## DTC 1AC

### 1AC – Terrorism

#### Advantage 1 is Terrorism –

#### Top UN officials concede – the risk of a nuclear terrorist attack is high

Sturdee, AFP, 7-1 [Simon, “UN atomic agency sounds warning on 'nuclear terrorism'”, Fox News, 7-1-13,

<http://www.foxnews.com/world/2013/07/01/un-atomic-agency-sounds-warning-on-nuclear-terrorism/>, RSR]

VIENNA (AFP) – The head of the UN atomic agency warned Monday against complacency in preventing "nuclear terrorism", saying progress in recent years should not lull the world into a false sense of security.¶ "Much has been achieved in the past decade," Yukiya Amano of the International Atomic Energy Agency told a gathering in Vienna of some 1,200 delegates from around 110 states including 35 ministers to review progress on the issue.¶ "Many countries have taken effective measures to prevent theft, sabotage, unauthorised access, illegal transfer, or other malicious acts involving nuclear or other radioactive material. Security has been improved at many facilities containing such material."¶ Partly as a result, he said, "there has not been a terrorist attack involving nuclear or other radioactive material."¶ "But this must not lull us into a false sense of security. If a 'dirty bomb' is detonated in a major city, or sabotage occurs at a nuclear facility, the consequences could be devastating.¶ "Nuclear terrorism" comprises three main risks: an atomic bomb, a "dirty bomb" -- conventional explosion spreading radioactive material -- and an attack on a nuclear plant.¶ The first, using weapons-grade uranium or plutonium, is generally seen as "low probability, high consequence" -- very difficult to pull off but for a determined group of extremists, not impossible.¶ There are hundreds of tonnes of weapons-usable plutonium and uranium -- a grapefruit-sized amount is enough for a crude nuclear weapon that would fit in a van -- around the world.¶ A "dirty bomb" -- a "radiological dispersal device" or RDD -- is much easier but would be hugely less lethal. But it might still cause mass panic.¶ "If the Boston marathon bombing (in April this year) had been an RDD, the trauma would be lasting a whole lot longer," Sharon Squassoni from the Center for Strategic and International Studies (CSIS) told AFP.¶ Last year alone, the IAEA recorded 17 cases of illegal possession and attempts to sell nuclear materials and 24 incidents of theft or loss. And it says this is the "tip of the iceberg".¶ Many cases have involved former parts of the Soviet Union, for example Chechnya, Georgia and Moldova -- where in 2011 several people were arrested trying to sell weapons-grade uranium -- but not only.¶ Nuclear materials that could be used in a "dirty bomb" are also used in hospitals, factories and university campuses and are therefore seen as easy to steal.¶

#### That breaks the nuclear taboo – leads to nuclear war.

Bin ‘9 (5-22-09 About the Authors Prof. Li Bin is a leading Chinese expert on arms control and is currently the director of Arms Control Program at the Institute of International Studies, Tsinghua University. He received his Bachelor and Master Degrees in Physics from Peking University before joining China Academy of Engineering Physics (CAEP) to pursue a doctorate in the technical aspects of arms control. He served as a part-time assistant on arms control for the Committee of Science, Technology and Industry for National Defense (COSTIND).Upon graduation Dr. Li entered the Institute of Applied Physics and Computational Mathematics (IAPCM) as a research fellow and joined the COSTIND technical group supporting Chinese negotiation team on Comprehensive Test Ban Treaty (CTBT). He attended the final round of CTBT negotiations as a technical advisor to the Chinese negotiating team. Nie Hongyi is an officer in the People’s Liberation Army with an MA from China’s National Defense University and a Ph.D. in International Studies from Tsinghua University, which he completed in 2009 under Prof. Li Bin. )

The nuclear taboo is a kind of international norm and this type of norm is supported by the promotion of the norm through international social exchange. But at present the increased threat of nuclear terrorism has lowered people’s confidence that nuclear weapons will not be used. China and the United States have a broad common interest in combating nuclear terrorism. Using technical and institutional measures to break the foundation of nuclear terrorism and lessen the possibility of a nuclear terrorist attack can not only weaken the danger of nuclear terrorism itself but also strengthen people’s confidence in the nuclear taboo**,** and in this way preserve an international environment beneficial to both China and the United States. In this way even if there is crisis in China-U.S. relations caused by conflict, the nuclear taboo can also help both countries reduce suspicions about the nuclear weapons problem, avoid miscalculation and thereby reduce thedanger of a nuclear war**.**

#### Extinction

Ayson 10 (Robert, Professor of Strategic Studies, Director of Strategic Studies: New Zealand, Senior Research Associate with Oxford’s Centre for International Studies. “After a Terrorist Nuclear Attack: Envisaging Catalytic Effects. Studies in Conflict and Terrorism, Volume 33, Issue 7, July 2010, pages 571-593)

But these two nuclear worlds—a non-state actor nuclear attack and a catastrophic interstate nuclear exchange—are not necessarily separable. It is just possible that some sort of terrorist attack, and especially an act of nuclear terrorism, could precipitate a chain of events leading to a massive exchange of nuclear weapons between two or more of the states that possess them. In this context, today’s and tomorrow’s terrorist groups might assume the place allotted during the early Cold War years to new state possessors of small nuclear arsenals who were seen as raising the risks of a catalytic nuclear war between the superpowers started by third parties. These risks were considered in the late 1950s and early 1960s as concerns grew about nuclear proliferation, the so-called n+1 problem. 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 be fingered 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. Some possibilities, however remote, do suggest themselves. For example, how might the United States react if it was thought or discovered that the fissile material used in the act of nuclear terrorism had come from Russian stocks,40 and if for some reason Moscow denied any responsibility for nuclear laxity? The correct attribution of that nuclear material to a particular country might not be a case of science fiction given the observation by Michael May et al. that while the debris resulting from a nuclear explosion would be “spread over a wide area in tiny fragments, its radioactivity makes it detectable, identifiable and collectable, and a wealth of information can be obtained from its analysis: the efficiency of the explosion, the materials used and, most important … some indication of where the nuclear material came from.”41 Alternatively, if the act of nuclear terrorism came as a complete surprise, and American officials refused to believe that a terrorist group was fully responsible (or responsible at all) suspicion would shift immediately to state possessors. Ruling out Western ally countries like the United Kingdom and France, and probably Israel and India as well, authorities in Washington would be left with a very short list consisting of North Korea, perhaps Iran if its program continues, and possibly Pakistan. But at what stage would Russia and China be definitely ruled out in this high stakes game of nuclear Cluedo? In particular, if the act of nuclear terrorism occurred against a backdrop of existing tension in Washington’s relations with Russia and/or China, and at a time when threats had already been traded between these major powers, would officials and political leaders not be tempted to assume the worst? Of course, the chances of this occurring would only seem to increase if the United States was already involved in some sort of limited armed conflict with Russia and/or China, or if they were confronting each other from a distance in a proxy war, as unlikely as these developments may seem at the present time. The reverse might well apply too: should a nuclear terrorist attack occur in Russia or China during a period of heightened tension or even limited conflict with the United States, could Moscow and Beijing resist the pressures that might rise domestically to consider the United States as a possible perpetrator or encourager of the attack? Washington’s early response to a terrorist nuclear attack on its own soil might also raise the possibility of an unwanted (and nuclear aided) confrontation with Russia and/or China. For example, in the noise and confusion during the immediate aftermath of the terrorist nuclear attack, the U.S. president might be expected to place the country’s armed forces, including its nuclear arsenal, on a higher stage of alert. In such a tense environment, when careful planning runs up against the friction of reality, it is just possible that Moscow and/or China might mistakenly read this as a sign of U.S. intentions to use force (and possibly nuclear force) against them. In that situation, the temptations to preempt such actions might grow, although it must be admitted that any preemption would probably still meet with a wdevastating response.

#### Risk of terror only goes one way – comparative studies prove that indefinite detention can only increase terrorism, not prevent it.

Roberts, Associate Professor of Philosophy at East Carolina University, ‘11

[Rodney, “Utilitarianism and the Morality of Indefinite Detention”, Criminal Justice Ethics, Vol. 30, No. 1, RSR]

Finally, ‘‘there is no evidence that¶ preventive detention works. Comparative studies of terrorism stretching back more than 20 years have¶ concluded that draconian measures\*¶ such as prolonged detention without¶ trial\*are not proven to reduce violence, and can actually be counterproductive.’’¶ 30 Since it may contribute¶ to the ‘‘underlying factors [that] are¶ fueling the spread of the jihadist movement,’’ namely, ‘‘injustice and fear of¶ Western domination, leading to anger,¶ humiliation, and a sense of powerlessness,’’ there is a sense in which¶ indefinite detention can be selfdefeating\*it may increase the likelihood of future attacks.31

#### We’ll isolate 3 internal links –

#### Scenario 1 is Resentment –

#### Current trial process breeds distrust with local populations and causes resentment – that kills effective counter-terror operations

Hathaway Et. Al, 2013, (Oona Hathaway is the Gerard C. and Bernice Latrobe Smith Professor of International Law, Yale Law School. Samuel Adelsberg, Spencer Amdur, and Freya Pitts are J.D. candidates at Yale Law School. Philip Levitz and Sirine Shebaya received their J.D.s from Yale Law School in 2012. We are grateful for the assistance of Julia Spiegel, Haley Nix, Celia Choy, Samir Deger-Sen, John Paredes, and Sally Pei. “The Power To Detain: Detention of Terrorism Suspects After 9/11” The Yale Journal of International Law. Lexis Nexis. Winter, 2013.)

2. Legitimacy Federal courts are also generally considered more legitimate than military commissions. The stringent procedural protections reduce the risk of error and generate trust and legitimacy. 245 The federal courts, for example, provide more robust hearsay protections than the commissions. 246 In addition, jurors are [\*165] ordinary citizens, not U.S. military personnel. Indeed, some of the weakest procedural protections in the military commission system have been successfully challenged as unconstitutional. 247 Congress and the Executive have responded to these legal challenges - and to criticism of the commissions from around the globe - by significantly strengthening the commissions' procedural protections. Yet the remaining gaps - along with what many regard as a tainted history - continue to raise doubts about the fairness and legitimacy of the commissions. The current commissions, moreover, have been active for only a short period - too brief a period for doubts to be confirmed or put to rest. 248 Federal criminal procedure, on the other hand, is well-established and widely regarded as legitimate. Legitimacy of the trial process is important not only to the individuals charged but also to the fight against terrorism. As several successful habeas corpus petitions have demonstrated, insufficient procedural protections create a real danger of erroneous imprisonment for extended periods. 249 Such errors can generate resentment and distrust of the United States that undermine the effectiveness of counterterrorism efforts. Indeed, evidence suggests that populations are more likely to cooperate in policing when they believe they have been treated fairly. 250 The understanding that a more legitimate detention regime will be a more effective one is reflected in recent statements from the Department of Defense and the White House. 251

#### Cooperation increases legitimacy of US action and solves the root cause of terrorism – comparatively outweighs military responses

Picco et. Al, 6 **–** (Giandomenico Picco Chairman and Chief Executive, Graham E. Fuller Adjunct Professor of History, Simon Fraser University, Alistair Millar Director, Center on Global Counter-Terrorism Cooperation, Robert Trager Assistant Professor of Political Science, University of California Los Angeles, Dessislava P. Zagorcheva Ph.D. Candidate, Columbia University, Panel Discussion with Stanley Foundation, “Effective Counterterrorism in a Globalized World:

Reclaiming the Edge of Legitimacy,” <http://secure.stanleyfoundation.org/registration/securityconference/panels/counterterrorism.php>)

Tactical terrorists use violence to achieve a specific political (usually local) goal and are willing to negotiate with their announced enemy. They usually have a political wing along with their military one, which signals that the group can be negotiated with and that it has the potential to transform into a more political and social force. Strategic terrorists in contrast are not too concerned with politics and are instead in a state of perpetual global war against perpetual enemies. They reject all other opinions and believe they have a monopoly on truth. Negotiation with such a group is impossible. The goal of an effective counterterrorism strategy would be to fracture the alliances that global/strategic groups have with local/tactical ones. This could be done by deterring the local/tactical ones from aiding and operating with Al Qaeda types. Making sure the cost of cooperating with Al Qaeda might include the loss of a local group's political objective is one way to create that fracture. The importance of multilateral institutions was highlighted in the session. Working multilaterally ensures that the United States' actions acquire a certain legitimacy, gets the level of cooperation and involvement from other countries, and facilitates operational factors (such as information sharing and the creation of internationally sanctioned standards). Ultimately, there is no military solution to the terrorist threat as such movements do not constitute a state or have a localized army that can be destroyed. It is instead a war for "hearts and minds." When dealing with a globalized threat such as terrorism, which crosses all borders, we need to work globally in cooperation with others to address its root issues.

#### Empirics prove – backlash from local populations over indefinite detention increases the threat of terrorism.

Tyler, et al, ’10 [Tom (Macklin Fleming Professor of Law and Professor of Psychology at Yale Law School); Stephen Schulhofer (Robert B. McKay Professor of Law at New York University School of Law); and Aziz Z. Huq (Assistant Professor of Law and Herbert and Marjorie Fried Teaching Scholar at the University of Chicago School of Law), “Legitimacy and Deterrence Effects in¶ Counterterrorism Policing: A Study of Muslim¶ Americans”, Law and Society Review, RSR]

A countervailing view in the terrorism literature, however,¶ warns of the potential of intrusive measures to stimulate terrorist¶ recruitment and ideological estrangement in the targeted communities (Donohue 2008) or to prompt law-abiding individuals to¶ withhold cooperation out of fear that suspicions, if reported, will¶ trigger overreaction and unjust treatment of innocents (as can¶ occur with ordinary crime; see Sherman 1993). A recent study of¶ Britain’s antiterror campaign in Northern Ireland (LaFree et al.¶ 2009) provides empirical conﬁrmation of this risk. These authors¶ identiﬁed six highly visible British interventions aimed at reducing¶ terrorist violence in Northern Ireland from the 1970s on, and they¶ assessed whether each intervention diminished subsequent attacks¶ or instead increased the frequency or intensity of terrorism. One of¶ the six measures, a highly intrusive military maneuver, did have a¶ deterrence effect. But two others had no statistically signiﬁcant¶ impact, suggesting that any deterrence gains were overwhelmed¶ by backlash effects. More tellingly, two of the intrusive new deterrence-based policies resulted in signiﬁcant increasesin violence¶ (also see Lum, Kennedy, et al. 2006). LaFree et al. (2009) hypothesize that erroneous arrests and the¶ adoption of internment without trial contributed to this backlash¶ effect by undermining the legitimacy of British antiterrorism¶ efforts. Several studies conducted in Iraq have also found that¶ perceived injustice on the part of U.S. forces is a strong predictor of¶ support for resistance among Iraqis (Fischer et al. 2008; Harb et al.¶ 2006). As LaFree and Ackerman observe: ‘‘To the extent that government-based counterterrorism strategies outrage participants or¶ energize a base of potential supporters, such strategies may¶ increase the likelihood of further terrorist strikes’’ (2009:15).¶ Because of this, government management of terrorist threats may¶ be as important as terrorism itself in determining future levels of¶ violence (Kilcullen 2009; McCauley 2006; Sharp 1973).

#### Scenario 2 is Intelligence –

#### Indefinite detention destroys intel sharing with Europe

Hathaway, et al, ’13 Oona (Gerard C. and Bernice Latrobe Smith Professor of International Law, Yale Law School); Samuel Adelsberg (J.D. candidate at Yale Law School); Spencer Amdur (J.D. candidate at Yale Law School); Freya Pitts (J.D. candidate at Yale Law School); Philip Levitz (J.D. from Yale Law School); and Sirine Shebaya (J.D. from Yale Law School), “The Power To Detain: Detention of Terrorism Suspects After 9/11”, The Yale Journal of International Law, Vol. 38, 2013, RSR]

Many key U.S. allies have been unwilling to cooperate in cases involving ¶ law-of-war detention or prosecution but have cooperated in criminal prosecutions. In fact, many U.S. extradition treaties, including those with allies ¶ such as India and Germany, forbid extradition when the defendant will not be ¶ tried in a criminal court.252 This issue has played out in practice several times. ¶ An al-Shabaab operative was extradited from the Netherlands only after ¶ assurances from the United States that he would be prosecuted in criminal ¶ court.253 Two similar cases arose in 2007.254 In perhaps the most striking ¶ example, five terrorism suspects—including Abu Hamza al-Masr, who is ¶ accused of providing material support to al-Qaeda by trying to set up a training ¶ camp in Oregon and of organizing support for the Taliban in Afghanistan—¶ were extradited to the United States by the United Kingdom in October ¶ 2012.255 The extradition was made on the express condition that they would be ¶ tried in civilian federal criminal courts rather than in the military ¶ commissions.256 And, indeed, both the European Court of Human Rights and the British courts allowed the extradition to proceed actions offered by the U.S. federal criminal justice system and finding they ¶ fully met all relevant standards.257 An insistence on using military commissions ¶ may thus hinder extradition and other kinds of international prosecutorial ¶ cooperation, such as the sharing of testimony and evidence.

#### European intelligence cooperation is key to create a global framework to solve terrorism- US Short of international law derails it

Pleschinger, 11 – (Stefanie, graduate of the International Relations Masters program at Yale University, “Allied Against Terror:

Transatlantic Intelligence

Cooperation,” http://yalejournal.org/wp-content/uploads/2011/01/062106pleschinger.pdf)

Disagreements between EU member state governments and the United States also negatively affect direct EU-U.S. cooperation. Fundamental divergences regarding counterterrorism methods, U.S. preventive action in Iraq, compliance with international law, and strategies for democracy promotion might increasingly estrange the transatlantic partners and hinder the advancement of intelligence cooperation. Because of different domestic experiences with war and terrorism, dissimilarities also exist in the perception of the threat of terrorism. The United States views terrorism as an external threat, while for the European Union it has historically been a danger from inside its borders. Consequently, incompatible approaches toward combating terrorism have developed on both sides of the Atlantic. Whereas the United States believes that military means must be employed abroad to successfully wage the “war on terrorism,” the European Union remains convinced that the rule of law, economic development, and human rights enforcement provide solutions to the problem of terrorism. U.S. authorities believe that the Europeans do not take terrorism as seriously, while Europeans strongly disapprove of U.S. practices in Guantanamo and Abu Ghraib. However, the European Union and United States ultimately depend on each other in combating terrorism, and thus, it is imperative to build a firewall between the daily conduct of intelligence cooperation and potential political disagreements in order to preserve a strong partnership that will succeed in the global fight against terrorism. 29 The scale of the recently thwarted terrorist plot aimed at transatlantic flights departing from London exemplifies the threatening nature of global terror - ism. 30 It has also demonstrated the crucial need to establish a cooperative international intelligence community capable of countering terrorist acts inspired by extreme fundamentalism and potentially plotted by anyone, including European citizens living inconspicuously in the suburbs of metro - politan cities. Transatlantic intelligence cooperation could form the backbone of an international counterterrorism network if both sides of the Atlantic shift their intelligence cooperation to an interregional level where the inter - national community could potentially contribute. The prerequisite for effec - tive transatlantic intelligence cooperation is a European intelligence network that synchronizes cross-border and cross-agency intelligence services and that strengthens relationships between EU intelligence institutions and their counterparts in the United States. The challenges to the development of a European intelligence service and supranational transatlantic intelligence cooperation are rooted in political, cultural, and historical issues that will require patience and trust among EU member states and in the transatlan - tic relationship. The history of European integration and EU-U.S. relations shows a steady trend toward increased collaboration under the pressures of globalization. However, the immediate threat of global terrorism will require closer cooperation at an accelerated pace

#### The threat of terrorism in the UK is highest now – intelligence cooperation is key

Lister et al, 9/26 (Paul, Tim, and Nic, “Evidence suggests that Al-Shabaab is shifting focus to ‘soft’ targets” CNN. http://www.cnn.com/2013/09/26/world/london-bombing-plot-qaeda/index.html

(CNN) -- "Our objectives are to strike London with low-cost operations that would cause a heavy blow amongst the hierarchy and Jewish communities, using attacks similar to the tactics used by our brothers in Mumbai."¶ Those are the opening words of a document found on the body of al Qaeda's top East Africa operative when he was killed two years ago.¶ And the plans uncovered in the document are now even more interesting and relevant in light of the attack on the shopping center in Nairobi, Kenya.¶ Among the targets identified: the famous Eton College, the five-star Dorchester and Ritz hotels, and the Jewish neighborhood of Golders Green in north London.¶ The Word document, written in English, which CNN understands was stored on a thumb drive, was found when Fazul Abdullah Mohammed -- architect of the U.S. Embassy bombings in Nairobi and in Dar es Salaam, Tanzania, in 1998 -- was killed at a government checkpoint in the Somali capital, Mogadishu, one night in June 2011. Its contents were first reported by Michelle Shephard of the Toronto Star, who provided the document to CNN.¶ Read the document here on The Toronto Star¶ Richard Barrett, the former head of counterterrorism for MI6, told CNN that while the plans were "pretty aspirational" they were found on "a very determined and extremely able operator who could convert plans to reality" and were seen as a "significant warning" by Western intelligence agencies.¶ It's not clear whether Mohammed wrote or had approved of the plan. Its style and content suggest that it may have been a "pitch" to him by another al Qaeda operative. Shephard says that it may have been written by a British jihadist in East Africa.¶ But after the Nairobi attack by the Somali jihadist group Al-Shabaab and other al Qaeda documents seen by CNN, it is further evidence that replicating the 2008 Mumbai, India, attacks has become a major priority for the terror group, aiming at "soft" targets such as hotels, shopping malls, resorts or even cruise ships.¶ Barrett told CNN that the attack plans discovered in Mogadishu will now be seen in a more concerning light by Western intelligence agencies though "it is open to doubt" that Al-Shabaab would currently have the capability to carry out such an attack in the UK.¶ In a message to affiliates earlier this month, al Qaeda leader Ayman al-Zawahiri called for "taking the citizens of the countries that are participating in the invasion of Muslim countries as hostages so that our prisoners may be freed in exchange."¶ Attacking Eton College, where members of the royal family and British aristocracy are educated, would "strike a heavy blow at the 'who's who' of the political and business world," the document said.¶ "As we know the average English man is envious of the rich and has no ties to the upper class. This attack will totally infuriate the government/royalty but will not have such an impact on the masses," it reasoned.¶ As for the planned attack on either the Ritz or the Dorchester hotels -- which the author envisaged being carried out on "New Year's, Valentine's Day or even Hanukkah" -- there were further similarities to the attacks in Mumbai and Nairobi.¶ "We plan to book in advance and take plenty of petrol with the brother, then set the 1st 2nd and 3rd floor on fire using petrol and igniting using petrol bombs ... while we block the stairs so no-one can run down by blocking the staircase with furniture."¶ The author envisaged using Western recruits to carry out the attack, including British militants who had joined jihadist ranks in Somalia and people put forward by Al-Shabaab.¶ "For this mission we can use our own people or the harakah (Al-Shabaab) can supply suitable candidates or we would need instant access to all British muhajireen (jihadist emigrants)" the writer said.¶ "Each martyrdom seeker will be trained in Somalia preferably for 2 months ... the brothers will be pushed through many battles to see how they react under pressure and they will be analysed to see if they can keep their composure."¶ The training outlined in the document is a chilling precursor to the planning involved in the Nairobi attack.¶ The brothers "will be trained how to raid a house, clear rooms and gather all hostages in one room also how to use a human shield while shooting and moving through a building," it says.¶ "Reconnaissance will cover how to gather suitable information on the target, for example where are the nearest police stations, what times is the area most crowded, when are best times to attack, are there any armed guards, are they prepared for an attack, best way to enter building," it continues.¶ The Al-Shabaab attack in Nairobi closely mirrored the Mumbai attacks, in which members of the Pakistani group Lashkar-e-Tayyiba, a terrorist outfit affiliated with al Qaeda, seized hotels and a Jewish center and held out against Indian security forces for three days. More than 160 people were killed.¶ The similarities are striking:¶ • The targets were "soft" -- not military or government facilities, and therefore more easily penetrated;¶ • They were also enclosed, making it more difficult for security forces to flush out the assailants;¶ • A similar number of attackers -- about 10 -- was involved, and they used multiple entrance points;¶ • Both attacks were low-tech, involving automatic weapons and hand grenades, at the opposite end of the terror spectrum from the 9/11 attacks;¶ • Both involved a significant amount of preparation.¶ • They were in major cities, in places that attracted foreigners, and especially Westerners, and they focused on neighboring countries regarded as hostile. The Pakistani group attacked Indian targets; the Al-Shabaab cell attacked a Kenyan landmark in retaliation for Kenya's incursion into and occupation of southern Somalia;¶ • Israeli or Jewish interests were part of the targeting matrix;¶ • The attacks were geared to gaining maximum publicity.¶ Bergen: Are mass murderers using Twitter as a tool?¶ Resemblance to plans for European, U.S. strikes¶ Similar priorities appeared to have influenced another senior al Qaeda planner, Younis al Mauretani, who orchestrated a plan to hit Europe with a series of strikes, including Mumbai-style gun attacks. The discovery of the plans led to the United States issuing an unprecedented warning to its citizens in Europe in October 2010.¶ Western counterterrorism officials told CNN that al Qaeda at the time also envisaged hitting the United States with coordinated gun and hostage attacks. When U.S. Navy SEALs raided Osama bin Laden's compound in Abbottabad, Pakistan, they retrieved a letter Mauretani had written to bin Laden in March 2010 outlining attack plans. "After we hit Europe we will hit America," it said.¶ According to Swedish counterterrorism officials, in December 2010, a Swedish al Qaeda cell attempted to put part of the "Mumbai-style" plot into operation by driving to Denmark with a submachine gun, a silencer, several dozen 9 mm submachine gun cartridges, and plastic wrist straps to handcuff hostages. Their target was the Jyllands-Posten newspaper in Copenhagen, one of the newspapers that published controversial cartoons of the Prophet Mohammed. They were arrested once they reached the Danish capital. Security services believe the plan was to try to take up to 200 journalists hostage at the newspaper and execute many of them, a Swedish counterterrorism source told CNN.¶ Who is Al- Shabaab?¶ In May 2011, German police discovered a thumb drive hidden in the underpants of a terrorist suspect who was being questioned in Berlin. Encrypted deep inside a pornographic video called "Kick Ass" and a file marked "Sexy Tanja" was an internal al Qaeda document called "Future Works," which discussed seizing cruise ships and executing passengers, and carrying out attacks in Europe similar to the Mumbai attacks. Counterterrorism sources say another of the documents recovered contained notes in German, written at a training camp, on taking and executing hostages, putting the attack on camera and sending the video to al Qaeda so it could be used as propaganda.¶ U.S. intelligence sources told CNN last year that the documents, which included an internal report on terrorist plots that al Qaeda had orchestrated against the UK, were "pure gold."¶ While "Future Works" did not include dates, places or specific plans, it appears to have been a brainstorming exercise to seize the initiative and return al Qaeda to front-page news around the world.

