A. Posner 11, Assistant Professor and Kirkland & Ellis Professor, University of Chicago Law School, The Flaws of Foreign Affairs Legalism, 51 Va. J. Int'l L. 507

Foreign affairs legalists make sweeping claims about the American judiciary's promotion of international law, but the support for these claims is weak. In this section, we discuss some examples of contributions to international law by Congress, the courts and the executive. We then evaluate the institutional capacities and incentives of the different branches to promote international law. As we will show, the evidence points to the executive, not the judiciary, as the branch most responsible for advancing international law.

[\*528]

1. The American Judiciary's Contribution to International Law

Foreign affairs legalists celebrate the American judiciary's contributions to international law, but they can only point to a few concrete accomplishments. A handful of judge-made doctrines put limited pressure on the political branches to comply with international law. For example, the Charming Betsy canon makes it more difficult for Congress to pass a statute that violates international law by requiring Congress to be clearer than it would otherwise be. n101 International comity rules, in limited circumstances, avoid violations of international jurisdictional law that suggest that certain types of disputes are best resolved in the state with the most contacts to the litigation. n102 The federal courts' admiralty jurisprudence has developed in tandem with admiralty cases in other states, and in this way it could be considered a contribution to international law. One could also point to the willingness of the federal courts to suspend federalism constraints in order to enforce treaties in cases like Missouri v. Holland, n103 but these cases are weak and inconsistent. n104

Moreover, the empirical literature regarding the judiciary's support of international law is thin. Benvenisti cites a handful of cases that suggest that national courts - mainly in developing countries - have used international law in an effort to constrain their executives. n105 Koh also cites a very small number of cases n106 - his best examples are American ATS cases, which we discuss below. n107 Slaughter rests much of her argument on the rise of international judicial conferences, where judges from different countries meet and exchange ideas. n108 She does not provide evidence that these conferences have affected judicial outcomes. Another possibility is that judges enjoy meeting each other and learning about foreign judicial decisions, but they do not, as a matter of pragmatics or principle, allow what they learn to affect the way that they decide cases. n109

In contrast, many court decisions and judge-made doctrines cut against the claims of foreign affairs legalism. The early decision in Foster [\*529] v. Neilson n110 to distinguish between self-executing and non-self-executing treaties, n111 recently reaffirmed in Medellin v. Texas, n112 ensures that many treaties cannot be judicially enforced. These rules have been reinforced by the reluctance to find judicially enforceable rights even in treaties that are self-executing. The tradition of executive deference also limits the judiciary's ability to contribute to international law. The judiciary generally follows the executive's lead instead of pushing the executive toward greater international engagement. In treaty interpretation cases, courts frequently defer to the executive. n113

On questions of international law - the area most important to foreign affairs legalists - the judiciary's record is poor. In the notable federal common law case The Paquete Habana, n114 the Supreme Court made clear that the executive could unilaterally decide that the United States would not comply with CIL, in which case the victims of the legal violation would have had no remedy. n115 Courts have held that both the executive and Congress have the authority to violate international law n116 and that violations of international law cannot be a basis for federal-question jurisdiction. n117 For example, the Supreme Court found that an illegal, extrajudicial abduction that circumvented the terms of an international extradition treaty did not preclude a U.S. trial court's jurisdiction over the abductee. n118

The Supreme Court's treatment of international law in Medellin v. Texas n119 is also instructive. Here, the Court held that the Vienna Convention [\*530] on Consular Relations n120 was not self-executing or judicially enforceable in U.S. courts. n121 That case involved a Mexican national who had been deprived of his right to consular notification under the Convention after he was arrested. He was later sentenced to death. n122 The International Court of Justice held that the United States violated international law by failing to provide the Mexican national with access to his consulate. n123 What is striking in the Medellin context is that not only did the Supreme Court refuse to intervene in order to vindicate rights under international law (earlier, it had held that the ICJ judgment was not binding on U.S. courts), n124 but it also prevented President Bush from vindicating those rights. n125 Bush had tried to order state courts to take account of the ICJ ruling, but the Supreme Court held that he did not have the power to do so. n126

### ALT CASE

#### US support for Israel demolishes our credibility---it comparatively outweighs the gains made by the plan

Hroub 11—Prof of Modern Middle Eastern Politics and Identity, Cambridge. PhD (Khaled, US fumbles Arab Spring gains over Palestine's UN bid, 11/3/11, http://www.grc.ae/?frm\_action=view\_newsletter\_web&sec\_code=grcanalysis&frm\_module=contents&show\_web\_list\_link=1&int\_content\_id=76208)

In a quick and angry response to UNESCO's decision to admit Palestine as a full member, the US administration stopped its $60 million annual contribution to the organisation's budget. Almost immediately, a flurry of condemnations of the American reaction erupted in the pan-Arab media. Once the news was broadcast, hundreds of frustrated viewers posted angry comments on Al-Jazeera and Al-Arabiya websites, both based in the Gulf and considered to be the leading news websites in Arabic. Particularly since the UNESCO step is more symbolic than anything else, the US reaction is seen to be way out of proportion.

General Arab frustration at the blindly pro-Israeli policies of the US has become compounded especially after Washington's (over)reaction to the Palestinian call for full statehood status at the UN in September. At that time, American pressure on the Palestinian leadership to withdraw their application ranged across the whole spectrum and continued to the very last minute. Not only were threats made including cutting annual aid to the Palestinian Authority, but President Barack Obama was reported to have held the Palestinian President Mahmoud Abbas personally responsible for any drop of American blood that might be shed in connection with the American veto against the Palestinian request. Some lawmakers in the US Congress have already started drafting measures to punish the Palestinians by effecting financial cuts. It could be said that the strong overall American reaction across the political spectrum in Washington has taken a harder line against the Palestinian petition than that taken in Tel Aviv.

Palestinian and other Arab commentators criticise the Americans for becoming plus royaliste que le roi, pointing to the many voices inside Israel that have been calling upon the government not only to accept the Palestinian move, but to support it. When the Palestinians started seriously considering this strategy over the past year, a prominent group of Israeli intellectuals and politicians, many of them holding prestigious Israeli awards, issued a statement, in April, in support of the declaration of a Palestinian state within the 1967 borders. This new Palestinian strategy of pursuing higher diplomatic status at the UN is bound within international law and creates no contradiction with any of the previous UN resolutions. In fact it is a harmless step which conforms to the parameters of the long-conducted peace process which has made the establishment of a Palestinian state within the 1967 boundaries its ultimate goal.

The short-sighted American reaction to Palestine's UN bid can only be understood as a means of appeasing the strong Jewish-American lobbies in light of the coming elections. Such electioneering tactics, in blockheadedly showing imagined support for Israel against the almost universal support to legitimate Palestinian rights acknowledged by the US itself, will cost the Americans a high and unwarranted price. Israel is not under any existential threat that could justify the hysterical American reaction. Neither is the US even in full consensual agreement with the hard line populist politics of Israel's current government. There has recently been a need for even more rational and balanced American positioning vis-a-vis the Palestinian effort rather than the head-to-head clashes in the context of which Obama's speech at the UN will be noted in history as the most Zionist speech delivered by an American president ever.

But what is really new about all this when American policies have always sided with Israel in good times and bad? Well, actually, there are two new developments that would render an American continuation of old policies in this respect more damaging than before: the recent Arab revolutions along with what the US has invested in supporting them; and the more assertive Gulf positions supporting the Palestinians.

By adopting such a blindly over-blown line of support to the current right-wing Israeli government, the US is simply losing all the gains that it might have garnered from the Arab Spring. Starting with revolutions in Tunisia and Egypt back in January, Washington faced the dilemma of either moving along with the rising sentiment in the Arab street which would change pro-Western regimes, or support their ailing and corrupt governments. The carefully calculated positions and neatly worded statements that Washington made in response to the speedy success of these revolutions had been meant to keep a balanced stance: to side with the wave of change, but to keep other allies in the Arab region assured of American support. In the end, the official American position was read by their allies in the region as tilting towards these revolutions even if they led to the toppling of the old regimes. At the level of Arab public perception, the American stance in ditching the Tunisian and Egyptian presidents had shaken the long-lived and deep-seated anti-American sentiment in the region. One could argue that for the first time in the past two decades parts of Arab public opinion were nudged out of their strong black anti-American feeling into a decidedly lighter 'grey' area.

