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**Contention 1 – Extraditions**

**Scenario 1 – Terrorism**

***Initially note – the President will never choose to use detention authority for domestic captures – but keeping the option available ensures confusion and the misperception that it is a realistic option***

Robert M. **Chesney**, Nonresident Senior Fellow, Governance Studies @ Brookings and Benjamin Wittes, Senior Fellow, Governance Studies @ Brookings, “Protecting U.S. Citizens’ Constitutional Rights During the War on Terror”, Testimony To Congress, May 22nd 20**13**, http://www.brookings.edu/research/testimony/2013/05/22-war-on-terror-chesney-wittes (BJN)

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

***This perception results in real consequences - The threat that the US is willing to violate article 6 of the US-EU Extradition treaty vis-à-vis the NDAA guarantees terror suspects won’t be extradited to the United States – undermining the ability of the US to bring them to justice***

Stacy K. **Hayes**. “INTERPRETING THE NEW LANGUAGE OF THE NATIONAL DEFENSE AUTHORIZATION ACT: A POTENTIAL BARRIER TO THE EXTRADITION OF HIGH VALUE TERROR SUSPECTS”, 58 Wayne L. Rev. 567, Summer 20**12** (BJN)

**Article 6** most **closely parallels U.S. Constitutional Amendment V in providing for the right to a fair trial and due process of law for the criminally charged**. n42 Article 6 includes inter alia the right to a fair trial [\*574] by an independent and impartial tribunal, the presumption of innocence, that legal assistance will be provided in the event the accused cannot afford to defend himself, and the right to examine the evidence against him. n43 Modern extradition cases demonstrate that the American view on capital punishment, and whether such punishment amounts to inhuman and degrading (or cruel and unusual) punishment, differs greatly from the European view so much so that it is a barrier to extradition. **To date, Article 6 and whether or not American courts provide a fair trial has not proven to be a barrier to extradition because European courts are persuaded that American courts offer more than adequate due process for those on trial**. n44 ***Military tribunals however, present a different concern.*** **Tribunals pose a threat to extradition in that terror suspects may claim Article 6 violations, arguing that a trial by military tribunal deprives them of due process and denies them a right to a fair trial.** D. Do Military Commissions Violate Article 6? **The past decade highlighted the difficulties of achieving success within the military commission process and cast a dark shadow of doubt** [\*575] **as to their efficacy**. n45 **The examples of al-Fawwaz and the other terror suspects currently fighting extradition demonstrate that the European community expects assurances that the *U*nited *S*tates will try these suspects in regularly constituted courts and not by military commissions.** n46 **The past ten years have produced *no evidence*** **that the European community will now be more comfortable with trial by military commission than it was before**. n47 It is safe to assume that **if the United States wants to extradite these terror suspects, it will** ***have to provide*** the same **assurances, namely a promise of trial by regularly constituted courts** with no prospect of the death penalty ***and avoidance of detention by the military***. Military commissions have a long history in the United States, reemerging at the forefront of the political landscape after the September 11th terrorist attacks when President George W. Bush deemed terror suspects enemy combatants to be tried by military tribunals instead of in civilian courts. n48 The prosecution of these cases was soon mired in protracted legal challenges, and in 2006, President Bush signed the Military Commissions Act (MCA) to authorize and establish procedures for military tribunals in response to the Supreme Court decision in Hamdan v. Rumsfeld. n49 Following Hamdan, pro-military tribunal advocates fought hard to pass legislation limiting terror suspects solely to military tribunals, arguing inter alia that federal law enforcement and criminal procedures were inadequate to garner much needed intelligence from detained suspects and that the American public would not stand for terrorist trials in civilian courts that are essentially in their own backyards. n50 Those opposed to limiting terror suspects to military [\*576] tribunals encompassed a wide variety of groups including law enforcement officials, human rights advocates, academics, and legal professionals. n51 Law enforcement argued primarily that such a limitation would burden the United States unnecessarily in the fight against terrorism; a fight that should use all available assets, including the FBI and intelligence agencies. n52 Human rights advocates, academics, and legal professionals argued that in fighting the war on terror, it was critical the United States abide by its long-standing commitments to due process of law and to international humanitarian law, such as the Geneva Conventions. n53 In 2009, President Barack Obama signed into law a revised version of the MCA intended to address concerns that the 2006 MCA ran afoul of the Geneva Conventions and the U.S. Constitution. n54 However, even with these revisions, the 2009 MCA failed to bring the military tribunal system into compliance with international human rights law. n55 For instance, the 2009 MCA did nothing to revise the controversial Section 7 of the 2006 MCA, which means Section 7 continues to strip the federal court system of its capacity to review petitions for writs of habeas corpus. n56 Unsatisfied that the 2006 and 2009 MCAs went far enough, and despite the U.S. Supreme Court's ruling in Hamdan, some conservative members of Congress continued to fight to limit trials of terror suspects exclusively to military tribunals, thereby cutting the judiciary entirely out of the terror suspect trial loop. n57 Meanwhile, the federal courts spent the [\*577] past decade successfully trying and convicting hundreds of suspects, n58 perhaps demonstrating the irrational fear of the pro-military tribunal advocates that those who have their day in court may not be convicted. In addition to these convictions, the Supreme Court granted certiorari to four Guantanamo cases, subsequently finding in favor of the detainees, n59 thereby demonstrating the full range of the federal court system. On December 31, 2011, these failed attempts to limit trials to military tribunals finally met measured success when President Obama signed the NDAA into law. n60 **Subtitle D of the NDAA, entitled "Counterterrorism" includes long-sought-after provisions designed to limit terror suspect trials to military tribunals, effectively by-passing the federal court system**. n61 **In particular, Sections 1021 and 1022 address the authority and action required by the U.S. military to detain terror suspects indefinitely pending disposition under the law of war.** n62 Even with the success of passage, **these provisions were modified enough from their original hard-lined proposals to result in merely codifying existing practices under the 2001 Authorization for Use of Military Force** (AUMF) and the 2006 and 2009 MCAs. n63 As this Note reveals, **these modifications are crucial because they allow the United *States to continue to provide assurances necessary to secure the extradition of known terrorists***. Viewed another way, **this codification greatly hampers both federal law enforcement and the Obama Administration in their respective roles in the fight against terrorism**, ***making it more difficult for the United States to treat terror suspects on a case-by-case basis.*** **In order to bring some of the most sought-after terrorists to justice, the *U*nited *S*tates must continue to provide and uphold** ***assurances*** **to her European allies that the terror suspects being extradited to the United States will not be subjected to inhuman or degrading treatment and will be given a fair and impartial trial.** **Without these assurances, the U.K. and Europe will not likely** [\*578] **extradite the currently detained high-value terror suspects to the United States.** 1. The Procedural Shortcomings Amount to a Lack of Due Process, and the 2009 MCA Falls Short in Correcting Deficiencies As mentioned earlier, the Obama Administration sought many changes to the highly criticized 2006 MCA. But even with the 2009 modifications, the use of military tribunals under the MCA and AUMF still fails to meet international human rights standards for a fair and impartial trial, most notably because of the lack of independence and impartiality. n64 The importance of a tribunal being independent and [\*579] impartial is such that it "requires that judges be both de facto impartial and independent as well as appear to be impartial and independent." n65 Two more glaring deficiencies in military tribunals include the lack of the presumption of innocence and denial of access to the writ of habeas corpus. In Combatant Status Review Tribunals (CSRT), which are precursors to a detainee's trial by military commission, instead of a presumption of innocence favoring the defendant, there is a rebuttable presumption in favor of the government's evidence. n66 CSRTs provide a rebuttable presumption that the government's evidence submitted to determine whether the detainee is an enemy combatant is genuine and accurate. n67 To date, detained persons held in the United States have relied on habeas corpus to show that their detention is not in accord with due process, n68 but this important check still does not exist for detainees held under U.S. control outside of the United States. n69 Other procedural deficiencies with the military commission process include deprivation of the right to counsel (particularly in the beginning stages), the right to be informed (with most restrictions to information surrounding classified information, with classification being determined by the prosecution), the right to be present (the prosecution may exclude the detainee from his own hearing for reasons of national security, as determined by the prosecution), the requirement for equality (detainees are usually denied requests to call witnesses and in 89% "of the tribunals, no evidence whatsoever was presented on the detainee's behalf"), and the admittance of coerced evidence. n70 The 2009 MCA made slight improvements to some of these deficiencies by stating that "the defense shall have a reasonable opportunity to obtain witnesses and evidence," and by entirely barring the "use of statements obtained through cruel, inhuman or degrading treatment." n71 However, the new witness and evidence requirements of the 2009 MCA fall short of meeting the requirements of equal opportunity among the parties. In addition, the bar to improperly obtained statements [\*580] does not apply to former CSRTs. n72 Ensuring due process, access to counsel, and access to all proceedings and all evidence are critical guarantees that must be provided to offer a fair trial. n73 As it stands, military commissions, despite some marked improvements, are not likely to meet the standards necessary to establish the right to a fair trial as set forth in Article 6 of the Convention. 2. European Court Insight on Article 6 Compliance What are the expectations of the European Court relative to Article 6 compliance? In twenty-two years of jurisprudence handed down from the European Court since Soering, the court never found an expulsion, until 2012, that violated Article 6 despite the claim's repeated assertion. n74 As Soering established, the European Court demands a showing of a "real risk of a flagrant denial of justice" to invoke a claim under Article 6. n75 This means that the claimant must meet a higher burden under Article 6 than Article 3; but in "assessing whether this test has been met, the Court considers that the same standard and burden of proof should apply as in Article 3 expulsion cases." n76 The court stated that the Article 6 test is a "stringent test of unfairness" and that a "flagrant denial of justice goes beyond mere irregularities or lack of safeguards in the trial procedures such as might result in a breach of Article 6 if occurring within the Contracting State itself." n77 In defining flagrant denial of justice, the court noted that it is: Synonymous with a trial which is manifestly contrary to the provisions of Article 6 or the principles embodied therein. Although it has not yet been required to define the term in more precise terms, the Court has nonetheless indicated that certain forms of unfairness could amount to a flagrant denial of justice. These have included: conviction in absentia with no possibility subsequently to obtain a fresh determination of the merits of the charge; [\*581] a trial which is summary in nature and conducted with a total disregard for the rights of the defence; detention without any access to an independent and impartial tribunal to have the legality of the detention reviewed; and deliberate and systematic refusal of access to a lawyer, especially for an individual detained in a foreign country. n78 On January 17, 2012 in Othman (Abu Qatada), the court determined that evidence obtained by torture would amount to a flagrant denial of justice invoking Article 6. n79 The court went further to state that similar considerations may apply in a case that presented evidence obtained by other forms of ill-treatment that fall short of torture as well. n80 In addition to the guidelines for Article 6 that Othman now provides, the European Court previously made clear that the guarantees of a right to a fair trial apply to all types of judicial proceedings, even those deemed administrative. n81 Moreover, the court has stated that special proceedings, such as military court-martial, may "be subject to Article 6 scrutiny because of the serious criminal nature of the crime with which the defendant had been accused." n82 Thus, it is safe to assume that military tribunals, as well as their administrative precursors, CSRTs, are very likely to amount to a flagrant denial of justice under Article 6. III. Analysis of How the NDAA Affects Extradition **Understanding how the European Court views Article 6 compliance and the current perceptions of the U.S. military tribunal system, one can surmise that the European Court is** ***likely to block extradition*** if a suspect will face trials in a military tribunal. Current cases demonstrate how [\*582] **terror suspects** have **successfully employed Article 3 to deter extradition**, and **forecast the future use of Article 6**. n83 These cases indicate that **it would be wise for the United States to** continue to **grant assurances that terror suspects will not be at risk of** the death penalty, **military detention, or trial by military commission**. **How the U.S. government interprets and applies the language of the NDAA, specifically Sections 1021 and 1022**, n84 ***will prove pivotal*** **in the fight to win extradition of these known terror suspects and ultimately bring them to justice.** A. Recent Extradition Cases Recent cases of terror suspects invoking Article 3 to fight extradition to the United States exemplify how the European Court may respond to Article 6 claims. These cases provide insight into how the United States should proceed with regard to statutory interpretation of the NDAA, particularly when requesting extradition of terror suspects. 1. Al-Fawwaz, Bary, and Eidarous Have Successfully Thwarted Extradition Since 1998 Using Article 3 Three terror suspects, who were arrested in London in the late 1990s, have successfully fought extradition for over a decade using Article 3. Khalid al-Fawwaz, alleged not only to be an al-Qaeda member, but also one of Osama bin Laden's key lieutenants, n85 was indicted for the 1998 U.S. embassy bombings in East Africa which killed 224 people and injured more than 4,500. n86 Adel Abdel Bary and Ibrahim Eidarous, both alleged members of Egyptian Islamic Jihad, operated alongside al-Fawwaz in the London al-Qaeda cell, n87 and were subsequently arrested "on an extradition warrant following a request from the United States" in 1999 for their involvement in the bombings. n88 For several years, al-Fawwaz, Bary, and Eidarous successfully fought extradition through a [\*583] series of appeals within the U.K. n89 In 2008, the U.K. Secretary of State issued warrants for their extradition to the United States, finding that the U.S. government met the prima facie case and provided reliable assurances. n90 Thus, the men would not be at "risk of the death penalty, indefinite detention or trial by a military commission." n91 Eidarous was diagnosed with advanced cancer, put on house-arrest, and subsequently died in 2008. n92 In 2009, al-Fawwaz and Bary began their final appeal against the 2008 findings of the Secretary of State, with the British High Court of Justice finding no breach of Article 3, and al-Fawwaz's claim for breach of Article 6 unsubstantiated. n93 They soon appealed to the European Court and the case is still pending. n94 [\*584] **If the United States does not uphold** the original **assurances provided in 2004, the European Court could deny extradition of** these **long-sought-after terror suspects, destroying an otherwise perfect record of honoring the assurances the United States has provided to the U.K. and her European allies**. **The implications would disrupt the ultimate goal of bringing wanted terrorists to justice*. It is imperative*** **that the *U*nited *S*tates maintain the assurances** as provided in 2004 **and *demonstrate*** **that the new statutory language of the NDAA does not impede the President from dealing with each terror suspect case on an individual basis** **and as necessary to continue to effectively fight the war on terrorism.**

***The threat is not hyperbole – the EU has already denied extradition on the basis of indefinite detention***

Peter **Margulies** of the Roger Williams School of Law, “Peter Margulies on the NDAA and Extradition”, December 20**11**, http://www.lawfareblog.com/2011/12/peter-margulies-on-the-ndaa-and-extradition/ (BJN)

Even more seriously, **making military prosecution the rule** and Article III courts the exception **would ramp up anti-extradition efforts in Europe and elsewhere**. **Extradition** to face criminal charges in Article III courts **already faces severe obstacles, as the United Kingdom case of Abu Hamza demonstrates. Abu Hamza,** whom the US has charged with recruiting terrorists for Al Qaeda, has **argued that the United States would impose a prison term disproportionate to his crimes** and that confinement in a supermax facility would violate the European Convention on Human Rights’ bar on inhuman and degrading treatment. In Babar Ahmad v. UK, the European Court of Human Rights held that Abu Hamza and others had raised “serious questions” on the legality of their extradition. Even after significant procedural reforms and the recent installation of the widely respected General Mark Martins as head of the prosecution office at the commissions, **transnational tribunals will** probably **view military commissions as offering fewer procedural rights and stiffer sentences than Article III courts. This will make extradition an even tougher sell in those tribunals,** whose jurisprudence has developed as a push-back against Bush administration policies such as coercive interrogation implemented in the immediate aftermath of September 11. **Particular countries, such as Germany, go even further, expressly barring extradition when the defendant faces trial in an “extraordinary” court or for a “purely military” offense.** **Arguments that military commission jurisdiction fell within either or both of these bars may take years to resolve.** Moreover, **advocates for these detainees and others have mobilized substantial political support in Britain against extradition.** Opposing extradition is already the cause du jour for some European celebrities. **Political opposition will strengthen** if military commissions became the rule, rather than the exception.In some cases, **American investigators may not even be able to get their foot in the door of the cell of a detainee held abroad** when military commissions are the norm. As Assistant Attorney General Monaco suggested at last week’s ABA conference, **the specter of military commissions may shut off access to suspected terrorists, and may hinder real-time information- sharing by our allies. Prompt detection and investigation of terrorist plots *could be the NDAA’s unintended first casualty.***