#### Scenario 3 is Extradition –

#### Allies won’t extradite terror suspects to the US over due process concerns – destroys intel gathering and causes suspects to be released – plan is key

Kris, 2011 (David, Assistant Attorney General for National Security at the U.S. Department of Justice from March 2009 to March 2011 “Law Enforcement as a Counter Terrorism Tool” 6/15/2011 acc at http://jnslp.com//wp-content/uploads/2011/06/01\_David-Kris.pdf

Finally, the criminal justice system may help us obtain important¶ cooperation from other countries. That cooperation may be necessary if we¶ want to detain suspected terrorists or otherwise accomplish our national¶ security objectives. Our federal courts are well-respected internationally.¶ There are well-established, formal legal mechanisms that allow the transfer¶ of terrorism suspects to the United States for trial in federal court, and for¶ the provision of information to assist in law enforcement investigations –¶ i.e., extradition and mutual legal assistance treaties (MLATs). Our allies¶ around the world are comfortable with these mechanisms, as well as with¶ more informal procedures that are often used to provide assistance to the¶ United States in law enforcement matters, whether relating to terrorism or¶ other types of cases. Such cooperation can be critical to the success of a¶ prosecution, and in some cases can be the only way in which we will gain¶ custody of a suspected terrorist who has broken our laws.184¶ In contrast, many of our key allies around the world are not willing to¶ cooperate with or support our efforts to hold suspected terrorists in law of¶ war detention or to prosecute them in military commissions. While we hope that over time they will grow more supportive of these legal¶ mechanisms, at present many countries would not extradite individuals to¶ the United States for military commission proceedings or law of war¶ detention. Indeed, some of our extradition treaties explicitly forbid¶ extradition to the United States where the person will be tried in a forum¶ other than a criminal court. For example, our treaties with Germany¶ (Article 13)185 and with Sweden (Article V(3))186 expressly forbid extradition¶ when the defendant will be tried in an “extraordinary” court, and the¶ understanding of the Indian government pursuant to its treaty with the¶ United States is that extradition is available only for proceedings under the¶ ordinary criminal laws of the requesting state.187 More generally, the¶ doctrine of dual criminality – under which extradition is available only for¶ offenses made criminal in both countries – and the relatively common¶ exclusion of extradition for military offenses not also punishable in civilian¶ court may also limit extradition outside the criminal justice system.188 Apart¶ from extradition, even where we already have the terrorist in custody, many¶ countries will not provide testimony, other information, or assistance in¶ support of law of war detention or a military prosecution, either as a matter¶ of national public policy or under other provisions of some of our¶ MLATs.18 These concerns are not hypothetical. During the last Administration,¶ the United States was obliged to give assurances against the use of military¶ commissions in order to obtain extradition of several terrorism suspects to¶ the United States.190 There are a number of terror suspects currently in foreign custody who likely would not be extradited to the United States by foreign nations if they faced military tribunals.191 In some of these cases, it might be necessary for the foreign nation to release these suspects if they cannot be extradited because they do not face charges pending in the¶ foreign nation.

#### European safe havens are the most likely avenue for WMD terrorism

Ferguson, 4 - scientist-in-residence based in the Washington DC office of the Center for Nonproliferation Studies, Monterey Institute of International Studies (Charles, “The threat of nuclear terrorism in Europe” 2/6, <http://www.eurozine.com/articles/2004-06-02-ferguson-en.html>)

While most terrorist groups are not motivated to unleash nuclear terror, at least one terrorist network - al Qaeda - has expressed strong interest in acquiring weapons of mass destruction. Al Qaeda operatives and their brethren in like-minded organizations have spread their web across numerous countries. According to a January report by The Observer , Islamic militants have built up an extensive network in Europe since 11 September 2001, using Great Britain as a logistical hub and nerve center. In recent years, Islamic extremists have expanded eastward into Bulgaria, the Czech Republic, Poland, and Romania. Terrorist cells have become rooted in Austria, France, and Germany and have recruited new members in these and other countries. Intelligence officials have warned that labeling all of these groups as al Qaeda misses the complexity behind the terrorist network. While most of the cells follow a similar agenda as al Qaeda, few directly hold their allegiance to this organization. The current focus on Islamic extremist groups should not blind us from seeing other terrorist organizations that would covet nuclear means of destruction. For example, Aum Shinrikyo, an apocalyptic cult with no ties to Islamic extremism, sought out nuclear weapons and released deadly sarin gas in a 1995 chemical attack in the Tokyo subway system. Despite the growth of terrorist cells in Europe, one must not assume that they will ultimately go nuclear. Climbing the escalation ladder to acts of nuclear terror requires leaping over several barriers. Regardless of the nuclear terror act under consideration, the terrorist group must be motivated to conduct extreme levels of violence and to venture into unconventional methods of attack. While a terrorist organization with a well-defined constituency would most likely not want to alienate its constituency with a nuclear act, groups that have weak or non-existent ties to constituencies would not face as many moral or political constraints. For example, the Chechen rebels, a national-separatist group, depend strongly on their supporters within Chechnya. In contrast, the character and agenda of al Qaeda, a political-religious terrorist network, make this organization apparently less concerned about directly harming constituents. The final barriers for a terrorist group to cross are technical in nature. The group would have to acquire the nuclear assets. If the group decided to attack a nuclear power plant, it would have to identify a vulnerable nuclear facility. The organization would have to develop or hire the skills needed to build and detonate a weapon or to sabotage a nuclear facility. Finally, the group would have to be able to deliver the attack without being detected during the development or completion phase. Vulnerable Nuclear and Radiological Assets in Europe Tactical nuclear weapons: Though intact nuclear weapons tend to be well-guarded, some are more susceptible than others to falling into the hands of terrorists. Most experts believe that portable so-called tactical nuclear weapons (TNWs) are more vulnerable to terrorist seizure than are strategic nuclear weapons. TNWs are designed for nuclear-war fighting or battlefield use. As such, they tend to be more portable than their strategic cousins. In Europe, concerns over loose nuclear weapons have focused on the thousands of Russian TNWs that are in various physical conditions and under varying security storage and use. The United States also maintains about 150-180 TNWs in about six NATO countries. While European politicians want to keep the issue of NATO's nuclear weapons out of public view, they need to take steps to reassure Russia that nuclear arms will not be deployed in new NATO-member states. This confidence building measure could serve as a way toward achieving more openness about how to improve the security of Russian TNWs. Uranium: Of the two types of weapons-usable nuclear material, highly enriched uranium (HEU) poses the greatest concern, because it can be used in the simplest nuclear bomb - a gun-type device - to produce a high-yield explosion. Most weapons experts agree that a well-funded terrorist group could build a gun-type bomb, which simply slams two pieces of HEU together inside a gun barrel. The major barrier to stopping construction of such a device is access to HEU. Research sites in Bulgaria, the Czech Republic, Hungary, Poland, Romania, and Yugoslavia have HEU, supplied mostly from Russia. Over the past several years, experts have warned that HEU from these sites could find its way to terrorists. The December 1994 seizure of almost three kilograms of weapons-usable HEU in the Czech Republic highlighted this danger. Since the fall of the Soviet Union, there have been many incidents of illicit trafficking of nuclear and radiological materials in Central and Eastern Europe and the newly independent states. Many more incidents could be happening than are being detected. Fortunately, efforts to secure and repatriate HEU from vulnerable sites in this region have begun. Since the summer of 2002, the United States, Russia, the International Atomic Energy Agency (IAEA), partner governments, and non-governmental organizations, such as the Nuclear Threat Initiative, have conducted three successful missions - Belgrade, Romania and Bulgaria - to secure HEU at research sites and to repatriate it to Russia. But more needs to be done, since about 20 additional research sites, each containing enough Russian-origin HEU for at least one bomb, still exist. Some of these sites are located in Central and Eastern Europe. Radiation: Within the past few years, the European Union has commissioned two studies to determine the effectiveness of the existing regulatory practices concerning the life cycle of radioactive sources. The first study examined the controls within the EU itself and found that radioactive materials management varied across the EU. The report underscored the risk posed by some 30,000 disused sources that are in danger of becoming orphaned, that is, of falling outside of regulatory controls. On the heels of that study, the EU investigated the regulatory practices in the Czech Republic, Estonia, Hungary, Poland, and Slovenia, states that were being considered for early admission to the EU. The EU study concluded that these states have regulatory controls that meet the general standards found throughout the EU. While the results of these pre-11 September reports are by and large encouraging, it should be noted that they focused on safety considerations and did not examine details of security procedures. Nuclear power plants: Well-designed nuclear power plants employ defense-in-depth safety features. To release radioactivity from a nuclear plant, terrorists would have to destroy or disable multiple safety systems. Unfortunately, Central and Eastern Europe contain many Soviet-designed nuclear power plants that do not meet Western safety standards. For example, early Soviet-designed models lack an adequate emergency core cooling system and containment structure, and have an inadequate fire protection system. Such reactors operate in Bulgaria, Slovenia, the Czech Republic, Hungary and Slovakia and Lithuania. While these reactors have engendered discussion regarding safety and security, attacks and sabotage against research centers - where security procedures tend to be less rigorous than at commercial plants - have been overlooked. Many research reactors are located at universities in or near major urban areas. While the inventory of radioactivity in a typical research reactor pales in comparison to the large quantities of lethal fission products within a commercial reactor, release of radioactivity from research sites could suit nuclear terrorists' purposes.

### 1AC – Credibility

#### Advantage 2 is Credibility –

#### Current handling of trials threatens to destroy the transatlantic alliance – specifically harms military cooperation with Germany and Britain.

Parker ‘12 Tom Parker, formerly policy director for Terrorism, Counterterrorism and Human Rights at Amnesty International USA. He is also a former officer in the British Security Service, “U.S. Tactics Threaten NATO” 9-17-12, <http://nationalinterest.org/commentary/us-tactics-threaten-nato-7461>, 8-03-13

A growing chasm in operational practice is opening up between the United States and its allies in NATO. This rift is putting the Atlantic alliance at risk. Yet no one in Washington seems to be paying attention.The escalating use of unmanned aerial vehicles to strike terrorist suspects in an increasing number of operational environments from the Arabian Peninsula to Southeast Asia, coupled with the continued use of military commissions and indefinite detention, is driving a wedge between the United States and its allies. Attitudes across the Atlantic are hardening fast. This isn’t knee-jerk, man-on-the-street anti-Americanism. European governments that have tried to turn a blind eye to U.S. counterterrorism practices over the past decade are now forced to pay attention by their own courts, which will restrict cooperation in the future.As recently as last month, the German federal prosecutor’s office opened a probe into the October 2010 killing of a German national identified only as “Buenyamin E.” in a U.S. drone strike in Pakistan. There are at least four other similar cases involving German nationals and several reported strikes involving legal residents of the United Kingdom.In March, Polish prosecutors charged the former head of Polish intelligence, Zbigniew Siemiatkowski, with “unlawfully depriving prisoners of the their liberty” because of the alleged role he played in helping to establish a CIA secret prison in northeastern Poland in 2002–2003.Last December, British Special Forces ran afoul of the UK courts for informally transferring two Al Qaeda suspects detained in Iraq, Yunus Rahmatullah and Amanatullah Ali, to U.S. forces. The British government has been instructed to recover the men from U.S. custody or face legal sanctions that could result in two senior ministers being sent to prison. Perhaps the most dramatic example illustrating the gap that has opened up between the United States and its European allies concerns the 2009 in absentia conviction of twenty-three U.S. agents in an Italian court for the role they played in the extraordinary rendition of radical Imam Hassan Mustafa Osama Nasr from Milan to Cairo.Britain, Poland, Italy and Germany are among America’s closest military partners. Troops from all four countries are currently serving alongside U.S. forces in Afghanistan, but they are now operating within a very different set of constraints than their U.S. counterparts.The European Court of Human Rights established its jurisdiction over stabilization operations in Iraq, and by implication its writ extends to Afghanistan as well. The British government has lost a series of cases before the court relating to its operations in southern Iraq. This means that concepts such as the right to life, protection from arbitrary punishment, remedy and due process apply in areas under the effective control of European forces. Furthermore, the possibility that intelligence provided by any of America’s European allies could be used to target a terrorism suspect in Somalia or the Philippines for a lethal drone strike now raises serious criminal liability issues for the Europeans. The United States conducts such operations under the legal theory that it is in an international armed conflict with Al Qaeda and its affiliates that can be pursued anywhere on the globe where armed force may be required. But not one other member of NATO shares this legal analysis, which flies in the face of established international legal norms. The United States may have taken issue with the traditional idea that wars are fought between states and not between states and criminal gangs, but its allies have not.The heads of Britain’s foreign and domestic intelligence services have been surprisingly open about the “inhibitions” that this growing divergence has caused the transatlantic special relationship, telling Parliament that it has become an obstacle to intelligence sharing. European attitudes are not going to change—the European Court of Human Rights is now deeply embedded in European life, and individual European governments cannot escape its oversight no matter how well disposed they are to assist the United States.The United States has bet heavily on the efficacy of a new array of counterterrorism powers as the answer to Al Qaeda. In doing so it has evolved a concept of operations that has much more in common with the approach to terrorist threats taken by Israel and Russia than by its European partners. There has been little consideration of the wider strategic cost of these tactics, even as the Obama administration doubles down and extends their use. Meanwhile, some of America’s oldest and closest allies are beginning to place more and more constraints on working with U.S. forces. NATO cannot conduct military operations under two competing legal regimes for long. Something has to give—and it may just be the Atlantic alliance.

#### Lack of trials destroys US credibility the MOST – legitimacy is key because terrorism is not a conventional threat

Welsh ’11 David Welsh, J.D. from the University of Utah. He is currently a doctoral student in the Eller School of Business at the University of Arizona where his research focuses on organizational fairness and ethics, “Procedural Justice Post-9/11: The Effects of Procedurally Unfair Treatment of Detainees on Perceptions of Global Legitimacy”, 9 U.N.H. L. Rev. 261, March 2011, Lexis

The Global War on Terror n1 has been ideologically framed as a struggle between the principles of freedom and democracy on the one hand and tyranny and extremism on the other. n2 Although this war has arguably led to a short-term disruption of terrorist threats such as al-Qaeda, it has also damaged America's image both at home and abroad. n3 Throughout the world, there is a growing consensus that America has "a lack of credibility as a fair and just world leader." n4 The perceived legitimacy of the United States in the War on Terror is critical because terrorism is not a conventional threat that can surrender or can be defeated in the traditional sense. Instead, this battle can only be won through legitimizing the rule of law and undermining the use of terror as a means of political influence. n5 Although a variety of political, economic, and security policies have negatively impacted the perceived legitimacy of the United States, one of the most damaging has been the detention, treatment, and trial (or in many cases the lack thereof) of suspected terrorists. While many scholars have raised constitutional questions about the [\*263] legality of U.S. detention procedures, n6 this article offers a psychological perspective of legitimacy in the context of detention.

#### Legislation is key to persuade allies – AUMF proves

Chesney et al 13 Robert Chesney, American lawyer and Professor of Law at Texas School of Law, Jack Goldsmith, Matthew Waxman, Benjamin Wittes, Real Clear Politics, 2-25, http://www.realclearpolitics.com/articles/2013/02/25/is\_the\_war\_on\_terror\_lawful\_117146.html

Third are the international costs of a renewed AUMF. This is a complex issue. As a general matter a renewed and clarified AUMF – especially one that (as we propose below) articulates the U.S. view of international law – would contribute to the development of opinio juris under customary international law. So too would the reaction to the new AUMF. That reaction depends on the details of the legislation. To the extent that the legislation is seen as constraining the president in meaningful ways and in hewing to accepted international law, it would be viewed in a positive light internationally. To the extent that it is seen as making permanent an indefinite and geographically limitless war or in stretching international law, it would be viewed in a negative light internationally among NGOs and allied governments. And of course both reactions are likely to some degree. The attempt to mitigate a negative reception abroad (and, in some quarters, at home), is one reason why we recommend below that any statutory reform in this area should emphasize compliance with jus in bello and jus ad bellum as well as the limited rather than unlimited nature of the authorization (conceptually and temporally). We recognize that the United States’ interpretation of some international law self-defense and law-of-war authorities is broader than our allies’ interpretation; legislating such limitations thus will not end debate. Nevertheless, acknowledging clearly that U.S. operations are to be conducted within, rather than beyond, traditional legal frameworks is an important step in mitigating friction with our allies, and prudent use of these legal authorities will be important in persuading allies that the U.S. position is a reasonable one.

#### Britain and Germany are critical to NATO’s success and American engagement

Aronsson and Keller, 2012 (Lisa is a Transatlantic Security Studies, Royal United Services Institute and Patrick is a coordinator at the Royal United Services Institute for Defence and Security Studies and the Konrad-Adenauer-Stiftung, “British-German Defense Co-Operation in NATO” May 2012. Konrad Adenauer Stiftunt, RUSI Institute. Web, Acc at http://www.rusi.org/downloads/assets/OP\_201205\_Aronsson\_and\_Keller.pdf

NATO is central to both British and German defence policy planning and is the primary forum for consultations on European defence issues largely because of the American commitment to NATO and because of the American presence in Europe over the past six decades. Both London and Berlin have special relationships of their own with the United States. Both have historically committed to the US as a security partner and the US in turn has provided leadership, commitment and resources to help them to achieve their strategic goals. For the Federal Republic of Germany, the US supported its integration into NATO and the European institutions, which enabled it to recover, grow and prosper peacefully after the Second World War. Those institutions also enabled Germany to re-unify after the Cold War and emerge as Europe’s economic powerhouse. The UK, on the other hand, positioned itself as a transatlantic bridge in security and defence. The US recognised the strategic role it could fill mid-Atlantic and as a permanent member of the UN Security Council. The US also valued the military contributions London was able to make to American-led operations. The UK has emerged as Europe’s most powerful military after the Cold War, and that reinforced its close strategic ties with the US.¶ America’s commitment to Europe has served both British and German interests, but its presence in Europe is changing rapidly, challenging both to respond. Washington’s geographic re-balancing towards Asia and the greater Middle East may not lead to a trend away from Europe or undermine Article V, but it will have consequences for NATO, and for Germany and the UK more specifically. The new strategy will challenge Allies in their decisions on resource allocation, geographic focus and political attention. It is in the best interests of the UK and Germany to keep the US engaged in a meaningful way, and to keep NATO relevant to American concerns not only in Europe but in the Middle East and further afield. Massive increases in the American defence budget since the late 1990s had subsidised NATO, but imminent downsizing after nearly two decades of American war-fighting will challenge Allies to re-think their roles and commitments within NATO, and the UK and Germany to re-think their defence relationships with the US. It is no longer feasible for Germany to shy away from responsibility for European defence and security, and London’s military power will no longer suffice to secure influence in Washington if NATO capabilities decline. America expects Germany to deliver leadership on European security, and it expects London to hold onto its ambition to shape global affairs in partnership with the US.