This move from a black and white perception of the US to a 'grey' area in a span of a mere few months should have been considered a massive strategic achievement. All previous efforts over the past decade and longer, and investments in 'Public Diplomacy' and other fruitless projects, had yielded very little. Winning the 'hearts and minds' of the Arabs required real change in politics, and many Arabs had started to see the beginning of such a change in the Arab Spring. This beginning seemed to have redressed for a while the frustration and loss of hope in President Obama, especially after the high expectations he managed to raise in his Istanbul and Cairo speeches in April and June 2009, respectively.

Yet, all efforts that the US has made, or the little achievements that it has been gaining on the Arab/Muslim public opinion front, have been continuously whittled away because of the way it has dealt with the Palestine/Israel issue. The credibility that Obama had projected in the first year of his presidency, which rapidly changed much of the negative image of the US among Arabs and Muslims, would later fail because of the stubborn Israeli position on settlements. As a condition set by the international community and by the US itself in the Roadmap for Peace, Obama pressed the Israelis to freeze building settlements prior to the resumption of negotiations between Israel and the Palestinians. The Israelis rejected his demand and have continued right up to the very present to construct new settlements in the West Bank and East Jerusalem. Obama did nothing, or, being unable to do anything, lost his face and credibility in the Arab and Muslim world, one may even add humiliatingly! A common metaphor that was frequently used in the Arab press depicted the US bowing on its knees before Israel.

The other new and noticeable development which would further expose America's pro-Israel policies is the new foreign policy of the Gulf countries, individually or as a GCC bloc. The Arab Spring has given the GCC an unprecedented role in leading collective Arab action, in Libya, Yemen and Syria. Egypt, Iraq and Syria, the countries that until recently would claim Arab leadership or enjoyed great influence on other Arab countries, have all taken the back seat each for obvious reasons. Within the framework of the Arab League or even outside it, the GCC bloc seems to remain, and perhaps despite many internal shortcomings, the only coherent Arab bloc that is able to function collectively and show leadership. On the Palestine front, this has been exhibited in the challenging remarks made by the Saudi prince Turki Al-Faisal in the American press, stating boldly that his country will support the Palestinian UN move without reservation. It was the concrete GCC support for the Palestinian president at the UN, according to many accounts, which had strengthened his position. There is some serious talk within the GCC that it (along with Turkey) should step in if the American threats of cutting the annual half a billion dollar or so support to the Palestinian Authority were to materialise. However, Washington is fully aware that a cut in aid would mean a cut in leverage, thus such an extreme measure would actually be very unlikely.

In the moving sands of the post-revolutions Arab region, the usual American policies towards the Israeli/Palestinian conflict have become out of date. What Washington attempts to build and invest with certain policies is destroyed and divested by other policies. Unless a radical change and a major shift in Washington's policies on Palestine is pursued, winning the hearts and minds of the Arabs seems likely to be a futile exercise - as the old Arab proverb most accurately describes, the Americans pointlessly 'are ploughing the sea'!

### 1NC: No Impact

#### The worst case scenario happened – no extinction

Dove 12 [Alan Dove, PhD in Microbiology, science journalist and former Adjunct Professor at New York University, “Who’s Afraid of the Big, Bad Bioterrorist?” Jan 24 2012, http://alandove.com/content/2012/01/whos-afraid-of-the-big-bad-bioterrorist/]

The second problem is much more serious. Eliminating the toxins, we’re left with a list of infectious bacteria and viruses. With a single exception, these organisms are probably near-useless as weapons, and history proves it.¶ There have been at least three well-documented military-style deployments of infectious agents from the list, plus one deployment of an agent that’s not on the list. I’m focusing entirely on the modern era, by the way. There are historical reports of armies catapulting plague-ridden corpses over city walls and conquistadors trying to inoculate blankets with Variola (smallpox), but it’s not clear those “attacks” were effective. Those diseases tended to spread like, well, plagues, so there’s no telling whether the targets really caught the diseases from the bodies and blankets, or simply picked them up through casual contact with their enemies.¶ Of the four modern biowarfare incidents, two have been fatal. The first was the 1979 Sverdlovsk anthrax incident, which killed an estimated 100 people. In that case, a Soviet-built biological weapons lab accidentally released a large plume of weaponized Bacillus anthracis (anthrax) over a major city. Soviet authorities tried to blame the resulting fatalities on “bad meat,” but in the 1990s Western investigators were finally able to piece together the real story. The second fatal incident also involved anthrax from a government-run lab: the 2001 “Amerithrax” attacks. That time, a rogue employee (or perhaps employees) of the government’s main bioweapons lab sent weaponized, powdered anthrax through the US postal service. Five people died.¶ That gives us a grand total of around 105 deaths, entirely from agents that were grown and weaponized in officially-sanctioned and funded bioweapons research labs. Remember that.¶ Terrorist groups have also deployed biological weapons twice, and these cases are very instructive. The first was the 1984 Rajneeshee bioterror attack, in which members of a cult in Oregon inoculated restaurant salad bars with Salmonella bacteria (an agent that’s not on the “select” list). 751 people got sick, but nobody died. Public health authorities handled it as a conventional foodborne Salmonella outbreak, identified the sources and contained them. Nobody even would have known it was a deliberate attack if a member of the cult hadn’t come forward afterward with a confession. Lesson: our existing public health infrastructure was entirely adequate to respond to a major bioterrorist attack.¶ The second genuine bioterrorist attack took place in 1993. Members of the Aum Shinrikyo cult successfully isolated and grew a large stock of anthrax bacteria, then sprayed it as an aerosol from the roof of a building in downtown Tokyo. The cult was well-financed, and had many highly educated members, so this release over the world’s largest city really represented a worst-case scenario.¶ Nobody got sick or died. From the cult’s perspective, it was a complete and utter failure. Again, the only reason we even found out about it was a post-hoc confession. Aum members later demonstrated their lab skills by producing Sarin nerve gas, with far deadlier results. Lesson: one of the top “select agents” is extremely hard to grow and deploy even for relatively skilled non-state groups. It’s a really crappy bioterrorist weapon.¶ Taken together, these events point to an uncomfortable but inevitable conclusion: our biodefense industry is a far greater threat to us than any actual bioterrorists.

#### Attack would fail

Mueller 6 - John Mueller, Professor of Political Science and International Relations at Ohio State, 06, Overblown p. 20-22

Properly developed and deployed, biological weapons could indeed, if thus far only in theory, kill hundreds of thousands, perhaps even mil­lions of people. The discussion remains theoretical because biological weapons have scarcely ever been used. **Belligerents have eschewed such weapons with good reason: they are extremely difficult to deploy and to control.** Terrorist groups or rogue states may be able to solve such problems in the future with advances in technology and knowledge, but, notes scientist Russell **Seitz**, while bioterrorism may look easy on paper, ''the learning curve is lethally steep in practice." The record so far is unlikely to be very encouraging. For example, Japan reportedly infected wells in Manchuria and bombed several Chinese cities with plague-infested fleas before and during World War II. These ventures (by a state, not a terrorist group) may have killed thousands of Chinese, but they apparently also caused considerable unintended casualties among Japanese troops and seem to have had little military impact.20

For the most destructive results, biological weapons need to be dis­persed in very low-altitude aerosol clouds. Because aerosols do not appreciably settle, pathogens like anthrax (which is not easy to spread or catch and is not contagious) would probably have to be sprayed near nose level. Moreover, 90 percent of the microorganisms are likely to die during the process of aerosolization, and their effectiveness could be reduced still further by sunlight, smog, humidity, and temperature changes. Explosive methods of dispersion may destroy the organisms, and, except for anthrax spores, long-term storage of lethal organisms in bombs or warheads is difficult: even if refrigerated, most of the organ­isms have a **limited lifetime**. The effects of such weapons can take days or weeks to have full effect, during which time they can be countered with medical and civil defense measures. And their impact is very diffi­cult to predict; in combat situations they may spread back onto the attacker. In the judgment of two careful analysts, delivering microbes and toxins over a wide area in the form most suitable for inflicting mass casualties—as an aerosol that can be inhaled—-requires a delivery system whose development "would outstrip the technical capabilities of all but the most sophisticated terrorist." Even then effective dispersal could easily be disrupted by unfavorable environmental and meteoro­logical conditions.21

After assessing, and stressing, the difficulties a nonstate entity would find in obtaining, handling, growing, storing, processing, and dispersing lethal pathogens effectively, biological weapons expert Milton Leiten-berg compares Ms conclusions with glib pronouncements in the press about how biological attacks can be pulled off by anyone with "a little training and a few glass jars," or how it would be "about as difficult as producing beer." He sardonically concludes, ''The less the commenta­tor seems to know about biological warfare the easier he seems to think the task is."