***Countries would literally have to let these terror suspects go***

David S. **Kris**, Assistant Attorney General for National Security at the U.S. Department of Justice

from March 2009 to March 2011, “Law Enforcement as a Counterterrorism Tool”, 6/15/20**11** http://jnslp.com//wp-content/uploads/2011/06/01\_David-Kris.pdf (BJN)

***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.**

***This will make Europe a safe-haven for terrorist operations***

Daniel J. **Sharfstein**, Associate, Strumwasser & Woocher, Santa Monica, California, “European Courts, American Rights: Extradition and Prison Conditions”, 67 Brooklyn L. Rev. 719, Spring 20**02** (BJN)

A. The Increasing Importance of Extradition **The *"vast majority"*** **of people suspected of involvement in the September 11 terrorist attacks have been arrested or are being sought overseas**. n13 Although the United States has [\*725] actively bypassed formal extradition with secret, informal procedures in numerous cases of suspected terrorists, n14 **the war on terrorism shows *unequivocally*** **what has become increasingly true over the past two decades**: that ***extradition is an essential tool for prosecutors in the United States***. **The rising tide of people and goods across borders and the ascendance of global technologies** such as the Internet **have blurred the line between domestic and international criminal enforcement. From terrorism to drug trafficking** to price fixing, multinational conspiracies have taken root in the fertile soil of an ever-smaller world. n15 For technology-driven crimes such as telemarketing fraud, **international boundaries often separate** [\*726] **perpetrators and victims**. n16 Even when criminals live in the same country as their victims, more **fugitives from justice have managed to flee across national borders.** n17 Since the Department of Justice's Office of International Affairs was created in 1979 to facilitate and rationalize extradition procedures, n18 the number of extradition requests made and received by the United States has skyrocketed. n19 Well before September 11, **American policy makers had emphasized the rising threat of international crime and the *crucial role* of extradition in fighting it.** n20 In October 1995, President Bill **Clinton issued Presidential Decision Directive 42**, ordering U.S. government agencies to intensify international crime-fighting efforts, and in a speech to the United Nations General Assembly, **he urged "every country" to endorse "a declaration which would first include a no sanctuary pledge, so that we could say together to organized criminals, terrorists, drug traffickers and smugglers, you have nowhere to** [\*727] **run and nowhere to hide**." n21 In an October 1997 memorandum to all U.S. Attorneys, Attorney General Janet Reno praised federal prosecutors for "going the extra mile" to obtain **the** international extradition of fugitives. "Your **need to obtain the international extradition of fugitives [is] more important than ever**," she wrote. n22 Six months later, a report developed by the Departments of Justice, State, and Treasury outlined a comprehensive strategy to fight international crime. In a chapter entitled "Denying Safe Haven to International Criminals," the report described how the Departments of State and Justice were aggressively renegotiating extradition treaties to "seek[] the broadest possible extradition obligations . . . ." n23

***European prosecution will be the root cause***

David B. **Rivkin**, Jr., Associate Fellow of The Nixon Center and Lee A. Casey, partner in the Washington, DC office of Baker & Hostetler LLP., “A House Divided? War, Extradition, and the Atlantic Alliance, PART II”, The National Interest, October 9th 20**02**, http://nationalinterest.org/article/a-house-divided-war-extradition-and-the-atlantic-alliance-part-ii-2137?page=1 (BJN)

Indeed, one can argue that, given the nature of this conflict, law enforcement operations have become just another version of low-intensity warfare. **The current** idiosyncratic **European attitudes do more than just impede the U.S. ability to successfully prosecute this conflict; they pose** ***a major threat to European security*** as well. **To the extent that European attitudes towards extradition remain unchanged** while the U.S. continues to uproot various terrorist support structures around the world, ***Europe might well become a magnet for Al-Qaeda***, the Taliban **and its terrorist allies**. **This is, in fact, a perennial feature of warfare**; when a success by one side on a particular front causes the enemy to shift his resources to the less well defended areas. Unrealistic **European law-enforcement attitudes may well make European capitals more attractive to terrorists than the warrens of Mogadishu or the slums of Sudan**. In fact, **recent investigations by German and Dutch authorities have already uncovered dozens of Al-Qaeda cells and demonstrated that many of the September 11 operatives spent considerable amounts of time in Europe.**

***A European safe-haven allows terrorists to target the United States***

Julia C. **Whitehair**, Master of Arts in Security Studies graduate thesis, “A PLACE TO HIDE: POPULAR SUPPORT AND TERRORIST SAFE HAVENS”, Nov 19th 20**10**, http://repository.library.georgetown.edu/bitstream/handle/10822/553428/WhitehairJuliaC.pdf?sequence=1 (BJN)

Given U.S. efforts to shut down traditional safe havens and the attention given in recent years to homegrown terrorist cells in the **United States** and Europe, **policymakers likely will have to confront questions about safe havens within healthy states**. **Terrorism experts** and policymakers with counterterrorism portfolios **have already raised Europe as a persistent source of terrorism *targeting the United States*. Michael Scheuer** in his testimony before members of Congress **called the European Union “the earth’s single largest terrorist safe haven” and “a major, consistent, and invulnerable source of terrorist threat to the United States**.”5 Former Director of Central Intelligence Porter Goss in 2005 and former U.S. Coordinator for **Counterterrorism Ambassador Harry A. Crumpton** in 2006 **testified about the persistent threat to the United States from terrorists based in Europe**.6 Senators Lieberman and Collins of the Senate Committee on Homeland Security and Governmental Affairs spoke of an increase in homegrown terror cells and attacks with roots in the United States.7

***European terrorist attacks on American targets ensure massive retaliation – generic neg defense doesn’t apply***

**VOA** (Voice of America), “US Concerned with Islamic Extremism in Europe”, October 31st 20**09**, http://www.voanews.com/articleprintview/319848.html (BJN)

The State Department's coordinator for counter-terrorism, Henry Crumpton, told the Senate Foreign Relations Committee, **Washington has good reason to worry about Islamic extremism in Europe**, following the Sept. 11, 2001 terrorist attacks on the United States. "**The terrorist cell that conducted the 9/11 attacks did much of its planning from a base in Europe**," said Henry Crumpton. "Five years later, and despite many counter-terrorism successes, **violent Islamic extremism in Europe continues to pose a threat to the national security of the United States and our allies**." Recent incidents in Europe linked to Muslim extremists include bombings in Madrid and London. In his testimony, Assistant Secretary of State Daniel Fried said the majority of Western Europe's more than 15 million Muslims are moderate. But he said he believes Muslims in Europe find Islamic extremism increasingly attractive because they are alienated from European societies in which they live. "Many marginalized Muslims, who cross the threshold into extremism, seem to be driven by a sense of spiritual alienation," said Daniel Fried. "They're less concerned than were their parents with economic survival in Europe. Many of Europe's second and third generation Muslims seem to long for spiritual fulfillment." Disaffected Muslims, especially young people, showed their numbers in protests last year in France. Fried adds that he believes many of Europe's Muslims who feel marginalized do not find their needs met in local, mainstream institutions. "Foreign financiers and religious activists, often from abroad, fill this spiritual vacuum, by building local mosques, and supplying them with extremist imams," he said. "Disconnected from often tolerant traditions of their families' original homelands, these Muslims are susceptible to foreign propaganda, and sermons that preach narrow and hateful interpretations of Islam." Although these officials devoted most of their testimony to discussing integration problems that exist in Europe, Senator George Allen indicated one reason why this is also an important issue for the United States. "While it may not be so obvious, though, **there are implications for the United States**," said Senator Allen. "**The United States and Europe enjoy an open travel arrangement, making it simple for anyone carrying a European country's passport to come to the United States on a day's notice. Thus, how Europe handles this issue is important for our own homeland security**." Robin Niblett, of the Center for Strategic and International Studies, a public policy organization, said **terrorists do not have to come to the United States to do damage to U.S. interests**. "Muslims, extremists, do not need to travel to the United States to be able to undertake attacks," said Robin Niblett. "**They can take on American targets in Europe**. They can take American targets in Iraq. In essence, **they are getting their fill of attacking America, and proving they can, without having to come over here**." Meanwhile, Niblett says, he is worried that the level of frustration and alienation in many of the Muslim communities in Europe is still strong and, therefore, dangerous. "**The risk of another terrorist attack is real,"** he noted. **"If another attack happens**, ***the backlash will be severe***. Even without another attack, levels of alienation are going to continue, and removing them will be a long process." Niblett says he believes this process of dealing with Islamic extremism in Europe is just beginning. And, he adds, Western governments are not, in his words, "totally in control of the agenda to try to resolve it."

***And, an attack on the EU spurs NATO strikes against Pakistan***

Tony **Karon**, Wednesday, Oct. 06, 20**10**, Why a Terrorist Strike on Europe Risks Geopolitical Meltdown, [http://content.time.com/time/world/article/0,8599,2023847,00.html](http://content.time.com/time/world/article/0%2C8599%2C2023847%2C00.html), jj

Why a ***Terrorist Strike on Europe Risks Geopolitical Meltdown***

**Bad as they are, right now, relations between the U.S. and Pakistan could get a whole lot worse if a feared Mumbai-style terrorist plot materializes in Europe**. One reason for the fraying of ties is the dramatic escalation in the Obama Administration's drone war in Pakistan's tribal areas. September saw more missiles fired from drone aircraft than any month on record, purportedly aimed at disrupting possible terrorist attacks planned for European cities — fear of which has also prompted travel alerts by the U.S. and allied governments. And the campaign has not relented. Pakistani officials claim that eight suspected militants of German citizenship were killed in a drone strike on a Waziristan mosque on Monday. The drone attacks have fueled outrage on Pakistan's streets, and presumably within its armed forces too. The anger has only grown with news of Pakistani soldiers killed as the U.S. pursues Afghan Taliban fighters fleeing into Pakistan (last Thursday, such a chase resulted in the death of three Pakistani soldiers). Pakistani authorities appeared to be sending out a warning by closing their Khyber Pass border with Pakistan, choking off the main supply line to the NATO mission in Afghanistan. And militants kept up their own retaliation on Wednesday by destroying NATO-contracted fuel trucks for the sixth time in a week. But **tensions could rise from both ends, should a successful attack be staged in Europe**. Explaining the recent terrorism-threat alerts and travel advisories announced for European cities, security **officials have been widely quoted in the media suggesting that intelligence points to a coordinated attack, originating in Pakistan, that would see gunmen deployed to wreak havoc on the streets of major European cities in the way that they did in the Indian city of Mumbai two years ago**. Drone attacks have reportedly been stepped up in the hope of disrupting that plot, allegedly revealed by a captured German of Afghan descent. **Following the Mumbai massacre**, carried out by the Pakistan-based jihadist group Lashkar-e-Taiba, **the U.S. had to work hard to restrain India from retaliating by bombing facilities in Pakistan used by the various Kashmir jihadist groups long cultivated by Pakistani intelligence — mindful of the danger that such an action could provoke a war between the nuclear-armed neighbors**. **But if Western cities were the target of a successful strike, it would be NATO that would be under pressure to respond**. Indeed, according to Bob Woodward's book Obama's Wars, Obama's National Security Adviser General Jim Jones told Pakistan's President Asif Ali Zardari that if Faisal Shahzad (the Pakistani-American sentenced to life imprisonment in New York City on Tuesday) had succeeded in his attempt to bomb Times Square last year, **the U.S. "would [have] been forced to do things Pakistan would not like**." Woodward wrote that retribution would entail the bombing of "up to 150 known terrorist safe havens inside Pakistan." If Jones' warning, as reported by Woodward, is to be taken seriously, **it's not hard to deduce that a series of attacks in Europe that emanate from Pakistan would force a similar response.**

***Causes US China War***

Webster G. **Tarpley 11**, Ph.D., US, Pakistan Near Open War; Chinese Ultimatum Warns Washington Against Attack, <http://tarpley.net/2011/05/21/us-pakistan-near-open-war-chinese-ultimatum-warns-washington-against-attack/>

**China has officially put the United States on notice that Washington’s planned attack on Pakistan will be interpreted as an act of aggression against Beijing**. **This blunt warning represents the first known strategic ultimatum received by the United States in half a century**, going back to Soviet warnings during the Berlin crisis of 1958-1961, **and indicates the grave danger of general war growing out of the US-Pakistan confrontation**. “**Any Attack on Pakistan Would be Construed as an Attack on China**” Responding to reports that China has asked the US to respect Pakistan’s sovereignty in the aftermath of the Bin Laden operation, Chinese Foreign Ministry spokesperson Jiang Yu used a May 19 press briefing to state Beijing’s categorical demand that the “sovereignty and territorial integrity of Pakistan must be respected.” According to Pakistani diplomatic sources cited by the Times of India, **China has “warned in unequivocal terms that any attack on Pakistan would be construed as an attack on China**.” This ultimatum was reportedly delivered at the May 9 China-US strategic dialogue and economic talks in Washington, where the Chinese delegation was led by Vice Prime Minister Wang Qishan and State Councilor Dai Bingguo.1 **Chinese warnings are implicitly backed up by that nation’s nuclear missiles, including an estimated 66 ICBMs, some capable of striking the United States, plus 118 intermediate-range missiles, 36 submarine-launched missiles, and numerous shorter-range systems**. Support from China is seen by regional observers as critically important for Pakistan, which is otherwise caught in a pincers between the US and India: “If US and Indian pressure continues, Pakistan can say ‘China is behind us. **Don’t think we are isolated, we have a potential superpower with us,’” Talat Masood, a political analyst and retired Pakistani general, told AFP**.2

***Global nuclear war***

**Hunkovic, 09** – American Military University (Lee, “The Chinese-Taiwanese Conflict,” <http://www.lamp-method.org/eCommons/Hunkovic.pdf>)

A war between China, Taiwan and the United States has the potential to escalate into a nuclear conflict and a third world war, therefore, many countries other than the primary actors could be affected by such a conflict, including Japan, both Koreas, Russia, Australia, India and Great Britain, if they were drawn into the war, as well as all other countries in the world that participate in the global economy, in which the United States and China are the two most dominant members. If China were able to successfully annex Taiwan, the possibility exists that they could then plan to attack Japan and begin a policy of aggressive expansionism in East and Southeast Asia, as well as the Pacific and even into India, which could in turn create an international standoff and deployment of military forces to contain the threat. In any case, if China and the United States engage in a full-scale conflict, there are few countries in the world that will not be economically and/or militarily affected by it. However, China, Taiwan and United States are the primary actors in this scenario, whose actions will determine its eventual outcome, therefore, other countries will not be considered in this study.