#### First impact is soft power –

#### Transatlantic cohesion is key to solve every scenario for extinction

Hamilton et al 09 (Daniel, lead author, Director of the Center for Transatlantic Relations at SAIS, Charles Barry, Hans Binnendijk, Stephen Flanagan, Julianne Smith, James, Townsend, Feb 2009, "Alliance Reborn: An Atlantic Compact for the 21st Century" The Washington NATO Project, Atlantic Counsel) transatlantic.sais-jhu.edu/sebin/i/y/nato\_report\_final.pdf

\*\*This card edited to remove gendered language\*\*

It is urgent that we renew and reform the transatlantic partnership, for the world we have known is fading. A new world is rising, uncertain, indeterminate, yet forming fast. There is much that is positive about this transformation. For the first time in human history, most people on this planet live under governments of their own choosing. Revolutions in science, technology, transportation and communications are improving lives and freeing minds. A rising global middle class is creating major new opportunities. More people have been lifted out of poverty in the last twenty years than in all of human history. The Great Powers are at peace. Overall, more people in more parts of the world have benefitted from these dramatic changes. Gains have not been shared evenly, however. For too many, change has simply meant disruption and uncertainty. Around the world there is great concern about the impact of corrosive regional, ethnic, and religious conflicts; the rise of terrorism and organized crime; migration flows provoked by poverty, population growth, environmental change or insecurity; the accelerating proliferation of mass destruction capacities; the spread of pandemics; increasing resource scarcity, particularly energy and water; environmental degradation and the effects of climate change. Moreover, the potential of our young century has been stunted by the deepest recession in generations. While the U.S. and Europe still account for more than 60 percent of the global economy, the financial crisis and attendant recession have greatly damaged Western capacities. In 2009, for the first time in history, the world's emerging economies are forecast to provide 100 percent of global economic growth. Within the next 10-15 years, they are expected to generate more than half of the world’s output. Yet they too have been hurt by the financial crisis. Developing countries have seen foreign capital dry up, export markets shrivel, and currencies, banks and stock markets weaken. Despite the global downturn, growing connections between continents will continue to exert a powerful influence on the evolving international order. Globalization has brought large gains in terms of trade and inflows of capital, greater technological diffusion and higher economic growth. But it has not brought geopolitics or ideological struggles to an end. Rather, darker forces, including terrorism, organized crime, and radical ideologies— particularly the jihadist vision of ridding the Muslim world of Western influence, corrupt regimes, and restoring the Caliphate—will continue to exacerbate regional tensions and transnational threats and fuel competition and instability. Moreover, the technology and knowledge to make and deliver agents of mass destruction is proliferating among some of the most ruthless factions and regimes on earth. The ability of individuals and groups to employ destructive power will continue, as governments struggle to meet the challenge of stateless networks that move freely across borders. The world’s most devastating agent of mass destruction – infectious disease – is moving from the hands of Mother Nature to the hands of [hu]man[s]. Stunning scientific advances are enhancing biology’s dual-use potential for beneficence or malevolence. Biological techniques available today permit rapid synthesis of large viruses from non-living parts. This will help researchers seeking new drugs and vaccines. But it also puts the synthesis of viruses such as smallpox within the reach of thousands of laboratories worldwide. The age of engineered biological weapons is neither science fiction nor suspense thriller. It is here, today. The world is on the cusp of exponential change in the power of bioagents and their accessibility to state and non-state actors. The absence of available medical countermeasures (medicines, vaccines and diagnostic tests) and the inadequacies of health information and distribution systems will limit most nations’ capacities to deal with large-scale epidemics. Current systems to manage epidemics were stretched to the limit by SARS and other natural outbreaks, and are wholly inadequate for the unique challenges of bioterrorism. Efforts to adopt nuclear nonproliferation regimes to the biological realm have been fraught with difficulties and are of questionable merit. While most threats to peace and stability today remain regionally rooted, in an increasingly interconnected world conflicts that once might have remained local disputes can now have global impact. In this context, problems of governance have become a central national security dilemma. Unstable and ungoverned regions of the world, or governance that breaks when challenged, pose dangers for neighbors and can become the setting for broader problems of terrorism, migration, poverty and despair. The broader Middle East, stretching to southwest Asia, remains the region of the world where unsettled relationships, religious and territorial conflicts, impoverished societies, fragile and intolerant regimes and deadly combinations of technology and terror brew and bubble on top of one vast energy field upon which global prosperity depends. Choices made here could determine the shape of the 21st century – whether agents of mass destruction will be unleashed upon mass populations; whether the oil and gas fields of the Caucasus and Central Asia can become reliable energy sources; whether catastrophic terrorism can be prevented; whether Russia’s borderlands can become stable and secure democracies; whether Israel and its neighbors can live in peace; whether millions of people can be lifted from pervasive poverty and hopelessness; and whether the great religions of the world can flourish together. A number of significant, interrelated trends will continue to affect alliance security: Sunni-Shia conflicts and Islamist violence; Israeli-Palestinian tensions; Iraq’s precarious transition as U.S. and coalition forces withdraw; Iranian efforts to assert regional influence and develop nuclear weapons; and sustained insurgencies in Afghanistan and Pakistan that offer safe harbor to terrorists. Central Asia has become a focal point for competition over energy resources, and Russia and China could intensify their efforts to gain influence in the region. Leadership transition will test key regional powers, and could trigger regime failure and instability, opening doors to clan, tribal, and regional rivalries that may transcend state borders and lead to turmoil and violence. Significant and protracted instability could become the defining characteristic of Central Asia, including failed and failing states; radical Islamic movements; organized crime; and trafficking in weapons, WMD materials, and narcotics. Rising China, India and Indonesia will reshape power dynamics in Asia and beyond. Japan remains a major world player, but domestic political differences have prevented it from shouldering additional burdens to enhance global security commensurate with its position. China is on track to become the world’s second largest economy, the world’s largest importer of resources, the world’s biggest polluter, and a leading military power. Yet it faces significant domestic challenges, including environmental degradation, AIDS, and the prospect of wider social unrest if economic growth falters or problems in governance, social welfare, and regional development cannot be overcome. India is likely to continue to enjoy economic growth, develop its military, and seek to establish itself as a major independent power, even as rivalry persists with Pakistan. Burgeoning Indonesia is grappling with secessionist challenges and the spread of Islamist fundamentalism. An unpredictable North Korea will require significant international attention. Sub-Saharan Africa continues to be a major global supplier of oil, gas, and other commodities, yet remains vulnerable to HIV/AIDS, economic disruption, population stresses, civil conflict, corruption and failed governance. Many states lack the capacity to break up terror cells, thwart trafficking in arms, drugs or people, or provide domestic security. The Darfur crisis is a tragic reminder of the potential for local strife to affect millions. While Africans are assuming more of their own security responsibilities, Europeans and Americans are called to provide emergency assistance, deploy and train peacekeepers, and mediate disputes. Despite the rise of Brazil and broadening commercial relations with Asia and Europe, Latin America has yet to add its potential to broader transatlantic partnership. Some areas in this region continue to be among the most violent in the world, due to the activities of drug trafficking organizations, criminal cartels, and persistent weaknesses in governance and the rule of law. Resource issues are gaining in prominence as energy, water, and food pressures grow. The concentration of energy resources under state control and/or in regions of instability, together with rapidly changing resource distribution patterns, increasing demand and decreasing reserves will continue to challenge all consuming countries. Lack of access to stable water supplies is reaching critical proportions, particularly for agriculture, and rapid urbanization is exacerbating the problem. The World Bank estimates that demand for food will rise by 50 percent by 2030.4 Climate change is expected to exacerbate resource scarcities, prompting greater humanitarian crises, large-scale migration of people, instability, and conflict. Although the impact of climate change will vary, a number of regions are already suffering harmful effects, particularly water scarcity, storm intensity and loss of agricultural production. The International Panel on Climate Change (IPCC) estimates that by 2020, up to 250 million Africans could face starvation and malnutrition due to lack of fresh water supplies, lower crop yields, and drought. The IPCC also warns that mega-delta regions throughout Asia will face huge geopolitical challenges from climate-induced migration. One immediate strategic consequence of climate change is likely to be an ice-free summertime Arctic within the next few years, which will open up vast energy and mineral resources yet pose considerable environmental, legal and geostrategic challenges. The U.S. Geological Survey estimates that at least 25 percent of the world’s remaining oil and gas resources lie north of the Arctic Circle. Although the circumpolar states share a common interest in addressing environmental vulnerabilities as they exploit these resources, unresolved jurisdictional claims could result in greater tensions. Moreover, a host of new players could join the mix, since world shipping could also be transformed: the Northern Sea Route between the North Atlantic and the North Pacific is about 5,000 nautical miles shorter – a week’s sailing time -- than a trip via the Suez Canal. The new world rising underscores how the challenges facing Europeans and Americans have changed since the end of the Cold War. We are accustomed to associating historic change with significant dates and catalytic events. Even today, the fall of the Berlin Wall on November 9, 1989 remains the most potent symbol of the attraction and power of open societies. Yet when walls come down for families and friends they also can come down for hatred, prejudice and new forms of competition. There is no more vivid example than the tragic attacks of September 11, 2001.5 The changes we are experiencing today are no less historic. They are perhaps less vivid in the popular mind because they cannot be tied to one symbolic event but emanate from the billions of individual decisions made around the globe every day. Yet the consequences of those choices are no less dramatic for our welfare. We no longer face a singular threat to our mutual security, nor can we afford to subsume diverse dangers under simplistic slogans such as the Global War on Terror. We still face the potential for conflict between major states. We will perhaps always face the menace of terrorism. But today, a host of unorthodox challenges also demand our urgent attention. Two broad themes emerge from our assessment. First, the global has become local. Our well-being is increasingly influenced by flows of people, money and weapons, goods and services, technology, toxins and terror, drugs and disease. We characterize these phenomena as "global," but their impact is local. They are unprecedented in their range, scope and speed. They offer untold opportunities and terrible dangers. They are impersonal forces with very personal consequences. As a result, “human” security has become integral to “national” security. The networked nature of modern societies should prompt reconsideration of what, exactly, needs protecting in today’s world. Traditional strategies focused on securing territory. Yet what do cyber hackers, energy cartels and al-Qaeda have in common? They are networks that prey on other networks - the interconnected arteries and nodes of vulnerability that accompany the free flow of people, ideas, energy, money, goods and services, and the complex interdependent systems on which free societies depend. It is our complete reliance on such networks, matched with their susceptibility to catastrophic disruption, that make them such tempting targets. In the 21st century, we are called to protect our connectedness, not just our territory.6 A transformative approach to security should supplement the traditional focus on the security of territory with more energetic efforts to protect the critical functions of societies, and the manifold connections those societies have with others. Second, the local has become global. For many of our citizens the new world has meant disruption and insecurity. They worry that a job gained abroad means a job lost at home, that their hard-won prosperity could simply slip away. They are anxious about the pace of global change, about their livelihoods, about their future. They worry that their way of life is at the mercy of distant events. These concerns are real, widespread, and legitimate. Yet domestic renewal cannot come at the expense of our international engagement. The affairs of the world have become too deeply entrenched in our domestic lives for us to ignore global developments while we concentrate on problems at home. Domestic renewal, in fact, requires our active international engagement – together. Some argue that with the Cold War over and new powers rising, the transatlantic partnership has had its day, that the values and interests of Europeans and Americans have diverged, and that many of our institutions are of little relevance to today’s global challenges. We disagree. Our partnership remains as vital as in the past, but now we must focus on a new agenda. The new world rising offers us both necessity and opportunity to reposition our partnership to meet 21st century challenges, and to improve the institutions and tools at our disposal. In recent years, Europeans and Americans have differed on the nature of some of these challenges and how best to confront them. Differences of perspective and policy can be powerful. But the history of European-American relations has often been the history of difference. Merely asserting difference or reciting lists of tough issues does not make the case for estrangement. It makes the case for better leadership. Moreover, that which has driven us apart has rarely overshadowed that which keeps us together: basic principles of democracy, liberty, human rights, nondiscrimination and the rule of law; mutual peace and security; open, rules-based markets; and an open door to those who choose to abide by these principles and add their strength to ours -- all underpinned by deep security and economic linkages and an intensity of cooperation without parallel anywhere on earth. At times, each side of the Atlantic has honored these principles in the breach. Our achievements do not always match our aspirations. But the common body of accumulated principles, norms, rules and procedures we have built and accumulated together – in essence, an acquis Atlantique -- affirms the basic expectations we have for ourselves and for each other.7 It offers a unique foundation to build upon. For sixty years this foundation has made the transatlantic relationship the world’s transformative partnership. North America’s relationship with Europe enables each of us to achieve goals together that neither can alone – for ourselves and for the world. This still distinguishes our relationship: when we agree, we are usually the core of any effective global coalition. When we disagree, no global coalition is likely to be very effective. In short, transatlantic partnership remains indispensable if we are to tackle effectively the challenges we face. But unless we address the deep changes that have altered the context of our relationship, and unless we develop common strategies to advance the broadened range of interests we share, we are less likely to harness transatlantic potential to our wider goals and more likely to hold each other back.

#### Second impact is hard power –

#### Legitimacy makes deterrence effective

Welsh ’11 David Welsh, J.D. from the University of Utah. He is currently a doctoral student in the Eller School of Business at the University of Arizona where his research focuses on organizational fairness and ethics, “Procedural Justice Post-9/11: The Effects of Procedurally Unfair Treatment of Detainees on Perceptions of Global Legitimacy”, 9 U.N.H. L. Rev. 261, March 2011, Lexis

In February 2006, the United Nations Working Group on Arbitrary Detention spoke out against international law and human rights violations at Guantanamo Bay, stating that the facility should be closed "without further delay." [n46](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n46) This report paralleled earlier criticism from Amnesty International that Guantanamo Bay violates minimum standards for the treatment of individuals. [n47](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n47) In response, the United States has argued that detainees are not prisoners of war but are rather "unlawful combatants" who are not entitled to the protections of the Geneva Convention because they do not act in accordance with the accepted rules of war. [n48](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n48) Yet, regardless of the debatable legal merit of this argument, legitimacy is an "elusive quality" grounded in worldwide opinion that will not let the United States off the hook on a mere technicality when moral duties and international customs have been violated. [n49](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n49) In the next section, I discuss the importance of legitimacy and the ways in which it has been undermined by U.S. conduct in the War on Terror. By understanding what drives global perceptions of U.S. legitimacy, current detention policies and their ramifications can be more accurately assessed and restructured. IV. Legitimacy: The Critical Missing Element in the War on Terror In the context of the War on Terror, legitimacy is the critical missing element under the current U.S. detention regime. Legitimacy can be defined as "a psychological property of an authority, institution, or social arrangement that leads those connected to it to believe that it is appropriate, proper, and just." [n50](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n50) As far back as Plato and Aristotle, philosophers have recognized that influencing others merely through coercion and power is costly and inefficient. [n51](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n51) Today, empirical evidence suggests that legitimacy, rather than deterrence, is primarily what causes individuals to obey the law. [n52](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n52) Thus, while legal authorities may possess the immediate power to stop illegal action, long-term compliance requires that the general public perceives the law to be legitimate. [n53](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n53) Terrorism is primarily an ideological war that cannot be won by technology that is more sophisticated or increased military force. [n54](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n54) While nations combating terrorism must continue to address immediate threats by detaining suspected terrorists, they must also consider the prevention of future threats by analyzing how their policies are perceived by individuals throughout the world. Ultimately, in the War on Terror, "the benefits to be derived from maximizing legitimacy are too important to neglect." [n55](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n55) Over time, perceptions of legitimacy create a "reservoir of support" for an institution that goes beyond mere self-interest. [n56](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n56) In the context of government: Legitimacy is an endorphin of the democratic body politic; it is the substance that oils the machinery of democracy, reducing the friction that inevitably arises when people are not able to get everything they want from politics. Legitimacy is loyalty; it is a reservoir of goodwill that allows the institutions of government to go against what people may want at the moment without suffering debilitating consequences

#### The plan’s external oversight on detention maintains heg---legitimacy is the vital internal link to global stability

Robert Knowles 9, Acting Assistant Professor, New York University School of Law, Spring, “Article: American Hegemony and the Foreign Affairs Constitution”, 41 Ariz. St. L.J. 87, Lexis

The hegemonic model also reduces the need for executive branch flexibility, and the institutional competence terrain shifts toward the courts. The stability of the current U.S.-led international system depends on the ability of the U.S. to govern effectively. Effective governance depends on, among other things, predictability. n422 G. John Ikenberry analogizes America's hegemonic position to that of a "giant corporation" seeking foreign investors: "The rule of law and the institutions of policy making in a democracy are the political equivalent of corporate transparency and [\*155] accountability." n423 Stable interpretation of the law bolsters the stability of the system because other nations will know that they can rely on those interpretations and that there will be at least some degree of enforcement by the United States. At the same time, the separation of powers serves the global-governance function by reducing the ability of the executive branch to make "abrupt or aggressive moves toward other states." n424¶ The Bush Administration's detainee policy, for all of its virtues and faults, was an exceedingly aggressive departure from existing norms, and was therefore bound to generate intense controversy. It was formulated quickly, by a small group of policy-makers and legal advisors without consulting Congress and over the objections of even some within the executive branch. n425 Although the Administration invoked the law of armed conflict to justify its detention of enemy combatants, it did not seem to recognize limits imposed by that law. n426 Most significantly, it designed the detention scheme around interrogation rather than incapacitation and excluded the detainees from all legal protections of the Geneva Conventions. n427 It declared all detainees at Guantanamo to be "enemy combatants" without establishing a regularized process for making an individual determination for each detainee. n428 And when it established the military commissions, also without consulting Congress, the Administration denied defendants important procedural protections. n429¶ In an anarchic world characterized by great power conflict, one could make the argument that the executive branch requires maximum flexibility to defeat the enemy, who may not adhere to international law. Indeed, the precedents relied on most heavily by the Administration in the enemy combatant cases date from the 1930s and 1940s - a period when the international system was radically unstable, and the United States was one of several great powers vying for advantage. n430 But during that time, the executive branch faced much more exogenous pressure from other great powers to comply with international law in the treatment of captured enemies. If the United States strayed too far from established norms, it would risk retaliation upon its own soldiers or other consequences from [\*156] powerful rivals. Today, there are no such constraints: enemies such as al Qaeda are not great powers and are not likely to obey international law anyway. Instead, the danger is that American rule-breaking will set a pattern of rule-breaking for the world, leading to instability. n431 America's military predominance enables it to set the rules of the game. When the U.S. breaks its own rules, it loses legitimacy.¶ The Supreme Court's response to the detainee policy enabled the U.S. government as a whole to hew more closely to established procedures and norms, and to regularize the process for departing from them. After Hamdi, n432 the Department of Defense established a process, the CSRTs, for making an individual determination about the enemy combatant status of all detainees at Guantanamo. After the Court recognized habeas jurisdiction at Guantanamo, Congress passed the DTA, n433 establishing direct judicial review of CSRT determinations in lieu of habeas. Similarly, after the Court declared the military commissions unlawful in Hamdan, n434 this forced the Administration to seek congressional approval for commissions that restored some of the rights afforded at courts martial. n435 In Boumediene, the Court rejected the executive branch's foreign policy arguments, and bucked Congress as well, to restore the norm of habeas review. n436¶ Throughout this enemy combatant litigation, it has been the courts' relative insulation from politics that has enabled them to take the long view. In contrast, the President's (and Congress's) responsiveness to political concerns in the wake of 9/11 has encouraged them to depart from established norms for the nation's perceived short-term advantage, even at the expense of the nation's long-term interests. n437 As Derek Jinks and Neal Katyal have observed, "treaties are part of [a] system of time-tested standards, and this feature makes the wisdom of their judicial interpretation manifest." n438¶ At the same time, the enemy combatant cases make allowances for the executive branch's superior speed. The care that the Court took to limit the issues it decided in each case gave the executive branch plenty of time to [\*157] arrive at an effective detainee policy. n439 Hamdi, Rasul, and Boumediene recognized that the availability of habeas would depend on the distance from the battlefield and the length of detention. n440¶ The enemy combatant litigation also underscores the extent to which the classic realist assumptions about courts' legitimacy in foreign affairs have been turned on their head. In an anarchic world, legitimacy derives largely from brute force. The courts have no armies at their disposal and look weak when they issue decisions that cannot be enforced. n441 But in a hegemonic system, where governance depends on voluntary acquiescence, the courts have a greater role to play. Rather than hobbling the exercise of foreign policy, the courts are a key form of "soft power." n442 As Justice Kennedy's majority opinion observed in Boumediene, courts can bestow external legitimacy on the acts of the political branches. n443 Acts having a basis in law are almost universally regarded as more legitimate than merely political acts. Most foreign policy experts believe that the Bush Administration's detention scheme "hurt America's image and standing in the world." n444 The restoration of habeas corpus in Boumediene may help begin to counteract this loss of prestige.¶ Finally, the enemy combatant cases are striking in that they embrace a role for representation-reinforcement in the international realm. n445 Although defenders of special deference acknowledge that courts' strengths lie in protecting the rights of minorities, it has been very difficult for courts to protect these rights in the face of exigencies asserted by the executive branch in foreign affairs matters. This is especially difficult when the minorities are alleged enemy aliens being held outside the sovereign territory of the United States in wartime. In the infamous Korematsu decision, another World War II-era case, the Court bowed to the President's factual assessment of the emergency justifying detention of U.S. citizens of Japanese ancestry living in the United States. n446 In Boumediene, the Court [\*158] pointedly declined to defer to the executive branch's factual assessments of military necessity. n447 The court may have recognized that a more aggressive role in protecting the rights of non-citizens was required by American hegemony. In fact, the arguments for deference with respect to the rights of non-citizens are even weaker because aliens lack a political constituency in the United States. n448 This outward-looking form of representation-reinforcement serves important functions. It strengthens the legitimacy of U.S. hegemony by establishing equality as a benchmark and reinforces the sense that our constitutional values reflect universal human rights. n449¶ Conclusion¶ When it comes to the constitutional regime of foreign affairs, geopolitics has always mattered. Understandings about America's role in the world have shaped foreign affairs doctrines. But the classic realist assumptions that support special deference do not reflect the world as it is today. A better, more realist, approach looks to the ways that the courts can reinforce and legitimize America's leadership role. The Supreme Court's rejection of the government's claimed exigencies in the enemy combatant cases strongly indicates that the Judiciary is becoming reconciled to the current world order and is asserting its prerogatives in response to the fewer constraints imposed on the executive branch. In other words, the courts are moving toward the hegemonic model. In the great dismal swamp that is the judicial treatment of foreign affairs, this transformation offers hope for clarity: the positive reality of the international system, despite terrorism and other serious challenges, permits the courts to reduce the "deference gap" between foreign and domestic cases.

#### That’s key to solve extinction

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It is worth first examining the larger picture: We live in a time of arguably the greatest structural change in the global order yet endured, with this historical moment's most amazing feature being its relative and absolute lack of mass violence. That is something to consider when Americans contemplate military intervention in Libya, because if we do take the step to prevent larger-scale killing by engaging in some killing of our own, we will not be adding to some fantastically imagined global death count stemming from the ongoing "megalomania" and "evil" of American "empire." We'll be engaging in the same sort of system-administering activity that has marked our stunningly successful stewardship of global order since World War II. Let me be more blunt: As the guardian of globalization, the U.S. military has been the greatest force for peace the world has ever known. Had America been removed from the global dynamics that governed the 20th century, the mass murder never would have ended. Indeed, it's entirely conceivable there would now be no identifiable human civilization left, once nuclear weapons entered the killing equation. But the world did not keep sliding down that path of perpetual war. Instead, America stepped up and changed everything by ushering in our now-perpetual great-power peace. We introduced the international liberal trade order known as globalization and played loyal Leviathan over its spread. What resulted was the collapse of empires, an explosion of democracy, the persistent spread of human rights, the liberation of women, the doubling of life expectancy, a roughly 10-fold increase in adjusted global GDP and a profound and persistent reduction in battle deaths from state-based conflicts. That is what American "hubris" actually delivered. Please remember that the next time some TV pundit sells you the image of "unbridled" American military power as the cause of global disorder instead of its cure. With self-deprecation bordering on self-loathing, we now imagine a post-American world that is anything but. Just watch who scatters and who steps up as the Facebook revolutions erupt across the Arab world. While we might imagine ourselves the status quo power, we remain the world's most vigorously revisionist force. ¶ As for the sheer "evil" that is our military-industrial complex, again, let's examine what the world looked like before that establishment reared its ugly head. The last great period of global structural change was the first half of the 20th century, a period that saw a death toll of about 100 million across two world wars. That comes to an average of 2 million deaths a year in a world of approximately 2 billion souls. Today, with far more comprehensive worldwide reporting, researchers report an average of less than 100,000 battle deaths annually in a world fast approaching 7 billion people. Though admittedly crude, these calculations suggest a 90 percent absolute drop and a 99 percent relative drop in deaths due to war. We are clearly headed for a world order characterized by multipolarity, something the American-birthed system was designed to both encourage and accommodate. But given how things turned out the last time we collectively faced such a fluid structure, we would do well to keep U.S. power, in all of its forms, deeply embedded in the geometry to come.¶ To continue the historical survey, after salvaging Western Europe from its half-century of civil war, the U.S. emerged as the progenitor of a new, far more just form of globalization -- one based on actual free trade rather than colonialism. America then successfully replicated globalization further in East Asia over the second half of the 20th century, setting the stage for the Pacific Century now unfolding.