#### They don’t cause mass destruction

O’Neill 4O’Neill 8/19/2004 [Brendan, “Weapons of Minimum Destruction” http://www.spiked-online.com/Articles/0000000CA694.htm]

David C Rapoport, professor of political science at University of California, Los Angeles and editor of the Journal of Terrorism and Political Violence, has examined what he calls 'easily available evidence' relating to the historic use of chemical and biological weapons. He found something surprising - such weapons do not cause mass destruction. Indeed, whether used by states, terror groups or dispersed in industrial accidents, they tend to be far less destructive than conventional weapons. 'If we stopped speculating about things that might happen in the future and looked instead at what has happened in the past, we'd see that our fears about WMD are misplaced', he says. Yet such fears remain widespread. Post-9/11, American and British leaders have issued dire warnings about terrorists getting hold of WMD and causing mass murder and mayhem. President George W Bush has spoken of terrorists who, 'if they ever gained weapons of mass destruction', would 'kill hundreds of thousands, without hesitation and without mercy' (1). The British government has spent £28million on stockpiling millions of smallpox vaccines, even though there's no evidence that terrorists have got access to smallpox, which was eradicated as a natural disease in the 1970s and now exists only in two high-security labs in America and Russia (2). In 2002, British nurses became the first in the world to get training in how to deal with the victims of bioterrorism (3). The UK Home Office's 22-page pamphlet on how to survive a terror attack, published last month, included tips on what to do in the event of a 'chemical, biological or radiological attack' ('Move away from the immediate source of danger', it usefully advised). Spine-chilling books such as Plague Wars: A True Story of Biological Warfare, The New Face of Terrorism: Threats From Weapons of Mass Destruction and The Survival Guide: What to Do in a Biological, Chemical or Nuclear Emergency speculate over what kind of horrors WMD might wreak. TV docudramas, meanwhile, explore how Britain might cope with a smallpox assault and what would happen if London were 'dirty nuked' (4). The term 'weapons of mass destruction' refers to three types of weapons: nuclear, chemical and biological. A chemical weapon is any weapon that uses a manufactured chemical, such as sarin, mustard gas or hydrogen cyanide, to kill or injure. A biological weapon uses bacteria or viruses, such as smallpox or anthrax, to cause destruction - inducing sickness and disease as a means of undermining enemy forces or inflicting civilian casualties. We find such weapons repulsive, because of the horrible way in which the victims convulse and die - but they appear to be less 'destructive' than conventional weapons. 'We know that nukes are massively destructive, there is a lot of evidence for that', says Rapoport. But when it comes to chemical and biological weapons, 'the evidence suggests that we should call them "weapons of minimum destruction", not mass destruction', he says. Chemical weapons have most commonly been used by states, in military warfare. Rapoport explored various state uses of chemicals over the past hundred years: both sides used them in the First World War; Italy deployed chemicals against the Ethiopians in the 1930s; the Japanese used chemicals against the Chinese in the 1930s and again in the Second World War; Egypt and Libya used them in the Yemen and Chad in the postwar period; most recently, Saddam Hussein's Iraq used chemical weapons, first in the war against Iran (1980-1988) and then against its own Kurdish population at the tail-end of the Iran-Iraq war. In each instance, says Rapoport, chemical weapons were used more in desperation than from a position of strength or a desire to cause mass destruction. 'The evidence is that states rarely use them even when they have them', he has written. 'Only when a military stalemate has developed, which belligerents who have become desperate want to break, are they used.' (5) As to whether such use of chemicals was effective, Rapoport says that at best it blunted an offensive - but this very rarely, if ever, translated into a decisive strategic shift in the war, because the original stalemate continued after the chemical weapons had been deployed. He points to the example of Iraq. The Baathists used chemicals against Iran when that nasty trench-fought war had reached yet another stalemate. As Efraim Karsh argues in his paper 'The Iran-Iraq War: A Military Analysis': 'Iraq employed [chemical weapons] only in vital segments of the front and only when it saw no other way to check Iranian offensives. Chemical weapons had a negligible impact on the war, limited to tactical rather than strategic [effects].' (6) According to Rapoport, this 'negligible' impact of chemical weapons on the direction of a war is reflected in the disparity between the numbers of casualties caused by chemicals and the numbers caused by conventional weapons. It is estimated that the use of gas in the Iran-Iraq war killed 5,000 - but the Iranian side suffered around 600,000 dead in total, meaning that gas killed less than one per cent. The deadliest use of gas occurred in the First World War but, as Rapoport points out, it still only accounted for five per cent of casualties. Studying the amount of gas used by both sides from1914-1918 relative to the number of fatalities gas caused, Rapoport has written: 'It took a ton of gas in that war to achieve a single enemy fatality. Wind and sun regularly dissipated the lethality of the gases. Furthermore, those gassed were 10 to 12 times as likely to recover than those casualties produced by traditional weapons.' (7) Indeed, Rapoport discovered that some earlier documenters of the First World War had a vastly different assessment of chemical weapons than we have today - they considered the use of such weapons to be preferable to bombs and guns, because chemicals caused fewer fatalities. One wrote: 'Instead of being the most horrible form of warfare, it is the most humane, because it disables far more than it kills, ie, it has a low fatality ratio.' (8) 'Imagine that', says Rapoport, 'WMD being referred to as more humane'. He says that the contrast between such assessments and today's fears shows that actually looking at the evidence has benefits, allowing 'you to see things more rationally'. According to Rapoport, even Saddam's use of gas against the Kurds of Halabja in 1988 - the most recent use by a state of chemical weapons and the most commonly cited as evidence of the dangers of 'rogue states' getting their hands on WMD - does not show that unconventional weapons are more destructive than conventional ones. Of course the attack on Halabja was horrific, but he points out that the circumstances surrounding the assault remain unclear. 'The estimates of how many were killed vary greatly', he tells me. 'Some say 400, others say 5,000, others say more than 5,000. The fighter planes that attacked the civilians used conventional as well as unconventional weapons; I have seen no study which explores how many were killed by chemicals and how many were killed by firepower. We all find these attacks repulsive, but the death toll may actually have been greater if conventional bombs only were used. We know that conventional weapons can be more destructive.' Rapoport says that terrorist use of chemical and biological weapons is similar to state use - in that it is rare and, in terms of causing mass destruction, not very effective. He cites the work of journalist and author John Parachini, who says that over the past 25 years only four significant attempts by terrorists to use WMD have been recorded. The most effective WMD-attack by a non-state group, from a military perspective, was carried out by the Tamil Tigers of Sri Lanka in 1990. They used chlorine gas against Sri Lankan soldiers guarding a fort, injuring over 60 soldiers but killing none. The Tamil Tigers' use of chemicals angered their support base, when some of the chlorine drifted back into Tamil territory - confirming Rapoport's view that one problem with using unpredictable and unwieldy chemical and biological weapons over conventional weapons is that the cost can be as great 'to the attacker as to the attacked'. The Tigers have not used WMD since.

### 2NC: No Impact

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

Sonia Ben Ouagrham-Gormley ‘12, Assistant Professor in the Biodefense Program at George Mason University, Spring 2012, “Barriers to Bioweapons,” International Security, Vol. 36, No. 4,pp. 80–114

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

#### They don’t have the capability

Sonia Ben Ouagrham-Gormley ‘12, Assistant Professor in the Biodefense Program at George Mason University, Spring 2012, “Barriers to Bioweapons,” International Security, Vol. 36, No. 4,pp. 80–114