***Independently – Europe is a prime location for terror cells to construct a nuclear weapon – multiple reasons***

Charles **Ferguson**, scientist-in-residence based in the Washington DC office of the Center for Nonproliferation Studies, Monterey Institute of International Studies, “The threat of nuclear terrorism in Europe”, 02-06-20**04**, http://www.eurozine.com/articles/2004-06-02-ferguson-en.html (BJN)

**A nuclear terrorist act anywhere is a nuclear terrorist act everywhere**. In particular, a terrorist-detonated nuclear weapon in a European city will impact on American security. Conversely, a terrorist-constructed crude nuclear bomb exploded in an American city will have repercussions for European security. Nuclear weapon explosions are the most devastating form, or face, of nuclear terrorism. **The four recognized faces of nuclear terrorism are**: **Terrorists could seize an intact nuclear weapon** and bypass its security features, thus activating it. **Terrorists could acquire,** through theft, purchase, or diversion, weapons-**usable fissile material** (either highly enriched uranium or plutonium) and build a crude nuclear weapon, or improvised nuclear device (IND). **Terrorists could attack or sabotage nuclear facilities**, such as commercial nuclear power plants or research reactors, to cause a release of radioactivity. **Terrorists could acquire and release radioactive materials**, such as commercial radioactive sources used in medicine, research, and industry, to fuel radiological dispersal devices (RDDs) – one type of which is popularly known as a "dirty bomb," or release radiation through other mechanisms, such as radiation emission devices. Understanding Nuclear Terrorists **While most terrorist groups are not motivated to unleash nuclear terror**, at least one terrorist network **- al Qaeda - has expressed strong interest in acquiring *w*eapons of *m*ass *d*estruction**. 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.**

***This ensures great power wars that culminate into extinction***

Robert **Ayson**, July **2010**, Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand at the Victoria University of Wellington, “After a Terrorist Nuclear Attack: Envisaging Catalytic Effects,” Studies in Conflict & Terrorism, Vol. 33, Issue 7, InformaWorld

A terrorist nuclear attack, and even the use of nuclear weapons in response by the country attacked in the first place, would not necessarily represent the worst of the nuclear worlds imaginable. Indeed, **there are reasons to wonder whether nuclear terrorism should** ever **be regarded as** belonging in the category of truly **existential** threats. A contrast can be drawn here with the global catastrophe that would come from a massive nuclear exchange between two or more of the sovereign states that possess these weapons in significant numbers. Even the worst terrorism that the twenty-first century might bring would fade into insignificance alongside considerations of what a general nuclear war would have wrought in the Cold War period. And it must be admitted that as long as the major nuclear weapons states have hundreds and even thousands of nuclear weapons at their disposal, there is always the possibility of a truly awful nuclear exchange taking place precipitated entirely by state possessors themselves. **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 devastating response. As part of its initial response to the act of nuclear terrorism (as discussed earlier) Washington might decide to order a significant conventional (or nuclear) retaliatory or disarming attack against the leadership of the terrorist group and/or states seen to support that group. Depending on the identity and especially the location of these targets, Russia and/or China might interpret such action as being far too close for their comfort, and potentially as an infringement on their spheres of influence and even on their sovereignty. One far-fetched but perhaps not impossible scenario might stem from a judgment in Washington that some of the main aiders and abetters of the terrorist action resided somewhere such as Chechnya, perhaps in connection with what Allison claims is the “Chechen insurgents’ … long-standing interest in all things nuclear.”42 American pressure on that part of the world would almost certainly raise alarms in Moscow that might require a degree of advanced consultation from Washington that the latter found itself unable or unwilling to provide. There is also the question of how other nuclear-armed states respond to the act of nuclear terrorism on another member of that special club. It could reasonably be expected that following a nuclear terrorist attack on the United States, both Russia and China would extend immediate sympathy and support to Washington and would work alongside the United States in the Security Council. But there is just a chance, albeit a slim one, where the support of Russia and/or China is less automatic in some cases than in others. For example, what would happen if the United States wished to discuss its right to retaliate against groups based in their territory? If, for some reason, Washington found the responses of Russia and China deeply underwhelming, (neither “for us or against us”) might it also suspect that they secretly were in cahoots with the group, increasing (again perhaps ever so slightly) the chances of a major exchange. If the terrorist group had some connections to groups in Russia and China, or existed in areas of the world over which Russia and China held sway, and if Washington felt that Moscow or Beijing were placing a curiously modest level of pressure on them, what conclusions might it then draw about their culpability? If Washington decided to use, or decided to threaten the use of, nuclear weapons, the responses of Russia and China would be crucial to the chances of avoiding a more serious nuclear exchange. They might surmise, for example, that while the act of nuclear terrorism was especially heinous and demanded a strong response, the response simply had to remain below the nuclear threshold. It would be one thing for a non-state actor to have broken the nuclear use taboo, but an entirely different thing for a state actor, and indeed the leading state in the international system, to do so. If Russia and China felt sufficiently strongly about that prospect, there is then the question of what options would lie open to them to dissuade the United States from such action: and as has been seen over the last several decades, the central dissuader of the use of nuclear weapons by states has been the threat of nuclear retaliation. If some readers find this simply too fanciful, and perhaps even offensive to contemplate, it may be informative to reverse the tables. Russia, which possesses an arsenal of thousands of nuclear warheads and that has been one of the two most important trustees of the non-use taboo, is subjected to an attack of nuclear terrorism. In response, Moscow places its nuclear forces very visibly on a higher state of alert and declares that it is considering the use of nuclear retaliation against the group and any of its state supporters. How would Washington view such a possibility? Would it really be keen to support Russia’s use of nuclear weapons, including outside Russia’s traditional sphere of influence? And if not, which seems quite plausible, what options would Washington have to communicate that displeasure? If China had been the victim of the nuclear terrorism and seemed likely to retaliate in kind, would the United States and Russia be happy to sit back and let this occur? **In the charged atmosphere immediately after a nuclear terrorist attack, how would the attacked country respond to pressure from other major nuclear powers not to respond in kind? The phrase “how dare they tell us what to do” immediately springs to mind. Some might** even go so far as to **interpret** this **concern as a tacit form of** sympathy or **support for the terrorists. This might not help** the chances of **nuclear restraint**

**Scenario 2 - Relations**

***Extradition fights ensure the irrelevance of NATO***

David B. **Rivkin**, Jr., Associate Fellow of The Nixon Center and Lee A. Casey, partner in the Washington, DC office of Baker & Hostetler LLP., “A House Divided? War, Extradition, and the Atlantic Alliance, PART II”, The National Interest, October 9th 20**02**, http://nationalinterest.org/article/a-house-divided-war-extradition-and-the-atlantic-alliance-part-ii-2137?page=1 (BJN)

Since the end of the Cold War, **many questions have been asked about the long-term viability of the U.S.-European partnership**. By leading the NATO intervention in Bosnia and Kosovo - a venture where no vital U.S. interests were implicated, but where the Europeans strongly clamored for joint U.S.-European involvement - **the U.S. has demonstrated that maintaining NATO solidarity remained a key American policy priority. Europe has yet to respond in kind. The best argument of the die-hard Atlanticists has been to claim that the current discord is attributable to the lack of any serious threat facing this partnership in general,** and NATO in particular. **By implication, if and when such a threat arose, Cold War levels of solidarity would reemerge. The events of September 11 certainly qualify as such a threat**, but whether that solidarity will reappear remains to be seen. **At this time**, however, **the only major contribution most of the European governments are likely to be asked for will be law enforcement cooperation, including the arrest and extradition of suspects to the United States. If Europe cannot do this much**, even when there are no insurmountable legal obstacles, ***then the Atlantic Alliance has been already beset with irreconcilable differences***. Even if it endures, **it would become more of an irrelevant debating club than the West's premier security instrument. Our European allies should grasp what is at stake here;** the U.S., for its part, should appreciate the fact that the fundamental issues of principle are implicated, rather than just a series of specific narrow policy disputes, and therefore speak clearly and forthrightly to the European elites and publics. Candor and sustained engagement, rather than diplomatic politesse, offers the only hope of closing this rift.

***These fights will supersede durability and alt-causes***

David B. **Rivkin**, Jr., Associate Fellow of The Nixon Center and Lee A. Casey, partner in the Washington, DC office of Baker & Hostetler LLP., “A House Divided? War, Extradition, and the Atlantic Alliance, PART II”, The National Interest, October 9th 20**02**, http://nationalinterest.org/article/a-house-divided-war-extradition-and-the-atlantic-alliance-part-ii-2137?page=1 (BJN)

**In past extradition-related disputes with the United States, Europe's leaders have generally gotten their way. American prosecutors have agreed**, in individual cases**, not to seek the death penalty. But** such **agreements are highly unlikely (almost unthinkable) with respect to Al-Qaeda's leadership.** (If Osama bin Laden surrendered to one of the European police authorities tomorrow, the ensuing extradition fight would be bitter and cause enormous damage to the Alliance.) **Although few ordinary Americans care much about the issues that regularly bedevil trans-Atlantic relations, such as banana imports, anti-trust issues, or global climate change, virtually all care deeply and passionately about the war on terrorism.** By more than a two-thirds majority, they support the use of military commissions and capital punishment. The Bush Administration is serious about winning the war on terrorism and making Lincoln's words come true again. **The value to the United States of allies who coddle**, even based on sincerely held beliefs, **unlawful combatants who seek to destroy this country will be eventually questioned.**

***History is on our side – past extradition fights have tanked relations – the impact will only grow larger in terrorism cases***

Kyle M. **Medley**, associate in the New York office of Barger & Wolen. Mr. Medley is a litigator with experience before numerous state and federal courts, “RESPONSIBILITY AND BLAME: PSYCHOLOGICAL AND LEGAL PERSPECTIVES: THE WIDENING OF THE ATLANTIC: EXTRADITION PRACTICES BETWEEN THE UNITED STATES AND EUROPE\*”, 68 Brooklyn L. Rev. 1213, Summer 20**03** (BJN)

Finally, **extradition helps countries avoid international tension and** ***diplomatic crisis***. n42 One case in particular exhibits how **the extradition battle over fugitives can cause foreign relations between the U.S. and other nations to** ***deteriorate***. **In 1997, Benjamin Sheinbein** was suspected of the killing and gruesome dismemberment of an acquaintance in Maryland. n43 [\*1221] Sheinbein **fled to Israel** three days after the body was found. n44 Because Israeli law forbids extradition of any of its citizens for any crime, Sheinbein argued that he was an Israeli citizen. n45 Although Sheinbein claimed Israeli citizenship through his father who was in fact an American citizen, n46 **Israeli courts** nonetheless **refused to grant his extradition** to the U.S. n47 The American government fiercely responded to the extradition refusal. Robert **Livingston, Chair to the U.S. House of Representatives Appropriations Committee**, for instance, **threatened to cut off Israel's $ 3 billion American aid package** unless Sheinbein was extradited to the U.S. n48 Secretary of State Madeleine Albright personally contacted Israeli Prime Minister Benjamin Netanyahu and asked for his "maximum cooperation" with extraditing Sheinbein. n49 **These efforts were for the murder of a single person. In the wake of the thousands of people murdered in the World Trade Center** and Pentagon terrorist attacks, **tensions will** ***undoubtedly increase* between the U.S. and nations reluctant to extradite.**

***NATO solves nuclear war***

**Brzezinski 09** [ZBIGNIEW BRZEZINSKI, 2009, U.S. National Security Adviser from 1977 to 1981. His most recent book is Second Chance: Three Presidents and the Crisis of American Superpower, September 2009 - October 2009, (Foreign Affairs, SECTION: Pg. 2 Vol. 88 No. 5, HEADLINE: An Agenda for NATO Subtitle: Toward a Global Security Web, p. Lexis)]

ADJUSTING TO A TRANSFORMED WORLD

AND YET, it is fair to ask: Is nato living up to its extraordinary potential? **Nato today is without a doubt the most powerful military and political alliance in the world.** **Its 28 members come from the globe's two most productive, technologically advanced, socially modem, economically prosperous, and politically democratic regions**. Its member states' 900 million people account for only 13 percent of the world's population but 45 percent of global gdp. 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 0^ a territorially rapacious nationalist state nor by the coercive aspiration of a globally pretentious ideology embraced by an expansrve 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** **w**eapons of **m**ass **d**estruction - **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 pop- ulist 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 nation- alist 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, televisión, 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.**

***Even post Cold-War, NATO checks a laundry list of existential risks***

**Burns ’12**, R. Nicholas Burns, former U.S. ambassador to NATO, was under secretary of state for political affairs from 2005-2008 and now is director of the Future of Diplomacy Project at the Belfer Center for Science and International Affairs at Harvard Kennedy School. David Manning, former British ambassador to NATO, also served as foreign policy adviser to the British prime minister and as British ambassador to the United States. May 17, 2012, New York Times, NATO: When I’m Sixty-Four, <http://www.nytimes.com/2012/05/18/opinion/nato-when-im-sixty-four.html>

**Can they afford not to?** The international landscape is barely recognizable compared with that of 1949 when the alliance was founded to safeguard the fragile democracies of a shattered post-war Western Europe. But although the Cold War ended with the disintegration of the Soviet Union 20 years ago, **the international environment remains unstable and uncertain**.¶ **The NATO partners must now confront a range of elusive and complex global threats from rogue and failing states to terrorism, piracy and cyberattacks**. **They must also adapt to global power relationships that are changing rapidly and bringing new challenges**. **China’s** economic miracle is fueling a **military buildup** that **may well lead to increased tensions and an accelerating arms race in Asia**.¶ The prospect of **a nuclear Iran is provoking fears of a new war in the Middle East and doubts about the durability of the** Nuclear ***N***on***p***roliferation ***T***reaty. **If Iran gets the bomb will others in the volatile Middle East be far behind?** As NATO’s efforts to construct an anti-ballistic missile shield recognize, **Europe could before long find itself next to a Middle East of nuclear armed states**.¶ The **NATO** corridors and council table are where the 28 members can daily discuss these and other security challenges with a familiarity that, most of the time, **allows them to forge common positions and policies. NATO still guarantees Europe’s security and the security of America’s close partners**.¶ As both of us can testify, having worked closely together in NATO a decade ago, talking the talk is an essential prerequisite for an alliance that can walk the walk.¶ The consultative and cooperative reflex that has developed within NATO is rare in international relations. It brings many benefits. Small as well as large countries air their security concerns and enjoy the guarantee that comes from belonging to an alliance in which all members are committed to one another. This has greatly reassured the East European and Baltic countries as they have tackled the enormous task of rebuilding themselves following their liberation from Communism and the collapse of the Warsaw Pact.¶ **NATO not only plays a valuable role in helping to stabilize relations between its members and awkward and uncertain neighbors, but acts as a dispute resolution mechanism between members themselves**.¶ **We take it for granted that cooperation, not conflict, is Europe’s default mode, but the suicidal first half of the 20th century, and the mayhem that followed the collapse of Yugoslavia, are reminders that we should beware of pushing our luck.** Investment in an alliance that in large measure denationalizes defense, and contains or resolves old antagonisms through family arguments around NATO’s kitchen table, provides a remarkable rate of return.¶ **The alliance is good at talking to others as well as itself. We both remember when NATO stopped the wars in Bosnia and Kosovo and played a vital role in averting civil war in Macedonia**.¶ When preventive diplomacy succeeds it gets few headlines and is quickly forgotten. But **NATO’s engagement averted what might easily have become another Balkan war**. One lesson from Macedonia is how powerful NATO and the European Union can be when working together, a relationship the trans-Atlantic community might exploit more energetically as it navigates the uncertainties of an emerging multi-polar world.¶ “**Will you still need me when I’m sixty-four?” sang the Beatles. NATO is now in its 64th year, and in our view the answer is an unequivocal yes.** **The alliance still underwrites our security and underpins our prosperity. It gives us a global voice that no member state would enjoy individually. And if “it’s good to talk” in a dangerous world, there is no better trans-Atlantic forum.**

***And independently US-EU relations access every impact***

**Stivachtis 10** – Director of International Studies Program @ Virginia Polytechnic Institute [Dr. Yannis. A. Stivachtis (Professor of Poli Sci @ Virginia Polytechnic Institute & Ph.D. in Politics & International Relations from Lancaster University), THE IMPERATIVE FOR TRANSATLANTIC COOPERATION,” The Research Institute for European and American Studies, 2010, pg. <http://www.rieas.gr/research-areas/global-issues/transatlantic-studies/78.html>]

**There is no doubt that US-European relations are in a period of transition**, and that the stresses and strains of globalization are increasing both the number and the seriousness of the challenges that confront transatlantic relations. The events of 9/11 and the Iraq War have added significantly to these stresses and strains. At the same time, **international terrorism**, **the nuclearization of North Korea and especially Iran, the proliferation of** weapons of mass destruction (**WMD), the transformation of Russia** into a stable and cooperative member of the international community, **the growing power of China, the political and economic transformation and integration of the Caucasian and Central Asian states, the integration and stabilization of the Balkan countries, the promotion of peace and stability in the Middle East, poverty, climate change, AIDS and other emergent problems and situations require further cooperation** among countries at the regional, global and institutional levels. Therefore, **cooperation between the U.S. and Europe is more imperative than ever to deal effectively with these problems**. It is fair to say that **the challenges of crafting a new relationship between the U.S. and the EU as well as between the U.S. and NATO are more regional than global, but the implications of success or failure will be global.** The transatlantic relationship is still in crisis, despite efforts to improve it since the Iraq War. This is not to say that differences between the two sides of the Atlantic did not exist before the war. Actually, post-1945 relations between Europe and the U.S. were fraught with disagreements and never free of crisis since the Suez crisis of 1956. Moreover, despite trans-Atlantic proclamations of solidarity in the aftermath of 9/11, the U.S. and Europe parted ways on issues from global warming and biotechnology to peacekeeping and national missile defense. Questions such as, the future role of NATO and its relationship to the common European Security and Defense policy (ESDP), or what constitutes terrorism and what the rights of captured suspected terrorists are, have been added to the list of US-European disagreements. There are two reasons for concern regarding the transatlantic rift. First, **if European leaders conclude that Europe must become counterweight to the U.S., rather than a partner, it will be difficult to engage in the kind of open search for a common ground than an elective partnership requires**. Second, there is a risk that public opinion in both the U.S. and Europe will make it difficult even for leaders who want to forge a new relationship to make the necessary accommodations. If both sides would actively work to heal the breach, a new opportunity could be created. **A vibrant transatlantic partnership remains a real possibility, but only if both sides make the necessary political commitment.** There are strong reasons to believe that the security challenges facing the U.S. and Europe are more shared than divergent. The most dramatic case is terrorism. Closely related is the common interest in halting the spread of weapons of mass destruction and the nuclearization of Iran and North Korea. This commonality of threats is clearly perceived by publics on both sides of the Atlantic.