### 1AC – Plan

#### Plan: The United States federal government should create a domestic terror court with exclusive jurisdiction to resolve the legal status of persons detained in an Active Theater of War.

### 1AC – Solvency

#### Contention 2 is Solvency

#### The US Court of Appeals decision in Al Maqeleh v. Gates created a legal black hole for detainees in an active theater of war

Nikkel 12, 2012, J.D. Candidate, 2012, William S. Boyd School of Law, Las Vegas; B.A., 2009, University of Nevada, Reno. Nevada Law Journal. Spring 2012. The Author would like to thank Professor Christopher L. Blakesley, Professor Terrill Pollman, and the Nevada Law Journal staff for helping with the research and writing of this Note.) Web, Lexis Nexis.

Dilawar's horrific death was one of many prisoner abuses at Bagram Airfield since late 2001, thrusting the base into the national spotlight as the New York Times and other media outlets began to investigate the abuses at Bagram. 6 In the wake of this increased international scrutiny and the United States Supreme Court's decision opening federal courts to detainee habeas challenges from Guantanamo Bay Naval Base in Boumediene v. Bush, 7 detainees at Bagram filed habeas suits in federal court to seek release. 8 The United States District Court for the District of Columbia ("District Court") consolidated these cases into a single action, Al Maqaleh v. Gates, and held in August 2009 that the Bagram detainees could indeed seek habeas relief in domestic courts. 9 However, the United States Court of Appeals for the District of Columbia ("D.C. Circuit") reversed this decision in May 2010 because the detainees' location in an active "theater of war" precluded their access to federal courts under Boumediene. 10 The D.C. Circuit's reversal revealed a fundamental paradox in the government's approach to the Afghan conflict and the "war on terror." 11 Presidents Obama and Bush have insisted the nation cannot be at "war" with al Qaeda and therefore the protections of the Geneva Conventions and other international law [\*445] do not apply to nor protect captured persons. 12 When the Bagram detainees challenged the legality of their detentions, the D.C. Circuit deferred to the executive's judgment and denied habeas relief because Bagram was in an "active theater of war in a territory under neither the de facto nor the de jure sovereignty of the United States." 13 This paradox puts Bagram detainees in a legal "black hole" 14 where they cannot obtain relief through traditional military justice (like Geneva-governed military commissions) and domestic courts refuse to hear their habeas claims.

#### Obama’s speech has called on Congress to remove restrictions on detainment

Josh Rogin 13, senior correspondent for national security & politics for Newsweek and The Daily Beast, May 23, 2013, “How Obama Bungled the Guantánamo Closing” <http://www.thedailybeast.com/articles/2013/05/23/how-obama-bungled-the-guantanamo-closing.html>

.¶ Obama took that issue head-on Thursday when he called on Congress to remove restrictions on transferring prisoners to the U.S., announced the Defense Department will establish a domestic site for holding military commissions, defended the idea of trying alleged terrorists on U.S. soil, and lifted the ban on transferring Guantánamo prisoners to Yemen, which could greatly reduce the prisoner population in Guantánamo.¶ By announcing these steps, Obama is calling on the public to support his contention that the prison can be closed safely, in order to put pressure on Congress to change its tune, experts said.¶ “It looks like he’s learned some lessons from the last go-round,” said Ken Gude, chief of staff at the Center for American Progress, the think tank founded by former Clinton chief of staff John Podesta. “Starting by designating a site on a military base to hold commissions is a great first step. What is Congress going to say to the Defense Department? That it doesn’t think it can secure a U.S. military base inside the United States from potential attack by terrorists?”

#### Inevitable closure of Guantanamo and inadequacy of commissions and civilian trials means a DTC is key

Anthony L. Kimery 9, Homeland Security Today's Online Editor and Online Media Division manager, draws on 30 years of experience and extensive contacts as he investigates homeland security, counterterrorism and border security, citing Glenn Sulmasy, first permanent commissioned military law professor at the Coast Guard Academy, where he is a Professor of Law teaching international, constitutional, and criminal law, "The Case For A 'National Security Court'", December 3, [www.hstoday.us/blogs/the-kimery-report/blog/the-case-for-a-national-security-court/a9333d82c11cecd35e74c8c0b65c2698.html](http://www.hstoday.us/blogs/the-kimery-report/blog/the-case-for-a-national-security-court/a9333d82c11cecd35e74c8c0b65c2698.html)

Some argue … a National Security Court would be a ‘star chamber’ and would fly in the face of traditional American jurisprudence. However, if properly structured and staffed, such a court would go a long way to solve the conundrum of how to deal with enemy combatant terror suspects, many of whom cannot effectively be tried in civilian courts due to the classified nature of key evidence against them,” [wrote](http://www.investigativeproject.org/984/national-security-court-we-already-have-one) Bill West, former chief of the national security section for Immigration and Customs Enforcement and now a consultant to the Investigative Project on Terrorism. “Presumably, within a National Security Court system, defense attorneys would receive appropriate security clearances, and unclassified summaries of classified evidence would be provided to defendants whenever possible,” West wrote. “Mechanisms would likely be in place to allow for the secure and, if necessary anonymous testimony of intelligence agents and their ‘assets.’ West noted that “the United States already has a workable, if not working, version of a National Security Court.” He explained that among the significant revisions to the Immigration and Nationality Act (INA) by the Anti-Terrorism and Effective Death Penalty Act of 1996 was the creation of the Alien Terrorist Removal Procedures and the Alien Terrorist Removal Court (ATRC). The ATRC changed the nature of potential deportation adjudication substantially, but in a limited and controlled fashion.¶ A Wall Street Journal [editorial](http://online.wsj.com/article/SB123258578172604569.html) opined that it “sounds great” that President Obama stated that he wants to create "a process that adheres to rule of law, habeas corpus, basic principles of Anglo-American legal system, but doing it in a way that doesn't result in releasing people who are intent on blowing us up.” However, “this ‘balance’ is difficult to strike because many of the Guantanamo prisoners haven't committed crimes per se but are dedicated American enemies and too dangerous to let go. Other cases involve evidence that is insufficient for trial but still sufficient to determine that release is an unacceptable security risk.”¶ The Journal editorialized that while “the stock anti-antiterror position is that detainees should be charged with crimes, either through military courts-martial or (preferably) the ordinary criminal justice system - anyone who can't be indicted should be set free - such trials are unworkable even for the [dozens of] detainees that prosecutors had planned to try with military commissions, let alone prisoners who are too dangerous to release but for which there isn't sufficient evidence for a tribunal, much less civilian courts. Critics like to point to aggressive interrogations as somehow tainting these cases, but the real problems are far more prosaic. For instance, any evidence probably can't be admitted in civilian courts because terrorists aren't read their Miranda rights when picked up in combat zones.”¶ Consequently, the Journal opined that “an alternative to military commissions that is gaining political traction is the idea of a National Security Court, composed of Article III judges to supervise detentions and administer trials. There are real risks here. Politically, it will cost time and capital that Mr. Obama probably prefers to spend elsewhere. Practically, any new system is likely to face the same legal challenges from the white-shoe lawyers at Shearman and Sterling and anti-antiterror activists that for years tied down military commissions.”¶ The “decision has been made” to close GITMO and bring the five key 9/11 defendants to New York to be tried in civilian criminal court, “and it was made on information most people do not have access to – so, it seems something had to be done and there were two options, military commissions or civilian courts,” Sulmasy told HSToday.us. “But now, the real issue that will emerge is what to do in the future – for the 75 or so detainees whom it appears cannot be tried in either of those venues as well as those in Bagram and the future, inevitable captures during this generational war. Now that the detention facility at GITMO apparently will not close on time, it seems now – more than ever before – is the best time for Congress to step up, hold hearings, and look at the possibility of having to only use one of two paradigms and look toward embracing the third way – the National Security Court system.”¶ Reiterating what he urged in his book, Sulmasy told said “Congress can and should take a long, hard, look, hold hearings, and truly examine what is in the best interest of the nation … We need comprehensive and long term changes in the detention policies of the United States and this, despite some disappointment that [GITMO] won't close on time, does open the door for Congress to step up to the plate and answer the call for real reform and properly balance national security and human rights."¶ “I firmly believe this needs to be reviewed and acted upon sooner than later,” Sulmasy said, noting that “to do otherwise, to let the GITMO issue continue to fester, is to simply exacerbate unnecessary criticism of the US and to further negatively impact the greater War on al Qaeda.”¶ While Sulmasy believes that in so far as military commissions are concerned for adjudicating combatants in the WOAQ, he said they “are lawful and have been a part of US jurisprudence since the founding of the nation … the real issue is that it is not the appropriate tool to use against the Al Qaeda fighters. They are normally employed against ‘the few’ who violate the laws of war. In the hybrid conflict with Al Qaeda, every one of the fighters is violating the laws of war and thus, ‘all’ are forced into the military commission process. This simply isn’t the right system to detain and try these unique hybrid warriors.”¶ “Additionally,” Sulmasy told HSToday.us in lengthy interviews, “the credibility of the commissions has been tarnished irrevocably. The legitimacy of any convictions will be subject to intense scrutiny at the outset. It seems more appropriate to have held hearings and really looked at the options available to Congress rather than simply ‘retooling’ the military commissions with some additional rights. Real changes are necessary … for the … inevitable future captures in this generational conflict.”

#### The legislative process increases public awareness and debate which is key to resolving the contentious nature of Obama’s demands- even if stakeholders don’t agree with the proposal, the aff’s process ensures embrace, not backlash.

Sillivana, 2009 (Assistant Professor of Law, Paul M. Herbert Law Center, Louisiana State University.“Lincoln’s Constitutionalism in Time of War: Lessons for the War on Terror?” Article: “INTERNATIONAL LAW AND DOMESTIC LEGITIMACY: REMARKS PREPARED FOR LINCOLN’S CONSTITUTIONALISM IN TIME OF WAR: LESSONS FOR THE CURRENT WAR ON TERROR? Chapman Law Review. Spring 2009. Web, Acc 8/14/2013 at <http://www.chapmanlawreview.com/?p=1514>)

Moreover, the incorporation of international law does not preclude legislative override where necessary. The last-in-time doctrine enables the political branches to supersede international law through the passage of contradictory federal legislation.71 The formal incorporation of Congress through such a process fosters public debate both domestically and internationally, and also provides incentive for the legislature to come off the sideline to place preferred policies on solid legal footing. Regardless of its success or failure, the process of forming legislation and engaging in the political machinations that surround prospective legislation encourages a broader public dialogue as well as a focal \*502 point for discussion of policy issues upon which debate can unfold. The focal points of such debates tend to revolve around legislation that sparks the greatest public concern and reflects positions centered on popular understanding of the “most important” points surrounding the issue. Invitation for public debate in the policy-making process enables dissenting views to voice opinions and air grievances. More broadly, incorporating the public into the debate acts as a functional and productive way to curb the vitriol of dissent–which perceives itself as unduly marginalized and unjustly silenced in affecting the actions and direction of government. Public inclusion in the broader policy judgments of war and armed conflict not only enables public opinion an outlet and opportunity for enhanced focus but also encourages public investment in the policy outcome that is ultimately embraced at the conclusion of the process, even if that outcome reflects a decision against the passage of any legislation.

#### Restrictions inevitable---only a question of whether they are deliberate or haphazard

Benjamin Wittes 9, senior fellow and research director in public law at the Brookings Institution, is the author of Law and the Long War: The Future of Justice in the Age of Terror and is also a member of the Hoover Institution's Task Force on National Security and Law, “Legislating the War on Terror: An Agenda for Reform”, November 3, Book, p. 17

A new administration now confronts the same hard problems that plagued its ideologically opposite predecessor, and its very efforts to turn the page on the past make acute the problems of institutionalization. For while the new administration can promise to close the detention facility at Guantanamo Bay and can talk about its desire to prosecute suspects criminally, for example, it cannot so easily forswear noncriminal detention. While it can eschew the term "global war on terror," it cannot forswear those uses of force—Predator strikes, for example—that law enforcement powers would never countenance. Nor is it hastening to give back the surveillance powers that Congress finally gave the Bush administration. In other words, its very efforts to avoid the Bush administrations vocabulary have only emphasized the conflicts hybrid nature—indeed- emphasized that the United States is building something new here, not merely applying something old.¶ That point should not provoke controversy. The evidence that the United States is fumbling toward the creation of hybrid institutions to handle terrorism cases is everywhere around us. U.S. law, for example, now contemplates extensive- probing judicial review of detentions under the laws of war—a naked marriage of criminal justice and wartime traditions. It also contemplates warrantless wiretapping with judicial oversight of surveillance targeting procedures—thereby mingling the traditional judicial role in reviewing domestic surveillance with the vacuum cleaner-type acquisition of intelligence typical of overseas intelligence gathering. Slowly but surely, through an unpredictable combination of litigation, legislation, and evolutionary developments within executive branch policy, the nation is creating novel institutional arrangements to authorize and regulate the war on terror. The real question is not whether institutionalization will take place but whether it will take place deliberately or haphazardly, whether the United States will create through legislation the institutions with which it wishes to govern itself or whether it will allow an endless sequence of common law adjudications to shape them.¶ The authors of the chapters in this book disagree about a great many things. They span a considerable swath of the U.S. political spectrum, and they would no doubt object to some of one another's policy prescriptions. Indeed, some of the proposals are arguably inconsistent with one another, and it will be the very rare reader who reads this entire volume and wishes to see all of its ideas implemented in legislation. What binds these authors together is not the programmatic aspects of their policy prescriptions but the belief in the value of legislative action to help shape the contours of the continuing U.S. confrontation with terrorism. That is, the authors all believe that Congress has a significant role to play in the process of institutionalization—and they have all attempted to describe that role with reference to one of the policy areas over which Americans have sparred these past several years and will likely continue sparring over the next several years.

#### DTC is better than any alternative court – it’s the most efficient while preserving fairness.

David Welsh, J.D. from the University of Utah. He is currently a doctoral student in the Eller School of Business at the University of Arizona where his research focuses on organizational fairness and ethics, “Procedural Justice Post-9/11: The Effects of Procedurally Unfair Treatment of Detainees on Perceptions of Global Legitimacy”, 9 U.N.H. L. Rev. 261, March 2011, Lexis

VII. Balancing Fairness, Effectiveness, and Efficiency¶ Although enhancing procedural justice is critical to U.S. success in the War on Terror, fairness is not an absolute and must be carefully balanced with other strategic objectives including effectiveness and efficiency. Yet, weighing these elements is not inherently a zero-sum game in which one objective can only be maximized at the expense of the others. While some degree of balance is required, a zero-sum mentality is often the result of short-term thinking as opposed to long-term strategy. In this section, I argue that the DTC [\*292] model collectively maximizes effectiveness, efficiency, and fairness to a greater extent than either the current U.S. detention regime or competing detention models. I also caution against the misuse of procedural justice and legitimacy to present a front of credibility that is used to manipulate and exploit individuals.¶ A. Efficiency¶ The DTC model represents a method of bringing efficiency and fairness to the detention system. Efficiency suggests that with limited resources, procedural protections cannot be an absolute. Yet, some unfair policies with a guise of efficiency, like a shoot-on-sight policy against suspected terrorists, would actually be incredibly costly when long-term effects on U.S. legitimacy are considered. At the other end of the spectrum, the trial of thousands of suspected terrorists under the U.S. criminal model is also tremendously inefficient. [n186](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n186) Implementing traditional evidence and jury requirements would be extremely costly and would create significant delays. Critics of Article III courts and international treaty-based terror courts note the impracticability and inefficiency of this system in the context of terrorism. [n187](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n187)¶ Referring back to the problem of "the process as the punishment," weighing the additional delays and complications required under alternate models such as the traditional criminal justice system eclipses the marginal benefit of any additional rights provided by these models. Under the DTC model, efficiency and fairness work together, as both the detainee and the United States have an interest in expediting the judicial process. Of course, resources could be poured into the criminal system to allow a significantly larger caseload, yet, the proposed DTC model strikes a more suitable balance between efficiency and fairness that does not stretch either of these ideals beyond the point of diminishing returns. Just as judicial statutes allow courts to efficiently provide justice without reinventing the wheel on a case-by-case basis, the DTC framework is an efficient alternative to current ad hoc policies used to try terrorists. [\*293] ¶ B. Effectiveness¶ While short-term effectiveness often appears to be hampered by fair process, procedural justice and legitimacy are the building blocks of long-term effectiveness in the War on Terror. The famous ticking time bomb scenario, in which a terrorist is apprehended after hiding a bomb, is often used as an example justifying torture (procedural injustice) in the name of effectiveness. Choosing not to torture the suspected terrorist appears to compromise effectiveness and potentially sentence thousands of innocent civilians to death. Torture supporters argue that in such a situation the ends justify the means. However, substantial evidence suggests that torture marks the beginning of a slippery slope that ultimately undermines both fairness and effectiveness. [n188](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n188)¶ Next, this approach is problematic because it casts a wide net that potentially allows the torture of anyone that may have some knowledge of the bomb. [n194](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n194) "You end up going down a slippery slope and sanctioning torture in general," states Professor David Cole. [n195](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n195) With the lives of thousands of individuals on the line, how far should this individual be tortured? Are any means off limits in such a scenario? What if torturing the alleged terrorist does not produce results, but it is suspected that this individual will talk if the government tortures his six-year-old daughter in front of him? Inevitably, the ticking time bomb scenario leads full circle back to questions about legitimacy and fairness. If the United States is willing to venture down this slippery slope, it will, as the United States Army Field Manual section on torture indicates, "bring discredit upon the U.S. and its armed forces while undermining domestic and international support for the war effort." [n196](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n196)¶ While this scenario represents the extreme example, all attempts to circumvent fairness in the name of effectiveness inevitably begin to move down this slippery slope. In a regime without clear rules, effectiveness becomes subsumed in necessity, and in a period of crisis, long-term costs are easily overshadowed by perceived short-term gains. It is possible to conceptualize a regime in which bureaucratic procedural red tape ties the hands of the military to a point where effectiveness is undermined. However, this is not the lesson of the last seven years. In contrast, U.S. policymakers are seeking to set rules and limits on a regime that has run largely unregulated and unchecked in the War on Terror. [n197](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n197) The DTC model maintains effectiveness by recognizing inherent differences between suspected terrorists and domestic criminals. Yet, it also enhances fairness by granting specific procedural rights to detainees. Thus, under the [\*295] DTC model, if Osama bin Laden was captured today, he would not receive a full Miranda warning or be immediately brought to trial before a jury, as a domestic criminal defendant would be. Yet, he also would not be indefinitely placed in a "black hole" but would be brought before a judge within seven days. He would be guaranteed certain rights that would allow non-abusive interrogation but not torture. Regardless of whether valuable information is obtained through questioning, to go beyond the rules in this scenario would ultimately undermine both effectiveness and fairness in the long term. The DTC model establishes the correct balance by providing the tools to convict bin Laden without losing sight of his rights as a human being. In the eyes of a global audience, this model of guaranteed rules and rights enhances both legitimacy and long-term effectiveness in the War on Terror.

#### Terror courts are key – separates powers.

Pariseault, 2005 (John is a JD Candidate at the university of California, Hastings College of the Law. “Applying the Rule of Law in the War on Terror: An Examination of Guantanamo Bya Through the Lens of the US Constitution and the Geneva Congentions” Spring 2005. 28 Hastings Int’l & Comp. L. Rev. 481)

Specialized, Congressionally-authorized terrorism courts may be the best solution to the issues raised in this article. Congressional authorization would avoid the separation of powers criticism garnered by military commissions. [n120](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?tokenKey=rsh-20.973149.8694205014&target=results_DocumentContent&returnToKey=20_T17974679647&parent=docview&rand=1376676759880&reloadEntirePage=true#n120) They could also handle the [\*499] peculiar needs of the government in its war on terror, such as allowing for mandatory detention periods, and evidentiary rules that take into account the security and availability constraints on the prosecution in making its case. Such variations would garner greater acceptance because they would be a product of a working democratic system as opposed to independent Executive decision-making.¶ This article recognizes that deference ought to be given to the Executive branch in times of crisis. However, Congress should, as part of its oversight authority, promulgate a framework for the detention and trial of suspected terrorists. [n121](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?tokenKey=rsh-20.973149.8694205014&target=results_DocumentContent&returnToKey=20_T17974679647&parent=docview&rand=1376676759880&reloadEntirePage=true#n121) Vesting sole authority in the Executive to define who the terrorists are, how they should be detained, and in what way they should be tried, contravenes the intention of the framers of our Constitution in establishing a tripartite separation of powers and a truly independent judiciary. [n122](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?tokenKey=rsh-20.973149.8694205014&target=results_DocumentContent&returnToKey=20_T17974679647&parent=docview&rand=1376676759880&reloadEntirePage=true#n122) The history and development of American law is clearly focused upon protecting individual liberties and subjecting the Executive branch and the Legislature to the rule of law. [n123](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?tokenKey=rsh-20.973149.8694205014&target=results_DocumentContent&returnToKey=20_T17974679647&parent=docview&rand=1376676759880&reloadEntirePage=true#n123)

#### Incorporating procedural justice into a Domestic Terror Court is key- treatment of each individual detainee influences perception of the United States.