Knowledge Acquisition and Diffusion in Past Weapons Programs Studies of knowledge transfer, including in weapons technology, indicate that access to written data does not guarantee its successful transfer and subsequent use, even by experts. The reasons fall into four main categories: the nature of knowledge; external factors; socioeconomic conditions; and the organizational dimensions of programs. As a consequence, scientific data produced elsewhere can be used in a different context as a general guideline to perform a speciªc task, but rarely as a comprehensive set of “how to” instructions to reproduce past work, even with the necessary expertise, which poses serious challenges to weapons development and proliferation. the tacit, local, and collective nature of knowledge Technical and scientific knowledge results from a process of experimentation and testing that, in addition to producing explicit knowledge (e.g., reports, formulas, and designs), produces tacit knowledge, or unarticulated know-how or skills that cannot, or only with considerable difªculty, be translated into written form. Tacit knowledge may also take the form of laboratory practices, routines, or techniques, which, although important for the success of an experiment or process, may not be included in a written document. Two reasons explain their absence: (1) they are not recognized as being an essential part of the experiment or process, or (2) scientists and technicians are unaware that their peculiar way of doing things is crucial for experimental success. Because scientiªc data capture only the explicit portion of the author’s expertise, it is an incomplete representation of the knowledge produced, which constitutes a major obstacle to its efªcient use by others. In addition, written documents rarely explain why scientiªc teams make certain technical choices. 16 As a result, written information requires a degree of interpretation for use in speciªc contexts, implying that those who receive this information must possess sufªcient knowledge to decide how best to use it. Yet, even when the users have the required base knowledge, the absence of the associated tacit knowledge makes the use of explicit data difªcult. Analysts have recorded such technical difªculties in past weapons programs when the transfer of data occurs between state programs, but also within state programs. For instance, despite receiving hundreds of pages of scientific information on the production of the Soviet anthrax weapon designed by the Kirov bioweapons laboratory in Russia, the Stepnogorsk bioweapons production plant in Kazakhstan failed to produce an anthrax weapon based on this information after two years of repeated attempts. Only with the addition of sixtyªve scientists from two Russian facilities at Kirov and Sverdlovsk, and three more years of interpretation and modiªcation of the original protocols, did the Kazakh facility succeed in producing an anthrax weapon, one that proved to be dramatically different from the Kirov weapon. 17 Similarly, the blueprints and scientiªc data that Britain provided to the United States in the early 1940s, which described the production process and weaponization of biological agents, could not be used in the U.S. bioweapons program without extensive modiªcations. The British production process used a series of connected milk churns and was capable of producing only small amounts of agents. The process was not suited for the large-scale production envisioned by the United States. As a result, the United States had to create a new development and production infrastructure, as well as production processes, which required several years of research and testing. 18 Another challenge in using others’ scientiªc data is that tacit knowledge does not transfer easily. It requires proximity to the original source(s) and an extended master-apprentice relationship. 19 Scientiªc and technical knowledge is also highly local: it is developed within a speciªc infrastructure, using a speciªc knowledge base, and at a speciªc location. Some studies have shown that the use of data and technology in a new environment frequently requires adaption to the new site. 20 Successful adaptation often requires the involvement of the original scientiªc author(s) to guide the adjustment. For instance, some of the problems encountered during the production of the Soviet anthrax weapon were solved only after the authors of the weapon in Russia traveled to Kazakhstan to assist their colleagues. These individuals trained their colleagues, transferring their tacit knowledge in the process, and helped adjust the technical protocols to the Kazakh infrastructure, which was substantially different from that of the Russian facility. Even with the presence of these original authors, five years were needed to complete the process of successful transfer and use of bioweapons technology. 21 A further complication is that tacit knowledge can decay over time and may disappear if not used or transferred. Studies have shown that trying to re-create lost knowledge can be difficult, if not impossible

#### Nor the organizational structure

Sonia Ben Ouagrham-Gormley ‘12, Assistant Professor in the Biodefense Program at George Mason University, Spring 2012, “Barriers to Bioweapons,” International Security, Vol. 36, No. 4,pp. 80–114

socioeconomic conditions in which knowledge is used Stability in the work environment and continuity of the scientiªc work are also essential to the proper use and transfer of knowledge. For example, interviews with former U.S. and Soviet bioweapons scientists have indicated that teams of scientists must work together for an extended, uninterrupted period of time to be able to assimilate the acquired knowledge, learn from one another, and create new collective knowledge to make progress on weapons development. 27 In the case of the U.S. bioweapons program, the knowledge accumulation phase lasted from 1943 to 1965. Only around 1965 did scientists feel that they had experimented enough with various pathogens to make signiªcant progress. 28 During such time spans, perturbations in the work environment can set back the clock in an experiment and slow progress because frequently some knowledge is lost, particularly when the interruption is long-lasting. In the Soviet bioweapons program, several scientists noted the negative effect on scientiªc progress caused by periodic shortages in basic ingredients such as growth media, which not only interrupted their work but also pulled them away from their experiments to solve procurement problems. Conºicts among personnel or management and interruptions in scientiªc work caused by shortages in funding had the same delaying effect. 29

### No Bioterror---No Motivation

#### Bioterrorism is too complicated – terrorists would use other methods

Stolar 6 – Alex Stolar, research officer for the Institute of Peace and Conflict Studies, October 2006, "Bioterrorism and US Policy Responses" http://www.ipcs.org/pdf\_file/issue/1659566521IPCS-Special-Report-31.pdf

Moreover, a lingering question is, why would terrorists use bioweapons in an attack? Executing a biological weapon attack is difficult and expensive, and does not suit the modus operandi of the sole group with the means to pursue bioterrorism, Al Qaeda. At present, Al Qaeda favors simple attacks that generate great fear. 9/11 was executed with box cutters; the Madrid train attacks with dynamite purchased from petty criminals6; the London 7/7 bombings utilized simple explosives that could be fashioned with easily available materials and little expertise7; and the terrorists in the recent plot to bomb flights from London to the US intended to use nail polish remover and hair bleach.8 Al Qaeda favors creating great fear at little cost. Why would it stray from this effective formula to bioterrorism which is expensive and of questionable reliability?

#### And, terrorists won’t use bioweapons because they fear mass casualties

Moodie 2**—**headed the Chemical and Biological Arms Control Institute and served as assistant director for multilateral affairs at the U.S. Arms Control and Disarmament Agency**.** president of the Chemical and Biological Arms Control Institute (Brad Roberts and Michael Moodie, Biological Weapons: Toward a Threat Reduction Strategy, http://www.ndu.edu/inss/DefHor/DH15/DH15.htm)

The argument about terrorist motivation is also important. Terrorists generally have not killed as many as they have been capable of killing. This restraint seems to derive from an understanding of mass casualty attacks as both unnecessary and counterproductive. They are unnecessary because terrorists, by and large, have succeeded by conventional means. Also, they are counterproductive because they might alienate key constituencies, whether among the public, state sponsors, or the terrorist leadership group. In Brian Jenkins' famous words, terrorists want a lot of people watching, not a lot of people dead. Others have argued that the lack of mass casualty terrorism and effective exploitation of BW has been more a matter of accident and good fortune than capability or intent. Adherents of this view, including former Secretary of Defense William Cohen, argue that "it's not a matter of if but when." The attacks of September 11 would seem to settle the debate about whether terrorists have both the motivation and sophistication to exploit weapons of mass destruction for their full lethal effect. After all, those were terrorist attacks of unprecedented sophistication that seemed clearly aimed at achieving mass casualties--had the World Trade Center towers collapsed as the 1993 bombers had intended, perhaps as many as 150,000 would have died. Moreover, Osama bin Laden's constituency would appear to be not the "Arab street" or some other political entity but his god. And terrorists answerable only to their deity have proven historically to be among the most lethal. But this debate cannot be considered settled. Bin Laden and his followers could have killed many more on September 11 if killing as many as possible had been their primary objective. They now face the core dilemma of asymmetric warfare: how to escalate without creating new interests for the stronger power and thus the incentive to exploit its power potential more fully. Asymmetric adversaries want their stronger enemies fearful, not fully engaged--militarily or otherwise. They seek to win by preventing the stronger partner from exploiting its full potential. To kill millions in America with biological or other weapons would only commit the United States--and much of the rest of the international community--to the annihilation of the perpetrators.

# 1NR

## Politics

### Overview

#### DA outweighs the case---conceded economic decline causes nuclear war and that shutdown is the biggest internal – means it outweighs since 100% probable

#### Decline is inevitable with a shutdown which makes their add-on irrelevant and much smaller in terms of magnitude

#### Russia relations don’t solve growth – empirically denied and those relations are resilient – 1NC evidence which proves shutdown is key

#### Terrorism won’t happen and even if it does it’s long term and the shutdown outweighs on timeframe since it happens this month and wrecks the economy – prefer timeframe, means we turn their impacts before they turn ours

#### Economy turns terrorism – wage decline causes more people to go into terrorism and turns Russia because Russia is more likely to attack in world of decline

### U – No Shutdown

#### The shutdown will be narrowly avoided now as the GOP is willing but time matters – that’s Fox News. Their ev only cites Syria which was resolved and conservatives with political incentives – prefer our more objective and conclusive ev.