**Plan**

***The United States Congress should restrict the indefinite detention authority in the area prescribed by the 2001 Authorization for Use of Military Force and the (2012/2013) National Defense Authorization Act to cases involving persons arrested and/or captured outside the territory of the United States.***

**Contention 2 - Solvency**

***Plan is a no-cost option for Congress – The Executive won’t use the detention war power for domestic captures – but keeping the option legal makes the perception of its use alive***

Robert M. **Chesney**, Nonresident Senior Fellow, Governance Studies @ Brookings and Benjamin Wittes, Senior Fellow, Governance Studies @ Brookings, “Protecting U.S. Citizens’ Constitutional Rights During the War on Terror”, Testimony To Congress, May 22nd 20**13**, http://www.brookings.edu/research/testimony/2013/05/22-war-on-terror-chesney-wittes (BJN)

We would like to make four major points today, points which lead to a single recommendation: **First, a review of the relevant case law suggests that the Supreme Court** as currently aligned **would** probably **not approve the use of long-term military detention under** color of the Authorization for **the** Use of Military force (**AUMF**) **with respect to a *U*nited *S*tates citizen detainee who was arrested by law enforcement authorities within the *U*nited *S*tates**. **Whether it would approve detention for a non-citizen captured within the *U*nited *S*tates is also in doubt,** though the matter is less clear in that setting. **Second, current criminal justice authorities provide ample grounds for ensuring the incapacitation of such persons in most foreseeable instances. There is little if anything to be gained for the executive branch in gambling with the domestic military detention option, which would carry significant litigation risk and guarantee divisive political friction. Third, although the Bush administration did use military detention for domestic captures in two instances**—one involving a citizen, another a non-citizen—**it typically relied on the criminal justice system instead**. Indeed, **in the case of the citizen detainee, it eventually backed away** in the face of a looming judicial reversal. **The Obama administration has stayed this course,** taking similar action with respect to the domestic non-citizen detainee in military custody. **Today *it is highly unlikely that an administration of either party would attempt to use these authorities again.*** Fourth, ***because these options nonetheless have not formally been foreclosed in law, there are periodic surges of interest in them* by both political supporters and opponents**. **Supporters demand their use in cases like that of the Boston Marathon bombing. Opponents, meanwhile, have gone to court to seek injunctive relief against law of war detention authorities based on speculative fears of military detentions that will not take place. *All of this is disruptive, undesirable, and unnecessary*.** **Based on these observations, we therefore recommend that Congress codify in statute today’s practical status quo.** That is, **Congress should state explicitly that detention authority under the AUMF and the NDAA does not extend to any persons captured within the territory of the *U*nited *S*tates.** We provide a more expansive discussion of these points below, in two parts. The first part outlines the legal context against which these issues arise today. The second discusses the practical and policy consequences of leaving the current status quo uncodified in statute and explains our recommendation for legislation.

***Interpreting the NDAA to exclude domestic captures is critical to extraditions***

Stacy K. **Hayes**. J.D. Candidate Wayne State University, “INTERPRETING THE NEW LANGUAGE OF THE NATIONAL DEFENSE AUTHORIZATION ACT: A POTENTIAL BARRIER TO THE EXTRADITION OF HIGH VALUE TERROR SUSPECTS”, 58 Wayne L. Rev. 567, Summer 20**12** (BJN)

C. **Assurances that Include a Guarantee of a Right to Fair Trial Are** ***Key*** **to Achieving Extradition On the surface, the new statutory language in the NDAA does not pose any problems to the United States continuing to provide assurances to her European allies** that terror suspects will receive humane treatment and a fair trial**. But it remains imperative that the current and future administrations understand that affording anything less than a fair trial to these terror suspects in the federal justice system will likely result in terrorists** ***evading justice altogether. The U.S. government should not underestimate its allies' doubt regarding the fairness of the military tribunal system***, substantiated or not, when evaluating whether to provide and uphold assurances that terror suspects will go to trial in regularly constituted courts to ensure their extradition. **It is clear that the European approach to human rights, even as it affects extradition, includes the right to a fair trial that does not include trial by military tribunal.** n131 As history demonstrates, "**the right to a fair trial is one of the most litigated of all human rights. It is also perhaps one of the most important because without it a violation of a human right is unlikely to be remedied in domestic procedures.**" n132 Moreover, many international cases have highlighted "the importance of independence and impartiality" as a key feature of a fair trial. n133 For instance, **the European Court** in Weeks v. United Kingdom **noted that the most important, fundamental feature of court is the "independence of the executive and of the parties involved.**" n134 As one scholar noted in Lamy v. Belgium, "the European Court of Human Rights noted that a fair hearing is not possible when detainees are denied access to those documents in the investigation file which are essential to effectively challenge the lawfulness of [one's] [\*591] detention." n135 And more recently, the U.K. House of Lords stated in A. v. Secretary of State for the Home Department that "neither the common law . . . nor international human rights law allows indefinite detention at the behest of the executive, however well-intentioned." n136 Thus, **the hotly contested and highly publicized deficiencies within the military commission process certainly create, at the minimum, the appearance that a fair trial by an independent and impartial tribunal will be incredibly difficult to obtain for any terror suspect extradited to the United States** without the assurance of trial by a civilian court. **Additionally, the promise of indefinite detention until the end of hostilities will likely bolster claims of Article 3 violations and add to the likelihood of Article 6 claims**. **Either one can work to the disadvantage of the *U*nited *S*tates as it seeks to bring to justice those terror suspects who await extradition from the U.K. and Europe.** Thus, the current administration should set a strict plan to execute the waiver in all cases regarding extradition from America's European allies. Doing so will make the waiver the norm rather than the exception. Regular use of the waiver will override the presumption in favor of military trials that Section 1022 n137 creates and take the political aspect out of any future executive decision to provide a waiver. IV. Conclusion **The right to a fair trial is one of the most expansive and complicated of all the human rights protected under international law**. n138 And even though individual countries bear the burden to defend their citizenry against terrorism, "in cases where action is being taken against terrorism, states must ensure that international human rights norms are respected. The foremost role of international human rights in cases involving terrorists is the protection of the accused terrorist's human rights." n139 **With this in mind, the United States** ***should interpret the NDAA to provide assurances to the U.K. and her European allies that all extradited terror suspects will defend their case in regularly constituted courts and will be detained in civilian criminal facilities*** without threat of the death penalty. **In doing so, the United States will signify support for the rule of** [\*592] **law as it seeks to defeat terrorism.** Moreover, and perhaps equally important, **this continuation of assurances will demonstrate that the United States stands with her allies in the protracted struggle against terrorism.**

***No disads – law enforcement and criminal trials solve, plus the president would never detain domestic captures anyway***

The idea that we have to keep the option of military detention available is an outdated view of law enforcement – Current criminal trials provide ample security – and even if it could technically be better to use military detention – it wouldn’t be used

Robert M. **Chesney**, Nonresident Senior Fellow, Governance Studies @ Brookings and Benjamin Wittes, Senior Fellow, Governance Studies @ Brookings, “Protecting U.S. Citizens’ Constitutional Rights During the War on Terror”, Testimony To Congress, May 22nd 20**13**, http://www.brookings.edu/research/testimony/2013/05/22-war-on-terror-chesney-wittes (BJN)

**It is** certainly **possible that we will one day again confront a case in which strong evidence exists that an individual member of an AUMF-covered group poses a huge threat within the United States, but** in which **the evidence supporting this view is** either **too sensitive to disclose** or inadmissible for any of several reasons. In such a situation, **legislation *prohibiting* the military detention of suspects captured in the *U*nited *S*tates in theory could precipitate an outcome** like the one that Comey **feared** in 2002. **From that perspective, the option of at least attempting to sustain military detention, despite the legal uncertainty we described above, would be attractive. For a variety of reasons, however, we believe that situation is** ***far less likely to develop today than it was in 2002.*** **Law enforcement practice has improved substantially** in this space. **The FBI and Justice Department have developed significant expertise in handling suspects like Padilla. And** as we mentioned before, **one of the reasons the information developed against Padilla was unusable by Comey was that it had been obtained by the CIA using highly-coercive means; those means are no longer in use**. None of this eliminates the possibility of a case like Padilla’s developing in the future, of course, but it does suggest that such scenarios are unlikely to arise. Indeed, **such a situation has not arisen since the earliest years of the war on terror.** Aside from a Padilla-like scenario, **a *ban* on military detention in domestic capture scenarios thus would foreclose no course of action that is realistically available to the executive branch** at this stage given its own preferences**. It would**, rather, ***merely codify the existing understanding reflected in executive branch policy and practice***—policy and practice reinforced over the years by well-informed expectations about the likely views of the justices on the underlying legal issues. Adopting such a change, it is worth emphasizing, would run with the grain of America’s traditional wariness when it comes to a domestic security role for the U.S. military. **There have unfortunately been times in our nation’s history when it has been necessary and proper for the military to play such a role. It is far from clear that this is the case today,** however, **given the demonstrated capacity of the criminal justice system in the counterterrorism context.** In the final analysis, we conclude that **the manifest legal uncertainty and political friction overhanging the domestic military detention option entail costs that,** in our view, **outweigh the hypothetical benefits** of continuing to leave that option open as a statutory matter. **We therefore favor legislation that would clarify that military detention in counterterrorism under the AUMF is not available with respect to any persons--whether United States citizens or aliens--arrested within the United States.**

# 2ac

**2AC – T – Subsets**

1. ***We meet –***
2. ***C/I -***

***“In” means within a set of limits***

**Dictionary.Com** – No specific Date Included

Updated in 2013 but no specific date given, <http://dictionary.reference.com/browse/in>

**In** [in] preposition, adverb, adjective, noun, verb, inned, in•ning.¶ preposition¶ 1.¶ (**used to indicate inclusion within space, a place, or limits**): walking in the park.¶ 2.¶ (used to indicate inclusion within something abstract or immaterial): in politics; in the autumn.¶ 3.¶ (used to indicate inclusion within or occurrence during a period or limit of time): in ancient times; a task done in ten minutes.¶ 4.¶ (used to indicate limitation or qualification, as of situation, condition, relation, manner, action, etc.): to speak in a whisper; to be similar in appearance.¶ 5.¶ (used to indicate means): sketched in ink; spoken in French.¶ 6.¶ (used to indicate motion or direction from outside to a point within) into: Let's go in the house.¶ 7.¶ (used to indicate transition from one state to another): to break in half.¶ 8.¶ (used to indicate object or purpose): speaking in honor of the event.

***“Area” means the scope of a concept***

**Merriam Webster**, <http://www.merriam-webster.com/dictionary/area>

Full Definition of ***AREA***

1

: a level piece of ground

2

: the surface included within a set of lines; specifically : the number of unit squares equal in measure to the surface — see metric system table, weight table

3

: **the scope of a concept, operation, or activity** : **field <the whole area of foreign policy**>

1. ***Substantial means “of considerable amount” – not some contrived percentage***

**Prost 4** (Judge – United States Court of Appeals for the Federal Circuit, “Committee For Fairly Traded Venezuelan Cement v. United States”, 6-18, http://www.ll.georgetown.edu/federal/judicial/fed/opinions/04opinions/04-1016.html)

The URAA and the SAA neither amend nor refine the language of § 1677(4)(C).  In fact, they merely suggest, without disqualifying other alternatives, a “clearly higher/substantial proportion” approach.  Indeed, the SAA specifically mentions that no “precise mathematical formula” or “‘benchmark’ proportion” is to be used for a dumping concentration analysis.  SAA at 860 (citations omitted); see also Venez. Cement, 279 F. Supp. 2d at 1329-30.  Furthermore, as the Court of International Trade noted, the SAA emphasizes that the Commission retains the discretion to determine concentration of imports on a “case-by-case basis.”  SAA at 860.  Finally, **the definition of the word “substantial” undercuts the** CFTVC’s **argument.  The word “substantial” generally means “considerable in amount, value or worth**.”  Webster’s Third New International Dictionary 2280 (1993).  ***It does not imply a specific number or cut-off***.  **What may be substantial in one situation may not be in another situation**.  The very breadth of the term “substantial” undercuts the CFTVC’s argument that Congress spoke clearly in establishing a standard for the Commission’s regional antidumping and countervailing duty analyses.  It therefore supports the conclusion that the Commission is owed deference in its interpretation of “substantial proportion.”  The Commission clearly embarked on its analysis having been given considerable leeway to interpret a particularly broad term.

1. ***Reasons to prefer –***
2. ***They’re arbitrary – it’s contrived to read the resolution as saying “you must affect all indefinite detention”. If contrived interps are allowed, aff always loses.***
3. ***Education – only our interp facilitates nuanced debates on specific kinds of detention***
4. ***Aff ground – they kill it – aff would lose to unbeatable PIC’s***
5. ***Prefer reasonability – if there is no ground loss an interpretation that expands aff ground should be preferred***

**2AC – T – Restrict = Prohibit**

***We meet: the plan is a prohibition on indefinite detention of persons captured in the U.S. --- that’s 1AC Chesney***

1. ***Counter-interp:***

***Restriction means a limit and includes conditions on action***

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

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

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

1. ***Reasons to prefer:***
2. ***Aff ground – they limit the aff to one tiny mechanism. Aff ground outweighs because the XO CP creates an inherent check on small affs***
3. ***Education – none of the lit is about outright banning war powers – we create the most real world discussions***

***C) No ground loss – we guarantee them indefinite detention good ground***

***4) Prefer reasonability – if there is no ground loss an interpretation that expands aff ground should be preferred***

**A2: d rule**

***Evaluate consequences – allowing violence for the sake of moral purity is evil***

**Isaac 2** (Jeffrey C., Professor of Political Science – Indiana-Bloomington, Director – Center for the Study of Democracy and Public Life, Ph.D. – Yale, Dissent Magazine, 49(2), “Ends, Means, and Politics”, Spring, Proquest)

As writers such as Niccolo Machiavelli, Max Weber, Reinhold Niebuhr, and Hannah Arendt have taught, an unyielding concern with moral goodness undercuts political responsibility. The concern may be morally laudable, reflecting a kind of personal integrity, but it suffers from three fatal flaws: (1) It fails to see that the purity of one’s intention does not ensure the achievement of what one intends. Abjuring violence or refusing to make common cause with morally compromised parties may seem like the right thing; but if such tactics entail impotence, then it is hard to view them as serving any moral good beyond the **clean conscience** of their supporters; (2) it fails to see that in a world of real violence and injustice, moral purity is not simply a form of powerlessness; it is often a form of complicity in injustice. This is why, from the standpoint of politics--as opposed to religion--pacifism is always a potentially immoral stand. In categorically repudiating violence, it refuses in principle to oppose certain violent injustices with any effect; and (3) it fails to see that politics is as much about **unintended consequences** as it is about intentions; it is the effects of action, rather than the motives of action, that is most significant. Just as the alignment with “good” may engender impotence, it is often the pursuit of “good” that generates evil. This is the lesson of communism in the twentieth century: it is not enough that one’s goals be sincere or idealistic; it is equally important, always, to ask about the effects of pursuing these goals and to judge these effects in pragmatic and historically contextualized ways. Moral absolutism inhibits this judgment. It alienates those who are not true believers. It promotes arrogance. And it undermines political effectiveness.

