## Case

### Democracy

#### Aff solves the impact better

Chavez 8, associate professor of political science at the US Naval Academy, Ph.D. from Stanford, Fulbright scholar

[Rebecca Bill, "The Rule of Law and Courts in Democratizing Regimes" in The Oxford handbook of law and politics, p.63-4]

The fortification of the rule of law is increasingly seen as a necessity for nascent democracies across the globe. The past decade has witnessed a growing recognition by political scientists that an independent judiciary can bolster both political and economic development. This recognition is central to the young but growing body of literature that addresses how emerging democracies build on the rule of law and autonomous courts. As nations struggle to consolidate democracy, we have witnessed a surge of promising new scholarship on the conditions under which the rule of law emerges and endures. This movement in academia has accompanied the emphasis by influential sources of development funds, including the World Bank, the Inter-American Development Bank, and the International Monetary Fund, on the importance of independent judicial systems that have the capacity to encourage investment, protect rights, and bolster democracy. In many third wave democracies, the judicial branch remains unable to place real constraints on the executive or other government actors. Countries such as Argentina, Russia, and Taiwan instituted open electoral competition before developing the rule of law. A myopic focus on elections is partly to blame for the fragility of the democratic scaffolding in many nascent democracies. Competitive elections have masked the fact that other essential components of democracy have not taken root (Dahl 1971; Karl 1986). For instance, weak political institutions and the remnants of authoritarianism have impeded the development of the rule of law, resulting in “illiberal” or “delegative” democracies (Diamond 1996; Larkins 1998; O’Donnell 1994; Zakaria 1997). Without the rule of law, democratic consolidation may never occur. Judicial independence and the rule of law constitute important bulwarks against the erosion of democratic institutions.

**Democracies do not prevent war – their studies confuse correlation for causation**

**Hayes 11**—PhD at Georgia Institute of Technology

(Jarrod, “The Democratic Peace and the New Evolution of an Old Idea”, European Journal of International Relations, June 10, 2011, http://ejt.sagepub.com/)//AW

In this critical overview, I argue that, while the idea of a democratic peace has enjoyed an immense amount of attention, the nature of inquiry has created significant lacunae that have only recently begun to be addressed. Methodologically, large-N quantitative studies dominate the field.ii While these studies have been invaluable in establishing the claim that the democratic peace phenomenon exists (what I call the ‘statistical democratic peace’**), by their very nature they are able to demonstrate only correlation, not causation**. Not surprisingly, what effort these studies did make towards understanding and explaining the democratic peace focused on causes—norms and institutions (Maoz and Russett, 1993)—that could be quantified, either directly or by proxy. Yet the quantitative nature of the studies does not enable access to causal forces. The mechanisms behind the democratic peace remained shrouded in shadow. The end of the Cold War and the subsequent (at least rhetorical) inclusion of the democratic peace in U.S. foreign policy means the field, now more than ever, needs to develop a better understanding of the mechanisms within (and without) democracies that generate the observed peace. In the process of expanding our inquiry of the mechanisms behind the democratic peace, we will actually generate a new, broader field of study: democratic security. This review derives its emphasis on mechanisms from the scholarship on scientific realism (Bhaskar, 1975; Harré and Madden, 1975; Manicas, 2006) and Mario Bunge’s systemism philosophy (Bunge, 1996; Bunge, 2000; Bunge, 2004b). While the social sciences have largely been oblivious, philosophers of science have questioned the Humean, deductive-nonological model of science. These questions have given rise to a model of science focused on processes and mechanisms: “the real goal of science is neither the explanation of events nor the explanation of patterns, though this idea catches dome of the truth of the matter. Rather, it has as its goal an understanding of the fundamental processes of nature” (Manicas, 2006: 14). Explanation, then, “requires that there is a "real connection," a generative nexus that produced or 1brought about the event (or pattern) to be explained” (Manicas, 2006: 20). Accordingly, correlation on its own cannot serve as explanation (much less understanding) because it does not allow the analyst access to the mechanisms at play: what causes what *and how*. The ongoing focus by social scientists on covering laws thus betrays a romantic understanding of science that is not only *not* what physical scientists do, but that is fatally flawed as a mode of intellectual inquiry. Bunge likewise emphasizes the importance of mechanisms in systemism, his philosophy of social science. Bunge argues that the study of the social sciences is the study of social systems and thus requires a ‘‘systemist’’ approach over traditional approaches that compartmentalize social studies (holism, for example structural realism, versus individualism, for example rational choice). The central focus of the systemist approach is the human system: the interaction between individuals and society. Explanation links rather than separates the structural and individual levels.

### Preemption

#### Checks on the Presidents power solves deterrence better- makes our threats credible

**Waxman 13** (Matthew C- Professor of Law at Columbia Law School; Adjunct Senior Fellow for Law and Foreign Policy, Council on Foreign Relations, “The Constitutional Power to Threaten War”, Forthcoming in Yale Law Journal, vol. 123 (2014), 8/25/2013, PDF)

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

### 2AC AT: Executive Circumvention

#### Courts effectively shape detention policy- observer effect- this card assumes all your empirics and warrants

Deeks 10/21 (Ashley, Ashbley Deeks served as an attorney-adviser in the Office of the Legal Adviser at the U.S. Department of State. She worked on issues related to the law of armed conflict, including detention, the U.S. relationship with the International Committee of the Red Cross, conventional weapons, and the legal framework for the conflict with al-Qaeda. Courts Can Influence National Security Without Doing a Single Thing <http://www.newrepublic.com/article/115270/courts-influence-national-security-merely-watching>)