#### Their only warrant is healthcare postponement but:

#### Shutdown will be averted now despite Obamacare backlash

Jonathan Strong, 9-11-2013, "House Leaders to Delay CR Vote," NRO, http://www.nationalreview.com/corner/358243/house-leaders-delay-cr-vote-jonathan-strong

House leadership has decided to delay the vote on a bill funding the government to next week amid a small rebellion from conservatives who want to use the measure for a do-or-die fight on repealing Obamacare. While the bill has faced criticism from conservatives, leadership aides are downplaying the significance of the delay, noting that Majority Leader Eric Cantor only yesterday unveiled his plan for the continuing resolution bill to the full GOP conference. “Getting anything this big accomplished in 72 hours is always tough and we just need a couple extra days to dot the is and cross the ts,” a House GOP leadership aide says. “Conversations are ongoing. We’re making progress,” a second Republican says.

#### House will avert shutdown now – they’ll punt Obamacare fight to the Debt Ceiling

David M. Drucker, 9-11-2013, "Conservatives float new plan to delay Obamacare by one year," Washington Examiner, <http://washingtonexaminer.com/conservatives-float-new-plan-to-delay-obamacare-by-one-year/article/2535609?custom_click=rss>

House conservatives are coalescing around an alternative plan that would delay implementation of Obamacare by one year and use the money saved to restore the sequester-mandated spending cuts, in exchange for approving either a must-pass budget bill or legislation to raise the debt ceiling. The concept was hatched by conservative House Republicans disappointed with a GOP leadership proposal that would send to the Senate a budget bill that funds the government beyond Sept. 30 but allows the Democratic chamber to approve that spending while simultaneously voting down an attached amendment stripping all funding for the Affordable Care Act. Conservative activists are pushing House Republicans to leverage a government shutdown as a means to defund Obamacare. House conservatives are sympathetic to this strategy, which involves passing a budget that defunds Obamacare and attempts to pin the blame for the inevitable government shutdown on President Obama. But even these Republicans recognize the political risk of a government shutdown, and they are now trying to devise an alternative to the leadership proposal that would still cut Obamacare. “My take is, a consensus is all beginning to build,” Rep. John Fleming, R-La., said Wednesday as he exited a closed-door meeting of the Republican Study Committee, a group of conservative House Republicans. House Majority Leader Eric Cantor, R-Va., attended the meeting, but did not address RSC members, those present said. Republican leaders cancelled a vote on their Obamacare proposal this week, acknowledging that they didn't have the votes needed to clear the House. RSC meetings can be raucous and emotive, with caucus members occasionally venting their unhappiness with leadership and its various plans. But members exiting Wednesday’s conclave described the discussion as constructive, an attempt to “thread the needle” between GOP leaders’ desire to avoid a politically risky government shutdown and conservative demands that the upcoming fiscal negotiations be used to block implementation of Obamacare, which will accelerate in October. The conservative alternative to delay Obamacare by a year and restore the sequester-related spending cuts could be part of the government funding bill or the debt ceiling legislation. But House Budget Chairman Paul Ryan, R-Wis., made a “compelling case” for using the debt ceiling legislation to negotiate the Obamacare delay, rather than the budget bill favored by Tea Party activists, according to one Republican who attended the RSC meeting. “That is better ground for us to fight on,” said this GOP member. Meanwhile, the GOP would likely jumpstart negotiations to raise the federal government's $16 trillion borrowing limit, which the Obama administration said will be reached between Oct. 18 to Nov. 5. Republicans might also choose to immediately pass a bill that was based on the conservative alternative in attempt to put the pressure to avoid breaching the debt ceiling on Obama and Senate Democrats. “We’re trying to find the sweet spot and do what’s right for America,” Rep. Jeff Duncan, R-S.C., said. "Republicans want to keep the government open; we’re not advocating for a shutdown."

#### GOP will give in now

Alexander Bolton, 9-12-2013, "Reid 'really frightened' over potential for government shutdown ," The Hill, http://thehill.com/homenews/senate/321923-reid-really-frightened-of-possible-government-shutdown-after-meeting-with-boehner

Senate Majority Leader Harry Reid (D-Nev.) said he is scared of a possible government shutdown after meeting with Speaker John Boehner (R-Ohio) Thursday morning. “I’m really frightened,” he told reporters after a press conference to discuss the morning meeting he had with Boehner, Senate Republican Leader Mitch McConnell (R-Ky.) and House Democratic Leader Nancy Pelosi (D-Calif.). “I think they’re looking like the House is having trouble controlling themselves,” he said. Earlier in the day, Reid declared that the lower chamber had been taken over by anarchists after an energy efficiency bill stalled on the Senate floor. “We’re diverted totally from what this bill is about. Why? Because the anarchists have taken over,” he said. “They’ve taken over the House and now they’ve taken over the Senate. Reid on Thursday delivered a blunt message to Boehner that he will not delay the 2010 Affordable Care Act in exchange for keeping the government open past the end of the month. Reid also made clear he will not grant Republicans any concessions in order to pass legislation to raise the debt limit. Reid told reporters that he will strip out any language defunding or delaying the new healthcare law included in House-passed legislation funding government beyond Sept. 30. “Go to something else, get away from ObamaCare. Send us something else,” he said. He plans to pass a “clean” stopgap spending measure to keep the government open through year’s end. Reid characterized Thursday morning’s bicameral leadership meeting as cordial and said he offered to help Boehner circumvent Tea Party-affiliated conservatives who are threatening a government shutdown. “I said to him, ‘What can I do to help?’,” Reid said. “It was not a yelling-at-each-other meeting. It was a very nice meeting we had. Hey listen, I like John Boehner.” Sen. Charles Schumer (N.Y.), the third-ranking Senate Democratic leader, predicted House Republican leaders will fold before allowing the government to shut down. “I still think at the last minute they’ll have to blink,” Schumer said. “The fact that Boehner came up with his sort-of concoction shows that he knows that a government shutdown plays badly for him,” he added, referring to the stopgap spending measure House GOP leaders presented to their colleagues on Tuesday. “Should he go forward and let the Tea Party win on the government shutdown, then everyone will come down on him and say, ‘Why’d you allow them to do it?’.”

### AT: Fiat Solves Link

Counter-interpretation---the aff must defend the political ramifications of passing the plan---that’s vital to holistic cost benefit analysis.

Politics disads are good:

* Key to current events education that’s useful immediately and promotes political engagement
* They’re a vital neg generic on this topic because there’s no limiting word in the resolution
* Most real world---politicians must always assess political consequences of advocating any bill---the real inherent barrier to the plan is political opposition

### AT: Detention Now

#### Obama backed off GITMO months ago – their evidence is from June and doesn’t assume the new session with limited time or the fiscal deadlines approaching

#### The aff triggers the link – introduction of new legislation causes agenda crowd-out – their ev assumes our DA is capital based which it is not

### AT: Plan Popular

#### Their Sulmasy card isn’t responsive---just says NSC accommodates lots of people interests –doesn’t contest the link that they cause agenda crowd-out – wasting precious hours needed to avert shutdown – that’s James

#### Restricting presidential war authority renders Obama impotent

Seeking Alpha 9-10, 9-10-2013, “Syria Could Upend Debt Ceiling Fight,” http://seekingalpha.com/article/1684082-syria-could-upend-debt-ceiling-fight

Unless President Obama can totally change a reluctant public's perception of another Middle-Eastern conflict, it seems unlikely that he can get 218 votes in the House, though he can probably still squeak out 60 votes in the Senate. This defeat would be totally unprecedented as a President has never lost a military authorization vote in American history. To forbid the Commander-in-Chief of his primary power renders him all but impotent. At this point, a rebuff from the House is a 67%-75% probability.

#### The plan would trade off with Congress’s ability to avert the shutdown - timing is on the brink, they’ll only have a day or two to vote on the shutdown in the status quo

Jake Sherman and John Bresnahan, 9-11-2013, “John Boehner, Eric Cantor struggle to lead House,” Politico, http://www.politico.com/story/2013/09/john-boehner-eric-cantor-house-leaders-96675.html

Time is an issue for Boehner, Cantor and Majority Whip Kevin McCarthy (R-Calif.). The House is in session next week, out the following week and on the day they return — Sept. 30 — the government’s coffers run dry. Their time off can be canceled. The soonest a new government funding bill can hit the floor could be next Thursday. While confusion reigned on Wednesday afternoon, House Appropriations Committee Chairman Hal Rogers (R-Ky.) said it is “not time to panic” “We’ve got some time left here,” Rogers noted. “Conversations are taking place among the various elements” inside the House GOP Conference about how to move forward.