**2AC A2: Al Qaeda Weak / No Terror**

***Al Qaeda strong – ignore their ev, its not in the context of Europe – Whitehair says EU terror uniquely dangerous – law enforcement is lenient and it gives them access to tech***

***Prefer the magnitude of our impacts because probability can change overnight***

**Carafano, ’09** [James J. expert in defense and homeland security at the Heritage Foundation, Assistant Director, [Kathryn and Shelby Cullom Davis Institute for International Studies](http://www.heritage.org/about/departments/davisinstitute.cfm) and Senior Research Fellow, [Douglas and Sarah Allison Center for Foreign Policy Studies](http://www.heritage.org/About/Departments/AllisonFPI.cfm) “Worst Case Scenario: Dealing with WMD Must Be Part of Providing for Common Defense” June 29, <http://www.heritage.org/Research/HomelandSecurity/upload/AR05.pdf>]

**It Can Happen Here** **The arguments against preparing for these dangers offer cold comfort**. **Arguing,** for example, **that WMD attacks may be “high consequence” but “low probability” makes little sense. There is no way to establish probability because there is no predictable data set to measure.** The style of terrorist attack often turns on the choice of tactic and the terrorists who choose WMD; **probability can go from zero to certainty overnight. Playing the odds on such threats is the worst kind of Russian roulette, particularly when looking at the cost of losing**. By one estimate, **the cost of recovering from a nuclear attack on New York City could equal the U.S. GDP. Nor does it make much sense to argue that terrorists will adopt “simpler” means or that enemy states can be easily deterred by the U.S. nuclear arsenal**. **Terrorists have already gone the WMD route**. The Rajneeshee cult in Wyoming in 1984 launched a biological warfare attack. In 1995, the Aum Shinrikyo hit the Tokyo subway with poison gas. Soon after the 9/11 attacks, letters laced with anthrax began appearing in the U.S. mail. **Luckily, these efforts were neither very sophisticated nor well organized. Next time, we might not be so lucky**. Likewise, the U.S. nuclear deterrent has not dissuaded North Korea or Iran from pursuing very aggressive nuclear and ballistic missile programs.

**A2: Relations Durable**

***Extend Rivkin and Medley – Extradition fights have the potential to supersede durability - The Atlantic Alliance only survives because counter-terror cooperation – refusing extradition would make all others of cooperation meaningless***

***Failure to extradite causes a major downturn in relations – even with staunch allies***

Matthew W. **Henning**, Partner in the Boston office of Morrison Mahoney LLP, “Extradition Controversies: How Enthusiastic Prosecutions Can Lead to International Incidents”, 22 B.C. Int'l & Comp. L. Rev. 347, Spring 19**99** (BJN)

**The well-publicized Ira Einhorn story** and other recent extradition cases **highlight how the United States'** ("U.S.") **zeal to bring** U.S. murder **suspects to justice in America has collided with issues of human rights** and state sovereignty. n1 **In some instances the attempts at extradition have escalated into *international confrontations***. n2 In the Einhorn case, on December 4, 1997, a French Appeals Court denied extradition to the U.S. of Ira Einhorn, a famous "hippie" guru and convicted murderer. n3 The outrage felt in the U.S. after the French Court's decision is symptomatic of the escalating frustration that U.S. law enforcement officials and politicians have faced in the last two decades as high visibility international murder prosecutions have run into delays or have been defeated by foreign courts' refusals to extradite the suspects back to the U.S. n4 The Appeals Court's decision caused one of Einhorn's French attorneys to gloat, "The United States has learned today to its distress that it still has lessons to learn from old Europe in matters of human rights." n5 **The combination of complicated extradition and human rights principles** and the unique facts of the murder cases **has resulted in** ***heated disputes*** **between the U.S. and countries which have traditionally been** [\*348] ***staunch U.S. allies***. n6 **The extreme facts** of the murder cases **have caused the U.S. to react angrily, and** even, on occasion, ***to explicitly pressure the other country to return the suspects***. n7 For instance, Ira Einhorn was convicted in the U.S. of bludgeoning his girlfriend to death and then hiding her body in a steamer trunk in his apartment for eighteen months. n8 Einhorn was arrested in 1979 for the murder, but he fled the U.S. on the eve of his trial, which led to a sixteen-year, five-country manhunt by the Philadelphia District Attorney's Office before French authorities ultimately captured Einhorn in Champagne-Mouton, France. n9 The French Appeals Court that heard the case freed Einhorn, allowing him to resume his life in a quaint village in France. n10

**A2: No impact to NATO**

***Yes impact – Brzezinski and Burns say NATO checks a host of existential problems like cyberattacks, China, and Iran --- NATO engagement can deescalate conflicts***

**A2: no impact to EU**

***Yes – Stivichachis – Europe is a unique ally for solving global problems***

**Drone shift 2ac**

***no DA’s --- the first card in the 1ac says Obama will never actually use this detention authority --- but the perception he can triggers our impacts – that’s marguiles***

***The DA is illogical against our aff --- Obama won’t use drones to kill domestically anyway – Holder’s response to the Paul filibuster proves***

***Non-unique---drone shift now because detention is already too difficult***

David **Ignatius 10**, Washington Post, "Our default is killing terrorists by drone attack. Do you care?", December 2, www.washingtonpost.com/wp-dyn/content/article/2010/12/01/AR2010120104458.html

Every war brings its own deformations, but consider this disturbing fact about America's war against al-Qaeda: It has become easier, politically and legally, for the United States to kill suspected terrorists than to capture and interrogate them.¶ Predator and Reaper drones, armed with Hellfire missiles, have become the weapons of choice against al-Qaeda operatives in the tribal areas of Pakistan. They have also been used in Yemen, and the demand for these efficient tools of war, which target enemies from 10,000 feet, is likely to grow.¶ The pace of drone attacks on the tribal areas has increased sharply during the Obama presidency, with more assaults in September and October of this year than in all of 2008. At the same time, efforts to capture al-Qaeda suspects have virtually stopped. Indeed, if CIA operatives were to snatch a terrorist tomorrow, the agency wouldn't be sure where it could detain him for interrogation.¶ Michael Hayden, a former director of the CIA, frames the puzzle this way: "Have **we made detention** and interrogation **so legally difficult and politically risky that our default option is to kill our adversaries rather than capture** and interrogate **them**?"¶ It's curious why the American public seems so comfortable with a tactic that arguably is a form of long-range assassination, after the furor about the CIA's use of nonlethal methods known as "enhanced interrogation." When Israel adopted an approach of "targeted killing" against Hamas and other terrorist adversaries, it provoked an extensive debate there and abroad.¶ "For reasons that defy logic, people are more comfortable with drone attacks" than with killings at close range, says Robert Grenier, a former top CIA counterterrorism officer who now is a consultant with ERG Partners. "It's something that seems so clean and antiseptic, but the moral issues are the same."

***Europe cares more about detention than drones***

John **Bellinger 13**, partner in the international and national security law practices at Arnold & Porter LLP in DC, Adjunct Senior Fellow in International and National Security Law at the CFR, "Peter Baker on Mounting Criticisms of Obama Administration CT Policies", February 10, www.lawfareblog.com/2013/02/peter-baker-on-mounting-criticisms-of-obama-administration-ct-policies/

One of **Baker’s** more interesting **observation**s — and one of the first times I have seen this in print, although it is a subject of some discussion among Bush Administration officials — **is that civil liberties groups have taken it easy on** the **Obama** Administration:¶ For four years, Mr. **Obama has benefited** at least in part **from the reluctance of** Mr. **Bush’s most virulent critics to criticize a Democratic president. Some liberals acknowledged in recent days that they were willing to accept policies they once would have deplored as long as they were in** Mr. **Obama’s hands**, not Mr. Bush’s.¶ “**We trust the president**,” former Gov. Jennifer Granholm of Michigan said on Current TV. “**And if this was Bush, I think that we would all be more up in arms because we wouldn’t trust that he would strike in a very targeted way** and try to minimize damage rather than contain collateral damage.”¶ **Presumably for the same reason, European governments, who** were **unrelent**ing **in their criticism of Guantanamo** and other Bush Administration counterterrorism policies, **have simply looked the other way as** most of those same policies have continued (or, in the case of **drones, dramatically increased**). One does wonder whether the Nobel Prize Committee is suffering from at least a modicum of buyer’s remorse.¶ As the Obama Administration begins its second term, **the** big **question now is whether the domestic and international criticism will snowball and, if so, how the Administration will respond**.

**2AC A2: Executive CP**

***1) Doesn’t solve the case:***

***A) Extend Chesney - The CP is the status quo – The President has already given these assurances but as long as the power is granted by Congress the perception of its use will persist***

(In September 2010, the Obama administration made this unstated policy official, announcing that it would use the criminal justice system exclusively both for domestic captures and for citizens captured anywhere in the world. In a speech at the Harvard Law School, then-White House official John Brennan stated: it is the firm position of the Obama Administration that suspected terrorists arrested inside the United States will—in keeping with long-standing tradition—be processed through our Article III courts. As they should be.)

***B) Extend Hayes – a Statutory re-interpretation of the NDAA by the legislator is the key assurance our allies need to extradite terror suspects to the United States***

***C) Unilateral executive assurances fail to solve perception***

Ashley **Deeks**, Academic Fellow at Columbia Law School and senior contributor to Lawfare, “Promises Not to Torture: Diplomatic Assurances in U.S. Courts”, The American Society of International Law, 20**08**, http://www.asil.org/files/ASIL-08-DiscussionPaper.pdf (BJN)

**Human rights groups** have been the most vocal opponents of assurances, and **often represent in court individuals who are contesting their transfers by the U.S. government. Many groups** have called for a total ban, while others **have sought more stringent monitoring mechanisms to give teeth to the assurances**.222 **Critics claim that current practice *shrouds the assurances in a veil of secrecy***. At the same time, ***the fact that only the Executive Branch reviews the assurances*** **leads these critics to conclude that the decision-maker has a vested interest in concluding that the assurances are reliable**. In part **because the Executive Branch faces widespread criticism over issues related to detention**, Guantanamo, and torture, ***a unilateral reliance by the Executive Branch on assurances*** (which the public associates with all three issues) ***is viewed with similar skepticism***. **The criticisms may have gained additional traction in the public’s mind because the U.S. government has not responded** directly **to these criticisms**.

***D) Congress comparatively solves this deficit***

Ashley **Deeks**, Academic Fellow at Columbia Law School and senior contributor to Lawfare, “Promises Not to Torture: Diplomatic Assurances in U.S. Courts”, The American Society of International Law, 20**08**, http://www.asil.org/files/ASIL-08-DiscussionPaper.pdf (BJN)

***This legislative approach has a number of advantages***. First, **it would provide greater *transparency* than the existing process by providing a check by another branch of government**. Second, **it would overcome the appearance of having a transfer decision made** ***exclusively by a decisionmaker who critics see as invested in a particular outcome***; **a neutral third party would evaluate the process to ensure the Executive reviewed the relevant elements in reaching its decision.** The fact of judicial review will make it even more likely that the Executive will engage in a careful, thoughtful balancing of the facts in deciding whether torture is more likely than not and seek the most robust assurances possible when it believes that, absent assurances, a person would more likely than not be tortured. Finally, a process in which all three branches have participated will ***bolster the credibility of the process with allies* and the public.**

***2) CP links to politics more***

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

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

***Extend Harvard Law Review --- says that future presidents will prevent self-restraint --- they’ll just decide to use indef detention on domestic captures --- says there needs to be a formal institutional check***

***Fisher says that the CP gets rolled back by Congress --- there are constitutienes in congress that awnt to detain dom captures --- so they’ll use the power of the purse to backlash against Obama***

***5) Extend Chesney – Congressional action is key to prevent interbranch conflict over detention policy -- Solves extinction***

Linda S. **Jamison**, Deputy Director of Governmental Relations @ CSIS, Spring 19**93**, Executive-Legislative Relations after the Cold War, Washington Quarterly, v.16, n.2, p. 189

Indeed there are very few domestic issues that do not have strong international implications, and likewise there are numerous transnational issues in which all nations have a stake. **Environmental degradation**, the **proliferation** of weapons of mass destruction, population control, migration, international narcotics trafficking, **the spread of AIDS, and** the deterioration of the human condition in the less developed world **are circumstances affecting all corners of the globe**. Neither political isolation nor policy bifurcation is an option for the United States. Global circumstances have drastically changed with the end of the Cold War and the political and policy conditions that sustained bipartisan consensus are not applicable to the post-war era. The formulation of a new foreign policy must be grounded in broad-based principles that reflect domestic economic, political and social concerns while providing practical solutions to new situations. Toward a cooperative US Foreign Policy for the 1990s: **If the federal government is to meet the new international policy challenges** of the post-cold war era, institutional dissension caused by partisan competition and **executive-legislative friction must give way to a new way of business. Policy flexibility must be the watchwor**d of the 1990s in the foreign policy domain **if the United States is to have any hope of securing its interests in the uncertain years ahead.** One former policymaker, noting the historical tendency of the United States to make fixed “attachments,” has argued that a changing world dictates policy flexibility, where practical solutions can be developed on principles of broad-based policy objectives (Fulbright 1979). **Flexibility**, however, **will not be possible without interbranch cooperation.**  The end of the Cold War and the new single-party control of the White House and Congress provide a unique opportunity to reestablish foreign policy cooperation. Reconfiguring post cold war objectives requires comprehension of the remarkable transformations in world affairs and demands an intense political dialogue that goes beyond the executive branch (Mann 1990, 28-29).

**NB**

***Congress has already passed detention restrictions—thumps the da***

Janet Cooper **Alexander 13**, professor of law at Stanford University, March 21st, 2013, "The Law-Free Zone and Back Again," Illinois Law Review, [illinoislawreview.org/wp-content/ilr-content/articles/2013/2/Alexander.pdf](http://illinoislawreview.org/wp-content/ilr-content/articles/2013/2/Alexander.pdf)

Congress also passed legislation requiring suspected members of al- Qaeda or “associated forces” to be held in military custody, again making it difficult to prosecute them in federal court. The bill as passed contained some moderating elements, including the possibility of presidential waiver of the military custody requirement, 7 recognition of the FBI’s ability to interrogate suspects, 8 and a disclaimer stating that the statute was not intended to change existing law regarding the authority of the President, the scope of the Authorization for Use of Military Force, 9 or the detention of U.S. citizens, lawful residents, or persons captured in the United States. 10 All the while, Republican presidential hopefuls were vying to see who could be the most vigorous proponent of indefinite detention, barring trials in civilian courts, and reinstating a national policy of interrogation by torture.¶ 11¶ During the same period, the D.C. Circuit issued a series of decisions that effectively reversed the Supreme Court’s habeas decisions of 2004 and 2008. 12 The Supreme Court’s failure to review these decisions has left detainees with essentially no meaningful opportunity to challenge their custody. ¶ Thus, **a decade that began with the executive branch’s assertion of sole and exclusive power to act unconstrained by law or the other branches ended**, ironically, with **Congress asserting its power to countermand the executive branch’s decisions**, regardless of detainee claims of legal rights, in order to maintain those law-free policies. And although the Supreme Court had blocked the Bush administration’s law-free zone strategy by upholding detainees’ habeas rights, the D.C. Circuit has since rendered those protections toothless.