While courts rarely intervene directly in national security disputes, they nevertheless play a significant role in shaping Executive branch security policies. Let’s call this the “observer effect.” Physics teaches us that observing a particle alters how it behaves. Through psychology, we know that people act differently when they are aware that someone is watching them. In the national security context, the “observer effect” can be thought of as the impact on Executive policy-setting of pending or probable court consideration of a specific national security policy. The Executive’s awareness of likely judicial oversight over particular national security policies—an awareness that ebbs and flows—plays a significant role as a forcing mechanism. It drives the Executive to alter, disclose, and improve those policies before courts actually review them. Take, for example, U.S. detention policy in Afghanistan. After several detainees held by the United States asked U.S courts to review their detention, the Executive changed its policies to give detainees in Afghanistan a greater ability to appeal their detention—a change made in response to the pending litigation and in an effort to avoid an adverse decision by the court. The Government went on to win the litigation. A year later, the detainees re-filed their case, claiming that new facts had come to light. Just before the government’s brief was due in court, the process repeated itself, with the Obama Administration revealing another rule change that favored the petitioners. Exchanges between detainees and their personal representatives would be considered confidential, creating something akin to the attorney-client privilege. Thus we see the Executive shifting its policies in a more rights-protective direction without a court ordering it to do so.

#### Obama would comply- your ev is posturing

Green 11 (Craig, Prof of Law at Temple Unviersity , Northwestern University Law Review, Vol 105, No 3"Ending the Korematsu Era: An Early View From the War on Terror Cases")

Jackson’s hard-nosed analysis may seem intellectually bracing, but it understates the real-world power of judicial precedent to shape what is po- litically possible.306 Although presidential speeches occasionally declare a willingness to disobey Supreme Court rulings, actual disobedience of this sort is rare and would carry grave political consequences.307 Even President Bush’s losses in the GWOT cases did not spur serious consideration of noncompliance despite broad support from a Republican Congress.308 Likewise, from the perspective of strengthening presidential power, Kore- matsu-era decisions emboldened President Bush in his twenty-first-century choices about Guantánamo and military commissions.309 Thus, the modern historical record shows that judicial precedent can both expand and restrict the political sphere of presidential action.¶ The operative influence of judicial precedent is even stronger than a court-focused record might suggest, as the past sixty years have witnessed a massive bureaucratization and legalization of all levels of executive gov- ernment.310 From the White House Counsel, to the Pentagon, to other enti- ties addressing intelligence and national security issues, lawyers now occupy such high-level governmental posts that almost no significant policy is determined without multiple layers of legal review.311 And these execu- tive lawyers are predominantly trained to think—whatever else they may believe—that Supreme Court precedent is authoritative and binding.312

### 2AC AT: Congressional Circumvention

#### More evidence

Kundmueller 2002 [Michelle, Journal of Legislation, p. lexis]

This section of this Note, on the legal authority of customary international law vis-a-vis federal legislation, has not been included with the purpose of discovering which position is correct. Rather, the overview of this debate holds a central place in this Note because it demonstrates some of the issues at stake as U.S. courts begin to integrate customary international law into what were previously thought of as purely or primarily domestic issues. Admittedly, the number of cases using customary international law in this manner is still few and primarily based on some enabling federal statute. Nonetheless, these decisions take on a greater importance in light of the debate discussed above. Should theorists such as Paust and Lillich prevail, these early cases, taking the first modern steps in the process of identifying and applying customary international law would become crucial precedent in a law-making process that Congress would be powerless to overturn. On the other hand, the case law about to be analyzed will lie at the mercy of the will of the people and their Congress, should the theories of Kelley and Garland prove prophetic. It is still too early to know which faction will dominate, but this analysis of their theories does survey the potential spectrum of outcomes and the legal and political issues yet to be determined.

## T

### 2AC T-Prohibition

#### 2) Ruling on the Geneva Conventions is a restriction

Wolensky 9 (Spring, 2009¶ Chapman Law Review¶ 12 Chap. L. Rev. 721¶ LENGTH: 10495 words Comment: Discretionary Sentencing in Military Commissions: Why and How the Sentencing Guidelines in the Military Commissions Act Should be Changed\* \* This article was initially written and published when the state of military commissions were in flux. It reflects the events regarding military commissions up to and through April 2009. However, an important decision was made by President Obama in May of 2009. See William Glaberson, Obama Considers Allowing Please by 9/11 Suspects, N. Y. Times, June 6, 2009, at A1, A12. Obama decided to continue the use of military commissions under a new set of rules which provide more protections for detainees. Id. Due to the timing of publication, this decision is not incorporated in this article. Although Obama has decided to continue the military commissions, he has not finalized a set of rules. Id. This article serves as a recommendation for changes to the rules of the Military Commissions Act, which Congress and the Obama Administration should consider. NAME: Brian Wolensky\*\*)

One of the main treatises included in the Law of War is the Third Geneva Convention, which was enacted in 1949 to regulate the treatment of prisoners of war**.** [n31](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.719762.7040113385&target=results_DocumentContent&returnToKey=20_T17977639921&parent=docview&rand=1376739692140&reloadEntirePage=true#n31) The Law of War places restrictions on the way certain countries can act during times of warand the United States is bound by it when it establishes and uses military commissions. [n32](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.719762.7040113385&target=results_DocumentContent&returnToKey=20_T17977639921&parent=docview&rand=1376739692140&reloadEntirePage=true#n32)

#### Counter-interpretation- treaty-based regulations constitute a restriction/regulations are restrictions

Barron 8 (Professor of Law, Harvard Law School, Harvard Law Review, January 2008, Retrieved 6/1/2013, Lexis/Nexis)

2. Armed Conflict Against Terrorist Organizations and Preexisting Framework Statutes. - Beyond this general executive trend, certain central features of the current military conflict against al Qaeda help to create the conditions for constitutional battles over the legal status of statutory (and treaty-based) limitations that apply to the war on terrorism. Important in this regard is the fact that in most traditional wars, the Executive has perhaps had less reason to feel unduly constrained [\*713] by extant statutory and treaty-based regulations on his treatment of the enemy, in part because many such restrictions (such as those in multilateral treaties) have, at least nominally, merely put the nation on common ground with its enemies with respect to the methods of battle and the treatment of prisoners.