David Welsh, J.D. from the University of Utah. He is currently a doctoral student in the Eller School of Business at the University of Arizona where his research focuses on organizational fairness and ethics, “Procedural Justice Post-9/11: The Effects of Procedurally Unfair Treatment of Detainees on Perceptions of Global Legitimacy”, 9 U.N.H. L. Rev. 261, March 2011, Lexis

V. The Importance of Procedural Justice¶ In the context of detentions, "the fairness of the procedures" through which the United States exercises authority is the key element driving both national and international perceptions of U.S. legitimacy, and legitimacy ultimately determines the extent to which individuals comply with U.S. policies. [n73](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n73) Robust empirical evidence has "repeatedly documented a pattern of correlations consistent with a causal chain in which procedural fairness leads to perceived legitimacy, which leads to the acceptance of policies." [n74](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n74) Research also [\*273] suggests that procedural justice creates a "willingness to empower legal authorities to resolve issues of public controversy." [n75](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n75) An analysis of how procedural justice has been applied in legal and institutional settings provides a framework for addressing the specific legitimacy problems associated with Guantanamo Bay and how fair process can be effectively incorporated into a DTC model.¶ Thirty-five years ago, the formal study of procedural justice was born when researchers discovered that individuals "care deeply about the fairness of the process that is used to resolve their encounter or dispute, separate and apart from their interest in achieving a favorable outcome." [n76](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n76) This research indicates that individuals with control over the process (e.g., telling their side of the story, presenting evidence, and controlling the order and timing of presentation) view the process itself as fair. [n77](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n77) This outcome, known as the fair process effect, "is one of the most replicated findings in the procedural justice literature." [n78](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n78) A meta-analysis of 120 empirical justice studies covering a twenty-five year period revealed that procedural justice is highly correlated with outcome satisfaction (.48), institutional commitment (.57), trust (.61), and evaluation of authority (.64). [n79](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n79) These findings indicate the degree of significance that procedural justice has on individuals.¶ In the legal setting, an exploration of procedural justice in felony cases revealed that defendants' evaluations of the judicial system did not depend exclusively on the favorability of sentencing. [n80](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n80) Even when verdicts involved incarceration and serious sanctions, litigant [\*274] evaluations went beyond distributive outcomes to analyze their perceptions of the procedural fairness of the legal system. [n81](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n81) Additionally, while judges handling minor cases believed that litigants would ignore procedural issues when granted favorable outcomes, litigants' concerns over process led to unanticipated hostilities when procedural shortcuts were used by the court to resolve cases. [n82](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n82) Thus, while outcomes cannot be entirely disregarded, the fairness of the process used to reach a given outcome is critical to perceptions of legitimacy.¶ Recent research highlights two reasons why procedural justice may be particularly important in the context of detentions. First, judgments of procedural fairness are particularly important to individuals experiencing uncertainty. [n83](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n83) Detainees lack the procedural certainties guaranteed in a regular criminal proceeding in that they frequently do not know how long they will be held, why they are being held, what evidence exists against them, and what degree of punishment they may face. [n84](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n84) Second, the greater the unfavorableness of the outcome and the larger the potential harm, the more individuals care about fair process. [n85](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n85) These findings are reflected in U.S. criminal law provisions requiring certain elements of procedural due process when serious sanctions are involved. [n86](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n86)¶ It is also critical to extend procedural justice judgments beyond the individual detainee to the perspective of a worldwide audience. While it is easy to overlook how an alleged terrorist feels about the degree of procedural fairness he or she is receiving, the perceptions [\*275] of governments, human rights organizations, political groups (including terrorist organizations), and millions of individuals (particularly those who closely identify with that individual's race, religion, or nationality) cannot be ignored. Individuals become upset when they observe unfairness, and such observations motivate them to help victims of this unfairness. [n87](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n87) Thus, it would be a mistake to think that procedural injustice against a single individual will affect the perceptions of that individual alone. [n88](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n88) Additionally, efforts to hide procedural injustices, such as the abuse of detainees by U.S. soldiers, [n89](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n89) have only backfired by creating sympathy for the types of individuals that the United States seeks to dehumanize. [n90](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n90) In the next section, I identify six rules of procedural justice, evaluate the current detention regime based on these rules, and make recommendations about how these rules could be implemented in a DTC model.

#### All branches are key – allowing one branch to dominate skews the process and destroys solvency.

David Welsh, J.D. from the University of Utah. He is currently a doctoral student in the Eller School of Business at the University of Arizona where his research focuses on organizational fairness and ethics, “Procedural Justice Post-9/11: The Effects of Procedurally Unfair Treatment of Detainees on Perceptions of Global Legitimacy”, 9 U.N.H. L. Rev. 261, March 2011, Lexis

Under the current detention regime, there appears to be little in the way of procedural guarantees to prevent the U.S. government from using indefinite detentions to subvert justice. In the event that a detainee is put on trial, the evidence is evaluated and a decision is reached as to whether that individual will be held or released. However, when no such trial takes place, the detainee can be held without an evaluation of the charges or evidence. Such procedures incentivize bias against those detainees whom the United States speculates are "really bad" but lacks the evidence to convict. Similarly, during precarious periods there is a subtle motivation to keep all the alleged "bad guys" off the streets for long enough to turn the tide of the war effort. Perhaps there is also the cynical viewpoint that even innocent detainees have now mingled with actual terrorists, endured significant mistreatment, and, thus, now pose a threat to the United States.¶ One of the biggest challenges that the United States faces in the War on Terror is to effectively fight terrorism without simultaneously stereotyping millions of individuals associated with particular religions, nationalities, or ethnic groups. President Obama addressed this issue by declaring that "the United States is not, and never will [\*282] be, at war with Islam." [n135](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n135) He also noted that America's "partnership with the Muslim world is critical in rolling back a fringe ideology that people of all faiths reject." [n136](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n136) These broad policy statements set the right tone for the minimization of bias in detention trials. Yet, more specific procedural guarantees are needed as a check on the potential bias of a military system driven by effectiveness rather than justice.¶ A positive step in removing bias from detentions is increased process transparency. For example, the Department of Defense has implemented a media-visit program at Guantanamo Bay allowing members of the media to tour the facilities. [n137](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n137) More recently, the Department of Defense has even gone so far as to create a "Virtual Tour" of the Guantanamo Bay facilities. [n138](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n138) Instead of seeing dark images of coercion chambers that one might imagine in a secretive detention facility, viewers are greeted with images of basketball courts, libraries, and medical facilities. [n139](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n139) This voluntary act was no doubt "prompted by a desire to avoid an adverse impact on societal perceptions of Guantanamo Bay's organizational legitimacy." [n140](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n140) While some evidence relating to detainees is classified and should not be made available to the public, general information about procedures, living conditions, and the detainees themselves helps turn conceptions of Guantanamo Bay from a concentration camp into a more standard prison facility.¶ Another way to remove bias from a system is to introduce checks and balances to govern the process as proposed by the DTC model. Here, all three branches are involved in the judicial process as the President is given the authority to nominate DTC judges while the Senate retains the power to confirm them. While current U.S. detention procedures were originally enacted by the executive branch with [\*283] little congressional or judicial oversight, clear rules for each branch of government are laid out by the DTC model. [n141](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n141) For example, the executive branch is responsible for setting the criteria for a formal vetting process used by judges to determine who should be detained. [n142](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n142) Transparency combined with this system of checks and balances helps to prevent one branch of government from having too much of a vested interest in a particular outcome and allows the appointment of qualified judges to make unbiased judgments based on evidence and not prejudice. By minimizing bias, a major roadblock to reaching accurate decisions is cleared.

#### It’s a sequencing question- Congressional action to affirm international law provides the proper framework for legitimate executive action. Gitmo proves structural limitations are a prerequisite to executive action.

Sillivana, 2009 (Assistant Professor of Law, Paul M. Herbert Law Center, Louisiana State University.“Lincoln’s Constitutionalism in Time of War: Lessons for the War on Terror?” Article: “INTERNATIONAL LAW AND DOMESTIC LEGITIMACY: REMARKS PREPARED FOR LINCOLN’S CONSTITUTIONALISM IN TIME OF WAR: LESSONS FOR THE CURRENT WAR ON TERROR? Chapman Law Review. Spring 2009. Web, Acc 8/14/2013 at <http://www.chapmanlawreview.com/?p=1514>)

B. Extra-Executive Structural Regulations¶ International law provides a substantive framework for many of the types of legal difficulties that occur frequently among nations but are typically under-examined in the domestic legal context. In such circumstances, international law can provide the structural design to move the executive toward consensus building through constraints that guard against the intrinsic temptation of the executive branch to maximize its own power at the potential cost of losing its credibility. Where norm vacuums exist in sorting out the law as a domestic matter, international law often provides a basic substantive framework around which more extensive law can be built domestically.¶ These structural and touchstone characteristics of international law assist the public in assessing, and accepting, final provisions of law carried out in policy. Specifically, incorporating international law in the domestic process (1) promotes international and domestic political dialogue; (2) encourages the executive branch to engage in formal and informal justification of its policies; and (3) incentivizes transparency through public disclosure.¶ The importance of structural limitations surrounding executive action is demonstrable in the discussion surrounding the treatment of prisoners at Guantanamo Bay. Addressing the issue of the standard of treatment of U.S. detainees, President Bush asserted that the U.S. would treat detainees “humanely \*503 and, to the extent appropriate and consistent with military necessity . . . .”72 The power of this statement as a force of legitimation, is compromised by the fact that “it was very vague, it was not effectively operationalized into concrete standards of conduct, and it left all of the hard issues about ‘humane’ and ‘appropriate’ treatment to the discretion of unknown officials.”73

#### Studies quantify a decline in American legitimacy due to indefinite detention policy

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Similarly, the U.S. military puts itself in harm's way when it fails to follow international rules of war. "Guantanamo has become a liability. The real and perceived injustices occurring there have given our enemies an easy example of our failures and alleged ill intent," stated Homeland Security Committee member Rep. Jane Harman. [n169](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n169) The graphic beheading of U.S. citizen Nicholas Berg is one of many retaliatory attacks by terrorist groups in response to perceived abuses of their captured associates. [n170](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n170) Justified or not, terrorist groups often claim that immoral U.S. conduct has legitimized their actions. [n171](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n171)¶ One of the most heated debates about the treatment of detainees surrounds the use of torture and other methods of coercion to extract [\*289] information from detainees. President Obama's decision to ban certain types of torture, such as waterboarding, reflects his belief that the United States lost its "moral bearing" by utilizing such practices. [n172](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n172) Empirical evidence similarly reveals that America lost legitimacy through the torture of alleged terrorists. A 2006 poll of more than 27,000 individuals in twenty-five different countries indicated that 59% of respondents felt that clear rules against torture should be maintained, while 29% said governments should be allowed to use some degree of torture. [n173](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n173) Opposition to torture was strongest in Western Europe, Canada, and Australia, with approximately three-quarters of individuals in these regions opposing torture. [n174](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n174)¶ In contrast, the United States was more divided, as 58% of citizens opposed torture while 36% indicated that some degree of torture should be allowed. [n175](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n175) Going back to the earlier discussion about the tendency for governments to overreact during periods of crisis, it is interesting to note that countries that have experienced recent terrorist attacks or political violence are, on average, more willing to allow torture. [n176](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n176) Even though all twenty-five countries that participated in this survey are parties to the Geneva Convention, which forbids torture under Common Article 3 and the more recent Convention Against Torture, these findings provide evidence that nations are increasingly likely to jettison not only traditional rules of law but also ethical standards when under attack. [n177](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n177) Even as the debate over torture begins to wind down (now that the practice has been explicitly outlawed by President Obama), there remains an apprehension about the extent to which the "process is [\*290] the punishment" in the context of detentions. [n178](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n178) I borrow this phrase from Brenda Sims Blackwell and Clark D. Cunningham, who documented a number of criminal cases in which individuals spent up to twelve days in jail for minor offenses such as jaywalking before their cases could be resolved. [n179](https://www-lexisnexis-com.libproxy.usc.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371367095741&returnToKey=20_T17612684264&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.445699.5416944018#n179) However, this concept is magnified in the context of detentions. When an individual is taken from his or her homeland and placed in Guantanamo Bay for an indefinite period, the punishment, independent of ultimate guilt or innocence, has already begun. This is particularly salient because, as mentioned previously within the discussion of accuracy, U.S. detention procedures result in the roundup of a significant number of "innocent" individuals that is well in excess of those whom will ultimately be tried and convicted. Add potential mistreatment, coercion, and depravation, and suddenly the treatment of uncharged detainees looks worse than the lifestyle afforded many convicted criminals. In a legal system that presumes guilt, this outcome might be an acceptable reality. However, it stands in stark contrast to the constitutional notion of innocent until proven guilty.

#### Transatlantic cohesion is key to solve multiple nuclear threats

Anti-westernism

Religious extremism

Rising revisionist global wars

New nuclear states

Brzezinski ‘9 former U.S. National Security Adviser, 09 (Zbigniew, “An Agenda for NATO” Toward a Global Security Web September/October 2009),

NATO's potential is not primarily military. Although NATO is a collective-security alliance, its actual military power comes predominantly from the United States, and that reality is not likely to change anytime soon. NATO's real power derives from the fact that it combines the United States' military capabilities and economic power with Europe's collective political and economic weight (and occasionally some limited European military forces). Together, that combination makes NATO globally significant. It must therefore remain sensitive to the importance of safeguarding the geopolitical bond between the United States and Europe as it addresses new tasks. The basic challenge that NATO now confronts is that there are historically unprecedented risks to global security. Today's world is threatened neither by the militant fanaticism of a territorially rapacious nationalist state nor by the coercive aspiration of a globally pretentious ideology embraced by an expansive imperial power. The paradox of our time is that the world, increasingly connected and economically interdependent for the first time in its entire history, is experiencing intensifying popular unrest made all the more menacing by the growing accessibility of weapons of mass destruction -- not just to states but also, potentially, to extremist religious and political movements. Yet there is no effective global security mechanism for coping with the growing threat of violent political chaos stemming from humanity's recent political awakening. The three great political contests of the twentieth century (the two world wars and the Cold War) accelerated the political awakening of mankind, which was initially unleashed in Europe by the French Revolution. Within a century of that revolution, spontaneous populist political activism had spread from Europe to East Asia. On their return home after World Wars I and II, the South Asians and the North Africans who had been conscripted by the British and French imperial armies propagated a new awareness of anticolonial nationalist and religious political identity among hitherto passive and pliant populations. The spread of literacy during the twentieth century and the wide-ranging impact of radio, television, and the Internet accelerated and intensified this mass global political awakening. In its early stages, such new political awareness tends to be expressed as a fanatical embrace of the most extreme ethnic or fundamentalist religious passions, with beliefs and resentments universalized in Manichaean categories. Unfortunately, in significant parts of the developing world, bitter memories of European colonialism and of more recent U.S. intrusion have given such newly aroused passions a distinctively anti-Western cast. Today, the most acute example of this phenomenon is found in an area that stretches from Egypt to India. This area, inhabited by more than 500 million politically and religiously aroused peoples, is where NATO is becoming more deeply embroiled. Additionally complicating is the fact that the dramatic rise of China and India and the quick recovery of Japan within the last 50 years have signaled that the global center of political and economic gravity is shifting away from the North Atlantic toward Asia and the Pacific. And of the currently leading global powers -- the United States, the EU, China, Japan, Russia, and India -- at least two, or perhaps even three, are revisionist in their orientation. Whether they are "rising peacefully" (a self-confident China), truculently (an imperially nostalgic Russia) or boastfully (an assertive India, despite its internal multiethnic and religious vulnerabilities), they all desire a change in the global pecking order. The future conduct of and relationship among these three still relatively cautious revisionist powers will further intensify the strategic uncertainty. Visible on the horizon but not as powerful are the emerging regional rebels, with some of them defiantly reaching for nuclear weapons. North Korea has openly flouted the international community by producing (apparently successfully) its own nuclear weapons -- and also by profiting from their dissemination. At some point, its unpredictability could precipitate the first use of nuclear weapons in anger since 1945. Iran, in contrast, has proclaimed that its nuclear program is entirely for peaceful purposes but so far has been unwilling to consider consensual arrangements with the international community that would provide credible assurances regarding these intentions. In nuclear-armed Pakistan, an extremist anti-Western religious movement is threatening the country's political stability. These changes together reflect the waning of the post-World War II global hierarchy and the simultaneous dispersal of global power. Unfortunately, U.S. leadership in recent years unintentionally, but most unwisely, contributed to the currently threatening state of affairs. The combination of Washington's arrogant unilateralism in Iraq and its demagogic Islamophobic sloganeering weakened the unity of NATO and focused aroused Muslim resentments on the United States and the West more generally.

## 2AC

### At. Circumvention

#### No circumvention – the President would use the NSC

Harvey Rishikof 8, Professor of Law and Former Chair of the Department of National Security Strategy at the National War College and Kevin E Lunday, Captain and judge advocate in the US Coast Guard, "Due Process Is a Strategic Choice: Legitimacy and the Establishment of an Article III National Security Court", December 19, www.cwsl.edu/content/journals/Rishikof.pdf

The primary triggering mechanism for establishing NSC jurisdiction would fall within the discretion and control of the Attorney General. Through certification and charging provisions, the Attorney General could invoke NSC jurisdiction by certifying that persons in custody inside the United States are suspected of terrorist activity, or by charging persons in custody outside the United States with one or more specific terrorism offenses. However, the NSC would provide the government with a preferred venue to manage terrorism cases and proceedings, reducing the risk of the NSC being sidelined like the current ATRC.102 Further, the NSC could review challenges to the executive certification or charging decisions,103 transferring those cases in which the government has improperly attempted to employ the NSC for non-terrorism cases to the appropriate district court. This review power will reduce government incentives to dress up any case in terrorism clothing to obtain the advantages of the NSC procedures. The review power would not prevent the government from pursuing a terrorism matter in district court instead of the NSC. However, even without an executive action triggering NSC jurisdiction, if a district court determines that it is unable to adequately manage a terrorism case, it would be permitted to sua sponte transfer the case to NSC jurisdiction

### Cred

#### NSA scandal is no big deal---won’t harm relations

Bernd Riegert 10/25, DW's Europe correspondent in Brussels, "Opinion: Much ado about nothing?", 2013, www.dw.de/opinion-much-ado-about-nothing/a-17184229

Spying among friends is not unusual - but spying on the head of a government is taking things a step too far. However, DW's Bernd Riegert believes lack of EU unity means the US will not face serious consequences.¶ It's the stuff spy thrillers are made of: Merkel and Hollande on a secret mission in the capital of the most powerful man in the world! What did Obama know? When did he know it? And why did he do it? The monitored chancellor and her aide force the American bad guys - who are in fact their friends - to impose a code of conduct on the intelligence services.¶ But it's a scenario that's likely to remain in the realms of fiction. So what will happen in reality? The chancellor and the French president will meet their American counterpart for the talks planned at this week's EU summit, and they will try to establish some degree of transparency.¶ There will not, however, be any publicly negotiated agreements on what intelligence agencies on both sides of the Atlantic are allowed to do. That goes against the nature of the beast. The purpose of an intelligence service is to do things that are illegal in the country it's targeting.¶ Furthermore, the French and German leaders do not speak for the European Union. There is no joint European stance, only a vague declaration the delegates at the summit spent hours wrestling with. It merely states that the Americans are good friends, and notes that there is concern - without criticizing, let alone making accusations.¶ Europe not responsible for Merkel's mobile¶ The main reason for this is that European secret services, and thus many governments, benefit from the spying activities of the NSA and CIA. No one wants to endanger a cooperation aimed at preventing potential danger just because the chancellor's insecure private mobile phone may have been tapped. British Prime Minister David Cameron, whose intelligence services cooperate particularly closely with the US, prevented tougher wording on the EU statement. EU member states regard spying as a sovereign national matter. The EU has no authority - it's every country for itself.¶ The fuss in Brussels is also somewhat hypocritical. Now that a top politician is personally affected, delegations are being dispatched to a friendly nation. Yet it was already established months ago that US intelligence services snooped on millions of European citizens in Germany, France and elsewhere. The chancellor ignored the problem for far too long - until she herself was directly affected.¶ Not a big surprise¶ Intelligence service experts know perfectly well that the European services also spy, snoop and wiretap abroad, among both friends and foes. To prevent terrorist attacks, American and European services then share their findings: after 9/11, a liaison office was established outside Paris for precisely that purpose. The exchange allows the agencies to circumvent legal barriers they may be subject to in their own countries.¶ Trust has been lost, and must be won back, said Merkel and many top EU politicians in Brussels. Friends shouldn't be spied on. This is a rather naive notion: it is hardly news that agencies are also active in friendly states. Instead, European leaders should be worrying about what potential opponents, like China, Iran and Russia, are spying on in Europe. This could really cause damage.¶ What insight can the US glean by listening in on Merkel's partisan small talk on her CDU party phone? The comments made by US President Barack Obama on his last visit to Germany are probably closer to the truth: that if he wanted to know what Merkel was thinking, he'd simply give her a call, not ask the NSA.¶ Merkel's mission won't harm ties¶ The European Union will not cancel the agreement to share a large amount of banking data collected via SWIFT, nor will it suspend talks on a free trade agreement. This is the right decision, as such a drastic reaction really would do lasting damage to relations with the US. On their "mission impossible" in Washington, Merkel and Hollande should urge Obama to reduce the NSA's activities to a reasonable scale.

Eavesdropping on Merkel, if it in fact happened, was superfluous.

#### NATO still relevant----military and commerce

Charles A. Kupchan 13, D.Phil from Oxford in International Affairs, Professor of International Affairs at Georgetown, Whitney H. Shepardson Senior Fellow at the Council on Foreign Relations, 3/6/13, "Why is NATO still needed, even after the downfall of the Soviet Union?," http://www.cfr.org/nato/why-nato-still-needed-even-after-downfall-soviet-union/p30152

The North Atlantic Treaty Organization (NATO) is an international military alliance that was created to enable its members (the United States, Canada, and their European partners) to counter the threat posed by the Soviet Union. Alliances usually come to an end when the threat that led to their formation disappears. However, NATO defies the historical norm, not only surviving well beyond the Cold War's end, but also expanding its membership and broadening its mission.¶ NATO remains valuable to its members for a number of reasons. The expansion of the alliance has played an important role in consolidating stability and democracy in Central Europe, where members continue to look to NATO as a hedge against the return of a threat from Russia. In this respect, NATO and the European Union have been working in tandem to lock in a prosperous and secure Atlantic community.¶ Meanwhile, NATO has repeatedly demonstrated the utility of its integrated military capability. The alliance used force to end ethnic conflict in the Balkans and played a role in preserving the peace that followed. NATO has sustained a long-term presence in Afghanistan, helping to counter terrorism and prepare Afghans to take over responsibility for their own security. NATO also oversaw the mission in Libya that succeeded in stopping its civil war and removing the Qaddafi regime. All of these missions demonstrate NATO's utility and its contributions to the individual and collective welfare of its members, precisely why they continue to believe in the merits of membership.

### Terror

#### Defense ignores empirics

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

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

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

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

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

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

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

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

### Kiyemba CP

#### only Congressional action inspires the public to care about habeas violations- that solves accountability issues the prevent the executive from circumventing the counterplan 1. Legitimacy – congressional action most perceived and judicial deference makes the decision more powerful

Yoshino 11 (Kenji, a professor at N.Y.U. School of Law, The Military in the Constitution, June 28, <http://www.nytimes.com/roomfordebate/2010/10/13/the-future-of-dont-ask-dont-tell/the-military-in-the-constitution>) ap

I have a general and a specific reason for favoring legislative action over judicial action here. The general reason is that any time over 70 percent of the nation opposes a policy, as is the case with "don't ask, don't tell," that opposition is presumptively best expressed through our elected representatives. Such action gives more legitimacy to the ultimate decision because it more clearly hews to the democratic process.¶ The specific reason for preferring a legislative repeal of the policy is that the Constitution explicitly gives the legislative and executive branches control over the military. Article I of our Constitution grants Congress the power to regulate the military, while Article II makes the president the commander in chief of the armed forces.¶ Historically, these grants of authority have led the courts to accord extreme deference to the elected branches of government with respect to military issues. In the 1981 case of Rostker v. Goldberg, the Supreme Court rejected a sex-discrimination challenge to the male-only draft by observing that "judicial deference . . . is at its apogee when legislative action under the congressional authority to raise and support armies and make rules and regulations for their governance is challenged."