***Lx ev terrible – no reason for slipper slipe***

***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.***

***Terrorism kills the economy***

Owen B. **Toon**, 4-19-**2007**, is professor of Atmospheric and Oceanic Sciences and a fellow at the Laboratory for Atmospheric and Space Physics (LASP) at the University of Colorado received his Ph.D. from Cornell University, in cloud physics, atmospheric chemistry and radiative transfer, “Atmospheric effects and societal consequences of regional scale nuclear conﬂicts and acts of individual nuclear terrorism,” Atmosphere Chemistry Physics

**To an increasing extent, people are congregating in the world’s great urban centers, creating megacities** with popula- tions exceeding 10 million individuals. **At the same time,** ad- vanced **technology has designed nuclear explosives of such small size they can be easily transported** in a car, small plane or boat to the heart of a city. We demonstrate here that **a sin- gle detonation** in the 15 kiloton range can produce urban fa- talities **approaching one million** in some cases, **and casualties exceeding one million**. Thousands of small weapons still ex- ist **in** the arsenals of the U.S. and **Russia**, and **there are** at least six other countries with **substantial** nuclear weapons **invento- ries**. In all, thirty-three countries control sufficient amounts **of** highly **enriched uranium or plutonium** to assemble nuclear explosives. A conflict between any of these countries involv- ing 50-100 weapons with yields of 15kt has the potential to create fatalities rivaling those of the Second World War. Moreover, **even a single surface nuclear explosion, or an air burst in rainy conditions, in a city center is likely to cause the entire metropolitan area to be abandoned at least for decades owing to infrastructure damage and radioactive contamina- tion**. As the aftermath of hurricane Katrina in Louisiana sug- gests, ***the economic consequences of even a localized nuclear catastrophe would most likely have severe national and inter- national economic consequences***. **Striking effects result even from relatively small nuclear attacks** because low yield det- onations **are** most **effective against city centers** where busi- ness and social activity as well as population are concen- trated. Rogue nations and **terrorists would be most likely to strike there**. Accordingly, an organized attack on the www.atmos-chem-phys.net/7/1973/2007/ Atmos. Chem. Phys., 7, 1973–2002, 2007 Page 28 2000 O. B. Toon et al.: **Consequences of** regional scale nuclear conflicts U.S. by a small nuclear state, or **terrorists** supported by such a state, **could generate casualties comparable to those once predicted for a full-scale nuclear “counterforce” exchange in a *superpower conflict*.** Remarkably, the estimated **quantities of smoke generated** by attacks totaling about one megaton of nuclear explosives **could lead to significant global climate perturbations** (Robock et al., 2007). While we did not ex- tend our casualty and damage predictions to include poten- tial medical, social or economic impacts following the initial explosions, such analyses have been performed in the past for large-scale nuclear war scenarios (Harwell and Hutchin- son, 1985). Such a study should be carried out as well for the present scenarios and physical outcomes.

**Don’t violate CP**

***All of our args on the XO apply --- this is just the SQ --- wittes says you have to codify it in law***

***Perm do both***

**Politics 2ac --- debt ceiling**

***No PC on debt ceiling***

Mike **Lillis**, The Hill, **9/15**/13, http://thehill.com/video/sunday-shows/322313-obama-vows-no-debate-on-debt-ceiling

President **Obama** in an interview broadcast Sunday **amplified his warning that he** ***won't negotiate*** with GOP leaders ***on raising the debt ceiling***. With the government expected to hit its spending limit in mid-October, Speaker John Boehner (R-Ohio) and other Republicans are planning to use that deadline as leverage to exact steep spending cuts from the Democrats. But **Obama** in the interview, recorded Friday**, vowed** that the strategy won't work. "I’m happy to have a conversation with him [Boehner] about how we can deal with the so-called sequester, which is making across-the-board cuts on stuff that we shouldn’t be cutting," Obama said in an interview with ABC's "This Week" program. "What **I haven’t been willing to negotiate**, ***and I will not negotiate***, is **on the debt ceiling**."

***A) Shutdown is inevitable***

Ezra **Klein**, Washington Post, “A government shutdown just became a bit more likely. That might be a good thing.”, **Sept 12th** 2013, http://www.washingtonpost.com/blogs/wonkblog/wp/2013/09/12/a-government-shutdown-just-became-a-bit-more-likely-that-might-be-a-good-thing/?wprss=rss\_ezra-klein&clsrd

1) House **Republicans pulled their bill to fund the government**. The House was expected to vote Wednesday on a bill to continue funding the federal government. **The** initial **whip count showed the bill 18 votes short of passage**, so the vote didn't happen. Why is the bill 18 votes short of passage? Obamacare, of course. 2) The GOP's small Obamacare problem. The vote was delayed because **the** House **GOP can't decide on what to do about Obamacare**. Hardcore conservatives want to refuse to fund the government as long as any of that funding goes to Obamacare — which is to say, they want to shut down the government over Obamacare. This is a fight that House leadership believes they will lose, and lose very badly. So Team Boehner tried to finesse it. The funding bill required a vote on defunding Obamacare. But House conservatives quickly realized that they would lose the vote in the Senate and the result would be the federal government would get funded, and Obamacare would be funded along with it. So they turned on the bill, and, fearing for its passage, House leadership delayed the vote. 3) The GOP's big Obamacare problem. Behind all this is a simple fact: The GOP has lost on Obamacare. They didn't have the votes to stop it from passing in 2010. They didn't have the votes to repeal it in 2011. They didn't have the votes to win the presidency and the Senate by campaigning against it in 2012. And they really have no way to stop it in 2013. Now it's going into effect, and once it goes into effect and begins delivering health insurance to tens of millions of people, it's pretty much here to stay. But conservatives don't want to believe they've lost on Obamacare, and the rest of the Republican Party is scared to admit they've lost on Obamacare. So **as their situation becomes more desperate** **their tactics become more desperate**, too. That's what you get when your position is a mixture of delusion and fear. 4) **There isn't much time to pass a bill funding the government. So the GOP doesn't know how to pass a bill** funding the government because they don't know what to do about Obamacare — and **they don't seem on the verge of figuring it out, either**. Meanwhile, time is running short. As Jonathan Chait writes, "**a bill needs to pass by September 30**, **and Congress has a rigorous vacation schedule** to adhere to, giving it precious little time to accomplish the goal of not shutting down the government."

***B) That makes Debt Ceiling increase inevitable regardless of political capital***

Ezra **Klein**, Washington Post, “A government shutdown just became a bit more likely. That might be a good thing.”, **Sept 12th** 2013, http://www.washingtonpost.com/blogs/wonkblog/wp/2013/09/12/a-government-shutdown-just-became-a-bit-more-likely-that-might-be-a-good-thing/?wprss=rss\_ezra-klein&clsrd

5) **A government shutdown wouldn't be the worst thing** in the world. It's breaching the debt ceiling that would be a disaster. There are two fiscal crack-ups on offer this fall. One is a government shutdown. That's bad, but it's not a catastrophe. The other is breaching the debt ceiling. That's a complete and utter catastrophe. The timeline here is cold and unforgiving: Absent action, the government shutdown will happen at the end of this month. The debt ceiling could collapse as soon as Oct. 18. If **the GOP *needs to lose a giant showdown in order to empower more realistic voices*** and move forward, **it's better that showdown happens** over a government shutdown then a debt-ceiling breach**. A government shutdown is highly visible and dramatic, but** it ***won't actually destroy the economy.*** So an "optimistic" case might be that **there's a shutdown for the first few days of October, the GOP gets creamed in public opinion, the hostage-taking strategies** of the party's right flank **are discredited, and Washington is at a much better equilibrium by the time the debt ceiling needs to be raised.**

***The agenda is dead despite shift on Syria***

* No PC despite focus shift to Syria. It will still dominate and overshadow the agenda. Gop and dems still mad at him
* Job creation stagnant – hurts Obama’s credibility and messaging
* Obama has no major accomplishments

Doug **Schoen 9/18**, Contributor, I'm a political strategist, pollster, author and commentator, Obama's Path Forward, <http://www.forbes.com/sites/dougschoen/2013/09/18/obamas-path-forward/>, jj

It goes without saying that President ***Obama has had a rough summer***. ***Despite what appears to be a favorable development with Syria***, **few Democrats and Republicans are supportive of the administration**. **As Congress braces for a divisive debate over the debt ceiling, job creation remains stagnant**, **with August coming in below expectations and the Labor Department revising its July numbers to reflect a significantly weaker report**. Given that both **Syria** and the debt ceiling **are likely to dominate Washington’s agenda** for the remainder of September, it’s highly unlikely that Mr. Obama will advance key elements of his domestic policy agenda before the end of the year. ***This couldn’t come at a worse time***: less than a year ago, **the administration** was approaching its second term with great ambition. Today, **it’s not only digging itself out of self-inflicted holes, but it’s also left without strong policy accomplishments heading into the 2014 election**. By this time in his second term, President Clinton had successfully negotiated with a Republican-led Congress both the State Children’s Health Insurance Program and Balanced Budget Act of 1997. Despite the scandals that plagued his final years in the White House, historians broadly agree on his ability to move legislation through a tough political climate.

***And Obama’s being blasted on war powers now***

**Nelson, 9/5** (Colleen, 9/5/2013, “Obama's Curbs on Executive Power Draw Fire,” <http://online.wsj.com/article/SB10001424127887323893004579057463262293446.html>))

President Barack Obama, who pledged to push his second-term domestic agenda through executive actions when Congress wouldn't cooperate, has moved in the opposite direction on international affairs in recent months as he created new checks on executive authority.

**By asking Congress to authorize military action against Syria, proposing some constraints on National Security Agency surveillance programs and placing limits on drone strikes, the president *voluntarily has ceded some authority* in foreign policy and national security, legal experts say**.

The president's moves on national-security issues reflect a mix of political pragmatism as well as personal principles, and exactly how much power Mr. Obama actually has given up is the subject of debate. He has walked a fine line on Syria, for example, saying he wasn't required to seek sign-off from lawmakers for a military strike but asking for their approval anyway.

A senior administration official said that while the new drone-strike policy does rein in executive authority, the NSA and Syria proposals weren't a reduction of power but an effort to increase transparency and build public confidence.

Still, **the president**, who was criticized for seizing too much power through recess appointments and other steps that some said circumvented Congress, now **is being *criticized by veterans of past Republican administrations* for weakening the presidency**.

John **Yoo**, a Justice Department official in the George W. Bush administration, **said** Mr. **Obama had unnecessarily limited his own authority. He noted that it is rare to see a president restrict his powers.**

Mr. Obama "has been trying to reduce the discretion of the president when it comes to national security and foreign affairs," said Mr. Yoo, now a law professor at the University of California at Berkeley. "These proposals that President Obama is making really run counter to why we have a president and a constitution."

***\*Energy floor debates thump***

Amy **Harder 9/12**, and Clare Foran, National Journal, "The Energy Debate That Wasn't", 2013, www.nationaljournal.com/daily/the-energy-debate-that-wasn-t-20130912?mrefid=mostViewed

**The second day of the Senate's first floor debate on** an **energy** bill in six years ***was marked by obstruction, opposition, and frustration***.¶ Sen. David **Vitter**, R-La., **held firm in his refusal to allow debate to move forward** to an energy-efficiency bill **until Senate leaders agree on a time to vote on his amendment related to** President Obama's **health care** law. Vitter first interfered with the energy debate Wednesday afternoon, shortly after Senate Majority Leader Harry Reid, D-Nev., moved to the bill in place of the Syria resolution that was put on hold.¶ **Vitter's stance put an uncontroversial measure with broad support on a *difficult legislative obstacle course***.¶ "Senators who have talked about energy policy for years and years now say they want to have their issues that are unrelated to energy advance today, even though they have the potential to undermine this bill," Senate Energy and Natural Resources Chairman Ron Wyden, D-Ore., said on the floor, showing clear frustration. "I don't know how that adds up, if you give a lot of speeches at home about sensible energy policy and then take steps to undermine it."¶ Wyden didn't name any names, but he didn't have to.¶ "Since they were all directed at my activity, I want to respond," said Vitter just moments after Wyden concluded his comments. "I have nothing against this bill, I applaud that work. I did hear a lot this summer—quite frankly, I didn't hear about this bill or any provision of this bill. But I'm not denigrating it."¶ **Vitter isn't the only Republican seeking to pivot the debate.** Senate Minority Leader Mitch **McConnell**, R-Ky., **also filed an amendment to the energy bill seeking to delay a key part of Obamacare**. He spoke about the amendment Thursday morning but didn't mention the energy bill at all.¶ **A number of other Republican senators also used floor time to voice opposition to the health care law**, including John Barrasso of Wyoming, Dan Coats of Indiana, and Jeff Flake of Arizona.¶ Among the GOP voices, Vitter's was the loudest. **Whether senators will actually get to debate energy**—even ***controversial issues like*** the ***Keystone*** XL pipeline ***and*** climate-change ***regulations*—now hinges on whether Vitter either backs down from his amendment or comes to an agreement** with Senate leaders on another path to vote on it down the road.¶ ***Even if a deal is reached with Vitter, more obstacles await***. Sens. John **Hoeven**, R-N.D., **and** Mary **Landrieu**, D-La., **introduced an amendment** Thursday **that would declare** the **Keystone** pipeline **to be in the national interest**. A decision on a permit for the controversial project is still pending at the State Department.¶ On ***another thorny issue***, Sens. Joe Donnelly, D-Ind., and Roy Blunt, R-Mo., introduced **an amendment that would ban the E**nvironmental **P**rotection **A**gency **from requiring** costly carbon-capture and **sequestration technology** to be used in order to comply with climate-change regulations. The amendment would instead require the EPA to develop technology standards for different fuels and different sources of emissions.¶ **Barrasso is also pushing an amendment to block the agency's upcoming climate rules** unless they are approved by Congress. The EPA is expected to issue regulations limiting carbon emissions for new power plants very soon.

***Guns thump***

**Al Jazeera 9/22 –** “Obama urges new gun control push, citing latest mass shootings,” <http://america.aljazeera.com/articles/2013/9/22/obama-urges-new-guncontroleffort.html>

President Barack **Obama made a fresh call for greater gun controls over the weekend, urging his most ardent supporters to regroup and help push stalled legislation through Congress**. "We can't rest until all of our children can go to school or walk down the street free from the fear that they will be struck down by a stray bullet," Obama said in a keynote speech to the Congressional Black Caucus Foundation's annual awards dinner Saturday. **The remarks came on the back of another bloody week in terms of gun violence in the U.S., with mass shootings in both Washington D.C. and Chicago**. **Legislation** calling **for expanded background checks failed to clear the Senate earlier this year**, despite momentum for change seemingly being generated in the wake of last December’s massacre of 20 children and six adults in a Connecticut school. “**We fought a good fight earlier this year, but we came up short. And that means *we've got to get back up and go back at it,”* Obama told the Caucus**.

***Plan doesn’t cost political capital --- Obama wouldn’t push the plan***

**Controversial fights ensure agenda success.**

**Dickerson 1/18**/13 (John, Chief Political Correspondent at the Slate, Political Director of CBS News, Covered Politics for Time Magazine for 12 Years, Previous White House Correspondent, Go for the Throat!, http://tinyurl.com/b7zvv4d)

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.

This theory of political transformation rests on the weaponization (and slight bastardization) of the work by Yale political scientist Stephen Skowronek. Skowronek has written extensively about what distinguishes transformational presidents from caretaker presidents. In order for a president to be transformational, the old order has to fall as the orthodoxies that kept it in power exhaust themselves. Obama's gambit in 2009 was to build a new post-partisan consensus. That didn't work, but by exploiting the weaknesses of today’s Republican Party, Obama has an opportunity to hasten the demise of the old order by increasing the political cost of having the GOP coalition defined by Second Amendment absolutists, **climate science deniers**, supporters of “self-deportation” and the pure no-tax wing.

***Specifically true of our aff***

**Antle, 13** (June 10, W. James, editor of the Daily Caller News Foundation and senior editor at The American Spectator, He is a former associate editor at TAC and his work has appeared at The Guardian, Politico,¶ “Civil Liberties: A GOP Civil War?” http://www.theamericanconservative.com/articles/civil-liberties-a-gop-civil-war/)

Speaking on “Fox News Sunday,” Rand Paul had strong words for the National Security Agency. “Get a warrant, go after a terrorist or a murderer or a rapist,” he said. “But don’t troll through a billion phone records every day.”

The Kentucky senator went on to threaten a class-action lawsuit against such trolling. His remarks capped a week of bipartisan outrage over revelations that the federal government’s global surveillance program was much broader in scope than anticipated.

While Verizon was the first carrier implicated, there are now reports that the NSA has clandestine access to real-time user data for customers of as many as [50 companies](http://theweek.com/article/index/245311/sources-nsa-sucks-in-data-from-50-companies). Even one of the Republican congressmen behind the Patriot Act [cried foul](http://dailycaller.com/2013/06/06/patriot-act-author-seizing-phone-records-of-millions-of-innocent-people-is-excessive-and-un-american/).

Seizing phone records of millions of innocent people is excessive and un-American,” Wisconsin Rep. James Sensenbrenner, a past chairman of the House Judiciary Committee, said in a statement.