## CP

#### SCOTUS should apply the conventions to statutory authorization for detention

Riley 11 (Katherine is a Staff Writer for the Boston College International & Comparative Law¶ Review, 2011, ““INAPPOSITE” AND “AMORPHOUS”: THE¶ D.C. CIRCUIT’S REJECTION OF¶ INTERNATIONAL LAW”, http://www.bc.edu/content/dam/files/schools/law/lawreviews/journals/bciclr/34\_esupp/08\_riley.pdf)

The D.C. Circuit’s unilateral rejection of international laws of war¶ as even a source of interpretive guidance is incorrect and unwise.93¶ Federal judicial authority extends not only to all federal laws, but also¶ to all treaties—such as the Third Geneva Convention—which arise under¶ the authority of the Constitution.94 The Supreme Court frequently¶ evaluates international laws of war such as the Third Geneva Convention¶ in determining the legality of a detention or the sufficiency of detention¶ review procedures under the relevant statutes.95 Moreover, the¶ 2009 MCA, which amended the 2006 MCA, reflected modifications¶ consistent with congressional intent to integrate the Third Geneva¶ Convention and its prisoner-of-war categorization scheme into statutory¶ authorization for the trial of detainees.96 The court should use the Geneva¶ Convention as guidance to develop a comprehensive standard for¶ classification of detainees and the process due for detention review, as¶ the standards promulgated have been ratified by the United States and¶ can offer direction in an area in which the Supreme Court has not yet¶ provided guidance.97¶ A. The Third Geneva Convention and “Prisoners of War”¶ The Third Geneva Convention Relative to the Treatment of Prisoners¶ of War was signed by the President of the United States on July¶ 14, 1955, with the advice and consent of the Senate, and sets forth the¶ obligations of signatories to one another during declared war or armed¶ conflict.98 In Article 4, the Treaty identifies eight categories of individuals¶ eligible for classification of prisoners of war.99 Article 5 requires that persons that cannot be classified as prisoners of war according to Article¶ 4 be afforded the protection of the Treaty until a competent tribunal¶ determines their status.100 The remainder of the Treaty lays out¶ comprehensive guidelines for the treatment of prisoners of war, covering¶ everything from general protection to religious, intellectual, and¶ physical activities, penal and disciplinary sanctions, and release and repatriation¶ at the close of hostilities.101 Thus, the Convention’s existing¶ framework could serve as a procedural model for detainee status determination,¶ whether the detainee is classified as a prisoner of war under¶ Article 4 or not, or at least provide a base from which the courts¶ could upwardly depart when analyzing the statutory authorization for¶ such detention and detention review.102

## CIR

### 2AC CIR DA

#### Won’t pass- Rubio and GOP political agenda

WJLA, 10-28 ["Immigration reform: Obama urges Congress again to take action before end of year," ABC7, 10-28-13, http://www.wjla.com/articles/2013/10/immigration-reform-obama-urges-congress-again-to-take-action-before-end-of-year-96071.html#ixzz2jLXwlo2r, accessed 10-31-13, mss]

But in a **blow** to their effort, Sen. Marco Rubio signaled support for the piecemeal approach in the House despite his months of work and vote for the comprehensive Senate bill that would provide a path to citizenship for the 11 million immigrants living here illegally and tighten border security. The Florida Republican - son of Cuban immigrants and a potential presidential candidate in 2016 - had provided crucial support for the bipartisan Senate bill. "Sen. Rubio has always preferred solving immigration reform with piecemeal legislation. The Senate opted to pursue a comprehensive bill, and he joined that effort because he wanted to influence the policy that passed the Senate," Rubio's spokesman, Alex Conant, said Monday in explaining Rubio's backing for limited measures. Since 68 Democrats and Republicans joined together to pass the Senate bill in June, opponents and many conservatives have stepped up their pressure against any immigration legislation, based not only on their principle opposition but their unwillingness to deliver on Obama's top second-term domestic agenda issue. The recent budget fight only inflamed conservative GOP feelings toward Obama. Obama on Monday reiterated his call for Congress to complete action on an immigration overhaul before the end of the year. He said that represented the only way to end the record deportations of immigrants undertaken by his administration, actions he has tried to curtail by allowing young people who immigrated illegally into the United States - so-called Dreamers - to remain in the country under certain conditions. "That's why my top priority has been let's make sure that we comprehensively reform the whole system so that we're not just dealing with Dreamers, we're also dealing with anybody who's here and is undocumented," he said in an interview with Fusion, a cable channel that is a collaboration of ABC News and Univision. Most House Republicans reject a comprehensive approach and many question offering citizenship to people who broke U.S. immigration laws to be in this country. The House Judiciary Committee has moved forward with individual, single-issue immigration bills. Although House Republican leaders say they want to solve the issue, which has become a political drag for the GOP, many rank-and-file House Republicans have shown little inclination to deal with it. With just a few legislative weeks left in the House, it's unclear whether lawmakers will vote on any measure before the year is out.