### Disease Impact

#### Government shutdown wrecks CDC disease monitoring – key to check outbreaks

Emily Walker, 4-8-2011, "Both Sides Claim Win as Shutdown Averted," Med Page Today, http://www.medpagetoday.com/Washington-Watch/Washington-Watch/25826

The vast majority of employees at the Centers for Disease Control and Prevention (CDC) would be furloughed if the government ceased operations, said an HHS spokesman. Because the CDC tracks new public health threats such as disease outbreaks, the worst-case scenario during a shutdown would be a massive outbreak of a food-borne illness or other communicable disease. The CDC's emergency operation center -- a command center for monitoring and coordinating CDC's emergency response to public health threats in the United States and abroad -- will remain open. The center is currently working on responses to the earthquake and tsunami in Japan. But responses may be delayed, the spokesman said. "If a state were to call us and say 'We need help,' we may not be able to respond quickly," the spokesman said. While emergency workers will continue their jobs, the staff who work to "get people out the door," by booking travel and facilitating meetings, won't be working. "This would prevent us from responding as quickly as we'd like," the spokesman said. In addition, the CDC's ability to detect an outbreak could be jeapordized, he said. "We have a lot of disease surveillance networks. If those are scaled back to just the staff that monitor those networks, it could conceivably lead to us not being able to detect an outbreak as quickly as we'd like to. We simply won't have the manpower we have right now," the HHS spokesman said.

#### Extinction

Quammen 12 David, award-winning science writer, long-time columnist for Outside magazine for fifteen years, with work in National Geographic, Harper's, Rolling Stone, the New York Times Book Review and other periodicals, 9/29, “Could the next big animal-to-human disease wipe us out?,” The Guardian, pg. 29, Lexis

Infectious disease is all around us. It's one of the basic processes that ecologists study, along with predation and competition. Predators are big beasts that eat their prey from outside. Pathogens (disease-causing agents, such as viruses) are small beasts that eat their prey from within. Although infectious disease can seem grisly and dreadful, under ordinary conditions, it's every bit as natural as what lions do to wildebeests and zebras. But conditions aren't always ordinary. Just as predators have their accustomed prey, so do pathogens. And just as a lion might occasionally depart from its normal behaviour - to kill a cow instead of a wildebeest, or a human instead of a zebra - so a pathogen can shift to a new target. Aberrations occur. When a pathogen leaps from an animal into a person, and succeeds in establishing itself as an infectious presence, sometimes causing illness or death, the result is a zoonosis. It's a mildly technical term, zoonosis, unfamiliar to most people, but it helps clarify the biological complexities behind the ominous headlines about swine flu, bird flu, Sars, emerging diseases in general, and the threat of a global pandemic. It's a word of the future, destined for heavy use in the 21st century. Ebola and Marburg are zoonoses. So is bubonic plague. So was the so-called Spanish influenza of 1918-1919, which had its source in a wild aquatic bird and emerged to kill as many as 50 million people. All of the human influenzas are zoonoses. As are monkeypox, bovine tuberculosis, Lyme disease, West Nile fever, rabies and a strange new affliction called Nipah encephalitis, which has killed pigs and pig farmers in Malaysia. Each of these zoonoses reflects the action of a pathogen that can "spillover", crossing into people from other animals. Aids is a disease of zoonotic origin caused by a virus that, having reached humans through a few accidental events in western and central Africa, now passes human-to-human. This form of interspecies leap is not rare; about 60% of all human infectious diseases currently known either cross routinely or have recently crossed between other animals and us. Some of those - notably rabies - are familiar, widespread and still horrendously lethal, killing humans by the thousands despite centuries of efforts at coping with their effects. Others are new and inexplicably sporadic, claiming a few victims or a few hundred, and then disappearing for years. Zoonotic pathogens can hide. The least conspicuous strategy is to lurk within what's called a reservoir host: a living organism that carries the pathogen while suffering little or no illness. When a disease seems to disappear between outbreaks, it's often still lingering nearby, within some reservoir host. A rodent? A bird? A butterfly? A bat? To reside undetected is probably easiest wherever biological diversity is high and the ecosystem is relatively undisturbed. The converse is also true: ecological disturbance causes diseases to emerge. Shake a tree and things fall out. Michelle Barnes is an energetic, late 40s-ish woman, an avid rock climber and cyclist. Her auburn hair, she told me cheerily, came from a bottle. It approximates the original colour, but the original is gone. In 2008, her hair started falling out; the rest went grey "pretty much overnight". This was among the lesser effects of a mystery illness that had nearly killed her during January that year, just after she'd returned from Uganda. Her story paralleled the one Jaap Taal had told me about Astrid, with several key differences - the main one being that Michelle Barnes was still alive. Michelle and her husband, Rick Taylor, had wanted to see mountain gorillas, too. Their guide had taken them through Maramagambo Forest and into Python Cave. They, too, had to clamber across those slippery boulders. As a rock climber, Barnes said, she tends to be very conscious of where she places her hands. No, she didn't touch any guano. No, she was not bumped by a bat. By late afternoon they were back, watching the sunset. It was Christmas evening 2007. They arrived home on New Year's Day. On 4 January, Barnes woke up feeling as if someone had driven a needle into her skull. She was achy all over, feverish. "And then, as the day went on, I started developing a rash across my stomach." The rash spread. "Over the next 48 hours, I just went down really fast." By the time Barnes turned up at a hospital in suburban Denver, she was dehydrated; her white blood count was imperceptible; her kidneys and liver had begun shutting down. An infectious disease specialist, Dr Norman K Fujita, arranged for her to be tested for a range of infections that might be contracted in Africa. All came back negative, including the test for Marburg. Gradually her body regained strength and her organs began to recover. After 12 days, she left hospital, still weak and anaemic, still undiagnosed. In March she saw Fujita on a follow-up visit and he had her serum tested again for Marburg. Again, negative. Three more months passed, and Barnes, now grey-haired, lacking her old energy, suffering abdominal pain, unable to focus, got an email from a journalist she and Taylor had met on the Uganda trip, who had just seen a news article. In the Netherlands, a woman had died of Marburg after a Ugandan holiday during which she had visited a cave full of bats. Barnes spent the next 24 hours Googling every article on the case she could find. Early the following Monday morning, she was back at Dr Fujita's door. He agreed to test her a third time for Marburg. This time a lab technician crosschecked the third sample, and then the first sample. The new results went to Fujita, who called Barnes: "You're now an honorary infectious disease doctor. You've self-diagnosed, and the Marburg test came back positive." The Marburg virus had reappeared in Uganda in 2007. It was a small outbreak, affecting four miners, one of whom died, working at a site called Kitaka Cave. But Joosten's death, and Barnes's diagnosis, implied a change in the potential scope of the situation. That local Ugandans were dying of Marburg was a severe concern - sufficient to bring a response team of scientists in haste. But if tourists, too, were involved, tripping in and out of some python-infested Marburg repository, unprotected, and then boarding their return flights to other continents, the place was not just a peril for Ugandan miners and their families. It was also an international threat. The first team of scientists had collected about 800 bats from Kitaka Cave for dissecting and sampling, and marked and released more than 1,000, using beaded collars coded with a number. That team, including scientist Brian Amman, had found live Marburg virus in five bats. Entering Python Cave after Joosten's death, another team of scientists, again including Amman, came across one of the beaded collars they had placed on captured bats three months earlier and 30 miles away. "It confirmed my suspicions that these bats are moving," Amman said - and moving not only through the forest but from one roosting site to another. Travel of individual bats between far-flung roosts implied circumstances whereby Marburg virus might ultimately be transmitted all across Africa, from one bat encampment to another. It voided the comforting assumption that this virus is strictly localised. And it highlighted the complementary question: why don't outbreaks of Marburg virus disease happen more often? Marburg is only one instance to which that question applies. Why not more Ebola? Why not more Sars? In the case of Sars, the scenario could have been very much worse. Apart from the 2003 outbreak and the aftershock cases in early 2004, it hasn't recurred. . . so far. Eight thousand cases are relatively few for such an explosive infection; 774 people died, not 7 million. Several factors contributed to limiting the scope and impact of the outbreak, of which humanity's good luck was only one. Another was the speed and excellence of the laboratory diagnostics - finding the virus and identifying it. Still another was the brisk efficiency with which cases were isolated, contacts were traced and quarantine measures were instituted, first in southern China, then in Hong Kong, Singapore, Hanoi and Toronto. If the virus had arrived in a different sort of big city - more loosely governed, full of poor people, lacking first-rate medical institutions - it might have burned through a much larger segment of humanity. One further factor, possibly the most crucial, was inherent in the way Sars affects the human body: symptoms tend to appear in a person before, rather than after, that person becomes highly infectious. That allowed many Sars cases to be recognised, hospitalised and placed in isolation before they hit their peak of infectivity. With influenza and many other diseases, the order is reversed. That probably helped account for the scale of worldwide misery and death during the 1918-1919 influenza. And that infamous global pandemic occurred in the era before globalisation. Everything nowadays moves around the planet faster, including viruses. When the Next Big One comes, it will likely conform to the same perverse pattern as the 1918 influenza: high infectivity preceding notable symptoms. That will help it move through cities and airports like an angel of death. The Next Big One is a subject that disease scientists around the world often address. The most recent big one is Aids, of which the eventual total bigness cannot even be predicted - about 30 million deaths, 34 million living people infected, and with no end in sight. Fortunately, not every virus goes airborne from one host to another. If HIV-1 could, you and I might already be dead. If the rabies virus could, it would be the most horrific pathogen on the planet. The influenzas are well adapted for airborne transmission, which is why a new strain can circle the world within days. The Sars virus travels this route, too, or anyway by the respiratory droplets of sneezes and coughs - hanging in the air of a hotel corridor, moving through the cabin of an aeroplane - and that capacity, combined with its case fatality rate of almost 10%, is what made it so scary in 2003 to the people who understood it best. Human-to-human transmission is the crux. That capacity is what separates a bizarre, awful, localised, intermittent and mysterious disease (such as Ebola) from a global pandemic. Have you noticed the persistent, low-level buzz about avian influenza, the strain known as H5N1, among disease experts over the past 15 years? That's because avian flu worries them deeply, though it hasn't caused many human fatalities. Swine flu comes and goes periodically in the human population (as it came and went during 2009), sometimes causing a bad pandemic and sometimes (as in 2009) not so bad as expected; but avian flu resides in a different category of menacing possibility. It worries the flu scientists because they know that H5N1 influenza is extremely virulent in people, with a high lethality. As yet, there have been a relatively low number of cases, and it is poorly transmissible, so far, from human to human. It'll kill you if you catch it, very likely, but you're unlikely to catch it except by butchering an infected chicken. But if H5N1 mutates or reassembles itself in just the right way, if it adapts for human-to-human transmission, it could become the biggest and fastest killer disease since 1918. It got to Egypt in 2006 and has been especially problematic for that country. As of August 2011, there were 151 confirmed cases, of which 52 were fatal. That represents more than a quarter of all the world's known human cases of bird flu since H5N1 emerged in 1997. But here's a critical fact: those unfortunate Egyptian patients all seem to have acquired the virus directly from birds. This indicates that the virus hasn't yet found an efficient way to pass from one person to another. Two aspects of the situation are dangerous, according to biologist Robert Webster. The first is that Egypt, given its recent political upheavals, may be unable to staunch an outbreak of transmissible avian flu, if one occurs. His second concern is shared by influenza researchers and public health officials around the globe: with all that mutating, with all that contact between people and their infected birds, the virus could hit upon a genetic configuration making it highly transmissible among people. "As long as H5N1 is out there in the world," Webster told me, "there is the possibility of disaster. . . There is the theoretical possibility that it can acquire the ability to transmit human-to-human." He paused. "And then God help us." We're unique in the history of mammals. No other primate has ever weighed upon the planet to anything like the degree we do. In ecological terms, we are almost paradoxical: large-bodied and long-lived but grotesquely abundant. We are an outbreak. And here's the thing about outbreaks: they **end**. In some cases they end after many years, in others they end rather soon. In some cases they end gradually, in others they end with a crash. In certain cases, they end and recur and end again. Populations of tent caterpillars, for example, seem to rise steeply and fall sharply on a cycle of anywhere from five to 11 years. The crash endings are dramatic, and for a long while they seemed mysterious. What could account for such sudden and recurrent collapses? One possible factor is infectious disease, and viruses in particular.