But not everyone in the GOP is on board with this great privacy awakening. “Sen. Rand Paul, he’s a libertarian, and in Rand Paul’s world you have almost no defenses against terrorists,” blustered South Carolina Sen. Lindsey Graham. “In Rand Paul’s world, you can’t hold somebody for questioning who’s been involved in an attack on our country.”

This broadside elicited a fierce reaction from South Carolinian Nancy Mace, the first woman to graduate from the Citadel—and a possible Graham primary challenger. “In Senator Graham’s world, the Constitution doesn’t exist,” Mace[wrote](http://www.redstate.com/nancymace/2013/06/07/lindsey-grahams-world/). “In Senator Graham’s world, the entire Bill of Rights is negotiable.”

Mace zinged Graham for believing “arming al-Qaeda in Syria is a good idea.” She argued Graham “says we’re fighting for freedom but is the first to surrender all of them.” Mace concluded, “Maybe Senator Graham has been living in a world of his own for too long.”

Give Graham credit for consistency: unlike other Republican opportunists, he wants Barack Obama to exercise the same untrammeled executive powers he believes belonged to George W. Bush. No matter who the commander-in-chief is, he says America is a battlefield.

That’s why the ascendancy of Rand Paul—who would be as quick to criticize warrantless surveillance under President Romney, Ryan or Rubio—tears open a real debate within the Republican Party. For one side maintains that low taxes and the sanctity of innocent human life can somehow coexist with permanent war. The other side realizes that if the homeland is a battlefield, we must live under something closer to martial law than the Bill of Rights—a proposition incompatible with limited government.

While Graham does not speak for as many Republicans as he did during the Bush years, he makes one argument that is still likely to resonate on the right: “I see the threat to the average American, radical Islam coming to our backyard trying to destroy our way of life. He sees the threat [from] the government that’s trying to stop the attack.”

South Carolina’s senior senator accuses Paul of believing that people in our government are a “bunch of Nazis” rather than “patriotic Americans.”

The trump card for McCain-Graham Republicans and their many allies in the Democratic Party is that they can claim various federal actions have prevented terrorist attacks while the alleged proof is usually classified.

When terrorist attacks fail or do not occur, the surveillance state is vindicated. When terrorism happens, it proves the surveillance state needs more power. To think otherwise is to brand patriotic Americans Nazis, which of course only[unpatriotic conservatives](http://old.nationalreview.com/frum/frum031903.asp) do.

But so far it is Paul’s defense of the Fourth Amendment—conveniently violated by a Democratic administration—that is capturing conservatives’ imaginations. Tea Party groups are railing against the NSA alongside the IRS.

Grassroots conservatives seem to be standing with Rand rather than rolling their eyes at the wacko birds. They are quoting Sen. Barack Obama, who was skeptical of trading liberty for security, against President Obama.

Can this trend endure past the current administration? Only time will tell. We may not be living in Rand Paul’s world or Lindsey Graham’s, but the next few elections will help determine whose party the GOP is.

***PC theory is wrong***

**Hirsh, 2-7** – National Journal chief correspondent, citing various political scientists

[Michael, former Newsweek senior correspondent, "There’s No Such Thing as Political Capital," National Journal, 2-9-13, www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207]

**There’s No Such Thing as Political Capital**

The idea of political capital—or mandates, or momentum—is so poorly defined that presidents and pundits often get itwrong. 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 **shift**ed **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 [they]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 [they’re]*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.)

[Matt note: gender paraphrased]

**( ) No link - The disad is not an opportunity cost – Congress could do the plan and raise debt ceiling**

**Issues compartmentalized**

**Edwards 2k** [Distinguished Professor of Political Science, director of the Center for Presidential Studies, Texas A&M University (George C. III, March. “Building Coalitions.” Presidential Studies Quarterly, Vol. 30, Iss. 1.)]

Besides not considering the full range of available views, members of Congress are **not** generally **in a position to make trade-offs** between policies. Because of its **decentralization**, Congress usually considers policies **serially**, that is, **without reference to other policies**. Without an integrating mechanism, members have few means by which to set and enforce priorities and to emphasize the policies

***No food wars***

**Eland ’11** – Ivan Eland, American defense analyst and author. He is currently a Senior Fellow and Director of the Center on Peace and Liberty at the Independent Institute. Global Warming, Environmental Threats, and U.S. Security: Recycling the Domino Theory, Climate Coup: Global Warming’s Invasion of Our Government and Our Lives, edited by Patrick J. Michaels, pg. 110, jj

**Food scarcity**, like water shortages, **is a dubious cause of conflict**.¶ **The blithe assertion that environmentally induced famine will cause**¶ **increased conflict over scarce food supplies overlooks the aforementioned fact that widespread hunger reduces the capacity of nations**¶ **or groups to make war effectively**.39

***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.***

***Terrorism kills the economy***

Owen B. **Toon**, 4-19-**2007**, is professor of Atmospheric and Oceanic Sciences and a fellow at the Laboratory for Atmospheric and Space Physics (LASP) at the University of Colorado received his Ph.D. from Cornell University, in cloud physics, atmospheric chemistry and radiative transfer, “Atmospheric effects and societal consequences of regional scale nuclear conﬂicts and acts of individual nuclear terrorism,” Atmosphere Chemistry Physics

**To an increasing extent, people are congregating in the world’s great urban centers, creating megacities** with popula- tions exceeding 10 million individuals. **At the same time,** ad- vanced **technology has designed nuclear explosives of such small size they can be easily transported** in a car, small plane or boat to the heart of a city. We demonstrate here that **a sin- gle detonation** in the 15 kiloton range can produce urban fa- talities **approaching one million** in some cases, **and casualties exceeding one million**. Thousands of small weapons still ex- ist **in** the arsenals of the U.S. and **Russia**, and **there are** at least six other countries with **substantial** nuclear weapons **invento- ries**. In all, thirty-three countries control sufficient amounts **of** highly **enriched uranium or plutonium** to assemble nuclear explosives. A conflict between any of these countries involv- ing 50-100 weapons with yields of 15kt has the potential to create fatalities rivaling those of the Second World War. Moreover, **even a single surface nuclear explosion, or an air burst in rainy conditions, in a city center is likely to cause the entire metropolitan area to be abandoned at least for decades owing to infrastructure damage and radioactive contamina- tion**. As the aftermath of hurricane Katrina in Louisiana sug- gests, ***the economic consequences of even a localized nuclear catastrophe would most likely have severe national and inter- national economic consequences***. **Striking effects result even from relatively small nuclear attacks** because low yield det- onations **are** most **effective against city centers** where busi- ness and social activity as well as population are concen- trated. Rogue nations and **terrorists would be most likely to strike there**. Accordingly, an organized attack on the www.atmos-chem-phys.net/7/1973/2007/ Atmos. Chem. Phys., 7, 1973–2002, 2007 Page 28 2000 O. B. Toon et al.: **Consequences of** regional scale nuclear conflicts U.S. by a small nuclear state, or **terrorists** supported by such a state, **could generate casualties comparable to those once predicted for a full-scale nuclear “counterforce” exchange in a *superpower conflict*.** Remarkably, the estimated **quantities of smoke generated** by attacks totaling about one megaton of nuclear explosives **could lead to significant global climate perturbations** (Robock et al., 2007). While we did not ex- tend our casualty and damage predictions to include poten- tial medical, social or economic impacts following the initial explosions, such analyses have been performed in the past for large-scale nuclear war scenarios (Harwell and Hutchin- son, 1985). Such a study should be carried out as well for the present scenarios and physical outcomes.

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***\*\*History proves***

**Ferguson 6**— Laurence A. Tisch prof of History at Harvard. William Ziegler of Business Administration at Harvard. MA and D.Phil from Glasgow and Oxford (Niall, “The Next War of the World,” September/October 2006, http://www.realclearpolitics.com/articles/2006/09/the\_next\_war\_of\_the\_world.html)

Nor can economic crises explain the bloodshed. **What** may be the most familiar causal chain in modern historiography **links the** Great **Depression to** the rise of **fascism and** the outbreak of **World War II**. But that simple story **leaves too much out**. Nazi **Germany started the war** in Europe only **after its economy** had **recovered. Not all the countries** affected by the Great Depression were taken over by fascist regimes, nor did all such regimes **start wars** of aggression. In fact, **no** general **relationship between economics and conflict is discernible for the century** as a whole. Some **wars came after** periods of **growth**, others were the causes rather than the consequences of economic catastrophe, **and** some severe economic **crises were not followed by wars.**

**DA**

**Intrin**

**Food**

***No resource wars***

**Allouche, 11** - Research Fellow at the Institute of Development Studies at the University of Sussex (Jeremy,. "The sustainability and resilience of global water and food systems: Political analysis of the interplay between security, resource scarcity, political systems and global trade" Food Policy, Volume 36, Supplement 1, January 2011, Science Direct)

Water/food resources, war and conflict **The question of resource scarcity has led to many debates on whether scarcity** (whether of food or water**) will lead to conflict and war.** The **underlining reasoning** behind most of these discourses over food and water wars **comes from the Malthusian belief that there is an imbalance between the economic availability of natural resources and population growth** since while food production grows linearly, population increases exponentially. **Following this reasoning, neo-Malthusians claim that finite natural resources place a strict limit on the growth of human population** and aggregate consumption; **if these limits are exceeded, social breakdown, conflict and wars result.** Nonetheless, it seems that ***most empirical studies do not support any of these neo-Malthusian arguments.*** ***Technological change* and greater inputs of capital have dramatically increased labour productivity in agriculture.** More generally, **the neo-Malthusian view has suffered because during the last two centuries humankind has breached many resource barriers that seemed unchallengeable**. Lessons from history: alarmist scenarios, resource wars and international relations **In a so-called age of uncertainty, a number of alarmist scenarios have linked the increasing use of water resources and food insecurity with wars. The idea of water wars** (perhaps more than food wars) **is a dominant discourse in the media** (see for example Smith, 2009), NGOs (International Alert, 2007) and within international organizations (UNEP, 2007). In 2007, UN Secretary General Ban Ki-moon declared that ‘water scarcity threatens economic and social gains and is a potent fuel for wars and conflict’ (Lewis, 2007). Of course, **this type of discourse has an instrumental purpose; security and conflict are here used for raising water/food as key policy priorities** at the international level. **In the Middle East, presidents, prime ministers and foreign ministers have also used this bellicose rhetoric. Boutrous Boutros-Gali said; ‘the next war in the Middle East will be over water, not politics’** (Boutros Boutros-Gali in Butts, 1997, p. 65). **The question is not whether the sharing of transboundary water sparks political tension and alarmist declaration, but rather to what extent water has been a principal factor in international conflicts. *The evidence seems quite weak***. Whether by president Sadat in Egypt or King Hussein in Jordan, ***none* of these declarations have been followed up by military action**. The governance of transboundary water has gained increased attention these last decades. This has a direct impact on the global food system as water allocation agreements determine the amount of water that can used for irrigated agriculture. The likelihood of conflicts over water is an important parameter to consider in assessing the stability, sustainability and resilience of global food systems. ***None* of the *various and extensive databases* on the causes of war show water as a c**asus **b**elli. **Using the International Crisis Behavior (ICB) data set and supplementary data from the University of Alabama on water conflicts, Hewitt, Wolf and Hammer found only seven disputes where water seems to have been at least a partial cause for conflict** (Wolf, 1998, p. 251). In fact, about 80% of the incidents relating to water were limited purely to governmental rhetoric intended for the electorate (Otchet, 2001, p. 18). **As shown in The Basins At Risk (BAR) water event database, more than two-thirds of over 1800 water-related ‘events’ fall on the ‘cooperative’ scale** (Yoffe et al., 2003). **Indeed, if one takes into account a much longer period, the following figures clearly demonstrate this argument**. According to studies by the United Nations Food and Agriculture Organization (FAO), **organized political bodies signed** **between the year 805 and 1984 more than** **3600 water-related treaties**, and approximately 300 treaties dealing with water management or allocations in international basins have been negotiated since 1945 ([FAO, 1978] and [FAO, 1984]). **The fear around water wars have been driven by a Malthusian outlook which equates scarcity with violence, conflict and war. There is however no direct correlation between water scarcity and transboundary conflict**. Most specialists now tend to agree that the major issue is not scarcity per se but rather the allocation of water resources between the different riparian states (see for example [Allouche, 2005], [Allouche, 2007] and [Rouyer, 2000]). Water rich countries have been involved in a number of disputes with other relatively water rich countries (see for example India/Pakistan or Brazil/Argentina). The perception of each state’s estimated water needs really constitutes the core issue in transboundary water relations. Indeed, whether this scarcity exists or not in reality, perceptions of the amount of available water shapes people’s attitude towards the environment (Ohlsson, 1999). In fact, some water experts have argued that **scarcity drives the process of co-operation among riparians** ([Dinar and Dinar, 2005] and [Brochmann and Gleditsch, 2006]). **In terms of international relations, the threat of water wars due to increasing scarcity does not make much sense in the light of the recent *historical record*. Overall, the water war rationale expects conflict to occur over water, and appears to suggest that violence is a viable means of securing national water supplies, an argument which is highly contestable.** The debates over the likely impacts of climate change have again popularised the idea of water wars. The argument runs that climate change will precipitate worsening ecological conditions contributing to resource scarcities, social breakdown, institutional failure, mass migrations and in turn cause greater political instability and conflict ([Brauch, 2002] and [Pervis and Busby, 2004]). In a report for the US Department of Defense, Schwartz and Randall (2003) speculate about the consequences of a worst-case climate change scenario arguing that water shortages will lead to aggressive wars (Schwartz and Randall, 2003, p. 15). **Despite growing concern that climate change will lead to instability and violent conflict, the evidence base to substantiate the connections is thin** ([Barnett and Adger, 2007] and [Kevane and Gray, 2008]).

**Syria**

***If no protracted fights now despite Syria – proves UQ overwhelms***

***Destroys dem unity which thumps the da***

Mike **Dorning &** Kathleen **Hunter - Sep 17**, 2013, Bloomberg, Obama Rifts With Allies on Summers-Syria Limit Debt Dealing, <http://www.bloomberg.com/news/2013-09-17/obama-s-summers-syria-rifts-with-allies-limit-room-on-debt-deal.html>, jj