#### Courts shield h

Whittington 5 Keith E., Cromwell Professor of Politics – Princeton University, ““Interpose Your Friendly Hand”: Political Supports for the Exercise of Judicial Review by the United States Supreme Court”, American Political Science Review, 99(4), November, p. 585, 591-592

There are some issues that politicians cannot easily handle. For individual legislators, their constituents may be sharply divided on a given issue or overwhelmingly hostile to a policy that the legislator would nonetheless like to see adopted. Party leaders, including presidents and legislative leaders, must similarly sometimes manage deeply divided or cross-pressured coalitions. When faced with such issues, elected officials may actively seek to turn over controversial political questions to the courts so as to circumvent a paralyzed legislature and avoid the political fallout that would come with taking direct action themselves. As Mark Graber (1993) has detailed in cases such as slavery and abortion, elected officials may prefer judicial resolution of disruptive political issues to direct legislative action, especially when the courts are believed to be sympathetic to the politician’s own substantive preferences but even when the attitude of the courts is uncertain or unfavorable (see also, Lovell 2003). Even when politicians do not invite judicial intervention, strategically minded courts will take into account not only the policy preferences of well-positioned policymakers but also the willingness of those potential policymakers to act if doing so means that they must assume responsibility for policy outcomes. For cross-pressured politicians and coalition leaders, shifting blame for controversial decisions to the Court and obscuring their own relationship to those decisions may preserve electoral support and coalition unity without threatening active judicial review (Arnold 1990; Fiorina 1986; Weaver 1986). The conditions for the exercise of judicial review may be relatively favorable when judicial invalidations of legislative policy can be managed to the electoral benefit of most legislators. In the cases considered previously, fractious coalitions produced legislation that presidents and party leaders deplored but were unwilling to block. Divisions within the governing coalition can also prevent legislative action that political leaders want taken, as illustrated in the following case.

#### If they win their link then the plan isn’t announced till June

CSM 4 (Christian Science Monitor, 10-1-04 “Supreme Court term gets off to fast start”, http://www.csmonitor.com/2004/1001/p02s01-usju.html)

Argument sessions are set for two-week periods each month through April. Decisions are handed down throughout the year, with the most contentious and important often coming at term's end in June.

#### The public overwhelming supports the aff

Greenwald 9 (Glenn- former Constitutional and civil rights litigator and is the author of three New York Times Bestselling books: two on the Bush administration's executive power and foreign policy abuses, and his latest book, With Liberty and Justice for Some, an indictment of America's two-tiered system of justice. Greenwald was named by The Atlantic as one of the 25 most influential political commentators in the nation. He is the recipient of the first annual I.F. Stone Award for Independent Journalism, and is the winner of the 2010 Online Journalism Association Award for his investigative work on the arrest and oppressive detention of Bradley Manning, citing NYT/CBS Poll, June 18, “Overwhelming majority oppose preventive detention without charges”, http://www.salon.com/2009/06/18/detention/)

A new NYT/CBS News poll just released today asked a question designed to test support for Obama’s proposal to indefinitely detain Guantanamo detainees without charges — and it found overwhelming opposition to that plan (click to enlarge): The view that detainees should be charged with crimes or released is often depicted as the fringe “Far Left” view. Like so many views that are similarly depicted, it is — in reality — the overwhelming consensus view among Americans (68%). As is so often the case, it is the view depicted as the Serious Centrist position — the U.S. should keep people in cages for as long as it wants without charging them with any crime — that is the fringe view held by only a small minority (24%). While some may express surprise at the outcome of this question, it really shouldn’t be surprising: Americans are taught from childhood that one of the primary distinctions between free countries and tyrannies is that, in the former, the state lacks the power to imprison people without charging and convicting them of a crime. Is it really that surprising that an overwhelming majority of Americans see such charge-free imprisonment as wrong even when it comes to Guantanamo detainees, probably the single most dehumanized group on the planet?

**Passing popular items is key to the agenda**

**Page ‘9** (Polls can affect president's hold on party Updated 7/20/2009 11:44 PM | PRESIDENTIAL APPROVAL TRACKER — By William Couch, Michelle Price and Joshua Hatch, USA TODAY By Susan Page, USA TODAY

Even so, **a president's standing** at the moment is more than a matter of vanity. It **affects his ability to hold the members of his own party and persuade those on the other side to support him**, at least on the occasional issue. "**Approval ratings are absolutely critical for a president achieving his agenda**," says Republican pollster Whit Ayres. For Obama, the timing of his slide in ratings is particularly unhelpful: He's intensified his push to pass health care bills in the House and Senate before Congress leaves on its August recess. He'll press his case at a news conference at 8 p.m. Wednesday. His overall approval rating has dropped 9 percentage points since his inauguration in January, and his disapproval rate has jumped 16 points, to 41%. Trouble at home More people disapprove than approve of Obama on four domestic issues: the economy, taxes, health care and the federal budget deficit. He scores majority approval on handling Iraq, Afghanistan and foreign affairs. The biggest drop has been on his handling of the economy, down 12 points since February; his disapproval is up 19 points. The most erosion has come not from Republicans or independents but among his own Democrats. Support from conservative and moderate Democrats is down by 18 points. Another group in the party's political base — those earning $20,000 to $50,000 a year — had a drop of 15 percentage points, to 47%. That could reflect one reason why moderate Democratic senators and the fiscally conservative Blue Dog Democrats in the House are demanding more cost controls in the health care plan before they'll sign on. "**It's important if a president is trying to accomplish some big stuff legislatively**," **H.W. Brands, a professor at the University of Texas-Austin**, **says of the approval rating.** He was one of several presidential historians who sat down with Obama at a private White House dinner this month. "**Members of Congress are** somewhat **reluctant to tangle with a president who seems to have the backing of the** American **people**." At 55% overall, Obama's approval rating is a tick below that of George W. Bush at six months. It is well above Clinton and Gerald Ford, who was hammered for his pardon of Richard Nixon. At the top of the list is Harry Truman at 82% — buoyed by the end of World War II — followed by Lyndon Johnson, John Kennedy and Dwight Eisenhower. The fact that presidents from the 1950s and 1960s scored better than more recent ones could mean the public's assessments are getting tougher. "Mid-20th-century presidents had higher political capital and more stable political capital than presidents of the last 20 years," says Steven Schier, a political scientist who is studying presidential job approval since modern polling began in the 1930s. He wrote Panorama of a Presidency: How George W. Bush Acquired and Spent His Political Capital. Schier theorizes that the difference in ratings is due to the accelerating speed with which information is disseminated, the declining number of Americans firmly tied to a political party and a growing desire to see quick results. "There's less patience with presidents than there used to be," he says. What's popularity for? Savvy presidents understand that pursuing big policies will cost them popularity, Brands says. "**Presidents have to decide what their popularity is for**," he says. "Lyndon Johnson probably understood best that **political popularity is a wasting asset. You had to use it when you had it."** Johnson was inaugurated after Kennedy's assassination in 1963 and then crushed Republican Barry Goldwater in the 1964 presidential race. **LBJ used his high approval ratings** — **they** didn't fall below 60% for more than two years after his inauguration — and big majorities in the House and Senate **to enact his Great Society programs.**