## CP

### Conditionality Good

#### The judge should consider any germane opportunity cost to the plan

#### A) They destroy cost benefit analysis ---Limiting the neg to 1 advocacy artificially insulates the aff from competitive options.

#### B) Key to tactical choices---forces the 2ac to recognize and respond to strategic interactions---critical skill for advocacy --- strategic opponents are inevitable.

#### C) Advocacy construction--- forces the aff to defend their position from all sides--- inability to simultaneously defend against a variety of proposals props up bad affs that should lose in the free market of ideas

#### D) Err neg---2ar persuasion, no Uniqueness for production DAs, aff picks the focus of the debate, the topic is huge, and the 2nr has to answer theory and substance

#### E) Don’t vote on theory---causes substance crowd-out and incentivizes cheap-shot theory args based on marginal differentials---just because debate could be better doesn’t mean we should lose.

### AT: Exec Fiat Bad

#### Executive fiat – reject the argument, not the team

#### It’s good – our CP has a solvency advocate which checks all their arguments and makes it a necessary opp cost – that’s the question of the topic

### AT: SOP Add-On

#### Aff isn’t enough for SOP

Andrea Prasow 12, senior counterterrorism counsel for Human Rights Watch's U.S. Program. Prior to joining HRW, she served as assistant counsel for Salim Hamdan in the only contested military commission trial to date, 11/19/12, “A Failed Experiment,” http://www.nytimes.com/roomfordebate/2012/11/18/should-obama-close-guantanamo-and-end-military-tribunals/close-guantanamo-and-stop-the-military-commissions

Following the 9/11 attacks, the United States imprisoned hundreds without trial at Guantánamo and created a new military-commission system there to try terrorism suspects. The system lacked fundamental protections required for fair trials.¶ One of the first detainees charged in the new system — Salim Hamdan — challenged it all the way up to the Supreme Court, and won, forcing President George W. Bush to rewrite the system, this time with the help of Congress. Hamdan was then charged in the new system, and convicted in 2008 (I was co-counsel at his trial). But the new military trials were nearly as flawed as the old.¶ When President Obama took office, he and Congress revised the Military Commissions Act even further, but they remain fundamentally flawed, lacking independence and admitting inferior evidence like coerced testimony and hearsay. Last month, the federal appeals court in Washington overturned Hamdan’s conviction. The decision has serious implications for pending cases. It highlights the dangers of building a new legal system from scratch – you can get it wrong.

## Solvency

### 2NC No Solvency

#### Obama will circumvent the Court – power of the purse doesn’t matter – empirically denied – Mcneal is great about the Prez circumventing

#### Obama will stick to military commissions to get desired outcomes

Gregory McNeal 8, Visiting Assistant Professor of Law, Pennsylvania State University Dickinson School of Law. The author previously served as an academic consultant to the former Chief Prosecutor, Department of Defense Office of Military Commissions, “ARTICLE: BEYOND GUANTANAMO, OBSTACLES AND OPTIONS,” August 08, 103 Nw. U. L. Rev. Colloquy 29

Consistent with the theme of this Essay, I theorize that protecting intelligence equities enjoys primary importance in the eyes of the Executive, and that trial outcomes are a close second. Since September 11, 2001, 1,562 individuals have been charged in Article III courts with terrorism-related offenses, n116 while only a handful of individuals have been charged in military commissions. The number of detainees tried in Article III courts reveals that Article III courts are adequate in most cases. The system though, is under strain. A recent NPR report indicated that while the number of counterterrorism-related FISA warrants requested by the federal government has increased, the number of counterterrorism prosecutions has decreased. n117 Reinforcing the intelligence protection principle discussed above, a former FBI official interviewed by NPR stated that once prosecutors indict a terrorism suspect, "you start rolling a public process that after a point you can no longer really control. It becomes very public what you knew about this person, and that avenue of gathering more information or creating new sources is kind of cut off." n118 This fact, coupled with the continued use of Guantanamo suggests that the Executive perceives some value in the military [\*52] commission system. Clearly, some specific factors must influence the Executive to prefer trial by military commission over trial in Article III court. Otherwise those cases would be brought in Article III courts as many others have. I argue that two benefits of military commissions explain this phenomenon.¶ First, military commissions provide a marginal intelligence protection benefit over Article III courts. The language of the MCA related to protecting intelligence is nearly identical to the procedures detailed in the U.C.M.J. n119 Despite these similarities, military commissions provide the intelligence protection benefit of: security cleared counsel for the parties, security cleared panel members (jurors), security cleared administrative staff, and regimented procedures for reviewing all documents offered in pleadings or field with the court. Perhaps most importantly, military commissions do not require as many disclosures as those required in Article III courts and allow for the admission of hearsay. n120 These procedures enable evidence to be admitted in a manner which protects intelligence (such as ex parte affidavits) and are also more likely to secure a conviction.¶ Consider the intelligence protection benefit of these procedures as compared to Article III courts. In the 1993 World Trade Center bombing case, a letter was revealed to the defense during discovery listing "200 names of people who might be alleged as unindicted co-conspirators." n121 Six years later, that letter turned up as evidence in the trial of those who bombed U.S. embassies in Africa. Within days "the letter had found its way to Sudan and was in the hands of bin Laden (who was on the list), having been fetched for him by an al-Qaeda operative who had gotten it from one of his associates." n122 Based on this information, bin Laden was able to determine which of his operatives had been compromised. Disclosures such as this, which are mandated in Article III courts, threaten the protection of intelligence, and also provide defendants with greater rights which may result in an acquittal. Protecting intelligence and securing convictions [\*53] are considerations that weigh heavily on the mind of the Executive, who will seek to maximize both.¶ Congressional reformers must be aware of executive forum-discretion and limit the availability of alternative fora, especially in any transition to a national security court. Otherwise, the benefits of trial in military commissions will prove too alluring to the Executive, making any new forum underutilized.