**The backlash** President Barack **Obama faced** from Democrats **on both Syria and the prospect of Lawrence Summers leading the Federal Reserve underscore intraparty rifts that threaten to limit his room to strike budget and debt deals**. “**There’s a large and growing portion of the Democratic Party that’s not in a compromising mood**,” said William Galston, a former domestic policy adviser to President Bill Clinton. Summers, one of Obama’s top economic advisers during the first two years of his presidency, withdrew from consideration for Fed chairman after a campaign against him led by Democratic senators who criticized his role in deregulating the financial industry during the 1990s. That came just days after the Senate postponed deliberation on a request by Obama to authorize U.S. force in Syria, amid opposition from Democratic and Republican lawmakers wary of a new military action in the Middle East. **The two controversies raised “central issues” that divide Democrats at a time when the president needs unity to confront Republicans**, Galston said. “The White House better make sure it and congressional Democrats are on the same page” as lawmakers face deadlines on government spending and raising the debt limit, he said. Party Divisions Senator Richard Durbin of Illinois, the chamber’s second-ranking Democrat, said today that Democrats are united with Obama on the need for a “clean” debt-ceiling increase. The anti-Summers movement reflected “strong feelings that many of us have” about making the Fed more responsive on issues such as income inequality, he said. Republican leaders are dealing with their own divisions. House Speaker John Boehner, an Ohio Republican, had to pull back a vote last week on a plan to avoid a partial government shutdown in October after it became clear it couldn’t win enough support from members of his own party. Congress and the Obama administration are facing fiscal decisions that include funding the government by Sept. 30 to avoid a federal shutdown and raising the nation’s $16.7 trillion debt ceiling. Boehner said in July that his party wouldn’t increase the borrowing limit “without real cuts in spending” that would further reduce the deficit. The administration insists it won’t negotiate on the debt ceiling. Building Dissent For Obama, the dissent on the left was already brewing before the Syria and Summers debates. Congressional Democrats and union leaders accused him of being too eager to compromise with Republican demands to cut entitlement spending after he released a budget proposal that called for lower annual Social Security cost-of-living adjustments. Some early Obama supporters also were disappointed that the president, who has relied on drone strikes to kill suspected terrorists and failed to close the detention center at Guantanamo Bay, Cuba, hadn’t moved far enough from George W. Bush’s policies on civil liberties and national security. The complaints grew louder after the disclosure of National Security Agency surveillance practices this year. Obama, who earlier this year watched his gun-control legislation fail in the Senate partly because of defections by Democrats from Republican-leaning states, also is limited in his capacity to enlist public support to win over lawmakers. His job-approval rating was down to 45 percent in the Gallup Poll for Sept. 9 to 15. That’s about the same as the 46 percent that Bush had in the comparable period of his presidency, Sept. 8-11, 2005, immediately following Hurricane Katrina’s devastation of the New Orleans area. Clinton Contrast By contrast, Clinton had 58 percent job approval from Sept. 25-28, 1997, and Ronald Reagan 60 percent from Sept. 13-16, 1985, according to Gallup. Still, Joel Johnson, a former aide to Clinton and to onetime Senate Democratic leader Tom Daschle, said Obama’s ratings “are not dangerously low.” The fissures among congressional Democrats exposed by the Syria and Summers controversies are “apparent for anyone to see, but I don’t make much of it,” Johnson said. “Presidents struggle with the left and the right of their own caucuses constantly.” Johnson added that congressional Democrats have shown no signs of fracture in their support for Obama’s signature health-care law in the face of a sustained Republican attack. Republicans have made calls to delay or defund the law their most visible demand in the fights over funding the government and raising the debt limit. ‘Rough Path’ A battle fought along those lines may help Democrats overcome differences and unify the party, Johnson said. “There’s no denying that he’s hit a rough path recently,” agreed Jim Manley, a former top aide to Senate Majority Leader Harry Reid. “But I’m confident -- once attention is focused on the budget and debt-limit related items -- that Democrats in the House and the Senate will be marching in lockstep with the president.” Presidents now have fewer tools to enforce discipline on members of their party, accelerating their political weakening in their second terms, said former Representative Tom Davis of Virginia, who previously headed the House Republican national campaign apparatus. The growing influence of partisan media and outside groups that can spend large sums on elections has eroded the influence of presidents and congressional leaders, Davis said. ‘Scared to Death’ ***“Leaders in both parties have kind of lost their ability to twist arms,***” he said. “Members are scared to death of the interest groups coming after them.” **Obama doesn’t have a reservoir of personal relationships with Democratic members of Congress to draw upon**, said former Representative Jason Altmire, a Pennsylvania Democrat. “What I heard time and again when I was there is people were trying to compare him to past Democratic administrations,” said Altmire who lost a 2012 primary battle. “The comparison was often made that President Clinton was more friendly on a personal basis and made more of an effort to reach out.” Altmire predicted that winning the loyalty of Democratic lawmakers who had been around since the Clinton years was “going to be an ongoing challenge for the president.”

***Huge distraction***

Ted **Barrett and** Tom **Cohen**, CNN, **9-12-’13**, Congress shifts its focus away from Syria resolution, <http://www.cnn.com/2013/09/11/politics/syria-congress/index.html>, jj

"Congress will be watching these negotiations very closely," Senate Majority Leader Harry Reid, a Nevada Democrat, warned Wednesday. "If there is any indication they're not serious or they're being used as a ploy to delay, then Congress stands ready to return to that Syria resolution" that would authorize a military strike on Syria.

**Division LT**

***Citizen detention debates divide the GOP***

Seth **McLaughlin 13**, a reporter on the Politics Desk, The Washington Times, Rand Paul’s filibuster highlights split in GOP ranks; defense hawks not amused, <http://www.washingtontimes.com/news/2013/mar/7/rand-pauls-filibuster-highlights-split-in-gop-rank/?page=all>, jj

Mr. **Paul**, a possible 2016 presidential candidate, **provided a glimpse into his libertarian brand of Republicanism**, talking about his effort to end the war in Iraq while warning about the importance of ensuring the war in Afghanistan has boundaries and encouraging Americans to safeguard their constitutional rights. “Are we so afraid of terrorism and so afraid of terrorists that we are willing to just throw out our rights and our freedoms and what we have fought for and have gotten over the centuries?” Mr. Paul said. Along the way, Mr. **Paul got a little help from some friends, as a dozen other senators, including several tea party members, came to the floor to give him breaks from talking**. Senate Minority Leader Mitch **McConnell**, Kentucky Republican, also **showed up and showered Mr. Paul’s effort with praise**. Mr. **Paul** also **alluded to the 2011 fight over the Defense Authorization Act, which civil liberties group said allowed the U.S. military to detain American citizens indefinitely — where** Mr. **Graham said that when American citizens who align themselves with al Qaeda ask for an attorney, the answer is “Shut up. You don’t get a lawyer.”** “**Is that the kind of due process we want in our country?” Mr. Paul said.** “Is that what we’re moving towards? So the questions we’re asking here are important questions. And these questions are: Does the bill of rights apply? Can they have exceptions to the bill of rights?” Mr. **Graham fired back by saying he was disappointed with his party for “no longer thinking we are at war**” and casting Mr. Paul as a loner. “Not Sen. Paul — he has a man to himself,” Mr. Graham said. “He has a view. I don’t think it’s a Republican view. I think it is a legitimately held libertarian view.” Mr. Graham also said the Obama administration should ignore Mr. Paul’s request for additional information. “I do not believe that question deserves an answer,” Mr. Graham said. Attorney General Eric H. Holder Jr., though, sent Mr. Paul a response a few hours later, saying Mr. Obama does not have the power to unilaterally approve drone strikes against Americans — paving the way for the Senate confirmation of Mr. Brennan. Rep. Louie Gohmert, Texas Republican, applauded Mr. Paul’s effort. “It forced the White House’s hand,” Mr. Gohmert said. “They had to respond. They had to take a position.” **The back-and-forth highlighted a debate within the Republican Party that pits the old guard — whose fingerprints are all over the nation’s military efforts in Iraq, Afghanistan and Libya — against some of the Republican Party’s rising stars, several of whom rode into Congress as part of the backlash against growth of government and federal spending that started under President George W. Bush and continued on Mr. Obama’s watch.**

***Key to the agenda***

Payroll tax proves --- empirically effective political strategy --- better than negotiating with PC

**Alexander ’13**, Rachel Alexander is the editor of the Intellectual Conservative., Jan 28, 2013, Obama's Divide the GOP and Conquer Strategy, <http://townhall.com/columnists/rachelalexander/2013/01/28/obamas-divide-the-gop-and-conquer-strategy-n1499435/page/full>, jj

**Obama has figured out how to force his** left wing **agenda through even though he was reelected with a divided country**. ***He cherry picks issues which divide the Republican Party***. **The Republican Party ends up fighting within itself, diverting the public's attention to its chaos rather than Obama's agenda. The Republican Party is left looking unprincipled, confused and hypocritical**.¶ **Look at the most recent high-profile political battles**. With the help of the complicit liberal media, **Obama made extending the payroll tax cut to avoid the “fiscal cliff” one of the biggest issues**. It is not a clear-cut Republican versus Democrat issue, because while Republicans are generally in favor of lower taxes, government spending is out of control. **Every time the extension has come up for a vote, Republicans are split**. If they vote to extend it, they look fiscally irresponsible. If they vote to end it, they look like they support a tax increase. Either way **they will be skewered by both the left and the right** for deserting their principles, **and Obama skates away free to pursue his agenda with little scrutiny**. **The Democrats escape scrutiny** on the payroll tax cut extension votes because they don't claim to be the party of fiscal responsibility or friend of the taxpayers. They merely claim to stand for murky concepts like “caring about Americans.”

***Outweighs their link***

Even if plan weakens Obama --- divided GOP can’t capitalize on that

Byron **York**, Jewish World Review August 20, 20**13**, Fractured GOP struggles to expose Obama's weakness, <http://www.jewishworldreview.com/0813/york.php3#.UhZ20NLqmSo>

**Republicans are buzzing about a new** Gallup **poll showing public approval of** President **Obama's handling of the economy has fallen** to 35 percent, **while disapproval has risen** to an astonishing 62 percent. **With showdowns coming over Obamacare, spending, and debt, the president's weakness could create a huge opportunity for the GOP. But the fact is, Republicans are too disorganized, splintered, and unfocused to take advantage of it.**

***Alternate theories of agenda success ignore key facts.***

**Dickerson 13** [John, Chief Political Correspondent at the Slate, Political Director of CBS News, Covered Politics for Time Magazine for 12 Years, Previous White House Correspondent, They Hate Me, They Really Hate Me, http://tinyurl.com/arlxupq]

When you are on the Fox News’ ticker for the wrong reasons, it's time to put things into context.

On the eve of the president's inauguration, I wrote a piece about what President Obama needs to do to be a transformational rather than caretaker president. I was using a very specific definition of transformational presidencies based on my reading of a theory of **political science** and the **president's own words** about transformational presidencies from the 2008 campaign. It was also based on these givens: The president is ambitious, has picked politically controversial goals, has little time to operate before he is dubbed a lame-duck president, and has written off working with Republicans. "Bloodier-minded when it comes to beating Republicans,” is how Jodi Kantor put it in the New York Times. Given **these facts**, there is **only one logical conclusion** for a president who wants to transform American politics: He must take on Republicans—aggressively.

For me, this was a **math problem** with an **unmistakable conclusion**. Some people thought I was giving the president my personal advice. No. My goal was to make a compelling argument based on the facts. I used words like "war" and “pulverize,” and some have responded with threats to me and my family. (“Go for his throat!” some have counseled, echoing the headline.) These words have also liberated some correspondents (USUALLY THE ONES THAT TYPE IN ALL CAPS!!!!) from reading the piece or reading it in the spirit in which it was written. But there were also almost 2,000 other words in the piece, which should put that provocative language in context. What's been lost in the news ticker and Twitter threats is the argument of the piece: This is the **only plausible path** for a bold, game-changing second term for a president who has positioned himself the way President Obama has. Indeed, the piece accurately anticipated the forceful line the president ultimately took in his inaugural address with his call for collective action and failure to reach out to Republicans. Brit Hume said Obama’s speech confirms for all time the president’s essential liberalism. The New Republic’s Noam Scheiber precisely identified the speech not merely as liberal but an argument for liberalism.

Some correspondents have asked why I didn't advocate that Obama embrace House GOP spending plans or some other immediate compromise, a more pleasant outcome than the prospect of even more conflict in Washington. There's **no evidence**, however, that the president is in a compromising mood. (Again, see second inaugural.) This piece was written from the viewpoint of the reality as it stands, not a more pleasing future we would all prefer to inhabit. That reality (and the initial piece) includes an unpleasant fact to some Republicans: The GOP is in a state of disequilibrium. For evidence of that disarray, I rely on Rep. Tom Cole, Sen. Rand Paul, participants at the House GOP retreat, and Ramesh Ponnuru at the National Review. (As I mentioned in the piece, Democrats have their own tensions, too.)

***Our argument is based in academia and cites empirics.***

**Dickerson 13** [John, Chief Political Correspondent at the Slate, Political Director of CBS News, Covered Politics for Time Magazine for 12 Years, Previous White House Correspondent, Go for the Throat!, http://tinyurl.com/b7zvv4d]

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.

This theory of political transformation rests on the weaponization (and slight bastardization) of the work by **Yale political scientist** Stephen Skowronek. Skowronek has written extensively about what distinguishes transformational presidents from caretaker presidents. In order for a president to be transformational, the old order has to fall as the orthodoxies that kept it in power exhaust themselves. Obama's gambit in 2009 was to build a new post-partisan consensus. That didn't work, but by exploiting the weaknesses of today’s Republican Party, Obama has an opportunity to hasten the demise of the old order by increasing the political cost of having the GOP coalition defined by Second Amendment absolutists, climate science deniers, supporters of “self-deportation” and the pure no-tax wing.

The president has the ambition and has picked a second-term agenda that can lead to clarifying fights. The next necessary condition for this theory to work rests on the Republican response. Obama needs two things from the GOP: overreaction and charismatic dissenters. They’re not going to give this to him willingly, of course, but mounting pressures in the party and the personal ambitions of individual players may offer it to him anyway. Indeed, Republicans are serving him some of this recipe already on gun control, immigration, and the broader issue of fiscal policy.

On gun control, the National Rifle Association has overreached. Its Web video mentioning the president's children crossed a line.\* The group’s dissembling about the point of the video and its message compounds the error. (The video was also wrong). The NRA is whipping up its members, closing ranks, and lashing out. This solidifies its base, but is not a strategy for wooing those who are not already engaged in the gun rights debate. It only appeals to those who already think the worst of the president. Republicans who want to oppose the president on policy grounds now have to make a decision: Do they want to be associated with a group that opposes, in such impolitic ways, measures like universal background checks that 70 to 80 percent of the public supports? Polling also suggests that women are more open to gun control measures than men. The NRA, by close association, risks further defining the Republican Party as the party of angry, white Southern men.

The president is also getting help from Republicans who are calling out the most extreme members of the coalition. New Jersey Gov. Chris Christie called the NRA video "reprehensible." Others who have national ambitions are going to have to follow suit. The president can rail about and call the GOP bad names, but that doesn't mean people are going to listen. He needs members inside the Republican tent to ratify his positions—or at least to stop marching in lockstep with the most controversial members of the GOP club. When Republicans with national ambitions make public splits with their party, this helps the president.

(There is a corollary: The president can’t lose the support of Democratic senators facing tough races in 2014. Opposition from within his own ranks undermines his attempt to paint the GOP as beyond the pale.)

If the Republican Party finds itself destabilized right now, it is in part because the president has already **implemented a version** of this strategy. In the 2012 campaign, the president successfully transformed the most intense conservative positions into liabilities on immigration and the role of government. Mitt Romney won the GOP nomination on a platform of “self-deportation” for illegal immigrants—and the Obama team never let Hispanics forget it. The Obama campaign also branded Republicans with Romney's ill-chosen words about 47 percent of Americans as the party of uncaring millionaires.

Now Republican presidential hopefuls like Chris Christie, Marco Rubio, and Bobby Jindal are trying to fix the party's image. There is a general scramble going on as the GOP looks for a formula to move from a party that relies on older white voters to one that can attract minorities and younger voters.

Out of fear for the long-term prospects of the GOP, some Republicans may be willing to partner with the president. That would actually mean progress on important issues facing the country, which would enhance Obama’s legacy. If not, the president will stir up a fracas between those in the Republican Party who believe it must show evolution on issues like immigration, gun control, or **climate change** and those who accuse those people of betraying party principles.

That fight will be loud and in the open—and in the short term unproductive. The president can stir up these fights by poking the fear among Republicans that the party is becoming defined by its most extreme elements, which will in turn provoke fear among the most faithful conservatives that weak-willed conservatives are bending to the popular mood. That will lead to more tin-eared, dooming declarations of absolutism like those made by conservatives who sought to define the difference between legitimate and illegitimate rape—and handed control of the Senate to Democrats along the way. For the public watching from the sidelines, these intramural fights will look confused and disconnected from their daily lives. (Lip-smacking Democrats don’t get too excited: This internal battle is the necessary precondition for a GOP rebirth, and the Democratic Party has its own tensions.)

This approach is not a path of gentle engagement. It **requires confrontation** and bright lines and tactics that are more aggressive than the president demonstrated in the first term. He can't turn into a snarling hack. The posture is probably one similar to his official second-term photograph: smiling, but with arms crossed.

The president already appears to be headed down this path. He has admitted he’s not going to spend much time improving his schmoozing skills; he's going to get outside of Washington to ratchet up public pressure on Republicans. He is transforming his successful political operation into a governing operation. It will have his legacy and agenda in mind—and it won’t be affiliated with the Democratic National Committee, so it will be able to accept essentially unlimited donations. The president tried to use his political arm this way after the 2008 election, but he was constrained by re-election and his early promises of bipartisanship. No more. Those days are done.

Presidents don’t usually sow discord in their inaugural addresses, though the challenge of writing a speech in which the call for compromise doesn’t evaporate faster than the air out of the president’s mouth might inspire him to shake things up a bit. If it doesn’t, and he tries to conjure our better angels or summon past American heroes, then it will be among the most forgettable speeches, because the next day he’s going to return to pitched political battle. He has no time to waste.