#### Political capital theory isn’t true -

1. arm twisting fails
2. horse-trading isn’t real
3. Obama perceives it as such
4. He doesn’t try to use it

Kumar 13 (Anita, White House Correspondent for McClatchy Washington Bureau, Formerly worked for the Washington Post, 5/24, "After Failing on Gun Legislation Obama Learning Limits of His Power")

The cheering crowds that helped vault him into a second term in the White House mean little, if anything, back in Washington. A close look at his most recent defeat – a series of proposals intended to curb gun violence – shows that election popularity does not automatically translate into legislative success. Nor do campaign-like efforts to win a vote in Congress. Obama put more effort into the proposals than he has most issues, but he still suffered one of his biggest legislative defeats. The defeat illustrates a key truth – for all their power, presidents rarely succeed in manipulating votes on Capitol Hill. If anything, their abilities to twist arms have grown even more limited in recent years. Strained budgets leave them no extra money or pet projects to offer lawmakers in return for votes. And Obama’s detached personality and short history in Washington make him even less likely to wheel and deal with lawmakers. “There’s not much presidents can do to change votes. It’s mostly a myth,” said George Edwards, a presidential scholar at Texas A&M University. “It’s never been that way and it’s less so now.” His own election victory still fresh in his mind, Obama thought he had a clear path to bend Congress to his will after the horror of a mass shooting at an elementary school in Newtown, Conn., in December. His goal: the first significant new controls on guns in a generation. He tapped Vice President Joe Biden to lead a task force to examine gun laws. Biden spent a month speaking to more than 200 organizations on all sides of the issue, from crime victims to religious leaders, law enforcement organizations to gun manufacturers. Obama unveiled his sweeping package of executive actions and proposed legislation in January. He immediately began trying to sell it. By the standards of a campaign, he did everything right. Obama and Biden gave more than 30 speeches, interviews and online chats, oftentimes with families of gun victims at their side. First lady Michelle Obama made a rare foray into the debate by delivering an emotional speech in her hometown of Chicago. Obama’s political organization, Organizing for Action, held dozens of events, including candlelight vigils, rallies and meetings across the nation pushing the legislation. Obama flew Newtown families to Washington to lobby senators and turned over his radio address for the first time to the parents of a slain child. He did not win support for a proposal to renew a ban on assault weapons or to limit ammunition in clips. But support for greater background checks for gun purchases topped 90 percent in the polls. If it were an election with voters choosing whether to pass background checks, Obama would have won a landslide. But it was not an either-or choice. Congress could choose to do nothing. In March and April, Obama and Biden spoke to nearly 30 senators in 45 meetings or phone calls, according to the White House. The president stressed gun control proposals at a pair of dinners with Republican senators. In the final days before the vote, Obama’s chief of staff, Denis McDonough, visited an undecided Democratic senator, Heidi Heitkamp of North Dakota, but failed to convince her to vote for the background check legislation. New York Mayor Michael Bloomberg, founder of Mayors Against Illegal Guns and one of the nation’s most prominent gun control advocates, said he and Biden divvied up a list of senators to call in the hopes of convincing them that backing the legislation would not hurt them in their next election. “I’m thoroughly convinced that he and the president and this whole administration are committed as they could possibly be to help end the scourge of gun violence,” Bloomberg said. It wasn’t enough. Last month, the Democratic-controlled Senate defeated all significant gun proposals sought by Obama after some lawmakers bristled at being pushed by Obama. Obama, along with gun control advocates, insist they’ll try again, at least for the proposal to expand background checks to private and Internet sales. But the initial defeat underscored the limits of presidential power and suggested Obama faces major challenges for the duration of his presidency. “We actually thought he and the vice president handled this perfectly. They handled this quite deftly,” said Matt Bennett, co-founder of Third Way, a think tank, who served in the Clinton White House. “The gun issues are about as hard as it gets.” “The president worked really hard on this issue,” said Sen. Charles Schumer, D-N.Y. “He put political capital on the line. He made it one of his centerpieces of his State of the Union address and he went all around the country to try and rally support.” So what happened? For one, Obama and his allies often staged events in states that had been sites of mass shootings such as Illinois, Connecticut or Virginia, instead of states where senators were wavering on the issue. For another, his high-profile push may have cost as many votes as it won, given how polarizing modern presidents have become. Sen. John McCain of Arizona, one of four Republicans who voted for expanded background checks, said a better model of leadership would be Obama’s role on the proposed rewrite of the nation’s immigration laws. On that, Obama has expressed support but stayed out of the way to let members of Congress negotiate among themselves. “I think his role has been very appropriate, exactly appropriate,” he said of Obama’s approach on immigration. Finally, Obama might have relied more on personal talks with senators and less on the bully pulpit, presidential scholars said. “As soon as Obama jumps in, it makes it hard for Republicans to get behind it,” said Robert Spitzer, a political scientist at State University of New York at Cortland who has written extensively on gun control. “Obama could have done more on the inside game.” But Dan Gross, president of the Brady Campaign to Prevent Gun Violence, said the importance of public speeches is misunderstood. They aren’t, he said, designed to convince more Americans to favor proposals backed by Obama, but rather to convince them to lobby Congress. If the use of presidential rhetoric is misunderstood, the power of the presidency itself is often overstated. Even Lyndon B. Johnson, whose domineering personality and negotiating skills helped fuel his reputation for helping push through major legislation, benefitted from large Democratic majorities in Congress and broad popular support in the wake of John F. Kennedy’s assassination. There have been instances where presidents have helped get legislation passed, though they are the exception, not the rule. Bill Clinton offered to support Republicans who voted for the North American Free Trade Agreement. George W. Bush pushed through prescription drug coverage in a rare middle-of-the-night vote in the House of Representatives by making last-minute phone calls to lawmakers. But Obama’s effort to lobby or socialize with lawmakers has been sporadic, and some of his recent dinners came after the gun votes were all but locked up. Also, he has little to offer the lawmakers. While Washington was once a place where lawmakers openly traded votes with goodies from the White House – a president’s attendance at an event or a project in their home state – it’s not like that anymore. The practice of offering so-called earmarks – pet projects for lawmakers tucked into appropriations bills – fell out of favor following years of criticism by watchdog groups, constituents and even some lawmakers themselves. And even if it hadn’t, the money for many of those projects has dried up as the economy took a downturn and the government slashed budgets. “There’s not a lot he can give,” said John Burke, a political science professor at the University of Vermont who studies the presidency. Still, some say, Obama should have offered senators appointments to boards or behind-the-scenes assistance with fundraising – items that even senators from conservative states who want to keep their distance from the president might want. But in a recent wide-ranging news conference, Obama pushed back on the notion that he could get Congress to – as he called it – “behave.” “I can urge them to,” he said. “I can put pressure on them. I can, you know, rally the American people. . . . But ultimately they themselves are going to have to say, we want to do the right thing.”