#### DTC is necessary for due process – counterplan is a bandied solution

Amos N. Guiora 12, Professor of Law, S.J. Quinney College of Law, University of Utah, "Due Process and Counterterrorism", Emory International Law Review, Vol. 26, www.law.emory.edu/fileadmin/journals/eilr/26/26.1/Guiora.pdf

While the public safety exception has been recommended as applicable to counterterrorism as justification for denying Miranda protections to post-9/11 detainees, 111 the danger of trampling on individual rights outweighs information that interrogators may conceivably receive. The rule of law is at its most vulnerable in the interrogation setting; to that extent, while public safety may be perceived as beneficial to society, the possible gain is, at best, short term with long-term dangers looming in the offing.¶ V. JUDICIAL FORUMS¶ The fundamental premise is that detainees must be afforded the opportunity to be brought before a court of law for purpose of adjudication of their guilt or innocence. Whether the paradigm adopted is the criminal law or a hybrid, the guiding principle must be trial rather than the abyss of permanent indefinite detention. While various proposals and articles have been put forth, 112 resolution has eluded decision-makers. The Bush Administration’s attempt 113 to establish military commissions was roundly criticized. 114 While subsequent instructions prepared by the Department of Defense 115 were intended to mollify the chorus of criticism, the practical reality is the commissions have been widely viewed as an overwhelming failure. 116 Neither in their original inception nor subsequent tweaking were rules, procedures, and criteria adequately delineated with respect to suspect (and subsequently, defendant) rights. 117 Nevertheless, the largely acknowledged failure of the military commissions has not resulted in the establishment of a viable alternative.¶ To that end, in addition to the military commissions, there are three options for bringing individuals suspected of involvement in terrorism before a court of law: treaty-based international terror court, Article III civilian court, and a national security court. While I have advocated the establishment of the latter, the other options have also garnered significant—and justified—public support. 118 The critical question, in determining which option most effectively meets rule of law requirements, is whether the due process rights of the defendant are protected. That question, however, cannot be asked nor answered in a vacuum, nor absolutely; for the reality of terrorism/counterterrorism is that legitimate operational realities justify minimizing certain rights, otherwise protected. 119 In particular, with respect to the trial process, protecting confidential sources is an absolute state requirement, and to that end, denying the defendant the right to confront all witnesses is legitimate. 120 Although controversial and suggestive of a rights minimization regime, bringing a suspected terrorist to trial requires submitting confidential information to the court. 121¶ While introducing classified information denies the defendant the right to confront his accuser, it is a reality of operational counterterrorism. 122 Similarly, in the American criminal law paradigm, the defendant has the right to a trial by a jury of his peers. 123 While proponents of Article III courts say they are appropriate for suspected terrorists, the critical question—yet to be resolved— is whether all individuals detained post-9/11 are to be tried. To the point: while President Obama promised to close Guantanamo, the issue extends significantly beyond the detention center in Cuba. 124 According to senior military commanders, the United States, directly and indirectly, detains approximately 25,000 detainees in detention centers in Iraq and Afghanistan in addition to Guantanamo. 125¶ While some have suggested that the Iraqi and Afghan judiciaries are appropriate forums for adjudicating guilt of detainees presently detained in both countries, significant and sufficient doubt has been raised regarding objectivity and judicial fairness. 126 Precisely because the Bush Administrations have ordered the American military to engage in Iraq and Afghanistan in accordance with the Authorization to Use Military Force resolution passed by Congress, the United States bears direct responsibility for ensuring adjudication in a court of law premised on the “rule of law.” 127 Simply put: core principles of due process and fundamental fairness demand the United States ensure resolution of individual accountability.¶ While imposing American judicial norms on Iraq and Afghanistan raise legitimate international law questions regarding violations of national sovereignty, the continued denial of due process raises questions and concerns no less legitimate. History suggests there is no perfect answer to this question; similarly, both basic legal principles and fundamental moral considerations suggest that in a balancing analysis the scale must tip in favor of trial, regardless of valid sovereignty and constitutional concerns. While justice is arguably not blind, continued detention of thousands of suspects without hope of trial is a blight on society that violates core due process principles.¶ Regardless of which proposal above is adopted, the fundamental responsibility is to articulate and implement a judicial policy facilitating trial before an impartial court of law. That is the minimum due process obligation owed the detainee. ¶ VI. MOVING FORWARD¶ Due process is the essence of a proper judicial process; denial of due process, whether in interrogation or trial, violates both the Constitution and moral norms. Denying suspects and defendants due process protections results in counterterrorism measures antithetical to the essence of democracies. While threats posed by terrorism must not be ignored, there is extraordinary danger in failing to carefully distinguish between real and perceived threats. Casting an extraordinarily wide net results in denying the individual rights; similarly, there is no guarantee that such an appr oach contributes to effective operational counterterrorism. Extending constitutional privileges and protections to non- citizens does not threaten the nation-state; rather, it illustrates the already slippery slope. In proposing that due process be an inherent aspect of counterterrorism, I am in full accordance with Judge Bates’ holding. The time has come to implement his words in spirit and law alike; habeas hearings are an important beginning but do not ensure adjudication of individual accountability. Determining innocence or guilt is essential to effective counterterrorism predicated on the rule of law.

**Doesn’t solve the aff—saying they can’t be sent anywhere is an excuse for the executive and Congress to circumvent**

**Ynet 13** (News agency, “Yemeni president's White House talks on Guantanamo release fail”) http://www.ynetnews.com/articles/0,7340,L-4413553,00.html

**Despite attempts by officials to accent the positive aspects of his Washington visit** last week, Yemeni President Abd Raabuh Mansur **Hadi's White House meeting with President Barack Obama failed to reach a breakthrough on one of his most pressing issues, the repatriation of prisoners being held at the Guantanamo Bay prison who are Yemeni nationals.** The fate of the Yemeni, who now make up more than half of the remaining 166 prisoners being held at Gitmo, was on top of Hadi's agenda for his meeting with the president. Hadi told the American administration that Yemen is now capable and eligible to receive its imprisoned nationals, but the meeting failed to produce an agreement. Nevertheless, Hadi did not leave the Oval Office empty handed. The United States agreed to honor a previous commitment to provide Yemen with a military aid package that includes 12 aircraft equipped with night vision capabilities and radioactive monitoring sensors; 100 military vehicles; and a high-tech integrated communication system to aid Yemeni border guards tasked with the prevention and interdiction of smuggling activities. President Obama praised Hadi's leadership, saying his efforts have helped drive al-Qaeda elements out of their territories and pledged to help address Yemen's "significant economic challenges." President Hadi succeeded Ali Abdullah Saleh, who was ousted after more than thirty years of rule. Since his tenure began, the US security echelon has partnered with the Yemeni military in trying to eradicate the terrorist group al-Qaeda in the Arabian Peninsula (AQAP), considered by American officials to be arguably the most potent of the international terrorist organization’s global franchises. Several AQAP leaders have recently been killed by missiles fired from American-operated drones. Stressing the importance of the Hadi trip to the United States, Dr. Fares Al-Saqqaf, Hadi's advisor on strategic issues, told The Media Line that, “This visit comes at a critical time as Yemen goes through the final stages of its two-year transitional period, by the end of which an election will be held and a new constitution will be drafted. It came at a time when the country is facing economic challenges and the delegates at the National Dialogue Conference (NDC) are approaching the end of their discussions." The NDC is a body of 565 Yemeni citizens representing a cross-section of society who are tasked with drafting a new constitution and revised system of government. Among its issues are good governance and corruption. Its work is set to conclude in September. Political analyst and chairman of the Abaad Studies and Research Center, Abdusalam Mohammed, agreed with Al-Saqqaf, adding that, “The political and security challenges facing Yemen in addition to the fact that Yemen is scheduled to have a presidential election early next year -- something which may need to be postponed -- necessitated this visit and made it so important.” **The situation of those incarcerated at Guantanamo** Bay, however, **is the issue of greatest concern to the prisoners’ families and spurred on by human rights organizations**, is considered a major public issue. Families and activists who joined together to demonstrate outside Hadi’s Sana’a residence simultaneous to the president’s meeting at the White House were disappointed to learn that there was no specific time set for the prisoners to be released. Instead, Presidents Obama and Hadi agreed only to work together “to facilitate the repatriation of Yemeni detainees who have been designated for transfer” and continue consultations on the matter, according to a statement issued by the White House after the meeting. **Although many Guantanamo prisoners have already been turned-over to their respective country’s**, but **56 Yemeni nationals designated for transfer remain in the infamous facility due to a US-imposed moratorium** on the release of any Yemeni prisoners after a failed attempt to blow up a Detroit-bound passenger plane on Christmas, 2009, which was traced back to AQAP. In May, President Obama said he would allow the repatriation of the Yemeni prisoners, but his decision was blocked by the Republican-controlled House of Representatives, where many lawmakers say they fear those released would quickly join forces with AQAP in part because **Yemen, the poorest Arab state, does not have extremist rehabilitation centers.** Earlier this year, Yemen announced plans to establish such a center in a move to meet Congress’s conditions for releasing the prisoners. "**Washington is not serious about releasing Yemeni detainees," said** Abdulrahman **Baraman, a human rights activist and lawyer for some of the detainees' families. “It's only trying to make excuses in order not to repatriate the Yemeni detainees…Every time Obama pledges to hand them over, he reneges and finds new grounds for not making good on his pledge.** We are afraid that our fellow Yemenis imprisoned unfairly at Guantanamo are victimized by the partisan bickering between the Republicans and Democrats." Twice, the Republicans have prevented the ban from being lifted.

### 2AC OLC

#### CP causes circumvention and more detention.

Hammond, 2012, (J.D. Candidate 2013, University of Southern California Gould School of Law; B.S. Environmental Economics & Policy 2009, University of California, Berkeley. Southern California Interdisciplinary Law Journal. 22 S. Cal. Interdis. L.J. 193 “NOTE: THE NATIONAL DEFENSE AUTHORIZATION ACT AND THE UNBOUND AUTHORITY TO DETAIN: A CALL TO CONGRESS” Lexis.

¶ A. The Executive's Incentive to Over-Detain¶ ¶ The executive branch has little incentive to restrain its authority to detain - the executive has an incentive to over-detain suspected terrorists. n91 Terrorist attacks present the executive with an unpredictable and severe threat. Faced with such a tremendous threat, the executive is likely to "err on the side of the detention." n92 If an individual is erroneously detained and subsequently released, the executive's "error is invisible." n93 However, if an individual is not detained or erroneously released and proceeds to cause harm, "the error will be emblazoned across the front pages." n94 It is politically more desirable for the executive to push the boundaries of the detention authority than to risk suffering the "accusatory political backlash for having failed to take sufficient action." n95¶ The Bush Administration's detention polices provide a striking example of the executive's propensity to over-detain in the face of a terrorist threat. In the first two years after the September 11 terrorist attacks, over 5000 individuals were detained. n96 To this day, some of these detained individuals remain missing. n97

#### Court Creation DA – The executive cannot create a national security court, only Congress is vested with this power.

Schuck, Lecturer at Yale Law School, ‘4

[Peter, “Terrorism Cases Demand New Hybrid Courts”, LA Times, 7-9-2004,

<http://articles.latimes.com/2004/jul/09/opinion/oe-schuck9>, RSR]

The Supreme Court in its recent rulings has given U.S. citizens who are captives in the war on terror, as well as noncitizen Guantanamo detainees, the right to hearings. Now comes the hard part: what kinds of hearings, in what courts, by what process?¶ The court wisely refrained from answering these questions in detail. Arguments on the specifics had not been presented to the court, and the limited guidance that the justices did offer was more intuitive than analytical. Wisdom aside, this sort of self-restraint is constitutionally required: Article 1, Section 8, Clause 14 gives Congress -- not the judicial or the executive branch -- the authority to make rules for the armed forces, including the initial design of hearings for the prisoners.

#### Perm do both – The Executive cannot create remedies on its own- has to be passed as legislation by Congress

Bernstein, Law Prof-Chicago, 12 (ANYA BERNSTEIN, Bigelow Teaching Fellow and Lecturer in Law, The Universityof Chicago Law School, CONGRESSIONAL WILL AND THE ROLE OF THE EXECUTIVE IN BIVENS ACTIONS: WHAT IS SPECIAL ABOUT SPECIAL FACTORS, http://mckinneylaw.iu.edu/ilr/pdf/vol45p719.pdf)

Of course, the judiciary and the legislature are not the only branches that have a hand in crafting remedies. The modern executive branch, with its administrative remedial schemes and its prominent role in the process of legislation, also plays a part. However, as the Bivens case discussed throughout this Article indicates, the Executive’s role in remedy-creation is still subordinate to that of Congress. Administrative remedial schemes must be authorized through a delegation of congressional power to the Executive and are subject to legislative strictures and specifications. Although the President often plays a significant role in the crafting of legislation and must sign a bill into law, it is still Congress that debates and passes it. Responding to these realities, case law 16 regarding constitutional damages consistently looks to congressional will to ensure that judge-made remedies do not disturb the balance of authority between the judiciary and the legislature.

#### Net benefit is circumvention -

Posner 11 - Kirkland & Ellis Professor, University of Chicago Law School (Eric A. Posner, “Deference To The Executive In The United States After September 11: Congress, The Courts, And The Office Of Legal Counsel”, http://www.harvard-jlpp.com/wp-content/uploads/2012/01/PosnerFinal.pdf)

In the early years of the Bush Administration, the Office of Legal Counsel (OLC), an office within the Department of Jus‐ tice, issued a series of memoranda arguing that certain counter‐ terrorism practices—including surveillance of U.S. citizens and coercive interrogation—did not violate the law. 37 These memos were later leaked to the public, causing an outcry. 38 In 2011, the head of the OLC told President Obama that continued U.S. military presence in Libya would violate the War Powers Act. The President disregarded this advice, relying in part on contrary advice offered by other officials in the government.

These two events neatly encapsulate the dilemma for the OLC, and indeed all the President’s legal advisers. If the OLC tries to block the President from acting in the way he sees fit, it takes the risk that he will disregard its advice and marginalize the institution. If the OLC gives the President the advice that he wants to hear, it takes the risk that it will mislead him and fail to prepare him for adverse reactions from the courts, Congress, and the public.

Many scholars, most notably Professor Jack Goldsmith, argue that the OLC can constrain the executive. 39 The underlying idea here is that even if Congress and the courts cannot constrain the executive, perhaps offices within the executive can. The opposite view, advanced by Professor Bruce Ackerman, is that the OLC is a rubber stamp. 40 I advocate a third view: The OLC does not constrain the executive but enables him to accomplish goals that he would not otherwise be able to accomplish. It is more accurate to say that the OLC enables rather than constrains.

#### OLC has to be neutral- the solvency evidence means the CP links to politics

Posner 11 - Kirkland & Ellis Professor, University of Chicago Law School (Eric A. Posner, “Deference To The Executive In The United States After September 11: Congress, The Courts, And The Office Of Legal Counsel”, http://www.harvard-jlpp.com/wp-content/uploads/2012/01/PosnerFinal.pdf)

A question naturally arises about the OLC’s incentives. I have assumed that the OLC provides neutral advice, in the sense of trying to make accurate predictions about how other agents like Congress and the courts would react to proposed actions. It is possible that the OLC could be biased—either in favor of the President or against him. If the OLC were biased against the President, he would stop asking it for advice (or would ask for its advice privately and then ignore it). 50 This danger surely accounts for OLC jurisprudence being pro‐executive. 51 But it would be just as dangerous for OLC to be excessively biased in favor of the President because it would mislead him and lose its credibility with Congress. 52 As a result, the OLC could not help the President engage in L policies. So the OLC must be neither excessively pro‐President nor anti‐President. If it can avoid these extremes, it will be an enabler; if it cannot, it will be ignored. In no circumstance could it be a constraint. 53

#### CP isn’t sufficient – the cp is just lip service -- it doesn’t create a specialized court is key

Buttar 13 (Shahid, “Killing Us Softly: Why the Administration's Response to Criticism on Drones Carries Little Water,” 3-17, <http://truth-out.org/opinion/item/15156-killing-us-softly-why-the-administrations-response-to-criticism-on-drones-carries-little-water>)

Much of the controversy surrounding Brennan’s nomination concerned mere disclosure: whether the executive branch would let Congress read the administration’s legal analysis governing the targeted assassination program. President Obama apparently heard the message, admitting in his State of the Union address that more transparency is required. The result proved underwhelming. One congressional committee received a single legal memo among several, which did not even purport to delineate the boundaries of the assassination program, but rather explored the use of deadly authority against a single target among several hundred who have been killed, including at least four US citizens. Mere disclosure of some OLC memos to some Senators is insufficient. Meaningful congressional oversight requires full access to all the legal memos, as well as active investigation of the underlying facts. It is not enough to simply read executive legal analyses paying lip service to constitutional values routinely violated on the ground. The congressional intelligence committees, after all, were founded after robust investigations revealed widespread abuses by intelligence agencies, including the CIA, spanning decades and the terms of several presidents. Factual investigation has revealed more recent abuses, as well. Last year, the Senate Intelligence Committee concluded a thorough investigation of torture, which produced a report recognizing torture as an international human rights abuse that ultimately undermined US national security by producing false intelligence, eroding pro American sentiment abroad, and helping our enemies recruit foot soldiers. Yet, reflecting its pattern of embracing secrecy while claiming transparency, the Obama administration has refused to declassify the report. It is only because neither the press nor the public know the facts that irresponsible Hollywood fiction proved so problematic and controversial. Forgotten in commentary on Brennan’s confirmation were some troubling details suggesting that, on both torture and drone strikes, transparency remains inadequate. First, Senators had to fight tooth & nail to secure even the most minimal disclosure from the White House. Second, other congressional committees also sought access to the OLC assassination memos, but were denied. Finally, beyond disclosure of the OLC’s legal memos are important questions about how the standards in them are applied to real facts. The Obama administration and CIA still refuse to answer congressional questions beyond the memos—such as, “How much evidence does the President need to determine that a particular American can be lawfully killed?” These questions are crucial, but Brennan’s confirmation could ensure that Congress receives few answers.

#### Triggers litigation, OLC can’t speak to statutes, and White House Counsel Circumvents

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

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

### 2AC Prez Powers

#### WAR ON TERROR WILL FAIL NOW – AL Qaeda is resilient an US is overfocuse on tactics.

Groves, 13 (Bryan Groves an Army Special Forces officer and has served in Bosnia, Iraq, and Afghanistan. Bryan has a Master’s degree from Yale and is now an Army Strategist. He has served as an Assistant Professor in the Social Sciences Department at West Point. There he taught international relations, terrorism and counterterrorism, and was the Deputy Director of West Point’s Combating Terrorism Center. In 2012 he completed a year-long Interagency Fellowship at the State Department working the Iraq transition in the Executive Office of the Near Eastern Affairs Bureau. is (WHO “America’s Trajectory in the Long War: Redirecting Efforts Toward Strategic Effects versus Simply Tactical Gains” Extremis Project. Web, Acc at <http://extremisproject.org/2013/02/americas-trajectory-in-the-long-war-redirecting-efforts-toward-strategic-effects-versus-simply-tactical-gains/>

Eleven years following the attacks on 9/11 the United States has a significant disconnect between its strategic and tactical efforts against violent global jihadists. Some American leaders and commanders are confusing effectiveness and success, improperly associating tactical disruption of enemy elements with strategic effect. While the country has won some important tactical victories, it is not clear that they are amounting to a strategic impact, or that the gains will last.

Al Qaeda (AQ), its affiliate organizations, the Taliban, and most recently, AQ-inspired violent extremists, have demonstrated a tenacious resiliency. Their resiliency has primarily manifested itself through a unique ability to evolve and grow over time, enabling them to continue attacking U.S. interests abroad and at home. This resiliency is also evident through continued extremist recruitment, radicalization, mobilization, and funding. The frustrating aspect of this for U.S. counterterrorism officials is the enemy’s success in these areas despite tremendous American and Coalition efforts to disrupt, dismantle, and defeat these organizations.

By necessity the U.S. has also adapted, changing the way it defines the enemy, how it refers to the conflict, its stated National Security Strategy, and its National Strategy for Combating Terrorism. This paper explores why these counterterrorism responses have not had greater strategic effect. Are U.S. tactical victories coinciding with our strategic vision of success? Where does the U.S. stand in the ‘Long War?’ I argue that America remains stuck at the tactical and operational levels, largely falling short of making strategic progress because of its failure to address the long term drivers of the threat from global jihadis.

#### No impact to Prez powers

**Healy 11**

Gene Healy is a vice president at the Cato Institute and the author of The Cult of the Presidency, The CATO Institute, June 2011, "Book Review: Hail to the Tyrant", http://www.cato.org/publications/commentary/book-review-hail-tyrant

Legal checks “have been relaxed largely because of the need for centralized, relatively efficient government under the complex conditions of a modern dynamic economy and a highly interrelated international order.” What’s more, the authors insist, America needs the legally unconstrained presidency both at home (given an increasingly complex economy) and abroad (given the shrinking of global distances).

These are disputed points, to say the least. If Friedrich Hayek was at all correct about the knowledge problem, then if anything increasing economic complexity argues for less central direction. Nor does the fact that we face “a highly interrelated international order” suggest that we’re more vulnerable than we were in 1789, as a tiny frontier republic surrounded by hostile tribes and great powers. Economic interdependence — and the rise of other modern industrial democracies — means that other players have a stake in protecting the global trading system.

Posner and Vermuele coin the term “tyrannophobia,” which stands for unjustified fear of executive abuse. That fear is written into the American genetic code: the authors call the Declaration of Independence “the ur-text of tyrannophobia in the United States.” As they see it, that’s a problem because “the risk that the public will fail to trust a well-motivated president is just as serious as the risk that it will trust an ill-motivated one.” They contend that our inherited skepticism toward power exacerbates biases that lead us to overestimate the dangers of unchecked presidential power. Our primate brains exaggerate highly visible risks that fill us with a sense of dread and loss of control, so we may decline to cede more power to the president even when more power is needed.

Fair enough in the abstract — but Posner and Vermuele fail to provide a single compelling example that might lead you to lament our allegedly atavistic “tyrannophobia.” And they seem oblivious to the fact that those same irrational biases drive the perceived need for emergency government at least as much as they do hostility towards it. Highly visible public events like the 9/11 attacks also instill dread and a perceived loss of control, even if all the available evidence shows that such incidents are vanishingly rare. The most recent year for which the U.S. State Department has data, 2009, saw just 25 U.S. noncombatants worldwide die from terrorist strikes. I know of no evidence suggesting that unchecked executive power is what stood between us and a much larger death toll.

Posner and Vermuele argue that only the executive unbound can address modernity’s myriad crises. But they spend little time exploring whether unconstrained power generates the very emergencies that the executive branch uses to justify its lack of constraint. Discussing George H.W. Bush’s difficulties convincing Congress and the public that the 1991 Gulf War’s risks were worth it, they comment, “in retrospect it might seem that he was clearly right.” Had that war been avoided, though, there would have been no mass presence of U.S. troops on Saudi soil — “Osama bin Laden’s principal recruiting device,” according to Paul Wolfowitz — and perhaps no 9/11.

Posner and Vermuele are slightly more perceptive when it comes to the home front, letting drop as an aside the observation that because of the easy-money policy that helped inflate the housing bubble, “the Fed is at least partly responsible for both the financial crisis of 2008-2009 and for its resolution.” Oh, well — I guess we’re even, then.

Sometimes, the authors are so enamored with the elegant economic models they construct that they can’t be bothered to check their work against observable reality. At one point, attempting to show that separation of powers is inefficient, they analogize the Madisonian scheme to “a market in which two firms must act in order to supply a good,” concluding that “the extra transaction costs of cooperation” make “the consumer (taxpayer) no better off and probably worse off than she would be under the unitary system.”

But the government-as-firm metaphor is daffy. In the Madisonian vision, inefficiency isn’t a bug, it’s a feature — a check on “the facility and excess of law-making … the diseases to which our governments are most liable,” per Federalist No. 62. If the “firm” in question also generates public “bads” like unnecessary federal programs and destructive foreign wars — and if the “consumer (taxpayer)” has no choice about whether to “consume” them — he might well favor constraints on production.