#### Exec will inevitably choose tribunals

Gregory McNeal 08, Visiting Assistant Professor of Law, Pennsylvania State University Dickinson School of Law. The author previously served as an academic consultant to the former Chief Prosecutor, Department of Defense Office of Military Commissions, “ARTICLE: BEYOND GUANTANAMO, OBSTACLES AND OPTIONS,” August 08, 103 Nw. U. L. Rev. Colloquy 29

To understand my executive forum-discretion framework, it is necessary to understand several key assumptions. I begin by assuming that the Executive is a rational actor: that executive behavior based on rational ordering of policy preferences will result in deliberate and consistent conduct. n114 This assumption highlights the importance of my analytical approach: if the Executive has ordered policy preferences that govern his choices, and his choices are expected to result in deliberate and consistent conduct, some factor must contribute to the Executive's decision to choose one trial forum over another for similarly situated defendants.¶ Where we observe alleged terrorists who could satisfy the jurisdictional predicate for military commissions who are instead tried in an Article III court, or vice versa, I theorize that a multitude of factors are balanced by the Executive and account for the differences in conduct. Thus, a thorough exposition of the Executive's potential policy preferences can provide predictive guidance regarding what the Executive considers when making [\*51] decisions. n115 Quite simply, this analytical approach leads me to the conclusion that, so long as a forum exists which better protects intelligence or allows for easier convictions, the Executive will choose that forum over any other.

### 2NC Legitimacy

#### NSC can’t solve – seen as same as squo

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

Thomas Hilde 9, professor at the University of Maryland School of Public Policy, “Beyond Guantanamo. Restoring U.S. Credibility on Human Rights,” Heinrich Böll Foundation, http://www.boell.org/downloads/hbf\_Beyond\_Guantanamo\_Thomas\_Hilde(2).pdf

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

####  National Security Court violates Due Process — eight distinct violations

Jordan Paust 08, the Mike & Teresa Baker Law Center Professor at the University of Houston, a former U.S. Army JAG officer and member of the faculty of the Judge Advocate General’s School, 10/23/08, “The Case Against a National Security Court,”

Additionally, a national security court would comply with common Article 3 only if it provides “all the judicial guarantees” of due process reflected in customary international law. As the Supreme Court stated in Hamdan, “[i]nextricably intertwined with the question of regular constitution is the evaluation of the procedures governing the tribunal,” and “the phrase ‘regularly constituted court’ ... must be understood to incorporate the barest of those trial protections that have been recognized by customary international law.” The Supreme Court correctly added that “[m]any of these [due process requirements] are described in Article 75 of [Geneva] Protocol I” and in “the same basic protections set forth” as minimum human rights to due process in Article 14 of the ICCPR. Importantly, customary minimum human rights to due process reflected in Article 14 of the ICCPR apply in any social context and pertain, therefore, even when the laws of war are not applicable.¶ As documented in Beyond the Law and recognized by the Supreme Court in Hamdan, violations of customary rights to due process would include: (1) preclusion of the accused and defense counsel from learning what evidence was presented in closed hearings, (2) admission of hearsay evidence, (3) admission of unsworn statements, (4) denial of access by an accused and defense counsel to evidence in the form of classified information, (5) denial of confrontation of all witnesses against an accused, (6) use of “evidence obtained through coercion,” (7) denial of the right to be tried in one’s presence (absent disruptive conduct or consent), and (8) denial of review by a competent, independent, and impartial court of law (i.e., an Article III court). It seems unavoidable that a special national security court with special procedures that deviate from the federal rules of criminal procedure would not be designed to enhance fairness, fully meet bilateral and multilateral treaty requirements of equality of treatment, or provide more general equal protection of the law to criminal accused.

#### Process becomes politicized — means it’s not credible and super visible

David Cole 08, Professor of Law, Georgetown University Law Center, David Keene, Chairman, American Conservative Union, 6/23/08, “A Critiuqe of ‘National Security Courts’,” http://www.constitutionproject.org/pdf/Critique\_of\_the\_National\_Security\_Courts.pdf

In addition, these proposals are alarmingly short on details with respect to the selection of judges for these national security courts. Although there is a history of creating specialized federal courts to handle particular substantive areas of the law (e.g., taxation; patents), unlike tax and patent law, there is simply no highly specialized expertise that would form relevant selection criteria for the judges. Establishing a specialized court solely for prosecutions of alleged terrorists might also create a highly politicized process for nominating and confirming the judges, focusing solely on whether the nominee had sufficient “tough on terrorism” credentials — hardly a criterion that lends itself to the appearance of fairness and impartiality.

#### These violations are perceived — NSC breaks ILaw

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It is likely that some will propose the creation of a special court in order to facilitate convictions that would not be possible in a regular federal district court, especially through use of “evidence obtained through coercion” as part of what John Yoo and President Bush have admitted was a “common, unifying” plan or “program” of coercive interrogation that most know involves several manifest violations of customary and treaty-based international law and that can form the basis for criminal prosecution of (1) direct perpetrators, including those who authorized or ordered coercive interrogation; (2) leaders who were also or merely derelict in duty; (3) those who participated in a “joint criminal enterprise;” and (4) those who aided and abetted coercive interrogation or who were otherwise complicit (through memos or elsewise) in denials of rights under the laws of war, other violations of the laws of war, and violations of other international criminal law such as violations of the Convention Against Torture and customary prohibitions of secret detention. Quite clearly, lack of an intent to commit a crime would not obviate such forms of criminal responsibility and orders or authorizations will not lessen criminal responsibility for conduct that is manifestly unlawful. For example, an aider and abettor need only be aware that his or her conduct would or does assist that of a direct perpetrator. It is pertinent in this regard that there are reports that during multiple sessions in the White House beginning in 2002 Condoleezza Rice, Dick Cheney, George Tenet, Donald Rumsfeld, John Ashcroft, and others viewed simulations of and/or discussed and/or approved use of waterboarding, the “cold cell,” use of dogs to instill intense fear in detainees, and stripping naked, among other patently illegal tactics that were to be used as part of the admitted program of coercive interrogation.¶ Perpetuating illegality with a national security court would not serve our traditional values and the best interests of the United States, especially as we seek to regain our honor and international stature during a new Administration committed to the rule of law.

#### Violates the Geneva Convention

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 http://jurist.law.pitt.edu/forumy/2008/10/case-against-national-security-court.php

During an actual armed conflict to which the laws of war apply, a national security court would have to comply with the customary and treaty-based requirements set forth in common Article 3 of the 1949 Geneva Conventions which, as noted in my book Beyond the Law, are absolute and minimum requirements applicable with respect to any person detained during either an internal or an international armed conflict. These mandate that a court be “regularly constituted” and afford “all the judicial guarantees” of due process that are reflected in customary international law – which include, at a minimum, those mirrored in Article 14 of the International Covenant on Civil and Political Rights (ICCPR). ¶ The Supreme Court aptly affirmed in Hamdan v. Rumsfeld that the “core meaning” of the phrase “regularly constituted” has been authoritatively set forth in general commentary by the International Committee of the Red Cross and excludes “‘all special tribunals’” and requires that courts be “‘established ... [and] already in force in a country.’” While concurring in Hamdan, Justice Kennedy noted that there is little doubt that the phrase relates to “standards deliberated upon and chosen in advance.” As Hamdan recognized, a court (1) must not be a “special” tribunal, and (2) must already be in existence. A special national security court simply could not meet the first test and, if otherwise proper, could only operate prospectively with respect to incidents arising after its creation.