#### Especially true for immigration

Johnson 10/24/13 (Fawn, National Journal Online, "Obama's Words Won't Advance Immigration")

President Obama called again for immigration reform on Thursday. He'll probably do it next week too. And the week after that.¶ But until supportive Republicans come up with a plan for convincing their colleagues to advance some piece of legislation, immigration reform will not--cannot--advance beyond the rhetoric the president employed on Thursday.¶ There is certainly a path forward. It's narrow but navigable.¶ Ask Florida's Mario Diaz-Balart, one of the few House Republicans who desperately wants to legalize undocumented immigrants and create a new visa system that will allow future arrivals to come here legally. He knows the sales pitch can't include the words "comprehensive" or "path to citizenship."¶ His strategy is to get half of the House Republicans--roughly 118 lawmakers--to tell House Speaker John Boehner they can live with some kind of adjustment of status (Note: not "legalization") for the unauthorized population.¶ Then, Diaz-Balart would see House leadership put a series of single-issue immigration bills on the floor--one on border security, one on agricultural workers, one on electronic verification, one on nonfarm guest workers, one on undocumented youth who were brought here as kids, and one on "a process where people can get right with the law." (Hint: That last one is legalization, but the words matter.)¶ "We're going to require floor time" for all those measures, Diaz-Balart said. "Time is our biggest hurdle."¶ It's entirely possible that not all of those bills would pass on the floor. (Certainly, lots of Republicans would chafe at anything that smacks of legalizing people who live here without papers.) But as long as a few of them pass, with Democrats' help, that's enough to get talks going with the Senate.¶ Boehner has already pledged to stay away from a conference committee with the Senate on a big bill, like the one the upper chamber passed in June that included a path to citizenship. But the speaker has left open the door to presenting the Senate with a package of smaller bills.¶ The people closest to the situation say House action on anything immigration-related is a path fraught with peril. But one thing is certain: It has nothing to do with what Obama says.

#### Winners win – and compromises fail- which answers their uniqueness warrant

Gergen 13 – CNN Senior Political Analyst

(David, “Obama 2.0: Smarter – but wiser?”, CNN, 1-19-2013, http://www.cnn.com/2013/01/18/opinion/gergen-obama-two/index.html)