From Franklin Roosevelt onward, we’ve had something close to vertical integration under presidential command. Whatever benefits that system has brought, it’s imposed considerable costs — not least over 100,000 U.S. combat deaths in the resulting presidential wars. That system has also encouraged hubristic occupants of the Oval Office to burnish their legacies by engaging in “humanitarian war” — an “oxymoron,” according to Posner. In a sharply argued 2006 Washington Post op-ed, he noted that the Iraq War had killed tens of thousands of innocents and observed archly, “polls do not reveal the opinions of dead Iraqis.”

#### Legitimacy outweighs and solves – extend the Knowles evidence – flexibility is only necessary in a power vacuum –legitimacy solves the impact. Only a risk that American rule breaking causes that to decline

#### Our credibility internals solve the impact better than flexibility

Schwarz, senior counsel, and Huq, associate counsel at the Brennan Center for Justice at NYU School of Law, 2007 [Frederick A.O., Jr., partner at Cravath, Swaine & Moore, chief counsel to the Church Committee, and Aziz Z, former clerk for the U.S. Supreme Court, Unchecked and Unbalanced: Presidential Power in a Time of Terror, p. 201]

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

#### Creating a fair process for detainees preserves executive flexibility – results in judicial deference\*\*

Bauer, Junior Editor at the Alabama Law Review, ‘6

[Jay, “DETAINEES UNDER REVIEW: STRIKING THE RIGHT¶ CONSTITUTIONAL BALANCE BETWEEN THE EXECUTIVE'S¶ WAR POWERS AND JUDICIAL REVIEW”, Vol. 57, No. 4, RSR]

Establishing a detainee review process that is as transparent and fair as¶ possible may be the best way to "strik[e] the proper constitutional balance."'179 In considering the executive's concerns for national security and¶ protection of classified information, the courts have shown an ability to be¶ flexible and accommodate the special needs of the executive while preserving¶ the fundamental precepts of the Constitution. That flexibility will likely¶ come into play regardless of whether a court is reviewing a habeas petition¶ or the final decision of a tribunal under a separate statutory scheme like that¶ in the Detainee Treatment Act.¶ If a court is reviewing a non-citizen detainee's habeas claim, now that¶ the Supreme Court has established in Rasul that federal courts do have jurisdiction¶ over detainees at Guantanamo, the federal courts and habeas jurisprudence¶ may actually prove beneficial for the executive. For instance,¶ because a habeas court looks primarily to the authority and process of detention¶ in a habeas case, this Comment argues that from a practical standpoint¶ the more the executive branch establishes a solidly fair and judicial¶ process for determining detainee status, the better it would be for the executive.¶ Since the courts tend to deny habeas petitions when there is apparent¶ authority and alternative remedies available to a habeas petitioner, it is logical¶ that a full and fair process establishing those remedies for non-citizen¶ detainees is in the executive's best interest. In other words, if the executive¶ branch wants to preserve its independent control over detainees, then practically¶ speaking it could rely on history and precedence as a model. The¶ courts will defer to executive action, but only to a point. They will seek to¶ preserve the authority of the Constitution, albeit in a restrained sense considering¶ the unique nature of detaining enemy combatants in the "war on¶ terror." Habeas corpus jurisprudence teaches that as long as there is a way¶ for an independent judiciary to examine the lawfulness of executive detention,¶ or at least ensure that the detainee has an appropriate alternative remedy¶ available, then that detention will be upheld. Thus, ironically, the way¶ for the executive to retain control over detainees is to create a full and fair¶ tribunal process. Moreover, the traditional deference the judiciary pays to¶ the executive branch when it is looking at executive wartime actions or¶ judgments should also give the executive branch confidence that federal¶ court jurisdiction over detainees at Guantanamo Bay is not going to hinder¶ its execution of the "war on terror."¶ When it passed the Detainee Treatment Act, Congress intended to interject¶ congressional oversight into the detainee review process by dictating¶ the standard of evidence used, and it wanted to ensure that the procedures of¶ the CSRT are in accordance with the Constitution. 80 The passage of the Act¶ clearly shows that the executive should anticipate more, not less, assertion¶ of authority over the detainee review process by the other branches of government.¶ Although the consequences of the Act are unknown at this point in¶ time, it is also fairly clear that however the courts consider the detainee review process-whether it is through habeas litigation or under another¶ statutorily prescribed method like that of the Detainee Treatment Act-the¶ analysis will be in terms of whether that process fundamentally complies¶ with the Constitution. Thus, from just a pragmatic standpoint, it would be¶ prudent for the executive branch to ensure that the detainee review procedures¶ uphold the ideals of that great charter.¶ Consequently, creating a detainee review process as transparent and fair¶ as possible is the best option for our government and this nation as it seeks¶ to strike the right balance between executive war powers and judicial right¶ of review.

#### Extend the Welsh evidence – the plan IS the most fair for while also preserving effectiveness

#### Turn – the NSC curbs excessive judicial decisions on the executive power to detain –the limited purpose of the plan solves.

Andrew McCarthy 9, Director of the Center for Law & Counterterrorism at the Foundation for the Defense of Democracies. From 1985 through 2003, he was a federal prosecutor at the U.S. Attorney’s Office for the Southern District of New York, and was the lead prosecutor in the seditious conspiracy trial against Sheikh Omar Abdel Rahman and eleven others, described subsequently. AND Alykhan Velshi, a staff attorney at the Center for Law & Counterterrorism, where he focuses on the international law of armed conflict and the use of force, 8/20/09, “Outsourcing American Law,” AEI Working Paper, http://www.aei.org/files/2009/08/20/20090820-Chapter6.pdf

What is an asset in the criminal justice system, however, would be a liability in a system whose priority is not justice for the individual but the security of the American people. That liability, though, can be satisfactorily rectified by clear procedural rules which underscore that the overriding mission – into which the judicial function is being imported for very limited purposes – remains executive and military. The default position of the criminal justice system would not carry over to a system conceived for enemies of the United States – i.e., terrorist operatives who would not be facing NSC trials in the first place absent a finding, tested by judicial review, that they were alien enemy combatants. ¶ In such a system, the opportunities for judicial creativity would be limited by being plainspoken and unapologetic in enabling legislation about the fact that the defendants are not Americans but those who mean America harm; that the task of federal judges is not to ensure that defendants are considered as equals to our government before the bar of justice, but merely to ensure that they are not capriciously convicted of war crimes by the same branch of government that is prosecuting the war; that if credible and convincing evidence supports the allegations, the system’s preference is that defendants be convicted and harshly sentenced; and that the authority of judges is enumerated and finite – if the rules as promulgated do not expressly provide for the defendant to have particular relief, the judge is powerless to direct it. In short, the system would curb judicial excess by the recognition, which underlies the military justice system, that prosecuting war remains a quintessentially executive endeavor; in the NSC, judges would be a check against arbitrariness but they would not have any general supervisory authority over the conduct of proceedings and they would not be at liberty to create new entitlements by analogizing to ordinary criminal proceedings.

#### Constraints improve decision-making to combat attacks

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

It is in part for such reasons that studies of organizational performance in crisis management have regularly found that "planning and effective [\*1604] response are causally connected." n196 Clear, well-understood rules, formalized training and planning can function to match cultural and individual instincts that emerge in a crisis with commitments that flow from standard operating procedures and professional norms. n197 Indeed, "the less an organization has to change its pre-disaster functions and roles to perform in a disaster, the more effective is its disaster [sic] response." n198 In this sense, a decisionmaker with absolute flexibility in an emergency-unconstrained by protocols or plans-may be systematically more prone to error than a decision-maker who is in some way compelled to follow procedures and guidelines, which have incorporated professional expertise, and which are set as effective constraints in advance.¶ Examples of excessive flexibility producing adverse consequences are ample. Following Hurricane Katrina, one of the most important lessons independent analysis drew from the government response was the extent to which the disaster was made worse as a result of the lack of experience and knowledge of crisis procedures among key officials, the absence of expert advisors replacing those rules with more than the most general guidance about custodial intelligence collection available to key officials (including the President), and the failure to follow existing response plans or to draw from lessons learned from simulations conducted before the fact. n199 Among the many consequences, [\*1605] basic items like food, water, and medicines were in such short supply that local law enforcement (instead of focusing on security issues) were occupied, in part, with breaking into businesses and taking what residents needed. n200¶ Or consider the widespread abuse of prisoners at U.S. detention facilities such as Abu Ghraib. Whatever the theoretical merits of applying coercive interrogation in a carefully selected way against key intelligence targets, n201 the systemic torture and abuse of scores of detainees was an outcome no one purported to seek. There is substantial agreement among security analysts of both parties that the prisoner abuse scandals have produced predominantly negative consequences for U.S. national security. n202 While there remain important questions about the extent to which some of the abuses at Abu Ghraib were the result of civilian or senior military command actions or omissions, one of the too often overlooked findings of the government investigations of the incidents is the unanimous agreement that the abuse was (at least in part) the result of structural organization failures n203 -failures that one might expect to [\*1606] produce errors either to the benefit or detriment of security.¶ In particular, military investigators looking at the causes of Abu Ghraib cited vague guidance, as well as inadequate training and planning for detention and interrogation operations, as key factors leading to the abuse. Remarkably, "pre-war planning [did] not include[] planning for detainee operations" in Iraq. n204 Moreover, investigators cited failures at the policy level- decisions to lift existing detention and interrogation strictures without n205 As one Army General later investigating the abuses noted: "By October 2003, interrogation policy in Iraq had changed three times in less than thirty days and it became very confusing as to what techniques could be employed and at what level non-doctrinal approaches had to be approved." n206 It was thus unsurprising that detention and interrogation operations were assigned to troops with grossly inadequate training in any rules that were still recognized. n207 The uncertain effect of broad, general guidance, coupled [\*1607] with the competing imperatives of guidelines that differed among theaters of operation, agencies, and military units, caused serious confusion among troops and led to decisionmaking that it is overly kind to call arbitrary. n208¶ Would the new functionalists disagree with the importance of government planning for detention operations in an emergency surrounding a terrorist nuclear attack? Not necessarily. Can an organization anticipate and plan for everything? Certainly not. But such findings should at least call into question the inclination to simply maximize flexibility and discretion in an emergency, without, for example, structural incentives that might ensure the engagement of professional expertise. n209 Particularly if one embraces the view that the most potentially damaging terrorist threats are nuclear and biological terrorism, involving highly technical information about weapons acquisition and deployment, a security policy structure based on nothing more than general popular mandate and political instincts is unlikely to suffice; a structure that systematically excludes knowledge of and training in emergency response will almost certainly result in mismanagement. n210 In this light, a general take on role effectiveness might suggest favoring a structure in which the engagement of relevant expertise in crisis management is required, leaders have incentives to anticipate and plan in advance for trade-offs, and [\*1608] organizations are able to train subordinates to ensure that plans are adhered to in emergencies. Such structural constraints could help increase the likelihood that something more than arbitrary attention has been paid before transcendent priorities are overridden.

### 2AC Farm Bill

#### Economic decline doesn’t cause war

Barnett, Senior Managing Director Enterra Solutions LLC, ‘9 (Thomas, August 24, “The New Rules: Security Remains Stable Amid Financial Crisis” World Politics Review, http://www.worldpoliticsreview.com/articles/4213/the-new-rules-security-remains-stable-amid-financial-crisis)

When the global financial crisis struck roughly a year ago, the blogosphere was ablaze with all sorts of scary predictions of, and commentary regarding, ensuing conflict and wars -- a rerun of the Great Depression leading to world war, as it were. Now, as global economic news brightens and recovery -- surprisingly led by China and emerging markets -- is the talk of the day, it's interesting to look back over the past year and realize how globalization's first truly worldwide recession has had virtually no impact whatsoever on the international security landscape. None of the more than three-dozen ongoing conflicts listed by GlobalSecurity.org can be clearly attributed to the global recession. Indeed, the last new entry (civil conflict between Hamas and Fatah in the Palestine) predates the economic crisis by a year, and three quarters of the chronic struggles began in the last century. Ditto for the 15 low-intensity conflicts listed by Wikipedia (where the latest entry is the Mexican "drug war" begun in 2006). Certainly, the Russia-Georgia conflict last August was specifically timed, but by most accounts the opening ceremony of the Beijing Olympics was the most important external trigger (followed by the U.S. presidential campaign) for that sudden spike in an almost two-decade long struggle between Georgia and its two breakaway regions. Looking over the various databases, then, we see a most familiar picture: the usual mix of civil conflicts, insurgencies, and liberation-themed terrorist movements. Besides the recent Russia-Georgia dust-up, the only two potential state-on-state wars (North v. South Korea, Israel v. Iran) are both tied to one side acquiring a nuclear weapon capacity -- a process wholly unrelated to global economic trends. And with the United States effectively tied down by its two ongoing major interventions (Iraq and Afghanistan-bleeding-into-Pakistan), our involvement elsewhere around the planet has been quite modest, both leading up to and following the onset of the economic crisis: e.g., the usual counter-drug efforts in Latin America, the usual military exercises with allies across Asia, mixing it up with pirates off Somalia's coast). Everywhere else we find serious instability we pretty much let it burn, occasionally pressing the Chinese -- unsuccessfully -- to do something. Our new Africa Command, for example, hasn't led us to anything beyond advising and training local forces. So, to sum up: \*No significant uptick in mass violence or unrest (remember the smattering of urban riots last year in places like Greece, Moldova and Latvia?); \*The usual frequency maintained in civil conflicts (in all the usual places); \*Not a single state-on-state war directly caused (and no great-power-on-great-power crises even triggered); \*No great improvement or disruption in great-power cooperation regarding the emergence of new nuclear powers (despite all that diplomacy); \*A modest scaling back of international policing efforts by the system's acknowledged Leviathan power (inevitable given the strain); and \*No serious efforts by any rising great power to challenge that Leviathan or supplant its role. (The worst things we can cite are Moscow's occasional deployments of strategic assets to the Western hemisphere and its weak efforts to outbid the United States on basing rights in Kyrgyzstan; but the best include China and India stepping up their aid and investments in Afghanistan and Iraq.) Sure, we've finally seen global defense spending surpass the previous world record set in the late 1980s, but even that's likely to wane given the stress on public budgets created by all this unprecedented "stimulus" spending. If anything, the friendly cooperation on such stimulus packaging was the most notable great-power dynamic caused by the crisis. Can we say that the world has suffered a distinct shift to political radicalism as a result of the economic crisis? Indeed, no. The world's major economies remain governed by center-left or center-right political factions that remain decidedly friendly to both markets and trade. In the short run, there were attempts across the board to insulate economies from immediate damage (in effect, as much protectionism as allowed under current trade rules), but there was no great slide into "trade wars." Instead, the World Trade Organization is functioning as it was designed to function, and regional efforts toward free-trade agreements have not slowed. Can we say Islamic radicalism was inflamed by the economic crisis? If it was, that shift was clearly overwhelmed by the Islamic world's growing disenchantment with the brutality displayed by violent extremist groups such as al-Qaida. And looking forward, austere economic times are just as likely to breed connecting evangelicalism as disconnecting fundamentalism. At the end of the day, the economic crisis did not prove to be sufficiently frightening to provoke major economies into establishing global regulatory schemes, even as it has sparked a spirited -- and much needed, as I argued last week -- discussion of the continuing viability of the U.S. dollar as the world's primary reserve currency. Naturally, plenty of experts and pundits have attached great significance to this debate, seeing in it the beginning of "economic warfare" and the like between "fading" America and "rising" China. And yet, in a world of globally integrated production chains and interconnected financial markets, such "diverging interests" hardly constitute signposts for wars up ahead. Frankly, I don't welcome a world in which America's fiscal profligacy goes undisciplined, so bring it on -- please! Add it all up and it's fair to say that this global financial crisis has proven the great resilience of America's post-World War II international liberal trade order. Do I expect to read any analyses along those lines in the blogosphere any time soon? Absolutely not. I expect the fantastic fear-mongering to proceed apace. That's what the Internet is for.

#### GOP infighting dooms farm bill.

Murphy 10-31. [Patricia, congressional reporter, "Republican Infighting Over the Farm Bill Infuriates Farmers" The Daily Beast -- www.thedailybeast.com/articles/2013/10/31/republican-infighting-over-the-farm-bill-infuriates-farmers.html]

The next battle in the GOP civil war opened Wednesday as members of the House and Senate Agriculture committees sat down to hammer out differences over two versions of the Farm Bill. The massive piece of agriculture and nutrition legislation usually sails through both chambers, but it has become the latest litmus test for powerful conservative interest groups to decide whether individual Republican lawmakers are really conservative enough.¶ As farmers and ranchers in conservative districts have urged their congressmen to pass the bill this year, Heritage Action, the Club for Growth, and Americans for Prosperity have all pushed conservatives to vote against it, tagging it as wasteful, bloated spending. The decision by the three groups to label the Farm Bill as a “key vote” on their legislative scorecard over the summer led to a rebellion among House Republicans that sank the legislation until House leaders split it into two pieces, with agriculture funding moving forward and nutrition assistance, in the form of food stamps, getting slashed by $40 billion in a separate bill.¶ Rarely mentioned in the political sparring over the Farm Bill are the farmers themselves, who have long supported their own Republican members of Congress. Now they are becoming collateral damage in the ongoing battle between the party’s warring factions that has ground crucial legislation like the Farm Bill and immigration reform almost to a halt and left some farmers worrying about their futures.¶ “Most of our members would be quick to point out that frustration is an apt word that they’re feeling,” says Dale Moore, executive director of public policy for the American Farm Bureau. “You throw in the budget debates that have tied a lot of things up in knots, it gets so people are saying they just have to see something get done.” ¶ Political pressures, especially on Republicans, are making a tough Farm Bill even harder to pass, Moore says. “The issue is Republican members who get targeted as not being conservative enough,” he says. “They’re already driving on the stripes on the right-hand side of the road just before you before you get to the shoulder. How much farther to the right do you have to get?”

#### No farm bill – shutdown poisoned the well.

The Hill 10-20-13. thehill.com/blogs/on-the-money/agriculture/185932-lawmakers-seek-truce-with-farm-bill

The $1 trillion farm bill will serve as the first test of how deeply the shutdown fight has damaged relations in Washington.¶ Congress has made the legislation its first order of business as it pivots away from the battles over government funding and the debt ceiling.¶ The leaders of the agriculture committees in Congress and K Street lobbyists are eager to put the finishing touches on the bill, which could get wrapped into a year-end budget deal that replaces automatic sequestration cuts.¶ But some fear Speaker John Boehner (R-Ohio), who has vowed to complete the legislation, might be too wounded by the fiscal battle to finish the job.¶ The same conservative groups that thwarted Boehner’s plans during the shutdown fight — including Heritage Action — could be opposed to the farm bill if there is any compromise on food stamp cuts.¶ Supporters of the legislation also fear the raw relations between the White House and congressional Republicans will make bipartisan legislating difficult.

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

#### SNAP fights poison the well.

Rogers 10-24. [David, congressional reporter, "Farm bill gets no respect" Politico -- www.politico.com/story/2013/10/farm-bill-gets-no-respect-98795.html]

This year’s debate has provoked a singularly bitter but landmark fight over the nutrition title and future of the food stamp program.¶ House Republicans are insisting on cuts that together with already scheduled reductions next month would drive down spending on food stamp benefits by 12 percent in just two years—pushing millions of people off the rolls. The debate has been so partisan— without legislative hearings or any attempt to pump money back into reforms for the poor—that it has poisoned the farm bill well for many urban Democrats.

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

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

Sen. Rand Paul says that one of the ways he can bring more minority and younger voters into the party is to push back against indefinite detention.¶ Speaking with [Bloomberg Businessweek](http://m.washingtontimes.com/admin/stories/story/add/%28http%3A/www.businessweek.com/articles/2013-08-08/rand-paul-on-republicans-voter-appeal-and-the-federal-reserve), Mr. Paul, a likely 2016 presidential candidate, said this week that young blacks and Hispanics have a sense of justice and often mistrust government.¶ “So one of the big issues that I’ve fought here is getting rid of the provision called indefinite detention,” the Kentucky Republican said. “This is the idea that an American citizen could be accused of a crime, held indefinitely without charge, and actually sent from America to Guantanamo Bay and kept forever. I think there is something in that message of justice and a right to a trial by jury and a right to a lawyer that resonate beyond the traditional Republican Party and will help us to grow the Republican Party with the youth.”¶ Mr. Paul has argued that his libertarian brand of politics can help the GOP reach out to young voters and minorities who have supported Democrats in recent elections.¶ He has stopped short of calling for the closure of the controversial prison in Cuba, but has railed against locking up U.S. citizens on American soil without a trial.¶ As part of his effort to expand the GOP, Mr. Paul spoke this year at Howard University in Washington, D.C., and Simmons College in Louisville, where he urged blacks to give the GOP another look, while touting his opposition to military adventurism and desire to reduce sentences for non-violent drug possession¶ “We should stand and loudly proclaim enough is enough,” Mr. Paul said at Howard. “We should not have laws that ruin the lives of young men and women who have committed no violence. That’s why I have introduced a bill to repeal federal mandatory minimum sentences. We should not have drug laws or a court system that disproportionately punishes the black community.”

#### Forcing controversial fights key to Obama’s agenda- try or die for the link turn

Dickerson 13 (John, Slate, Go for the Throat!, 1/18 www.slate.com/articles/news\_and\_politics/politics/2013/01/barack\_obama\_s\_second\_inaugural\_address\_the\_president\_should\_declare\_war.single.html)

On Monday, President Obama will preside over the grand reopening of his administration. It would be altogether fitting if he stepped to the microphone, looked down the mall, and let out a sigh: so many people expecting so much from a government that appears capable of so little. A second inaugural suggests new beginnings, but this one is being bookended by dead-end debates. Gridlock over the fiscal cliff preceded it and gridlock over the debt limit, sequester, and budget will follow. After the election, the same people are in power in all the branches of government and they don't get along. There's no indication that the president's clashes with House Republicans will end soon. Inaugural speeches are supposed to be huge and stirring. Presidents haul our heroes onstage, from George Washington to Martin Luther King Jr. George W. Bush brought the Liberty Bell. They use history to make greatness and achievements seem like something you can just take down from the shelf. Americans are not stuck in the rut of the day. But this might be too much for Obama’s second inaugural address: After the last four years, how do you call the nation and its elected representatives to common action while standing on the steps of a building where collective action goes to die? That bipartisan bag of tricks has been tried and it didn’t work. People don’t believe it. Congress' approval rating is 14 percent, the lowest in history. In a December Gallup poll, 77 percent of those asked said the way Washington works is doing “serious harm” to the country. The challenge for President Obama’s speech is the challenge of his second term: how to be great when the environment stinks. Enhancing the president’s legacy requires something more than simply the clever application of predictable stratagems. Washington’s partisan rancor, the size of the problems facing government, and the limited amount of time before Obama is a lame duck all point to a single conclusion: The president who came into office speaking in lofty terms about bipartisanship and cooperation can only cement his legacy if he destroys the GOP. If he wants to transform American politics, he must go for the throat. President Obama could, of course, resign himself to tending to the achievements of his first term. He'd make sure health care reform is implemented, nurse the economy back to health, and put the military on a new footing after two wars. But he's more ambitious than that. He ran for president as a one-term senator with no executive experience. In his first term, he pushed for the biggest overhaul of health care possible because, as he told his aides, he wanted to make history. He may already have made it. There's no question that he is already a president of consequence. But there's no sign he's content to ride out the second half of the game in the Barcalounger. He is approaching gun control, climate change, and immigration with wide and excited eyes. He's not going for caretaker. How should the president proceed then, if he wants to be bold? The Barack Obama of the first administration might have approached the task by finding some Republicans to deal with and then start agreeing to some of their demands in hope that he would win some of their votes. It's the traditional approach. Perhaps he could add a good deal more schmoozing with lawmakers, too. That's the old way. He has abandoned that. He doesn't think it will work and he doesn't have the time. As Obama explained in his last press conference, he thinks the Republicans are dead set on opposing him. They cannot be unchained by schmoozing. Even if Obama were wrong about Republican intransigence, other constraints will limit the chance for cooperation. Republican lawmakers worried about primary challenges in 2014 are not going to be willing partners. He probably has at most 18 months before people start dropping the lame-duck label in close proximity to his name. Obama’s only remaining option is to pulverize. Whether he succeeds in passing legislation or not, given his ambitions, his goal should be to delegitimize his opponents. Through a series of clarifying fights over controversial issues, he can force Republicans to either side with their coalition's most extreme elements or cause a rift in the party that will leave it, at least temporarily, in disarray.