On the eve of his second inaugural, President Obama appears smarter, tougher and bolder than ever before. But whether he is also wiser remains a key question for his new term. It is clear that he is consciously changing his leadership style heading into the next four years. Weeks before the November elections, his top advisers were signaling that he intended to be a different kind of president in his second term. "Just watch," they said to me, in effect, "he will win re-election decisively and then he will throw down the gauntlet to the Republicans, insisting they raise taxes on the wealthy. Right on the edge of the fiscal cliff, he thinks Republicans will cave." What's your Plan B, I asked. "We don't need a Plan B," they answered. "After the president hangs tough -- no more Mr. Nice Guy -- the other side will buckle." Sure enough, Republicans caved on taxes. Encouraged, Obama has since made clear he won't compromise with Republicans on the debt ceiling, either. Obama 2.0 stepped up this past week on yet another issue: gun control. No president in two decades has been as forceful or sweeping in challenging the nation's gun culture. Once again, he portrayed the right as the enemy of progress and showed no interest in negotiating a package up front. In his coming State of the Union address, and perhaps in his inaugural, the president will begin a hard push for a comprehensive reform of our tattered immigration system. Leading GOP leaders on the issue -- Sen. Marco Rubio, R-Florida, for example -- would prefer a piecemeal approach that is bipartisan. Obama wants to go for broke in a single package, and on a central issue -- providing a clear path to citizenship for undocumented residents -- he is uncompromising. After losing out on getting Susan Rice as his next secretary of state, Obama has also shown a tougher side on personnel appointments. Rice went down after Democratic as well as Republican senators indicated a preference for Sen. John Kerry. But when Republicans also tried to kill the nomination of Chuck Hagel for secretary of defense, Obama was unyielding -- an "in-your-face appointment," Sen. Lindsay Graham, R-South Carolina, called it, echoing sentiments held by some of his colleagues. Republicans would have preferred someone other than Jack Lew at Treasury, but Obama brushed them off. Hagel and Lew -- both substantial men -- will be confirmed, absent an unexpected bombshell, and Obama will rack up two more victories over Republicans. Strikingly, Obama has also been deft in the ways he has drawn upon Vice President Joe Biden. During much of the campaign, Biden appeared to be kept under wraps. But in the transition, he has been invaluable to Obama in negotiating a deal with Senate Minority Leader Mitch McConnell on the fiscal cliff and in pulling together the gun package. Biden was also at his most eloquent at the ceremony announcing the gun measures. All of this has added up for Obama to one of the most effective transitions in modern times. And it is paying rich dividends: A CNN poll this past week pegged his approval rating at 55%, far above the doldrums he was in for much of the past two years. Many of his long-time supporters are rallying behind him. As the first Democrat since Franklin D. Roosevelt to score back-to-back election victories with more than 50% of the vote, Obama is in the strongest position since early in his first year. Smarter, tougher, bolder -- his new style is paying off politically. But in the long run, will it also pay off in better governance? Perhaps -- and for the country's sake, let's hope so. Yet, there are ample reasons to wonder, and worry. Ultimately, to resolve major issues like deficits, immigration, guns and energy, the president and Congress need to find ways to work together much better than they did in the first term. Over the past two years, Republicans were clearly more recalcitrant than Democrats, practically declaring war on Obama, and the White House has been right to adopt a tougher approach after the elections. But a growing number of Republicans concluded after they had their heads handed to them in November that they had to move away from extremism toward a more center-right position, more open to working out compromises with Obama. It's not that they suddenly wanted Obama to succeed; they didn't want their party to fail. House Speaker John Boehner led the way, offering the day after the election to raise taxes on the wealthy and giving up two decades of GOP orthodoxy. In a similar spirit, Rubio has been developing a mainstream plan on immigration, moving away from a ruinous GOP stance. One senses that the hope, small as it was, to take a brief timeout on hyperpartisanship in order to tackle the big issues is now slipping away. While a majority of Americans now approve of Obama's job performance, conservatives increasingly believe that in his new toughness, he is going overboard, trying to run over them. They don't see a president who wants to roll up his sleeves and negotiate; they see a president who wants to barnstorm the country to beat them up. News that Obama is converting his campaign apparatus into a nonprofit to support his second term will only deepen that sense. And it frustrates them that he is winning: At their retreat, House Republicans learned that their disapproval has risen to 64%. Conceivably, Obama's tactics could pressure Republicans into capitulation on several fronts. More likely, they will be spoiling for more fights. Chances for a "grand bargain" appear to be hanging by a thread.

### AT: Econ Impact

#### No economic internal

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Legalization of the estimated 12 million unauthorized immigrants residing in the United States would lead to both **economic benefits and costs for the nation.** **Some arguments for comprehensive immigration reform suggest that legalizing immigrants will help end the current recession.** This seems unlikely. Our research suggests that earlier findings from the IRCA era may overstate anticipated earnings from a new reform, at least in the short run. ¶ We do expect occupational mobility to improve for formerly unauthorized immigrants with higher skill levels. When compared to the continuously legal, their occupational earnings growth was about 9 to 10 percent. These higher-skill unauthorized immigrants are more likely to be overstayers than crossers, but unauthorized immigrants with college degrees are found in both groups. **Lower-skill unauthorized immigrants are not likely to experience strong occupational mobility as a result of a legalization program** (although their occupational earnings grow over time in the United States). It will be important that any new legislation give legalized immigrants incentives to improve their skills, especially in English. ¶ The majority of studies investigating the effect of legalizing immigrants on natives’ earnings suggest that the effects are slightly negative for workers with low skill levels. Since we find no improvements in occupational mobility or wages for the lowest skill levels in the short run, we do not expect that legalizing immigrants would place any increased pressure on the wages of low-skill natives or low-skill legal immigrants. Tax revenues may increase, although **many unauthorized immigrants already file federal and state tax returns and pay sales and payroll taxes.** We found that about 90 percent of unauthorized immigrants filed federal tax returns in the year before gaining LPR status. We expect that increases in tax revenues resulting from increased earnings among the formerly unauthorized would be modest.