#### Intrinsicness - Logical policy votes to do both

#### non link uniqueness and Obama won’t push- Obama aids have been pushing plan relentlessly

Klaidman, 7/31 (Daniel, national political correspondent for Newsweek and The Daily Beast and the author of [Kill or Capture: The War on Terror and the Soul of the Obama Presidency](http://www.amazon.com/Kill-Capture-Terror-Obama-Presidency/dp/0547547897/ref%3Das_at?tag=thedailybeast-autotag-20&linkCode=as2&), “Obama’s Secret Gitmo plan” Newsweek. Web, Acc 8/31/2013)

Ever since Obama vowed to “go back at” the Guantánamo challenge in a major national security policy address in May, his aides have gamely thrown themselves into the effort. There is more White House activity swirling around Gitmo now than there has been in three years. Numerous people are working on the project, either part time or full time, under the leadership of Lisa Monaco, Obama’s chief counterterrorism adviser. White House lobbyists have been all over Capitol Hill, meeting with members of Congress. And yet, despite all this, Obama aides quietly admit that unless the political climate changes dramatically, Guantánamo will likely be open for business for many years to come.

#### Vote no – plans introduction in this debate is its introduction in Congress

#### Aff gets McCain on board – he sees it a specific plan.

Hunt, 7/28 (Albert, “McCain Goes Maverick Again as Obama’s Republican Ally. Bloomberg View. Web, Acc 8/19/2013. http://www.bloomberg.com/news/2013-07-28/mccain-goes-maverick-again-as-obama-s-republican-ally.html

McCain also wants to help Obama fulfill his promise to close the detainee camp for terrorism suspects at Guantanamo Bay, Cuba. He says political conditions are much different than they were four years ago when there was a similar effort.¶ “The difference between 2009 and 2013 is the administration now has a plan,” he says.¶ Closing Guantanamo¶ Last month, the five-term senator traveled to Guantanamo with Senate Intelligence Committee Chairman [Dianne Feinstein](http://topics.bloomberg.com/dianne-feinstein/) and the White House chief of staff, [Denis McDonough](http://topics.bloomberg.com/denis-mcdonough/).¶ McDonough, who McCain knew as a mid-level aide to former Democratic Senate Leader Tom Daschle, is a glue that binds the Republican and the administration. He and McCain talk as often as five times a day. In addition, the Republican senator has a great fondness for Vice President [Joe Biden](http://topics.bloomberg.com/joe-biden/), a good working relationship with Secretary of State [John Kerry](http://topics.bloomberg.com/john-kerry/) and is a fan of United Nations Ambassador-designate Samantha Power.

#### McCain is key to getting GOP on board for the agenda – especially for immigration

Hunt, 7/28 (Albert, “McCain Goes Maverick Again as Obama’s Republican Ally. Bloomberg View. Web, Acc 8/19/2013. http://www.bloomberg.com/news/2013-07-28/mccain-goes-maverick-again-as-obama-s-republican-ally.html

The association between Obama and McCain is different. But it may be Washington’s most important since Reagan and O’Neill.¶ McCain, 76, whose political resiliency is rivaled only by such luminaries as [Bill Clinton](http://topics.bloomberg.com/bill-clinton/) and [Richard Nixon](http://topics.bloomberg.com/richard-nixon/), is the most pivotal figure in the Senate today. He often is more central than the party leaders, [Mitch McConnell](http://topics.bloomberg.com/mitch-mcconnell/), the Kentucky Republican, or [Harry Reid](http://topics.bloomberg.com/harry-reid/), a Nevada Democrat, or the self-styled new power broker, the New York Democrat Chuck Schumer.¶ When McCain is with the president -- on immigration and in brokering the recent deal to secure Senate approval of stalled Obama nominees -- they usually can trump the political right. When he’s against him -- sabotaging Obama’s plan last year to nominate [Susan Rice](http://topics.bloomberg.com/susan-rice/) as secretary of state -- the White House rarely prevails.

#### Feinstein is on board with the plan and no link - plan get’s bundled with 2014 defense authorization bill

Feinstein and Durbin, 8/14 (Dianne and Dick, United States Senators. “How to close Gitmo.” Los Angeles Times. Web, Acc at [http://www.latimes.com/news/opinion/la-oe-feinstein-durbin-close-gitmo-20130814,0,432429.story](http://www.latimes.com/news/opinion/la-oe-feinstein-durbin-close-gitmo-20130814%2C0%2C432429.story)

The 2014 [Senate](http://www.latimes.com/topic/politics/government/u.s.-senate-ORGOV0000134.topic) defense authorization bill will come up for debate on the Senate floor this fall. Congress must pass the provisions that streamline procedures for transferring detainees abroad and allow transfers to the U.S. for trial or detention under international law until the end of hostilities.¶ As chairwoman of the [Senate Intelligence Committee](http://www.latimes.com/topic/politics/espionage-intelligence/u.s.-senate-select-committee-on-intelligence-ORGOV000350.topic) and chairman of the defense appropriations subcommittee, respectively, we are committed to preventing terrorist attacks. We believe terrorists deserve swift and sure justice, and severe prison sentences. But holding detainees on an island off U.S. shores for years — without charge — is an abomination. It is not an effective administration of justice, does not serve our national security interests and is not consistent with our country's history as a champion of human rights.¶ It is time to close Guantanamo.

#### She’s key to getting GOP votes for his agenda

**SF Gate 12** (“Dianne Feinstein: 4 decades of influence”, <http://www.sfgate.com/politics/article/Dianne-Feinstein-4-decades-of-influence-3968314.php>)

She revels in split-the-baby deal making: "I think my greatest strength is finding a solution when there are opposing sides." It was Feinstein, an ally of [Hillary Rodham Clinton](http://www.sfgate.com/?controllerName=search&action=search&channel=politics&search=1&inlineLink=1&query=%22Hillary+Rodham+Clinton%22) against Barack [Obama](http://www.sfgate.com/barack-obama/) in the 2008 Democratic presidential primary, who brought the warring candidates to a secret rendezvous at her Washington home to bury the hatchet in private. In a chamber riven by partisanship, **Republicans like and respect her.** "She thinks through issues and makes what she thinks is a rational and correct decision," said Sen. Saxby Chambliss, R-Ga., the top Republican on the Intelligence Committee. "Unfortunately t**here are some Republicans who, if it's a Democratic idea, immediately jump up and they're opposed to it,** and that happens on the other side of the aisle too. **But with Dianne, that does not happen."** '

1. Political capital is fabricated- you can’t predict momentum or uplanned events. There’s only a risk the plan is a win.

Hirsh, Chief Correspondent National Journal, 2-7-’13 (Michael, “There’s No Such Thing as Political Capital” National Journal, http://www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207)

On Tuesday, in his State of the Union address, President Obama will do what every president does this time of year. For about 60 minutes, he will lay out a sprawling and ambitious wish list highlighted by gun control and immigration reform, climate change and debt reduction. In response, the pundits will do what they always do this time of year: They will talk about how unrealistic most of the proposals are, discussions often informed by sagacious reckonings of how much “political capital” Obama possesses to push his program through.¶ Most of this talk will have no bearing on what actually happens over the next four years.¶ Consider this: Three months ago, just before the November election, if someone had talked seriously about Obama having enough political capital to oversee passage of both immigration reform and gun-control legislation at the beginning of his second term—even after winning the election by 4 percentage points and 5 million votes (the actual final tally)—this person would have been called crazy and stripped of his pundit’s license. (It doesn’t exist, but it ought to.) In his first term, in a starkly polarized country, the president had been so frustrated by GOP resistance that he finally issued a limited executive order last August permitting immigrants who entered the country illegally as children to work without fear of deportation for at least two years. Obama didn’t dare to even bring up gun control, a Democratic “third rail” that has cost the party elections and that actually might have been even less popular on the right than the president’s health care law. And yet, for reasons that have very little to do with Obama’s personal prestige or popularity—variously put in terms of a “mandate” or “political capital”—chances are fair that both will now happen.¶ What changed? In the case of gun control, of course, it wasn’t the election. It was the horror of the 20 first-graders who were slaughtered in Newtown, Conn., in mid-December. The sickening reality of little girls and boys riddled with bullets from a high-capacity assault weapon seemed to precipitate a sudden tipping point in the national conscience. One thing changed after another. Wayne LaPierre of the National Rifle Association marginalized himself with poorly chosen comments soon after the massacre. The pro-gun lobby, once a phalanx of opposition, began to fissure into reasonables and crazies. Former Rep. Gabrielle Giffords, D-Ariz., who was shot in the head two years ago and is still struggling to speak and walk, started a PAC with her husband to appeal to the moderate middle of gun owners. Then she gave riveting and poignant testimony to the Senate, challenging lawmakers: “Be bold.”¶ As a result, momentum has appeared to build around some kind of a plan to curtail sales of the most dangerous weapons and ammunition and the way people are permitted to buy them. It’s impossible to say now whether such a bill will pass and, if it does, whether it will make anything more than cosmetic changes to gun laws. But one thing is clear: The political tectonics have shifted dramatically in very little time. Whole new possibilities exist now that didn’t a few weeks ago.¶ Meanwhile, the Republican members of the Senate’s so-called Gang of Eight are pushing hard for a new spirit of compromise on immigration reform, a sharp change after an election year in which the GOP standard-bearer declared he would make life so miserable for the 11 million illegal immigrants in the U.S. that they would “self-deport.” But this turnaround has very little to do with Obama’s personal influence—his political mandate, as it were. It has almost entirely to do with just two numbers: 71 and 27. That’s 71 percent for Obama, 27 percent for Mitt Romney, the breakdown of the Hispanic vote in the 2012 presidential election. Obama drove home his advantage by giving a speech on immigration reform on Jan. 29 at a Hispanic-dominated high school in Nevada, a swing state he won by a surprising 8 percentage points in November. But the movement on immigration has mainly come out of the Republican Party’s recent introspection, and the realization by its more thoughtful members, such as Sen. Marco Rubio of Florida and Gov. Bobby Jindal of Louisiana, that without such a shift the party may be facing demographic death in a country where the 2010 census showed, for the first time, that white births have fallen into the minority. It’s got nothing to do with Obama’s political capital or, indeed, Obama at all.¶ The point is not that “political capital” is a meaningless term. Often it is a synonym for “mandate” or “momentum” in the aftermath of a decisive election—and just about every politician ever elected has tried to claim more of a mandate than he actually has. Certainly, Obama can say that because he was elected and Romney wasn’t, he has a better claim on the country’s mood and direction. Many pundits still defend political capital as a useful metaphor at least. “It’s an unquantifiable but meaningful concept,” says Norman Ornstein of the American Enterprise Institute. “You can’t really look at a president and say he’s got 37 ounces of political capital. But the fact is, it’s a concept that matters, if you have popularity and some momentum on your side.”¶ The real problem is that the idea of political capital—or mandates, or momentum—is so poorly defined that presidents and pundits often get it wrong. “Presidents usually over-estimate it,” says George Edwards, a presidential scholar at Texas A&M University. “The best kind of political capital—some sense of an electoral mandate to do something—is very rare. It almost never happens. In 1964, maybe. And to some degree in 1980.” For that reason, political capital is a concept that misleads far more than it enlightens. It is distortionary. It conveys the idea that we know more than we really do about the ever-elusive concept of political power, and it discounts the way unforeseen events can suddenly change everything. Instead, it suggests, erroneously, that a political figure has a concrete amount of political capital to invest, just as someone might have real investment capital—that a particular leader can bank his gains, and the size of his account determines what he can do at any given moment in history.¶ Naturally, any president has practical and electoral limits. Does he have a majority in both chambers of Congress and a cohesive coalition behind him? Obama has neither at present. And unless a surge in the economy—at the moment, still stuck—or some other great victory gives him more momentum, it is inevitable that the closer Obama gets to the 2014 election, the less he will be able to get done. Going into the midterms, Republicans will increasingly avoid any concessions that make him (and the Democrats) stronger.¶ But the abrupt emergence of the immigration and gun-control issues illustrates how suddenly shifts in mood can occur and how political interests can align in new ways just as suddenly. Indeed, the pseudo-concept of political capital masks a larger truth about Washington that is kindergarten simple: You just don’t know what you can do until you try. Or as Ornstein himself once wrote years ago, “Winning wins.” In theory, and in practice, depending on Obama’s handling of any particular issue, even in a polarized time, he could still deliver on a lot of his second-term goals, depending on his skill and the breaks. Unforeseen catalysts can appear, like Newtown. Epiphanies can dawn, such as when many Republican Party leaders suddenly woke up in panic to the huge disparity in the Hispanic vote.¶ Some political scientists who study the elusive calculus of how to pass legislation and run successful presidencies say that political capital is, at best, an empty concept, and that almost nothing in the academic literature successfully quantifies or even defines it. “It can refer to a very abstract thing, like a president’s popularity, but there’s no mechanism there. That makes it kind of useless,” says Richard Bensel, a government professor at Cornell University. Even Ornstein concedes that the calculus is far more complex than the term suggests. Winning on one issue often changes the calculation for the next issue; there is never any known amount of capital. “The idea here is, if an issue comes up where the conventional wisdom is that president is not going to get what he wants, and he gets it, then each time that happens, it changes the calculus of the other actors” Ornstein says. “If they think he’s going to win, they may change positions to get on the winning side. It’s a bandwagon effect.”¶ ALL THE WAY WITH LBJ¶ Sometimes, a clever practitioner of power can get more done just because he’s aggressive and knows the hallways of Congress well. Texas A&M’s Edwards is right to say that the outcome of the 1964 election, Lyndon Johnson’s landslide victory over Barry Goldwater, was one of the few that conveyed a mandate. But one of the main reasons for that mandate (in addition to Goldwater’s ineptitude as a candidate) was President Johnson’s masterful use of power leading up to that election, and his ability to get far more done than anyone thought possible, given his limited political capital. In the newest volume in his exhaustive study of LBJ, The Passage of Power, historian Robert Caro recalls Johnson getting cautionary advice after he assumed the presidency from the assassinated John F. Kennedy in late 1963. Don’t focus on a long-stalled civil-rights bill, advisers told him, because it might jeopardize Southern lawmakers’ support for a tax cut and appropriations bills the president needed. “One of the wise, practical people around the table [said that] the presidency has only a certain amount of coinage to expend, and you oughtn’t to expend it on this,” Caro writes. (Coinage, of course, was what political capital was called in those days.) Johnson replied, “Well, what the hell’s the presidency for?”¶ Johnson didn’t worry about coinage, and he got the Civil Rights Act enacted, along with much else: Medicare, a tax cut, antipoverty programs. He appeared to understand not just the ways of Congress but also the way to maximize the momentum he possessed in the lingering mood of national grief and determination by picking the right issues, as Caro records. “Momentum is not a mysterious mistress,” LBJ said. “It is a controllable fact of political life.” Johnson had the skill and wherewithal to realize that, at that moment of history, he could have unlimited coinage if he handled the politics right. He did. (At least until Vietnam, that is.)¶ And then there are the presidents who get the politics, and the issues, wrong. It was the last president before Obama who was just starting a second term, George W. Bush, who really revived the claim of political capital, which he was very fond of wielding. Then Bush promptly demonstrated that he didn’t fully understand the concept either.¶ At his first news conference after his 2004 victory, a confident-sounding Bush declared, “I earned capital in the campaign, political capital, and now I intend to spend it. That’s my style.” The 43rd president threw all of his political capital at an overriding passion: the partial privatization of Social Security. He mounted a full-bore public-relations campaign that included town-hall meetings across the country.¶ Bush failed utterly, of course. But the problem was not that he didn’t have enough political capital. Yes, he may have overestimated his standing. Bush’s margin over John Kerry was thin—helped along by a bumbling Kerry campaign that was almost the mirror image of Romney’s gaffe-filled failure this time—but that was not the real mistake. The problem was that whatever credibility or stature Bush thought he had earned as a newly reelected president did nothing to make Social Security privatization a better idea in most people’s eyes. Voters didn’t trust the plan, and four years later, at the end of Bush’s term, the stock-market collapse bore out the public’s skepticism. Privatization just didn’t have any momentum behind it, no matter who was pushing it or how much capital Bush spent to sell it.¶ The mistake that Bush made with Social Security, says John Sides, an associate professor of political science at George Washington University and a well-followed political blogger, “was that just because he won an election, he thought he had a green light. But there was no sense of any kind of public urgency on Social Security reform. It’s like he went into the garage where various Republican policy ideas were hanging up and picked one. I don’t think Obama’s going to make that mistake.… Bush decided he wanted to push a rock up a hill. He didn’t understand how steep the hill was. I think Obama has more momentum on his side because of the Republican Party’s concerns about the Latino vote and the shooting at Newtown.” Obama may also get his way on the debt ceiling, not because of his reelection, Sides says, “but because Republicans are beginning to doubt whether taking a hard line on fiscal policy is a good idea,” as the party suffers in the polls.¶ THE REAL LIMITS ON POWER¶ Presidents are limited in what they can do by time and attention span, of course, just as much as they are by electoral balances in the House and Senate. But this, too, has nothing to do with political capital. Another well-worn meme of recent years was that Obama used up too much political capital passing the health care law in his first term. But the real problem was that the plan was unpopular, the economy was bad, and the president didn’t realize that the national mood (yes, again, the national mood) was at a tipping point against big-government intervention, with the tea-party revolt about to burst on the scene. For Americans in 2009 and 2010—haunted by too many rounds of layoffs, appalled by the Wall Street bailout, aghast at the amount of federal spending that never seemed to find its way into their pockets—government-imposed health care coverage was simply an intervention too far. So was the idea of another economic stimulus. Cue the tea party and what ensued: two titanic fights over the debt ceiling. Obama, like Bush, had settled on pushing an issue that was out of sync with the country’s mood.¶ Unlike Bush, Obama did ultimately get his idea passed. But the bigger political problem with health care reform was that it distracted the government’s attention from other issues that people cared about more urgently, such as the need to jump-start the economy and financial reform. Various congressional staffers told me at the time that their bosses didn’t really have the time to understand how the Wall Street lobby was riddling the Dodd-Frank financial-reform legislation with loopholes. Health care was sucking all the oxygen out of the room, the aides said.¶ Weighing the imponderables of momentum, the often-mystical calculations about when the historic moment is ripe for an issue, will never be a science. It is mainly intuition, and its best practitioners have a long history in American politics. This is a tale told well in Steven Spielberg’s hit movie Lincoln. Daniel Day-Lewis’s Abraham Lincoln attempts a lot of behind-the-scenes vote-buying to win passage of the 13th Amendment, banning slavery, along with eloquent attempts to move people’s hearts and minds. He appears to be using the political capital of his reelection and the turning of the tide in the Civil War. But it’s clear that a surge of conscience, a sense of the changing times, has as much to do with the final vote as all the backroom horse-trading. “The reason I think the idea of political capital is kind of distorting is that it implies you have chits you can give out to people. It really oversimplifies why you elect politicians, or why they can do what Lincoln did,” says Tommy Bruce, a former political consultant in Washington.¶ Consider, as another example, the storied political career of President Franklin Roosevelt. Because the mood was ripe for dramatic change in the depths of the Great Depression, FDR was able to push an astonishing array of New Deal programs through a largely compliant Congress, assuming what some described as near-dictatorial powers. But in his second term, full of confidence because of a landslide victory in 1936 that brought in unprecedented Democratic majorities in the House and Senate, Roosevelt overreached with his infamous Court-packing proposal. All of a sudden, the political capital that experts thought was limitless disappeared. FDR’s plan to expand the Supreme Court by putting in his judicial allies abruptly created an unanticipated wall of opposition from newly reunited Republicans and conservative Southern Democrats. FDR thus inadvertently handed back to Congress, especially to the Senate, the power and influence he had seized in his first term. Sure, Roosevelt had loads of popularity and momentum in 1937. He seemed to have a bank vault full of political capital. But, once again, a president simply chose to take on the wrong issue at the wrong time; this time, instead of most of the political interests in the country aligning his way, they opposed him. Roosevelt didn’t fully recover until World War II, despite two more election victories.¶ In terms of Obama’s second-term agenda, what all these shifting tides of momentum and political calculation mean is this: Anything goes. Obama has no more elections to win, and he needs to worry only about the support he will have in the House and Senate after 2014. But if he picks issues that the country’s mood will support—such as, perhaps, immigration reform and gun control—there is no reason to think he can’t win far more victories than any of the careful calculators of political capital now believe is possible, including battles over tax reform and deficit reduction.¶ Amid today’s atmosphere of Republican self-doubt, a new, more mature Obama seems to be emerging, one who has his agenda clearly in mind and will ride the mood of the country more adroitly. If he can get some early wins—as he already has, apparently, on the fiscal cliff and the upper-income tax increase—that will create momentum, and one win may well lead to others. “Winning wins.”¶ Obama himself learned some hard lessons over the past four years about the falsity of the political-capital concept. Despite his decisive victory over John McCain in 2008, he fumbled the selling of his $787 billion stimulus plan by portraying himself naively as a “post-partisan” president who somehow had been given the electoral mandate to be all things to all people. So Obama tried to sell his stimulus as a long-term restructuring plan that would “lay the groundwork for long-term economic growth.” The president thus fed GOP suspicions that he was just another big-government liberal. Had he understood better that the country was digging in against yet more government intervention and had sold the stimulus as what it mainly was—a giant shot of adrenalin to an economy with a stopped heart, a pure emergency measure—he might well have escaped the worst of the backlash. But by laying on ambitious programs, and following up quickly with his health care plan, he only sealed his reputation on the right as a closet socialist.¶ After that, Obama’s public posturing provoked automatic opposition from the GOP, no matter what he said. If the president put his personal imprimatur on any plan—from deficit reduction, to health care, to immigration reform—Republicans were virtually guaranteed to come out against it. But this year, when he sought to exploit the chastened GOP’s newfound willingness to compromise on immigration, his approach was different. He seemed to understand that the Republicans needed to reclaim immigration reform as their own issue, and he was willing to let them have some credit. When he mounted his bully pulpit in Nevada, he delivered another new message as well: You Republicans don’t have to listen to what I say anymore. And don’t worry about who’s got the political capital. Just take a hard look at where I’m saying this: in a state you were supposed to have won but lost because of the rising Hispanic vote.¶ Obama was cleverly pointing the GOP toward conclusions that he knows it is already reaching on its own: If you, the Republicans, want to have any kind of a future in a vastly changed electoral map, you have no choice but to move. It’s your choice.¶ The future is wide open.