#### Even massive economic decline has zero chance of war

Robert Jervis 11, Professor in the Department of Political Science and School of International and Public Affairs at Columbia University, December 2011, “Force in Our Times,” Survival, Vol. 25, No. 4, p. 403-425

Even if war is still seen as evil, the security community could be dissolved if severe conflicts of interest were to arise. Could the more peaceful world generate new interests that would bring the members of the community into sharp disputes? 45 A zero-sum sense of status would be one example, perhaps linked to a steep rise in nationalism. More likely would be a worsening of the current economic difficulties, which could itself produce greater nationalism, undermine democracy and bring back old-fashioned beggar-my-neighbor economic policies. While these dangers are real, it is hard to believe that the conflicts could be great enough to lead the members of the community to contemplate fighting each other. It is not so much that economic interdependence has proceeded to the point where it could not be reversed – states that were more internally interdependent than anything seen internationally have fought bloody civil wars. Rather it is that even if the more extreme versions of free trade and economic liberalism become discredited, it is hard to see how without building on a preexisting high level of political conflict leaders and mass opinion would come to believe that their countries could prosper by impoverishing or even attacking others. Is it possible that problems will not only become severe, but that people will entertain the thought that they have to be solved by war? While a pessimist could note that this argument does not appear as outlandish as it did before the financial crisis, an optimist could reply (correctly, in my view) that the very fact that we have seen such a sharp economic down-turn without anyone suggesting that force of arms is the solution shows that even if bad times bring about greater economic conflict, it will not make war thinkable.

## Precedent DA

### Congress DA

#### No deference now--- lots of rulings

Flaherty 2011 (Martin Flaherty, Leitner Professor of International Law, Fordham Law School, “Judicial Foreign Relations Authority After 9/11,” NYLS Law Review, http://www.nylslawreview.com/wordpress/wp-content/uploads/2011/08/Flaherty-56-1.pdf)

For a time the forces of judicial isolationism appeared to have gained traction and ¶ may yet carry the day. It is all the more surprising, then, that the Supreme Court ¶ reasserted the judiciary’s traditional foreign affairs role in the areas in which its ¶ opponents assert deference is most urgent—national security, terrorism, and war. Yet ¶ so far, in every major case arising out of 9/11, the Court has rejected the position ¶ staked out by the executive branch, even when supported by Congress. At critical ¶ points, moreover, each of these rejections involved the Court reclaiming its primacy ¶ in legal interpretation, an area in which advocates of judicial deference have appeared ¶ to make substantial progress. The Court nonetheless rejected deference in statutory ¶ construction in Rasul v. Bush.¶ 16 It took the same tack with regard to treaties in ¶ Hamdan v. Rumsfeld.¶ 17 It further rejected deference in constitutional interpretation in ¶ both Hamdi v. Rumsfeld18 and Boumediene v. Bush.¶ 19 Together, these cases represent a ¶ stunning reassertion of the judiciary’s proper role in foreign relations. Whether ¶ reassertion will mean restoration, however, still remains to be seen.

#### Legitimacy is tanked already

Rosen 12 (Jeffrey – Legal Affairs Editor at New Republic, “The Supreme Court Has a Legitimacy Crisis, But Not For the Reason You Think “, 2012, http://www.tnr.com/article/politics/103987/the-supreme-court-has-legitimacy-crisis-not-the-reason-you-think)

Last week, a New York Times/CBS poll found that only 44 percent of Americans approve of the Supreme Court’s job performance and 75 percent say the justices are sometimes influenced by their political views. But although the results of the poll were striking, commentators may have been too quick to suggest a direct link between the two findings. In the Times article on the poll, for example, Adam Liptak and Allison Kopicki suggested that the drop in the Court's 66 percent approval ratings in the late 1980s “could reflect a sense that the court is more political, after the ideologically divided 5-to-4 decisions in Bush v. Gore and Citizens United.” At the beginning of his tenure, Chief Justice John Roberts said that he subscribed to a similar theory. “I do think the rule of law is threatened by a steady term after term after term focus on 5-4 decisions,” Roberts told me. But a new study by Nathaniel Persily of Columbia Law School and Stephen Ansolabehere of Harvard suggests that the relationship between the Court’s declining approval ratings and increased perceptions of the Court’s partisanship may be more complicated than the New York Times and the Chief Justice suggest. According to the study, Americans already judge the Court according to political criteria: They generally support the Court when they think they would have ruled the same way as the justices in particular cases, or when they perceive the Court overall to be ruling in ways that correlate with their partisan views. If this finding is correct, the most straightforward way for the Court to maintain its high approval ratings is to hand down decisions that majorities of the public agree with. And, like its predecessors, the Roberts Court has, in fact, managed to mirror the views of national majorities more often than not. In a 2009 survey, Persily and Ansolabehere found that the public strongly supported many of the Supreme Court’s recent high-profile decisions, including conservative rulings recognizing gun rights and upholding bans on partial birth abortions, as well as liberal rulings upholding the regulation of global warming and striking down a Texas law banning sex between gay men. But if the public agrees with most of the Court's decisions, why is it more unpopular than ever? Part of the answer has to do with the fact that there are a handful of high profile decisions on which the Court is out of step with public opinion, including the Kelo decision allowing a local government to seize a house under eminent domain and the Boumediene case extending habeas corpus to accused enemy combatants abroad, and recent First Amendment decisions protecting unpopular speakers, such as funeral protesters, manufacturers of violent video games, and corporations (in the Citizens United case.) All of these decisions were unpopular with strong majorities of the public. But Persily and Ansolabehere also found that even decisions that closely divide the public can lead to a decrease in the Court’s approval rating over time, by increasing the perception among half the public that the Court is out of step with its partisan preferences. Bush v. Gore is perhaps the clearest example. In the short term, the Court’s overall approval ratings didn’t suffer: Republicans liked the decision, while Democrats didn’t, and the two effects canceled each other out. But Persily and his colleagues found that ten years later, Bush v. Gore continues to define the Court for many citizens, destroying confidence in the Court among Democrats while reinvigorating it among Republicans. Since an important component of the Court’s overall approval rating is whether Americans perceive themselves to be in partisan agreement with the Court as an institution, Bush v. Gore has led to a statistically significant decline in approval among Democrats as a whole.